U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-P-

DATE: JULY 14, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a professional boxer, 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 Nebraska 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 documentation and a brief, stating that he meets 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,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (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 professional boxer who has mainly competed in matches in Italy and the United States. Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the Petition, the Director found that that the Petitioner met only the awards criterion under 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the Petitioner maintains that he meets the criteria pertaining to membership under 8 C.F.R. § 204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), and leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii). We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner satisfies the plain language requirements of at least three criteria.

A. Evidentiary Criteria

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 determined that the Petitioner satisfied this criterion. The record reflects that the Petitioner won the

and the thereby showing that he has received nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, we concur with the Director that the Petitioner 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. § 204.5(h)(3)(ii).

On appeal, the Petitioner asserts his eligibility for this criterion based on memberships with the and the Regarding the Petitioner has not sufficiently documented his membership in the association. The record contains a letter from a professional boxer, who states that the Petitioner is a member of the as well as the and however, did not indicate how he is aware of the Petitioner's membership with In addition, the Petitioner did not provide evidence from the confirming his membership status. Moreover, other evidence in the record does not identify the Petitioner as being a part of or competing in sanctioned matches compared to his media coverage mentioning his affiliation with the and Similarly, the Petitioner submitted a letter from boxing trainer, manager, and adviser, who discussed the Petitioner's ranking and upcoming title bout in the without any reference to his involvement with the Accordingly, the Petitioner has not demonstrated that he is a member of the

Notwithstanding the above, the Petitioner argues that offers a separate level of membership for active boxer members, and that it is membership in this category that requires outstanding achievement. According to of bylaws, it maintains a ratings committee who compiles and publishes ratings for 40 boxers in each division to determine eligible contenders to participate in elimination bouts and to challenge for championships. Moreover, in order to be eligible to appear in ratings, a boxer should: 1) ; 2) ' 3) ' or 4) '

The Petitioner did not specify, nor does the record reflect, what ratings, if any, he received. Regardless, although the bylaws indicate committee members "shall consist of members of absolute integrity, who shall be subject to the Code of Ethics, the Petitioner has not established that they are comprised of "recognized national or international experts" as required by the regulation at 8 C.F.R. § 204.5(h)(3)(ii). For these reasons, the Petitioner has not shown that membership or a rating with the meets this criterion.

As it pertains to the and the Petitioner has shown his association with them. Regarding the Petitioner provided the rules and bylaws that are almost identical to the bylaws of

[1] Although states that the Petitioner has a top 10 ranking in the the Petitioner did not provide any

Further, the also indicates that the ratings committee "consists of members of absolute integrity, who shall be subject to the Code of Ethics." Again, the Petitioner has not demonstrated that the ratings committee is made up of "recognized national or international experts." As it relates to the the Petitioner submitted two documents that describe the history of the and lists the current world title holders. The evidence, however, does not indicate the membership criteria. The Petitioner did not offer the bylaws or other evidence showing that requires outstanding achievements of its members, as judged by recognized national or international experts. Therefore, the Petitioner has not established that membership with and satisfies this criterion.

Finally, the Petitioner contends that he is a member of the The record, however, does not support his assertion. In his cover letter at the initial filing of the petition, the Petitioner claimed that "[s]ince 2004, [he] has been a member of the distinguished The record includes a letter from team manager, who stated that he has attended several sessions of American technical-tactical training held by the Petitioner in 2011 and 2012 in preparation for the 2012 in In addition, indicates that he collaborated with the Petitioner to select athletes for the Because the letter lacks specific information, it does not establish that the Petitioner was in fact a member of the as a boxer or in some other capacity. On appeal, the Petitioner submits screenshots about the the and the Although the screenshots contain background information, they do not indicate that the Petitioner was a member of the national team. Furthermore, the Petitioner offers another letter from in which he provides an overall history and organization of the team but does not discuss the Petitioner. Finally, the record, including the Petitioner's recommendation letters and media coverage, does not reference the Petitioner's membership to this team. Accordingly, the Petitioner has not sufficiently demonstrated that he has been a member of the

> *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 record contains an article, which includes the title, date, and author, from that constitutes published material about the Petitioner relating to his boxing match in New York. In addition, the Petitioner provided evidence showing that is one of the top boxing websites, thereby demonstrating that the website qualifies as a major medium. Therefore, the Petitioner has established that he satisfies this criterion.

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corroborating evidence to show his actual ranking.

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 Petitioner maintains that his roles with the and meet this criterion. At the outset, the Petitioner provided documentation evidencing the distinguished reputations of both organizations. In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Regarding as discussed above, the record does not demonstrate that the Petitioner was a member of the national team. While letter attests that the Petitioner assisted in training him for the and helped him select athletes for the 2013/2014 team, it does not contain specific information, such as whether the Petitioner performed in an official capacity or simply provided an informal opinion. Further, the Petitioner has not established that his role of helping choose athletes for the team constituted a leading role for the or that he was responsible for the success of the national team to an extent that his role was critical. For these reasons, the Petitioner has not demonstrated that his role with the meets this criterion.

As it relates to the Petitioner offered a letter from owner, who claimed that the Petitioner is "a big inspiration to the younger boxers at and "was instrumental in bringing the [to] in 2015," which was attended by celebrities. Regarding the boxing awards, the Petitioner presented a screenshot from announcing the date and time of the awards. In addition, the Petitioner provided a recommendation letter from Current who stated that she has trained with the Petitioner at the gym. Moreover, the Petitioner submitted the previously discussed letter from who indicated that the Petitioner's attitude is an asset to the gym by providing a good role model to other boxers at the gym. The Petitioner's documentation, however, does not reflect that the Petitioner performed in a leading or critical role for the gym. Although the Petitioner's training and boxing at the gym may serve as an inspiration to other boxers, it does not represent a leading role. The Petitioner did not, for example, show how his position as a boxer fits into the hierarchy of the organization to show that it is a leading role. Further, the Petitioner has not shown how his training or boxing has led to the success or standing of the gym. While stated that the awards ceremony enabled the gym "to further spread the virtues of boxing training" and brought "a large group of celebrities to the event," he did not provide details explaining how the Petitioner contributed, how he was "instrumental" to organizing the awards ceremony, or how bringing celebrities to an awards ceremony led to the success or standing of the gym. for example, did not claim that attendance or membership increased at the gym as a result of the Petitioner's work on the awards ceremony. For these reasons, the Petitioner has not established that his role with meets this criterion.

B. Summary

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.

C. P-1 Nonimmigrant Status

We note the record of proceedings reflects that the Petitioner received P-1 nonimmigrant status. Although USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

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

ORDER: The appeal is dismissed.

Cite as *Matter of F-P-*, ID# 429644 (AAO July 14, 2017)