U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF X-Z-

DATE: JUNE 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a synchronized swimmer and coach, 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 petition, concluding that the Petitioner had not satisfied any of the regulatory criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and argues that she 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,

(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 a multi-part analysis. First, a petitioner can demonstrate a one-time achievement (that is, a major, internationally recognized award). Alternately, 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 synchronized swimmer who has participated in national and international competitions, and who has recently been hired as the head coach of [redacted] in [redacted] Arizona. As the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director determined that the Petitioner intended to work in the United States as a synchronized swimming coach. He therefore discounted her documentary evidence relating to her as a synchronized swimmer and found that the Petitioner did not meet any of the regulatory criteria. We disagree with the Director's analysis on this issue. Here, the record reflects that she not only intends to coach synchronized swimmers, but she also plans to compete and perform in synchronized swimming events. For instance, in her cover letters at the initial filing of the petition and in response to the Director's request for evidence, the Petitioner detailed her plans to compete, perform, [redacted] and coach. In addition, the record is supported by evidence showing that the Petitioner has not restricted her field to the area of coaching but rather to a diverse aspect of synchronized swimming

such as competing, performing, judging, and coaching. Accordingly, we will evaluate the totality of the Petitioner's documentary evidence as it relates to the area of synchronized swimming.[1]

The Petitioner provided evidence of her receipt of lesser internationally recognized awards for excellence under 8 C.F.R. § 204.5(h)(3)(i), such as her [redacted] place team finishes at the [redacted] and [redacted] Further, the record reflects that she served as [redacted] at the [redacted] meeting the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv). In addition, the Petitioner authored a scholarly article in the [redacted] establishing eligibility for the scholarly articles criterion under 8 C.F.R. § 204.5(h)(3)(vi). Accordingly, the Petitioner has met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the Petitioner has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not shown her eligibility.

The Petitioner provided evidence of her synchronized swimming awards from competitions in China from [redacted] Starting in [redacted], the Petitioner finished in [redacted] place in the '[redacted]' at the [redacted] Over the course of the next 10 years, the Petitioner medaled as part of a team in the [redacted] the [redacted] and other exhibitions. On the international stage, the Petitioner's teams won [redacted] place at the [redacted] and [redacted] place at the [redacted] In the United States, the Petitioner individually finished in fifth place at the [redacted] The Petitioner, however, has not demonstrated that such achievements have garnered her *sustained* national or international acclaim and that they reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59

[1] Further, we note that the U.S. Citizenship and Immigration Services Adjudicator's Field Manual (AFM) provides:

> In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

AFM ch. 22.22(i)(1)(C) emphasis in original).

(Sept. 19, 1990). In the case here, the Petitioner has not established that she received any awards since Furthermore, besides the she has not shown that she has participated in any national or international events for the past two years, or has successfully competed against the top synchronized swimmers, reflecting that she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994).

Similarly, the Petitioner submitted a letter from coach for the who stated that the Petitioner was on the that won place at the and place at the Although Coach indicated that "many competitors of both [the] and [were] finalists in the ' the record does not reflect, nor does the Petitioner claim, that she competed at the Rather, the Petitioner has been recently swimming at the against other collegiate athletes. She has not shown that she has been competing with renowned or accomplished synchronized swimmers, demonstrating that her latest "achievements have been recognized in the field of expertise." *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

The Petitioner contends on appeal that her recent press coverage in major media in and "shows her continued popularity in her home country of China," referencing a television interview with the regarding her being a for the and an article from the relating to her debut as a at the However, she has not shown that the content of the media coverage, which discusses her involvement in youth competitions, is indicative of a level of success consistent with being among "that small percentage who [has] risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Although the Petitioner provided other screenshots from news outlets' websites from 2010-2013 relating to the where the Petitioner is either not mentioned or is listed as a team member, she did not demonstrate that she received media attention that is consistent with sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act.

With regard to her judging experience, as indicated above, the Petitioner participated as for the . The competition, however, is among juniors and youths. An evaluation of the significance of the Petitioner's judging experience is acceptable under *Kazarian,* 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. The Petitioner has not shown that her single judging experience sets her apart from others in her field, such as by providing evidence that she has served as of acclaimed synchronized swimmers or of a prestigious national or international competition, such as at the Olympics, rather than children or amateurs at local competitions. Accordingly, the evidence under this criterion does not support a finding that

she "is one of that small percentage who [has] risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Pertaining to her artistic display as a performer, the Petitioner presented an invitation letter from the [redacted] for her "to participate in the performance of [redacted]" at the [redacted] in China. As it is expected that a synchronized swimmer, such as the Petitioner, would perform in a water show, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this classification. Here, while the Petitioner was invited to perform, the record does not indicate whether she actually participated as a swimmer at the attraction. Regardless, the Petitioner did not establish that such an invitation is reflective of being one of the small percentage at the top of her field, or that her exhibitions garnered attention in a manner consistent with sustained national or international acclaim. She did not show, for example, that her performances brought praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the event. The submitted evidence does not distinguish the Petitioner's performance in the show from others in her field, or demonstrate that it reflects a "career of acclaimed work in the field." H.R. Rep. No. 101-723 at 59.

In addition, the Petitioner offered evidence that she authored a scholarly article in the [redacted]. She did not, however, establish that her publication record of a single article sets her apart through a "career of acclaimed work." The statute requires the Petitioner to submit "extensive documentation" of her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Further, Petitioner did not establish that her article has been cited, nor did she otherwise demonstrate a level of interest in her work commensurate with sustained national or international acclaim at the top of her field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Finally, regarding her coaching expertise, the Petitioner has not established that she had coaching experience prior to filing the petition, and her post-filing experience appears to involve youth swimmers rather than accomplished athletes.[2] Although the record shows that the Petitioner has expanded her synchronized swimming field to judging, performing, and coaching while still competing, she has not demonstrated her extraordinary ability, either individually as a competitor or collectively as a competitor, [redacted] performer, or instructor. The totality of the evidence also does not indicate that the Petitioner has enjoyed recent sustained national or international acclaim in any of her areas of synchronized swimming. AFM ch. 22.2(i)(1)(C). Accordingly, as the Petitioner has not established her extraordinary ability under section 203(b)(1)(A)(i) of the Act as either a swimmer

[2] The record includes a May 2016 letter from [redacted] indicating its recent hiring of her to be the head coach. On appeal, the Petitioner provides evidence regarding her involvement in assessing the "12 & Under National Team Trials" in [redacted]

or a coach, we need not determine whether she is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

III. CONCLUSION

In summary, the Petitioner's evidence is not sufficient to establish that she has garnered sustained national or international acclaim, or that she is one of the small percentage at the very top of her field of endeavor. We find that the record as a whole does not reflect extensive documentation showing that the Petitioner's achievements have been recognized in the field. *See* section 203(b)(1)(A)(i) of the Act.

ORDER: The appeal is dismissed.

Cite as *Matter of X-Z-*, ID# 390088 (AAO June 22, 2017)