U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-A-Z-

DATE: FEB. 5, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a kickboxer, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, contending that he satisfies at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability if:

> (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). If that petitioner does not submit this evidence, then 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).

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) (discussing 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). 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 is a kickboxer who has fought within the [redacted] Because he has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met only one of the initial evidentiary criteria, awards under 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner maintains that he meets the following additional criteria: memberships under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii).[1] We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

[1] The Petitioner indicates that he no longer intends to pursue his eligibility for the other criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), nor does the record support a finding that he meets them. Accordingly, we will not further address them in our decision.

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 Director concluded that the Petitioner met this criterion. The record indicates that he received two third place finishes in the from the Accordingly, the Petitioner demonstrated that he satisfies this criterion, and we concur with the Director's findings for 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. § 204.5(h)(3)(ii).

The Petitioner claims that he meets this criterion based on membership with the of the In support of his contention, he references screenshots from the website www entitled ' where it lists him under ' In addition, the record contains a recommendation letters from kickboxing coach, who stated that the Petitioner "placed third [at the 2012 and received a diploma entitling him to be placed on the in 2012," and , former amateur boxer, who indicated that he was working with the Petitioner "when he qualified for the in 2012." The documentation, however, does not demonstrate that the Petitioner was in fact a *member* of the Instead, the evidence reflects that he was a *candidate, entitled to,* or *qualified* for membership.

Even if the Petitioner established his membership, he did not provide documentation indicating that such membership requires outstanding achievements, as judged by recognized national or international experts, consistent with the requirements of this regulatory criterion. Further, the Petitioner asserts that "membership in the automatically qualified him to compete in the In support of his assertions, he cites to his own affidavit that accompanied the initial filing of the petition, in which he claimed that he "qualified too late for the 2012 Besides this affidavit, the Petitioner did not submit corroborating evidence reflecting that membership with the automatically qualifies athletes for the team. Regardless, he did not demonstrate that he was a member of the team for consideration under this criterion. For these reasons, the Petitioner did not show that he satisfies 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 Petitioner argues that a screenshot entitled, " from www satisfies this criterion. Although the Petitioner is mentioned one time, the screenshot is about the team sponsored by competing at an open championship in Russia rather than published material about him.[2] Articles that do not pertain to a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, he did not include the author of the material as required by this regulatory criterion. Furthermore, the Petitioner did not show that the website is a professional or major trade publication or other major medium. Accordingly, the Petitioner did not establish that he meets this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner contends that his "Judge Referee Card" demonstrates that he was a ' ' and was subsequently elevated to " " The Petitioner provided a certificate from the reflecting that he "is a and was later assigned to ' ' In addition, the Petitioner submits an "Order" entitled, "On approval of the regulations on sports judges," from the showing a regulation to establish the procedure of assigning classification categories for "sports judges." Further, the Petitioner offers a letter from designated director for the stated that the Petitioner "participated as a judge in the period since 2013 to 2015 years." Moreover, included a list of open championships and tournaments and specified that the Petitioner was a "referee" for each event and concluded that he was a "referee of 170 fights."

The regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." Although the Petitioner asserts that he was issued a "Judge Referee Card," his card indicates his qualification as a "referee." Moreover, while claims that the Petitioner participated as a "judge," he lists his role in each match as a "referee." letter does not describe the duties of a referee to demonstrate whether they involve evaluating or judging the work or skills of competitors as opposed to enforcing the rules of a match and ensuring sportsmanlike competition. Moreover, the record lacks other evidence, such as official competition rules for the tournaments listed in the letter, showing that serving as a "referee" in this instance equates to participating as a "judge" of the work of others. Without further

[2] The record contains similar screenshots reflecting coverage of the at tournaments that, likewise, do not reflect published material about the Petitioner. In addition, these screenshots do not contain the date or author of the material, and the Petitioner did not show that the screenshots appeared in professional or major trade publications or other major media.

documentation, such as evidence that he awarded points or exercised his judgment in choosing the ultimate winner, evidence regarding officiating at a match is insufficient to meet this criterion. For these reasons, the Petitioner did not establish that he satisfies 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 Director determined that the Petitioner's certificates reflecting finishes and participation in tournaments did not demonstrate that he performed in a leading or critical role. On appeal, the Petitioner contends that the Director did not consider his "major role as a member of the " Further, he argues that "being a member of the in itself shows that the athlete has a critical role to play in the country's national sport organization."[3]

As previously discussed under the membership criterion, the Petitioner did not establish that he was a member of the Regardless, we disagree that being a member of a in-and-of-itself sufficiently demonstrates a critical role. Instead, the Petitioner must show how his performance was considered essential to the team's overall performance. In general, a critical role is commonly one in which a petitioner was responsible for the success or standing of the organization or establishment.

Although the Petitioner contends he is a member, he did not indicate that he participated in any competitions, tournaments, or matches with the Instead, the Petitioner's certificates reflect his individual participation in championships and matches since 2012 in local or regional tournaments, such as the and the Moreover, he did not identify what role or position he claims to have performed with the team. Furthermore, he did not show how he contributed to the team and whether he performed in a role that led to its overall success or standing. In addition, neither letter from or explained the Petitioner's accomplishments on the or how his role was essential to the team's achievements. Finally, the Petitioner did not refer to documentation or establish that the enjoys a distinguished reputation as required by the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Accordingly, the Petitioner did not demonstrate that he meets this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. 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. For the

[3] The Petitioner does not argue, nor does the record reflect, that he performed in a leading role for the

foregoing reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of I-A-Z-*, ID# 943303 (AAO Feb. 5, 2018)