U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12072545

Date: FEB. 26, 2021

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a gymnastics training facility, seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa classification available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.[1] 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 demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in athletics: either receipt of 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).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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).

[1] See [redacted] with a validity period of December 30, 2018 to December 29, 2019.

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 sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. See section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[2]

II. ANALYSIS

The Petitioner employs the Beneficiary as a gymnastics director and head coach. 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 at least three of the eight regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The Director determined that the Petitioner met only two criteria: awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) and critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). On appeal, the Petitioner argues that the Beneficiary fulfills two additional criteria.

After reviewing all of the submitted evidence, the record does not reflect that the Beneficiary meets the requirements of at least three criteria.

> 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).

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. At initial filing, the Petitioner did not claim the Beneficiary's eligibility for this criterion. The Director issued a request for evidence (RFE) informing the Petitioner that it "did not submit any evidence for this option" and it "may still submit evidence to satisfy it." In response, the Petitioner claimed the Beneficiary fulfilled this criterion based on his membership with USA Gymnastics.

On appeal, the Petitioner claims the Beneficiary's eligibility for this criterion based on membership with the [redacted] Gymnastics Federation [redacted], and USA Gymnastics. Regarding [redacted] and [redacted] the Petitioner did not make these claims of eligibility for this evidentiary criterion in its initial filing or after the Director afforded it an opportunity in an RFE. Accordingly, we will not consider these claims in our adjudication of this appeal. See Matter of Soriano, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the

[2] 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."

appeal based on the record of proceedings" before the Chief); see also Matter of Obaigbena, 19 I&N Dec. 533 (BIA 1988).[3]

Regarding USA Gymnastics, the Petitioner argues:

> A gymnastics coach who wishes to coach an athlete at a USA Gymnastics sanctioned competition must have a professional membership and must also have an instructor's license. USA Gymnastics imposes monetary penalties and even the suspension of participation in competitions if coaches attempt to participate in a gymnastics competition without the appropriate certifications.
>
> [It] provided evidence that the Beneficiary has been a Professional Member of USA Gymnastics in the [redacted] since 2013 and has held an Instructor's Certification since 2013, so that he can coach his athletes from the floor of the gymnastics competitions. Over the years, the Beneficiary has attended and coached at dozens of USA Gymnastics sanctioned events and has never been sanctioned or disciplined.

(exhibit references omitted).

Although it provided evidence of the Beneficiary's membership and certifications with USA Gymnastics, the Petitioner did not demonstrate how possessing a professional membership and license and never having been disciplined or sanctioned rise to a level of "outstanding achievements," consistent with this regulatory criterion. Moreover, the record reflects that the Petitioner submitted "USA Gymnastics 2019-2020 [redacted] Rules and Policies" indicating that "Professional Membership is open to any coach, judge or gymnastics professional that is a minimum of 18 years of age" and pays the membership fee and completes SafeSport Core Training. The Petitioner did not establish how such role, age, and background clearance requirements are tantamount to outstanding achievements. Here, the Petitioner did not show that USA Gymnastics professional membership is limited to those possessing outstanding achievements rather than open to anybody who is a coach, judge, or gymnastics professional, at least 18, and completes required training and certification. Moreover, the Petitioner did not demonstrate that recognized national or international experts judge the outstanding achievements for professional membership with USA Gymnastics.

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

---

[3] On appeal, the Petitioner references initially submitted letters from [redacted] general secretary of [redacted] who summarized the Beneficiary's competitive achievements and confirmed his coaching experience, and [redacted] unidentified role at [redacted] who indicated the Beneficiary's employment with the club and commented on his prior athletic accomplishments. The Petitioner, however, did not show how the letters establish that membership with [redacted] or [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts consistent with this regulatory criterion. Furthermore, the [redacted] claim relates to employment rather than to membership. Although the Petitioner offers an additional letter from [redacted] vice president of [redacted] who provided a brief history of [redacted] and the Beneficiary's career, the Petitioner did not demonstrate that membership with [redacted] necessitates outstanding achievements, as judged by recognized national or international experts. Here, the record does not reflect the membership requirements and determining bodies for [redacted] or [redacted] let alone that membership requires outstanding achievements, as judged by recognized national or international experts.

> 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).

This criterion requires the Petitioner to show that the Beneficiary has either commanded a high salary or will command a high salary or other remuneration for services. At initial filing, the Petitioner submitted an "Employment Agreement" offering the Beneficiary an annual salary of $50,000. In the RFE, the Director indicated that the Petitioner did not demonstrate that the Beneficiary's salary was high in his field and provided examples of documentation that could be offered. In response, the Petitioner did not address this criterion, nor did it present evidence relating to this criterion.

On appeal, the Petitioner argues that it initially submitted a letter from [redacted], president of the men's technical committee of the International Gymnastics Federation, who claimed that the Beneficiary "is paid more than $50,000 per year, which is well above the average salary for youth gymnastics coaches," "[h]e is the highest paid gymnastics coach in the state of Tennessee, outside a few gym owners that also coach part-time," and "[t]his salary also makes him among the highest paid youth gymnastics coaches anywhere in the country." However, [redacted] did not provide relevant, further information to support his assertions. For instance, while [redacted] claimed the Beneficiary's salary "is well above the average," he did not indicate the average salary of head coaches, the salaries of other gymnastic head coaches in Tennessee, and the salaries of gymnastic head coaches in the United States. In addition, [redacted] did not offer source material for his Tennessee and national salary claims. Moreover, [redacted] did not explain how he is aware of the salaries of gymnastic coaches in Tennessee and how being the highest paid youth gymnastics coach in Tennessee shows that the Beneficiary commands a high salary as a head gymnastics coach. Here, the Petitioner did not demonstrate that [redacted]'s letter, which lacks specific and detailed information, represents "reliable evidence" to establish that the Beneficiary commands a high salary.

Furthermore, the Petitioner submits screenshots from bls.gov regarding median annual salaries of coaches and scouts. As the Petitioner did not present this evidence to the Director after being afforded an opportunity to do so in response to the Director's RFE, we will not consider this evidence for the first time in our adjudication of this appeal. See Soriano, 19 I&N Dec. at 766; see also Obaigbena, 19 I&N Dec. at 533.[4]

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary satisfies at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. The

[4] The screenshots relate to the general area of "coaches and scouts" rather than to the Beneficiary's occupation as a gymnastics head coach. Moreover, while the screenshots reflect median annual wages, they do not show the range of salaries from lowest to highest to demonstrate where the Beneficiary's salary falls within that scope.

appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.