In Re: 32940421 Date: JULY 30, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (National Interest Waiver)

The Petitioner, a golf entrepreneur, seeks employment-based second preference (EB-2) immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner qualified for EB-2 classification as an individual of exceptional ability. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

II. LAW

To qualify for the underlying EB-2 visa classification, a petitioner must establish they are an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Section 203(b)(2)(A) of the Act.

Exceptional ability means a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business. 8 C.F.R. § 204.5(k)(2). A petitioner must initially submit documentation that satisfies at least three of six categories of evidence. 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F).[1] If these criteria do not readily apply to a petitioner's occupation, the petitioner may submit comparable evidence. 8 C.F.R. § 204.5(k)(3)(iii). Meeting at least three criteria, however, does not, in and of itself, establish eligibility for this classification.[2] If a petitioner does so, we will then conduct a final merits determination to decide whether the evidence in its totality shows that they are recognized as having the requisite degree of expertise and will substantially benefit the national economy, cultural or educational interests, or welfare of the United States. Section 203(b)(2)(A) of the Act.

If a petitioner establishes eligibility for the underlying EB-2 classification, they must then demonstrate that they merit a discretionary waiver of the job offer requirement "in the national interest." Section 203(b)(2)(B)(i) of the Act.

[1] If these types of evidence do not readily apply to the individual's occupation, a petitioner may submit comparable evidence to establish their eligibility. 8 C.F.R. § 204.5(k)(3)(iii).

[2] USCIS has previously confirmed the applicability of this two-part adjudicative approach in the context of individuals of exceptional ability. 6 *USCIS Policy Manual* F.5(B)(2), https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-5.

II. ANALYSIS

In her letter, the Petitioner stated her proposed endeavor is to start a company to help minorities and young girls from disadvantaged communities in the United States reach the collegiate level in golf. The Petitioner explained she would develop a website and program providing each prospective student-athlete with a plan that exposes them to resources, golf developmental programs, and other opportunities. In response to the Director's request for evidence (RFE), the Petitioner submitted a business plan for [redacted], a limited liability company, whose mission is to support girls from public schools and vulnerable populations in Florida, Arizona and Texas to obtain collegiate golf scholarships.

A. Exceptional Ability

The Director determined the Petitioner did not meet at least three of the regulatory criteria to establish exceptional ability at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F). On appeal, the Petitioner asserts the Director erred and she meets the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (B), (E) and (F), as discussed below. The Petitioner does not claim that she meets any of the other criteria at 8 C.F.R. § 204.5(k)(3)(ii).

1. Membership in Professional Associations

The Director determined the Petitioner met this criterion based on her membership in the [redacted] and the Florida State Golf Association. De novo review of the record shows the Director erred. This criterion requires evidence of "membership in professional associations." 8 C.F.R. § 204.5(k)(3)(ii)(E). The EB-2 regulations define "profession" as "any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." 8 C.F.R. § 204.5(k)(2).

The Petitioner submitted a letter from the President and Executive Director of the [redacted] who describe her as "one of the best junior amateur golfers in the country" of Colombia and "a nationally ranked junior golfer" in the United States. The Petitioner submitted an article on the history of the [redacted] which states it is involved in both amateur and professional tournaments. The Petitioner also submitted an article about the Florida State Golf Association which states it is a volunteer organization that conducts tournaments and provides college scholarships. The articles do not indicate that a baccalaureate degree is required for golfers to compete in the tournaments or become members of either organization. Consequently, the Petitioner has not shown that the [redacted] and the Florida State Golf Association are professional associations within the meaning of the regulations at 8 C.F.R. § 204.5(k)(2) and (3)(ii)(E). The Petitioner does not meet this criterion and the Director's contrary determination is withdrawn.

2. Academic Record of Degree, Diploma, Certificate or Similar Award

This criterion requires an "official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability." 8 C.F.R. § 204.5(k)(3)(ii)(A). The Petitioner claims she meets this criterion through her receipt of All-Academic Honors from the Women's Golf Coaching Association

(WGCA) and the National Collegiate Athletic Association (NCAA). The Director determined she did not meet this criterion under the plain language of the regulation or when her All-Academic Honors were considered as comparable evidence. On appeal, the Petitioner clarifies that she did not seek consideration of her honors as comparable evidence, but as evidence that meets this regulatory criterion because it is "an award from an institution of learning."

The record does not support the Petitioner's claims. The WGCA and NCAA are not institutions of learning, but athletic associations. While the Petitioner submitted evidence that she was named an Academic All-American while enrolled at [redacted] she did not submit an official academic record from [redacted] or any other institution of learning, as this regulatory criterion requires. Consequently, the Petitioner does not meet this criterion.

3. Ten Years of Experience in the Occupation

This criterion requires evidence "in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought." 8 C.F.R. § 204.5(k)(3)(ii)(B). The Director determined the Petitioner did not meet this criterion because she did not submit letters from employers regarding her experience as a golf entrepreneur. On appeal, the Petitioner asserts her experience as an amateur golfer "is the basis of her occupation and her endeavor" as a golf entrepreneur.

The Petitioner submitted letters from coaches and other golfers, none of whom were her employer. While the letters attest to the Petitioner's experience as an amateur golfer, they do not indicate she has any experience as a golf entrepreneur. Two letters discussed the Petitioner's experience with younger golfers, but do not indicate that they employed the Petitioner in any related capacity. P-F-R-A-[3] praises the Petitioner's "exceptional golf skills" and states she "demonstrated a knack for helping junior players with game strategy, as well as with the spirit of golf." J-V- states the Petitioner worked at summer golf camp and after-school programs. Neither P-F-R-A- nor J-V- indicate that the Petitioner was employed as a golf entrepreneur focused on helping young golfers obtain collegiate scholarships. As the Petitioner did not submit letters from employers showing she has at least ten years of experience in her proposed occupation, she does not meet this criterion.

4. Recognition for Achievements and Significant Contributions to the Field

This criterion requires evidence of "recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations." 8 C.F.R. § 204.5(k)(3)(ii)(F). The Director determined that the Petitioner submitted evidence of her achievements as a golfer, but not of any significant contributions to her industry or field. On appeal, the Petitioner claims she meets this criterion through letters from peers recognizing her achievements and contributions, including her Academic All-American honors, her success in national and international amateur golf tournaments, and her experience playing Division One golf at the collegiate level.

[3] We use initials to protect the privacy of the referenced individuals.

We recognize the Petitioner's achievements as a golfer. The Petitioner submitted articles from [redacted] golf publications stating the Petitioner was named to the 2022 Conference USA All-Academic second team, was named Conference USA (C-USA) Golfer of the Week for the second time in three weeks in 2021, was voted C-USA Most Improved Golfer of the Year at [redacted] and had five top-25 finishes in six events including two top placements in two tournaments. The Petitioner also submitted photographs of awards she received as an amateur and collegiate golfer, including Academic All-American, C-USA Most Improved Player, winning the [redacted] in 2021, and [redacted] golf team's Most Valuable Player. The Petitioner also submitted an article that states just two percent of high school golf participants move on to play in the NCAA Division One.

The Petitioner submitted letters from coaches, golfers and golfing organizations attesting to her achievements as an amateur and collegiate golfer. [redacted] confirms that the Petitioner is a member of the Club who since 2010, has played in national and international golf tournaments, playing between 15 and 20 tournaments per year. J-A-M-H- describes the Petitioner as "a very outstanding girl in golf" who was part of the team that won the [redacted] in 2021, a "team comprised of the best amateur players in the country." J-V- lists the Petitioner's achievements as a "student athlete" at [redacted] and praises her "extraordinary College career." N-S- names the awards the Petitioner received as "an exemplary student-athlete" at [redacted] who "performed well on and off the course." J-H- lists four tournaments that the Petitioner won at the junior, collegiate, and amateur level and states she is "currently ranked in the top 1000 in the World Amateur Golf Ranking (WAGR)." R-N- describes the Petitioner as a "highly skilled golfer" who "won a full scholarship to attend" [redacted] and play on their golf team.

L-B- lists some of the Petitioner's academic and golf achievements at [redacted] and states the Petitioner's "strong belief in giving back to the sport that has given so much to her has become her mission." M-B- praises the Petitioner for being a five-time Academic All-American, states that in 2019 the Petitioner won the [redacted], which is Colombia's [redacted] and was part of the Colombian team that won the [redacted] in 2021 and while at [redacted] "posted great scores and had other top finishes." C-J- describes the Petitioner as "a distinguished NCAA Division 1 student-athlete" at [redacted] and praises her achievements as an Academic All-American. H-R- praises the Petitioner's achievements as an amateur and collegiate golfer and states she "has taken her natural leadership skills to help develop young golfers into student-athletes by teaching them the skills they need to perform on and off the golf course."

The Petitioner's letters and awards show her achievements as an amateur golfer, but they do not establish that she has made any significant contributions to her field. The letters do not indicate that her personal athletic achievements made records, that she coached other successful golfers, or otherwise significantly contributed to the sport of golf or the golfing industry. In response to the RFE, the Petitioner submitted Articles of Organization for [redacted], a Florida Limited Liability Company, which identifies her as manager of the company. The Articles were filed in [redacted] 2023, after this petition was filed in February 2023. Eligibility must be established at the time of filing. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts."). As the Petitioner's company was

registered after her petition was filed, we cannot consider whether it constitutes a significant contribution to her field or industry.

The Petitioner has demonstrated her golfing achievements but has not shown that she has made significant contributions to the sport of golf or the golfing industry. As the regulation requires evidence of both achievements and significant contributions, the Petitioner does not meet this criterion.

B. National Interest Waiver

The Petitioner has not met at least three of the regulatory criteria required to establish exceptional ability and she consequently does not qualify for EB-2 classification. As this issue is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve determination of her eligibility for a waiver of the job offer requirement in the national interest. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that "courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner does not meet at least three of the regulatory criteria to establish exceptional ability and is consequently ineligible for EB-2 classification.

ORDER: The appeal is dismissed.