U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF G-USA

DATE: APR. 19, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a gymnastics center, seeks to temporarily employ the Beneficiary as a gymnastics coach. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in athletics, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner avers that the Director did not properly consider the record, including comparable evidence of the Beneficiary's eligibility pursuant to the "comparable evidence" provision. 8 C.F.R. § 214.2(o)(3)(iii)(C). It maintains that the evidence satisfies the regulatory requirements and thus the Beneficiary is eligible for O-1 classification.

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

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of

"a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). And if the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iii)(C). If a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. [1]

II. ANALYSIS

Absent evidence of a Nobel-like, major international award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the eight regulatory criteria. The Director determined that the Petitioner did not satisfy any of the evidentiary criteria described at 8 C.F.R § 214.2(o)(3)(iii). The Petitioner maintains that the exhibits satisfy six of those criteria. It also avers that it submitted comparable evidence of the Beneficiary's eligibility. 8 C.F.R § 214.2(o)(3)(iii)(C). As discussed below, we find that the exhibits do not satisfy any of the evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iii)(B), or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iii)(C).

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

The Petitioner maintains that the Beneficiary satisfies this criterion based upon awards he received as a coach of junior gymnasts competing in national and international events. The Beneficiary's resume indicates that since 2006 he has worked for the as coach of its ' ' He also provided copies of certificates he received from the as an ' in 2012 and 2015, and " in 2013.

Although not addressed by the Director, we note that, for the translations of the above-referenced foreign language awards certificates, the Petitioner submitted only an unsigned blanket certification for "these documents." Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the awards certificates, we cannot meaningfully determine whether the translated material is accurate and supportive of the Petitioner's claims. Regardless, for the reasons that follow, the evidence is nevertheless insufficient to establish that the Beneficiary received nationally or internationally recognized prizes or awards.

[1] While not at issue here, there are other evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

In this case, the Petitioner does not offer information regarding the certificates to demonstrate that they are "nationally or internationally recognized prizes or awards." Without documentary evidence regarding the awards themselves, such as the pool of individuals considered, the selection criteria, or the level of attention they attract within the field, we cannot conclude that they are recognized beyond the issuing entity. The burden is on the Petitioner to demonstrate the level of recognition and achievement associated with the Beneficiary's awards. Here, however, the evidence does not demonstrate the certificates represent receipt of nationally or internationally recognized honors.

> *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. § 214.2(o)(3)(iii)(B)(*2*).

The Petitioner maintains that the Beneficiary satisfies this criterion with his participation as a coach in junior gymnastic competitions at the "local, national, and international level" and for the national team of Peru. It avers that "it is because of [the Beneficiary's] expertise that he has participated in each event" and "[i]t is implied that participation [at] each event requires the outstanding achievements . . . as recognized by national or international experts." We determine, however, that the evidence provided is insufficient to satisfy this criterion.

While an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete or coach can earn a place on a national or an Olympic team only through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's or coach's membership on an Olympic team or a major national team such as a World Cup team may serve to meet this criterion, as such teams are limited in the number of members and have a rigorous selection process. However, it is the Petitioner's burden to demonstrate that the Beneficiary meets every element of a given criterion, including that he is a member or coach of a team that requires outstanding achievements of its members, as judged by recognized national or international experts.

The Petitioner provided certifications from the indicating that the Beneficiary served as coach at many international artistic gymnastics competitions, including the 2015 the 2015 the 2015 the 2015 and the 2014 We note that these foreign language documents do not comport with the regulation at 8 C.F.R. § 103.2(b)(3), as they are accompanied by uncertified translations. Thus, for the reasons previously discussed, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

While not explicitly submitted under this criterion, the exhibits include two letters and a resolution from the president of the confirming that the Beneficiary coached the men's artistic gymnastics team at the 2015 the

2015 and the 2013 The Petitioner also provided several foreign press releases that mention the Beneficiary as a coach for these competitions.

Although the evidence provided indicates the Beneficiary coached at events named above, it does not include information identifying the qualifications required for this role. The Petitioner does not offer a rationale for considering participation in such events to meet the membership criterion, beyond the urging that "it is implied" that outstanding achievements were required of coaches at the cited events. It did not submit details regarding the exclusivity of the teams or their process for choosing a coach. As previously mentioned, the Beneficiary's CV indicates that since 2006 he has worked for the as coach of the Without more, however, the Petitioner has not demonstrated that the Beneficiary's selection to coach athletes who compete on behalf of that team was due to a determination of his outstanding achievements, as judged by national or international experts in the field. Accordingly, the Petitioner has not established that the Beneficiary meets this criterion.

> *Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*).

In support of this criterion, the Petitioner submitted foreign-language press releases published on the webpages of the and The press releases describe the Beneficiary's work as coach of the men's artistic gymnastics team in preparing for the 2015 and the 2015

To qualify as major media, a publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[2] In this case, the Petitioner did not present information regarding the general online readership of the websites on which these press releases appeared, or other evidence showing that they constitute professional or major trade publications or major media.

In addition, the documentation provided does not meet other specific requirements of the criterion. First, most of the materials do not include authors. In addition, the Petitioner did not submit copies of the original foreign-language articles, accompanied by the required translations. 8 C.F.R. § 103.2(b)(3). The provided versions of the articles obtained from Google Translator do not meet the regulatory requirements for translations. *Id.* For these reasons, the Petitioner has not satisfied this criterion.

[2] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

> *Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*).

The Petitioner avers that the Beneficiary satisfies this criterion based upon his participation in two physical education and gymnastics conferences. It does not, however, offer rationale for a finding that the Beneficiary's role in attending or presenting at those events equates to participating "as a judge of the work of others." As such, the evidence submitted does not satisfy this criterion.

> *Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*).

In support of this criterion the Petitioner submitted recommendation letters from one of its coaches, and a coach with the artistic gymnastics team. Although the letters praise the Beneficiary's work as a gymnastics coach, they do not identify particular contributions of major significance in the field. In addition, letter contains multiple sentences identical to those contained in the Petitioner's support letter, suggesting that its language was not written independently. While it is acknowledged that has provided his support for this petition, it is unclear whether the letter reflects his independent observations and thus an informed and unbiased opinion of the Petitioner's work. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). Similarly, the letter from is unsigned and does not appear on letterhead. It therefore has limited probative value.

The Petitioner also provided foreign language originals and translations of letters from the parents of two junior gymnasts coached by the Beneficiary: and We note that the submitted translations of those letters do not comport with the regulation at 8 C.F.R. § 103.2(b)(3), since they are accompanied by uncertified translations. Thus, for the reasons previously discussed, the English translations of those letters do not meet the regulatory requirement under 8 C.F.R. § 103.2(b)(3) and have diminished probative value.

Regardless, the Petitioner has not demonstrated that the Beneficiary has made an original contribution of major significance in the field. The letter pertaining to credits the Beneficiary's coaching with helping him become the national junior men's artistic gymnastics champion. The letter regarding indicates that he "has been of several Competitions in which he has participated." The above-referenced resolution from indicates that both gymnasts were selected to compete as members of the men's artistic gymnastics team in the 2013 which the Beneficiary coached. The Petitioner has not, however, sufficiently corroborated elsewhere in the record that these students received awards while under the Beneficiary's primary tutelage. More importantly, the letters do not explain how their success at the junior level constitutes a contribution

of major significance in the field as a whole. For these reasons, the Petitioner has not satisfied this criterion.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's position within the scope of the organizations that have employed him. The Petitioner maintains that the Beneficiary was employed in a critical or essential capacity as coach of the men's artistic gymnastics team. It also references his representation of In support of this criterion, it submitted the above-referenced press releases and the letters and resolution.

The record does not establish, however, that the Beneficiary has been employed in a critical or essential capacity for these organizations. The Petitioner did not provide organizational charts or other documentation showing where the Beneficiary's position fell within the organizations' general hierarchy, such as evidence of how it related to other coaching positions in the organizations, the number of coaches employed, or how many of them coached top-level athletes. It did not submit material explaining the importance of the Beneficiary to the organizations. Without more, we cannot conclude that the Beneficiary played a critical or essential role. As a result, the Petitioner has not provided sufficient material to meet this criterion.

Comparable evidence. 8 C.F.R. 214.2(o)(3)(iii)(C).

As stated previously, DHS regulations provide that comparable evidence may be submitted if the listed criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) do not readily apply to a beneficiary's occupation. 8 C.F.R. § 214.2(o)(3)(iii)(C). A petitioner relying upon comparable evidence must still establish the beneficiary's eligibility by satisfying at least three separate evidentiary criteria as required under the regulations. Moreover, an inability to meet a regulatory criterion is not necessarily evidence that it does not readily apply to the beneficiary's occupation. It is the petitioner's burden to explain why the regulatory criterion is not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to that criterion.[3] On appeal, the Petitioner states that the Director erred in not considering as comparable evidence a photograph "showing that [the Beneficiary] met with and posed with the because of his work as a for the ."

First, the Petitioner has not explained why the listed criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) are not readily applicable to gymnastics coaching. Although the evidence submitted does not satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), (*2*), (*3*), (*4*), (*5*), and (*7*), as previously stated, an inability to meet a criterion does not demonstrate that it is not readily applicable to a beneficiary's occupation. In addition, although the Petitioner did not claim any additional criteria, we find it

[3] The burden of proof is on the party seeking the benefit. Section 291 of the Act.

reasonable to believe that a gymnastics coach could, for example, satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*6*) (authorship of scholarly articles in the field), or 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*) (command of a high salary).

Next, the Petitioner does not claim that the above-referenced photograph is directly related to any of the eligibility criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Rather, it references the photograph as pertaining to the Beneficiary's role as coach of the [redacted] men's artistic gymnastics team, which we have previously discussed under the eligibility criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) and (*7*). For these reasons, the Petitioner has not met the requirements for using comparable evidence of those listed criteria. 8 C.F.R. § 214.2(o)(3)(iii)(C).

III. CONCLUSION

The record does not satisfy at least three of the eight evidentiary criteria or the comparable evidence provision. 8 C.F.R. § 214.2(o)(3)(iii)(B), (C). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in athletics.

ORDER: The appeal is dismissed.

Cite as *Matter of G-USA*, ID# 226052 (AAO Apr. 19, 2017)