U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-M-B-

DATE: APR. 26, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a professional dog handling, training, and conditioning company, seeks to temporarily employ the Beneficiary as a professional dog handler. 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 Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not submit any written contracts or a summary of the terms of an oral agreement with the Beneficiary that existed at the time of filing. 8 C.F.R. § 214.2(o)(2)(ii)(B). In the addition, the Director determined 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 asserts that: (1) the Director misidentified the Beneficiary in the denial decision; (2) she previously obtained O-1 nonimmigrant status for the Beneficiary; and (3) the Beneficiary meets the regulatory requirements 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 include the following definition: "Extraordinary ability in the field of science, education, business, or athletics means 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 the initial evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. 8 C.F.R. § 214.2(o)(3)(iii). First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the individual's achievements in the field through evidence of a major, internationally recognized award, such as the Nobel Prize. 8 C.F.R. § 214.2(o)(3)(iii)(A). If the petitioner does not submit this evidence, then it must submit sufficient qualifying evidence that meets at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, it may submit comparable evidence in order to establish the individual's eligibility. 8 C.F.R. § 214.2(o)(iii)(C).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met."). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows extraordinary ability in the athletics under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(B) provides that petitions for O foreign nationals shall be accompanied by copies of any written contracts between the petitioner and the beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed.

II. ANALYSIS

A. Harmless Error

Initially, the Petitioner indicated the filing for three workers in Part 2 of Form I-129O. Specifically, she listed the principal Beneficiary (O-1 classification) in Part 3 and two other workers in an attachment to the petition as essential support personnel to the Beneficiary (O-2 classification). Only one beneficiary may be included on an O-1 petition. 8 C.F.R. § 214.2(o)(2)(i). O-2 beneficiaries must be filed for on a separate petition for the O-1 beneficiary. *Id.* As such, the Director issued a request for evidence (RFE) and informed the Petitioner that support personnel cannot be included on the same petition as the principal Beneficiary. Moreover, the Director requested that the Petitioner "[p]rovide a statement which identifies the principal beneficiary and the action [she] wish[es] to take for the support personnel." In response, the Petitioner stated that she wished to exclude the two support personnel from consideration and identified the Beneficiary as the principal.

[1] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

In denying the petition, however, the Director erroneously listed the name of one of the previously claimed support personnel as the principal Beneficiary on the cover page of the decision. On appeal, the Petitioner argues that "[t]his is a case of mistaken identity." Although the Director included the wrong name on the cover page, the decision reflects that she discussed the evidence as it related to the correct Beneficiary and ultimately concluded that the Petitioner did not fulfill the requirements to classify him as an individual of extraordinary ability. Accordingly, we find that the Director committed a harmless error that did not influence or impact her analysis or decision.

B. Prior O-1 Nonimmigrant Status

The Petitioner previously petitioned and obtained approval for the Beneficiary as an O-1 nonimmigrant.[2] On appeal, the Petitioner contends that the Beneficiary "was good enough" when she applied for him over three years ago, and he is "more successful here in the States and good enough to compete as a Professional Dog Handler here." However, each extraordinary ability petition is reviewed on its own merits. Further, we are not bound by prior decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000). Therefore, the petition and supporting evidence, which is the basis for this appeal, will be independently evaluated to determine whether the Petitioner satisfies the requirements to classify the Beneficiary as an individual of extraordinary ability regardless of any prior decision.

C. Pre-existing Contract

Petitions for O foreign nationals shall be accompanied by copies of any written contracts between the petitioner and the beneficiary, or, if there is no written contract, a summary of the terms of the oral agreement under which the beneficiary will be employed. *See* 8 C.F.R. § 214.2(o)(2)(ii)(B). At initial filing, the Director found that the Petitioner did not submit any contracts or a summary of the terms of any oral agreements. As such, the Director issued an RFE and informed the Petitioner of this regulatory requirement. In response, the Petitioner provided a contract entered into by the parties on December 1, 2017, approximately three months after the filing of the petition.

The Director denied the petition, in part, because the contract occurred after the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). On appeal, the Petitioner does not contest the Director's decision or address this issue in her brief. Accordingly, the Petitioner did not demonstrate any contract or agreement between the parties for the intended period of employment at the time she filed her petition.

[2] *See* with a validity period from October 27, 2014 to August 31, 2017

D. Evidentiary Criteria

Absent evidence of a major, internationally recognized award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the eight regulatory criteria at 8 C.F.R § 214.2(o)(3)(iii)(B). The Director determined that the Petitioner provided evidence relating to seven criteria but did not satisfy any of them. On appeal, the Petitioner submits additional documentation and maintains that the Beneficiary meets six criteria. As discussed below, we find that the exhibits meet only one of the evidentiary categories.

> *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 record contains evidence that the Beneficiary received nationally and internationally recognized awards for excellence from major events held by the . As such, the Petitioner established that the Beneficiary meets this 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. § 214.2(o)(3)(iii)(B)(*2*).

The Petitioner indicates that the Beneficiary is a member of the which is also a member of the . Moreover, the Petitioner claims that the Beneficiary "can judge in all recognized [c]ountries, therefore he can judge all) shows as well." In addition, she submits a letter from president of who stated that the Beneficiary served as a board member and a judge. Further, she presents screenshots from regarding the background and history of the

Moreover, the Petitioner states the "offers a trophy, recognizing the dogs with the best rankings out of all of the Club Members" and "[s]o the dogs owned by the members with the highest rankings receive the trophy." In addition, she submits three photographs of trophies and claims that the Beneficiary's "dogs have won that trophy 5 times."

In order to meet this criterion, the Petitioner must establish the Beneficiary'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. However, the Petitioner did not offer, for example, the bylaws or other evidence for reflecting that membership requires outstanding achievements and is judged by recognized national or international experts consistent with the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*). Further, the issue here is whether membership is judged by recognized national or international experts rather than the Beneficiary's ability to judge or experience as a judge. Moreover, the Petitioner did not provide any documentation to support her assertions regarding and therefore, did not show the Beneficiary's membership with the association.

For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

> *Published material in professional or major trade publications or other 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*).

The Petitioner contends that she previously submitted "published magazine [a]dvertisements in DN Magazine and Canine Chronicle." In order to satisfy this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, including the title, date, and author of the material. Generally, marketing materials created for the purpose of selling products or promoting services are not considered published material about the Beneficiary. Moreover, the record contains copies of magazine pages with pictures of the Beneficiary handling dogs without any discussion about him. Further, the Petitioner did not include the authors of the material.

In addition, the Petitioner did not establish that the submitted material appeared in qualifying publications. As it relates to *DN Magazine*, the Petitioner submits a letter from Matt Stander, co-founder, who claimed that the magazine's "impact is on a National and International basis." Regarding *Canine Chronicle*, she provides a letter from Thomas A. Grabe, publisher, who indicated that the publication produces 15,000 copies per issue. The evidence, however, does not demonstrate that the publications are representative of professional or major trade publications or other major media. Moreover, the Petitioner did not did not offer circulation numbers for *DN Magazine* and did not show the significance of the figures for *Canine Chronicle* or explain how such numbers represent major media status.

Further, the Petitioner offers three Internet addresses and claims that they reflect "link[s] to the websites where videos of [the Beneficiary] exhibiting his dogs at major internationally recognized shows like [redacted]." Because the Petitioner did not provide transcripts of the videos, she did not establish that they reflect published material about the Beneficiary. Furthermore, the Petitioner did not show whether the videos are about the Beneficiary rather than about the exhibited dogs or the overall dog shows. In addition, the Petitioner did not include the titles, dates, and authors of the videos. Finally, the Petitioner did not provide evidence establishing that the websites are major media.

Similarly, the Petitioner provides "a link to the local [redacted] station of the video interview of [the Beneficiary's] Dog from his significant win at the [redacted]." Again, the Petitioner did not include a transcript of the video, as well as the title, date, and author. Moreover, the Petitioner did not demonstrate that the video represents published material about Beneficiary rather than about the dog's win. In addition, the Petitioner did not offer evidence showing the website's major medium status.

For the reasons discussed above, the Petitioner did not establish the Beneficiary's eligibility for this criterion.

> *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 argues that the Beneficiary "is a member of the which allows him to judge in Countries all over the world" and "[b]ecause the and the follow the same rules and have mutual recognition, [the Beneficiary] is able to be a judge of all breeds in the United States." In addition, the Petitioner submits a letter from executive secretary for who discussed relationship with foreign registrations. Moreover, the Petitioner provides regulations for show judges.

Here, the Petitioner must demonstrate that the Beneficiary has participated as a judge of the work of others or an allied field of specialization. Although the Petitioner argues the Beneficiary's eligibility to judge, she did not offer evidence demonstrating that he actually participated as a judge, either individually or on a panel. The Petitioner did not present, for example, evidence from confirming his service as a judge at dog shows.

In addition, as noted under the membership criterion, a letter from claimed that the Beneficiary "is a Judge for and has also served on many Judges [sic] committees." However, the letter does reflect probative evidence as it does not contain detailed, specific information showing the Beneficiary's participation as a judge. For instance, the letter does not indicate the names and dates of shows to support the claims.

Accordingly, the Petitioner did not demonstrate that the Beneficiary meet 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 Petitioner claims that the Beneficiary meets this criterion based on his service as an mentor. She submits a letter from vice-president of dog show judges for who discussed the importance of breed mentors. In addition, the Petitioner provides two letters from individuals praising the Beneficiary for mentoring them.

In order to meet this criterion, the Petitioner must show that the Beneficiary has been employed in a critical or essential capacity for organizations and establishments with distinguished reputations. Although generally discussed the importance of breed mentors, he never mentioned or acknowledged the Beneficiary, nor did he indicate how the Beneficiary contributed to n a critical or essential capacity. Moreover, the recommendation letters reflect that the Beneficiary served as a breed mentor after the initial filing of the petition. Again, eligibility must be established at time of filing. *See* 8 C.F.R. § 103.2(b)(1). Further, the letters reflect the impact of the Beneficiary's mentorship to the individuals rather than to the greater

For these reasons, the Petitioner did not establish that the Beneficiary meets this criterion.

> *Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*).

The Director found that the Petitioner's submission of printouts of rates of other dog handlers were closely comparable to the rates commanded by the Beneficiary. On appeal, the Petitioner states that "[a]s of January 2018, [the Beneficiary] has new, higher handling rates for his service." However, the Petitioner must demonstrate that, at the time of filing the petition, the Beneficiary either commanded a high salary or will command a high salary or other remuneration for services. Thus, increasing the Beneficiary's handling rates after filing the petition does not satisfy this criterion. *See* 8 C.F.R. § 103.2(b)(1). Moreover, the Petitioner has not established that the submitted selection of dog handler rates are representative of the field as a whole, and we note that the Beneficiary's new rates are still similar to several of the sample rates. Here, the Petitioner has not established that the Beneficiary either commanded a high salary or will command a high salary or other remuneration when compared to others in his field.

Accordingly, the Petitioner did not show that the Beneficiary fulfills this criterion.

V. CONCLUSION

The record does not reflect a contract between the parties at the time of initial filing, and the record does not satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-M-B-*, ID# 2764837 (AAO Apr. 26, 2019)