U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-M-W-

DATE: APR. 18, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a competitive swimmer, seeks classification as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner had not established that the Beneficiary satisfies at least three of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner presents additional documentation and a brief stating that he meets all evidentiary requirements.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, he or she must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and scholarly articles). In addition, if a petitioner demonstrates that the listed criteria do not readily apply to his or her occupation, then he or she may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).[1] This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner, a competitive swimmer, did not indicate, and the record does not establish, that he has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The Petitioner must therefore demonstrate his eligibility under at least three of the criteria listed at 8 C.F.R. §§ 204.5(h)(3)(i)-(x).

The Director found that the Petitioner did not satisfy the regulatory requirements for the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), or the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, he asserts that he has satisfied all four of the claimed criteria. We have reviewed the entire record of proceedings, and it does not support a finding that the Beneficiary meets the plain language requirements of at least three criteria.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The record contains documentation, including photographs, certificates, and statistics, indicating that he has earned numerous points for his various teams in competitive events, as well as multiple certificates and medals throughout his swimming career. However, the documentation submitted is

[1] This case discusses a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination. *See also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

insufficient to demonstrate that these awards constitute nationally or internationally recognized awards for excellence in his field.

The Petitioner submitted numerous statistics from his time as a member of the University of [redacted] swim team and the Polish national team. Although he asserts that all finishers in the top eight for each individual or relay event garner points for their team, his finishes within these parameters do not constitute nationally or internationally recognized awards for excellence. While his points, combined with those of his numerous teammates competing in other events, may have contributed to his teams' overall finishes in various competitions, there is no indication that the earning of points at various swim meets is equivalent to an award for excellence in the field.

He also relies on his receipt of various certificates and awards while a member of the University of [redacted] swim team, such as certificates awarding him All-American status on the NCAA [redacted] for 2013 and being named [redacted] for 2015 and 2016. While these awards acknowledge his skills and abilities, there is no indication that these awards constitute nationally or internationally recognized awards for excellence in the field of swimming. Moreover, the Petitioner did not provide the selection criteria for these awards. Finally, the record contains no evidence demonstrating that the Petitioner's receipt of these awards garnered national attention beyond the [redacted] or the university.

The record also contains numerous claims that he won NCAA gold and bronze conference medals for relay and individual events while a member of the University of [redacted] swim team. However, there is no specific documentary evidence to support a finding that placing within the top three at various NCAA swimming events constitutes nationally or internationally recognized awards for excellence in swimming. Moreover, the record does not contain corroborating evidence of his receipt of these medals.

Although the record contains photographs of the Petitioner with numerous medals, it does not include corroborating evidence explaining the nature and purpose of each medal. The Petitioner asserts that he placed 8th and 10th at various European Championships, but there is no evidence demonstrating that such placement in those events constitutes an award for excellence in the field. Moreover, while the Petitioner submits copies of "Diplomas" on appeal, accompanied by English translations, that demonstrate he placed first in both the 100 Yard and 200 Yard Freestyle events for the [redacted] in swimming, there is no information demonstrating that awards given by the [redacted] are recognized nationally or internationally. For the above-stated reasons, the Petitioner has not established that the Beneficiary meets this regulatory criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

We find that the Director erred in determining that the record did not establish eligibility for this criterion. The Petitioner demonstrated that he was a member of the Polish national team on multiple occasions, and represented Poland as a member of the country's team at the Summer Olympic Games in He has therefore satisfied this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Director found that the Petitioner did not satisfy this criterion, and we agree with that determination. Although he submitted several articles and what appear to be video interviews regarding his athletic performances published in various forms of media, including the University of online web page, the online versions of and Polish-language publications, the evidence is insufficient to demonstrate that these articles appeared in professional publications, major trade publications, or other major media as required under the regulation.

The Petitioner submitted what appears to be an article posted on the University of web page at The article does not include the identity of its author or its date of publication; thus, it does not satisfy the requirements of this criterion. Even if these relevant factors were included, the record does not establish that this site qualifies as major media. The mere act of posting an article online does not transform what is otherwise a local college newspaper article into major media.

Regarding the videos featured in the online versions of the Petitioner misconstrues the type of evidence contemplated by 8 C.F.R. § 204.5(h)(3)(iii), which plainly states: "Such evidence *shall* include the title, date, and author of the material, and any necessary translation." (Emphasis added). The submitted evidence lacks all of the elements required by the plain language of the regulation. In addition, the online web pages of these publications merely contain photos of the video start pages, and are not accompanied by written transcripts identifying the content of these claimed interviews. [2]

[2] It should be noted that in the event the submissions from these magazines otherwise met the regulatory requirements, the information regarding their circulation is insufficient to establish that they constitute major media. The documentation provided is from the publications themselves (their websites, specifically) rather than published circulation statistics from an official or independent website or other publicly available source. We need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D. Cal. July 6, 2007) *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media).

Finally, the Petitioner submits articles published in various Polish-language publications, accompanied by certified translations. The translation accompanying the first article,, entitled [redacted] does not include the name of the publication in which the article appeared, or the date and author of the article. Although the translations of the remaining articles contain the relevant details required under this criterion, the Petitioner has not established the circulation data of [redacted] (Polish Sports Magazine) or [redacted] Newspaper to compare with the circulation statistics of other Polish newspapers or magazines. Consequently, he has not established that [redacted] are forms of major media. The record lacks information related to the distribution data of these publications to demonstrate that they are considered to be major media and the Petitioner has not established these publications are professional or major trade publications as required by the regulation. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012). For the reasons outlined above, the Petitioner has not satisfied the requirements of this criterion.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner asserts that he has performed in a leading or critical role for the University of [redacted] swim team. In general, a leading role is evidenced from the role itself, while a critical role is one in which a petitioner was responsible for the success or standing of the organization.

The Petitioner asserts on appeal that he played a critical role for the University of [redacted] swim team "because he has won multiple NCAA Championships, helped improve his teammates performances, and set school records." He asserts that his performances in multiple conference championships places him above his other teammates, thereby making his role more leading and critical than those of other swimmers on the team.

Although the Petitioner submitted evidence demonstrating that the University of [redacted] swim team has a distinguished reputation, he has not indicated where his position fits in the organization's overall hierarchy or shown how his membership on the team was reflective of a leading or critical role. The record does not include evidence, for example, differentiating his role as a swimmer from that of the other members.

The Petitioner states that he has won numerous medals for the University of [redacted] swim team in freestyle and freestyle relay championship events; specifically, the 200 and 500 Yard Freestyles, and the 200 and 800 Yard Freestyle Relays. However, his receipt of these medals is not sufficient to demonstrate that he served in a leading or critical role. As explained by the Petitioner, the top eight swimmers in all events are awarded points for their respective teams, which therefore contribute to the overall team score and ultimate place in which they finish. However, as a relay swimmer, he is one of a team of four and has not demonstrated that his contributions surpass his teammates. The

Petitioner has not provided sufficient evidence indicating that his swimming results impacted the University of [redacted] standing in the sport beyond those of his fellow teammates and competitors.

Although he submits numerous letters of recommendation from coaches and fellow swimmers, these are likewise insufficient to demonstrate his leading or critical role for the University of [redacted] swim team. For example, [redacted] the head coach, states that the Petitioner "was a crucial member of the team" who contributed to major successes in the relay category. Again, while his contributions were undoubtedly notable, there is no indication that his role as a member of a four-person relay team was more leading or critical than that of his three fellow relay team members, or of other individual team members in general. Similarly, although [redacted] states that as an international swimmer, the Petitioner offered his younger teammates a different perspective that helped them prepare for their first major events, there is no indication that he assumed a leading or critical role beyond that of mentoring younger teammates.

Similarly, [redacted] associate head coach for the University of [redacted] swim team, stated that the Petitioner played a leading role because he "scored many points throughout the season" and used his experience to mentally and physically prepare inexperienced teammates for competition. The record, however, does not include evidence differentiating his point results from fellow team members or explaining how his competitive results impacted the team's standing in the sport. For instance, the Petitioner did not show that the swim team garnered attention based on his top finishes at conference swimming events. Moreover, while [redacted] attests to the importance of the Petitioner's role in guiding and mentoring younger teammates, the record lacks corroborating evidence demonstrating that this aspect of the Petitioner's role for the organization was leading or critical.

The Petitioner also asserts that his role on various Polish national teams was leading or critical, again based on his claims of scoring points and earning medals that bolstered his team's rankings. A letter from the [redacted] states that his role is more leading than other teammates since he "is a consistent point scorer" and "because he holds multiple National Championships." This letter falls short of providing probative information that specifically addresses how the Petitioner's role was critical for each of the national teams for which he played. We cannot presume that he performed in a leading or critical role simply by his rankings in events specific to him; additional probative, corroborating evidence must also be part of the record. The Petitioner must provide specifics relating to how his role was critical to the organization as a whole. *See Noroozi v. Napolitano*, 905 F.Supp.2d at 545. Simply claiming that he won numerous medals and led his team to numerous victories, without more, falls short of providing probative information that specifically addresses how the Petitioner's role was critical for the team.

Even if the Petitioner had demonstrated that his role was leading or critical as contemplated by this criterion, he must also demonstrate that the organization has a distinguished reputation. The record, however, contains insufficient evidence to establish that the Polish national team enjoys a distinguished reputation as contemplated by the regulation.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

ORDER: The appeal is dismissed.

Cite as *Matter of P-M-W-*, ID# 1052433 (AAO Apr. 18, 2018)