U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12034722

Date: JUN. 14, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner, a tennis academy, seeks to classify the Beneficiary, a tennis coach, as a foreign national of extraordinary ability in athletics. To do so, the Petitioner seeks O-1 nonimmigrant classification, 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. *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 satisfy, as required, the alternative 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 pursuant to 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).

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).[1]

II. ANALYSIS

The record indicates the Beneficiary is employed as a tennis coach in the United States. The Beneficiary's background in athletics includes competitive tennis and tennis instruction. The record shows the Beneficiary competed as a tennis player in the junior and men's circuits of the [redacted] between 2002 and 2008, and at the University of [redacted] between 2007 and 2009. The Petitioner indicates that the Beneficiary has been coaching tennis since at least 2009. The Petitioner states it will employ the Beneficiary as a tennis instructor, providing group and private lessons at [redacted] and [redacted] for a period of three years. It provided a deal memo and a summary of its oral agreement with the Beneficiary.

A. Evidentiary Criteria

In denying the petition, the Director determined that the Petitioner did not claim the Beneficiary met the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and she further found that the Beneficiary fulfilled only two of the alternative regulatory criteria, employment in a critical or essential capacity for distinguished organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*) and high salary or other remuneration at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*). We will not disturb these findings.

On appeal, the Petitioner asserts that the Beneficiary meets three additional criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner has not established that the Beneficiary satisfies the requirements of at least three criteria. We will analyze the evidence submitted under each of those criteria below.[2]

> *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*).

The Petitioner asserted that it fulfilled this criterion through the Beneficiary's membership on [redacted] team. The Director concluded that the Petitioner had not established that the Beneficiary's membership on [redacted]'s [redacted] team required outstanding achievements as judged by recognized

[1] *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."

[2] On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

national or international experts in their disciplines or fields. We agree with the Director's determination.

In order to meet this criterion, the Petitioner must show that the Beneficiary's membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In support of this criterion, the Petitioner provided several screenshots from [redacted], including an overview stating that the competition, managed and run by the world governing body of [redacted]), is "the [redacted] team competition in world sport" and "gives players the chance to represent their country in an otherwise individual sport."

The record also contains several recommendation letters and articles that are relevant to this criterion. For example, a letter from [redacted] a former coach of [redacted]'s [redacted] team, provides that the Beneficiary "was invited to play on our [redacted] squad when he was only sixteen years old," and that he "played [redacted] the [redacted] tour, and Division 1 collegiate tennis." He asserts that "[t]o be invited to compete on a [redacted] team is proof of a player's outstanding ability in his field." An article from Sports [redacted] dated 2006 states that [redacted]s tennis team is now drawn . . . for the game against [redacted] in the first round of the [redacted] House in the [redacted] . . . The expanded [redacted] team was appointed by [redacted], [redacted], [redacted], [redacted], [the Beneficiary], [redacted], [redacted], new [redacted] and [redacted]. The final staff would appoint five tennis players."

A letter from [redacted] the current captain of [redacted] team, states that the Beneficiary "joined our [redacted] Team when he was only sixteen years old" and that "[h]e belonged on our team." An additional article from [redacted] dated 2006 quotes [redacted] the captain of [redacted] team, as stating that he "intends to produce a broad [redacted] team, which will also include quite a few youngsters [redacted] [the Beneficiary], [redacted]. . . . to give young people a sense of belonging and also put them in the mantle of the [redacted] team." He explains that "[t]heir combination at a young age allows them to . . . learn from veterans like [redacted] and [redacted] and "gives more players, besides four or five who should be on the roster, a chance to enjoy the so-called [redacted] team." A letter from [redacted] indicates that when the Beneficiary was a sixteen-year-old junior tennis player he "was already practicing and working out with the [redacted] team."[3]

On appeal, the Petitioner claims that "the [redacted] chooses the players on the [redacted] Team. A player must be invited by the association to be a member of the team. To be chosen for [redacted], a player must have a proven track record of significant accomplishment."

[3] Although [redacted] letter indicates that he became the captain of [redacted] team in 2015, this appears to be a scrivener's error.

Upon review, the aforementioned articles and recommendation letters do not establish that the Beneficiary was invited to compete or actually competed in the [redacted] for the [redacted] as a member of [redacted] team. Instead, they indicate that he was selected to join them for "practicing and working out" and to learn from veteran tennis players. In addition, they do not provide any probative details to show that the Beneficiary's selection required outstanding achievements, as judged by national or international tennis experts. Although a beneficiary's participation as a member of a national team may demonstrate eligibility for this criterion as such teams are limited in the number of members and have a rigorous selection process, it is the Petitioner's burden to demonstrate that the Beneficiary meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines. In this case, the Petitioner has not established the Beneficiary's membership on [redacted] team required outstanding achievements, as judged by recognized national or international experts in their disciplines or fields.

Based on the above reasons, the Petitioner has not shown that the Beneficiary satisfies this criterion.

> *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 Petitioner maintains that the Beneficiary satisfies this criterion based on published materials pertaining to him as a tennis player and coach. The Director determined that the published materials do not meet this criterion, because they do not address how "the Beneficiary's achievements are outstanding, that he or she has a record of sustained national or international recognition, and is acknowledged as one of the small percentage who has risen to the very top of his field." On appeal, the Petitioner asserts that the level of the Beneficiary's expertise as discussed in the articles should not be the determining factor of whether the published materials meet this criterion. We agree. If the Petitioner submits published material in professional or major trade publications or other major media about the Beneficiary relating to his work in the field, we will conclude that the evidence satisfies the plain language of this criterion.[4] Here, however, the Petitioner did not demonstrate published material about the Beneficiary in professional or major trade publications or other major media, including the author of the material.

The Petitioner provided several articles in support of this criterion. The aforementioned article from Sports [redacted] is about an upcoming [redacted] first-round competition between [redacted] and [redacted] The aforementioned article from [redacted] discusses [redacted]'s plans for [redacted] team after its "historic UK victory." An article from [redacted] lists the competition results of the youth season, including that [redacted], a youth athlete coached by the Beneficiary, had "his first final in the national competitions." The article states that "according to leading tennis experts, [the Beneficiary] is expected to be one of the most prominent coaches in [redacted]" Although the

[4] The level of the Beneficiary's expertise would be more relevant to an examination of the totality of the evidence. As discussed above, 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 that the beneficiary has achieved a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor and that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise through extensive documentation. 8 C.F.R. § 214.2(o)(3)(ii), (iii).

Beneficiary's name is mentioned in the above articles, they are not about him. Articles that are not about the Beneficiary 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 about a show are not about the actor).

In addition, the translations submitted for the above articles do not identify an author and were not accompanied by evidence that sufficiently demonstrates that the online publications in which the articles appeared are major media. For example, materials about [redacted] from the websites www.lib.guides.umd.edu and www.news.bbc.co.uk, and documentation from [redacted] did not contain information regarding the general online readership of those publications or other evidence showing that they constitute professional or major trade publications or major media, per the requirements of this criterion. Further, although the Petitioner provided information from Alexa.com about the global and country rank for the online publication [redacted] none of the submitted articles appeared in that online publication. Moreover, the Petitioner did not provide comparative circulation statistics for Sports[redacted]

The Petitioner also provided an article from *The New York Times* titled [redacted] which the Petitioner claimed "featured" the Beneficiary but was "about [redacted] tennis player [redacted]'s performance at the U.S. Open." An additional article from Cstv.com titled [redacted] contains a picture of the Beneficiary with the caption "[the Beneficiary] [redacted]" However, the photocopies of these articles are blurry and difficult to read; the Petitioner did not provide legible copies of these articles, demonstrating published material about the Beneficiary relating to his work.

Finally, the Petitioner submitted two "Fox5" screenshots of the Beneficiary, one with the caption [redacted] The Petitioner claimed that the screenshots reflected an interview of the Beneficiary "as a tennis expert . . . discussing the scourge of [redacted] in professional tennis." However, the Petitioner did not provide a transcription of the video demonstrating published material about the Beneficiary relating to his work.

Based on the foregoing discussion, we find that the Petitioner did not provide evidence that the Beneficiary satisfies this criterion.

> *Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

On appeal, the Petitioner maintains that the Beneficiary satisfies this criterion based on his tennis training techniques, which he "has been invited to share . . . with the [redacted] Team." It asserts that letters submitted from "top touring tennis professionals" coached by the Beneficiary and other experts in tennis coaching detail "[the Beneficiary's] original contributions as a coach," and it argues that the Director did not give appropriate weight to the submitted expert testimonials. In addition, the Petitioner claims that a previously provided article from Epitruslondon.com titled [redacted] supports its contention that "top coaches consistently make original contributions to their students' technical ability, strategic choices, and professional endeavors." The Director considered this documentation but found that it was not

sufficient to demonstrate that the Beneficiary's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination. First, as noted by the Director, in order to meet the regulatory requirements of this criterion, a petitioner must establish that not only has the Beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

In addition, we note that this criterion requires "scientific, scholarly, or business-related contributions." Here, the Petitioner has not demonstrated how the Beneficiary's tennis training techniques are considered to be a scientific, scholarly, or business-related contribution. Rather, as it has indicated, that item is in the field of athletic coaching. Notwithstanding the foregoing, on appeal, the Petitioner points to several letters from tennis players the Beneficiary has coached.[5] For example, [redacted] and [redacted], [redacted] team members, assert in a joint letter that the Beneficiary "helped us dramatically in [redacted] matches between the years of 2005 and 2010," and was "an important figure" in their reaching the [redacted] of the World Group in the 2009 [redacted] In addition, [redacted] credited the Beneficiary with his having reached the [redacted] of the 2009 U.S. Open with partner [redacted], [redacted], a retired professional tennis player, states that during the 2011 season he hired the Beneficiary, at the suggestion of his lead coach, to accompany him on tour and assist him with "mental fortitude and resilience." He asserts that "[the Beneficiary] was critical to my success that season," as he rose from [redacted] in the World and received the "distinguished" [redacted] award.[6]

In addition, in his aforementioned letter [redacted], captain of [redacted] team, indicates that the Beneficiary "has become a renowned coach in our field" and that "[t]here are quite a few players who have approached him to escort them to tournaments because they know that he has an in-depth understanding of the mental side of tennis." [redacted] states that he "recently asked [the Beneficiary] to work with me to help the current [redacted] line-up" and that the Beneficiary is "creating the strategies that will be used to get our team back to the World Group." He asserts that the Beneficiary works with "ranked juniors" and is "an outstanding coach for young players."

Here, while the letters indicate that the Beneficiary has successfully coached tennis athletes, including members of [redacted] team, they do not, individually or collectively, identify how his instruction methods or training strategies have been recognized as an original contribution of major significance to the greater field of tennis and coaching. Demonstrating ability as a skilled tennis coach is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field of tennis or tennis coaching as a whole. *Cf.* Visinscaia v. Beers, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

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[5] We have reviewed and considered all of the reference letters in the record, including those not specifically mentioned in this decision.

[6] Documentation from [redacted] provides that the award goes to the "player who reached a significantly higher [redacted] Ranking by year's end and who demonstrated an increasingly improved level of performance through the year."

When viewed in its totality, the record does not include documentary evidence showing how the Beneficiary's tennis coaching has already made a major impact on the field. The Petitioner did not show, for example, that the Beneficiary's instruction or coaching methods have been adopted by others or otherwise impacted anyone other than the individual athletes with whom he has worked, or that his techniques have garnered widespread attention in the field for obtaining significant results to which other coaches aspire. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Upon review, the preceding letters of recommendation demonstrate that the Beneficiary's work has earned the respect and admiration of those with whom he has worked and collaborated, but they do not establish that he has made original scientific, scholarly, or business-related contributions of major significance in his field. Similarly, the aforementioned media coverage in the record mentions the Beneficiary's competitive and coaching accomplishments without suggesting that he has had an impact on the field.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that the Beneficiary has made original contributions of major significance in the field.

III. CONCLUSION

The Petitioner has not submitted qualifying material under 8 C.F.R. § 214.2(o)(3)(iii)(A) and the record does not establish that the Beneficiary meets at least three of eight evidentiary criteria 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 an individual of extraordinary ability in athletics. The 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.