U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-U-S-C-, LLC

DATE: DEC. 14, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a professional soccer club, seeks to classify the Beneficiary as an individual of extraordinary ability in the athletics. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas 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.

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy the 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 it has provided sufficient evidence of two criteria along with comparable evidence of the Beneficiary's eligibility. 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 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). In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, "truth is to be determined not by the quantity of evidence alone but by its quality." That decision explains that, pursuant to the preponderance of the evidence standard, we "must 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." *Id.* Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record shows eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii).

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary as a soccer coach for a period of three years. The Beneficiary's background includes experience as a soccer coach in Brazil for organizations such as [redacted] and [redacted]

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). On appeal, the Petitioner maintains that the exhibits satisfy two of those criteria and that it also submitted comparable evidence of the Beneficiary's eligibility under 8 C.F.R § 214.2(o)(3)(iii)(C). As explained 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).

B. Evidentiary Criteria

> *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*).

The Director found that the Petitioner did not submit sufficient evidence to meet this criterion, and we agree. Specifically, she noted that the published material presented dealt primarily with the [redacted] soccer club, where the Beneficiary coached a minor league team, and did not specifically refer to him. The Director also noted that several of the articles provided are not published in major media.

On appeal, the Petitioner states that "young coaches, who later may go on to become major league coaches do not get praise in the major media." It contends that because "coaches in the minor leagues often do not get the credit they deserve either by members of the press or by the general public," "the proof of a coach's excellence" is more properly demonstrated through "testimonials from people who went on to very successful careers in the soccer world." However, testimonials do not satisfy the plain language of the criterion, which requires published material about the individual.[1]

Accordingly, we examine the submitted published material in determining whether the Petitioner has met the criterion. The Petitioner offered an article from an organization described as "one of the world's pioneers in the field of consultants in the world of sports." The article features the Beneficiary and describes his contributions to youth soccer in Brazil. While the article's content is primarily about the Beneficiary and his work with youth soccer, the Petitioner has not provided sufficient evidence that this article was published in a professional or major trade publication or other major media as required.

The remaining articles do not mention the Beneficiary, thus, they are not about him as required. For example, the Petitioner provided material from its website entitled, ' along with article from entitled ' ' Neither article mentions the Beneficiary. The excerpts, therefore, are not published material "about the alien" and "relating to the alien's work in the field." *See* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*). Additionally, the Petitioner has not offered evidence that either website constitutes a qualifying publication.

In sum, the Petitioner has not offered sufficient evidence that material about the Beneficiary and relating to his work has been published in professional or major trade publications or major media. Accordingly, it has not met 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 a minor league coach for Fluminense.

The record does not establish, however, that the Beneficiary has been employed in a critical or essential capacity for this or any other organization. The Petitioner did not provide sufficient details

[1] The Petitioner does not specifically state whether it seeks to satisfy the comparable evidence provision with respect to this criterion. Regardless, it has not sufficiently demonstrated that the criterion does not readily apply to the Beneficiary's occupation, nor has it explained how the submitted testimonials are comparable.

regarding when the Beneficiary joined [redacted] his specific role, or how his contributions were critical or essential to the soccer club. [redacted] it did not submit documentation showing where the Beneficiary's position fell within the organizations' general hierarchy, such as evidence of how it related to other coaches in the organization or the number of coaches employed.

The Petitioner contends on appeal that several of the athletes that the Beneficiary coached were subsequently traded to top European soccer teams "for millions of dollars," and that their accomplishments can be attributed to the Beneficiary's role as a coach with [redacted] The record does not include sufficient detail regarding when the Beneficiary coached these individuals or how his work with them was a critical or essential role for [redacted] Without more, we cannot conclude that the Beneficiary played a critical or essential role.

Finally, the Petitioner asserts that the letters of recommendation provided are evidence that the Beneficiary has been employed in a critical or essential capacity for [redacted] However, the letters do not describe the manner in which the Beneficiary's role as a coach was critical or essential for the soccer club. For example, many of the letters state that the Beneficiary "is a balanced leader and has the ability to motivate a large team that seeks good results and fights for titles."[2] One of the Beneficiary's students, [redacted] states that he has "helped me to improve myself" and "has an extraordinary knowledge of soccer." Similarly, a Brazilian sports writer, [redacted] indicates that the Beneficiary is "an extraordinary soccer coach." While the Beneficiary has earned the admiration of his references, the letters do not demonstrate that his successes are reflective of a critical or essential role for an organization or establishment under the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

C. Comparable Evidence

On appeal, the Petitioner contends that the Director erred in not considering the Beneficiary's experience working with minor league players and the letters of recommendation attesting to his experience. It contends that "the extent of his extraordinary abilities shows up mainly with the teams he coached for and the results of the careers of the players he coached as a youth in the professional youth leagues," as demonstrated by the letters of recommendation provided. It seeks eligibility under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) because it claims that "the regulatory criteria are not applicable" to "minor league soccer coaches." We agree with the Director that the Petitioner has not satisfied the comparable evidence provision under 8 C.F.R § 214.2(o)(3)(iii)(C).

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that comparable evidence "may" be submitted if the criteria in 8 C.F.R. § 214.2(o)(3)(iv) do not readily apply to the beneficiary's occupation. It is the Petitioner's the burden to articulate why one or more criteria do not readily apply and how the evidence submitted is "comparable." The Petitioner claims that several of the criteria do not apply

[2] We note that, given the similarity of the language used in many of the letters of recommendation, it is unclear whether their letters reflect independent observations and thus an informed and unbiased opinion of the Beneficiary's work.

to the minor league youth coaching occupation. It contends that there is not sufficient published material from major media that covers minor league soccer, and that the criteria for membership, remuneration, or original contributions similarly do not apply to minor league soccer coaching.[3]

The Petitioner, instead, argues that multiple letters of reference from the Beneficiary's colleagues and coaches should be considered as comparable evidence of his extraordinary ability. However, the Petitioner has not explained how this evidence is comparable to any of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv), nor has it demonstrated that it is reflective of 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). For example, the letters do not indicate the extent of the his influence on other soccer players or teams, nor do they show his acclaim in the field. As such, the Petitioner has not satisfied the comparable evidence provision.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the exhibits do not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). 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 M-U-S-C-, LLC*, ID# 789671 (AAO Dec. 14, 2017)

[3] On appeal, the Petitioner states that a soccer coach at the "minor league level" would not be able to satisfy these criteria because their efforts are not sufficiently recognized by the evidentiary forms listed. However, an individual's inability to meet a regulatory criterion does not necessarily establish that the criterion does not readily apply to his occupation. Here, the Petitioner has not sufficiently demonstrated that the four named criteria, under which it seeks eligibility, do not apply to the Beneficiary's occupation as required by the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iii)(C).