U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-F-C-, INC.

DATE: MAR. 4, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a youth soccer club, seeks to temporarily employ the Beneficiary as a head coach. To do so, the Petitioner seeks O-1 nonimmigrant visa 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. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner maintains that the evidence satisfies the regulatory requirements and thus the Beneficiary is eligible for O-1 classification.

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 the initial evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. 8 C.F.R. § 214.2(o)(3)(iii). First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the individual's achievements in the field through evidence of a major, internationally recognized award, such as the Nobel Prize. 8 C.F.R. § 214.2(o)(3)(iii)(A). If the petitioner does not submit this evidence, then it must submit sufficient qualifying evidence that meets at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, it may submit comparable evidence in order to establish the individual's eligibility. 8 C.F.R. § 214.2(o)(iii)(C).

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 extraordinary ability in the athletics under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the Beneficiary as a soccer coach for a period of two years. His background in athletics includes competitive soccer and soccer instruction. As a player, the record indicates he competed in amateur and professional soccer competitions, including as a member of team in 1979, its team in 1981, and the from 1983 to 1985. Since 1998, the Beneficiary has been employed as a youth soccer coach. In 2000, he completed a course at the in and obtained the qualification of soccer coach. He is a member of the Between 2006 and 2010, he was head coach of the youth divisions of . Since 2010 he has been the head coach of the U-20 and U-17 soccer teams of

In its initial letter, the Petitioner described the Beneficiary as a soccer coach who has "developed numerous professional soccer players," and who will be "an incredible reference and resource for all our staff coaches." The Petitioner's agreement with him indicated that he will be employed as "the Head Coach of the Teams assigned," and that his duties will include conducting practices, attending scheduled league games, and participating in training at its facilities in Texas.

[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."

B. Extraordinary Ability in Athletics

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 the eight regulatory criteria at 8 C.F.R § 214.2(o)(3)(iii)(B). The Director determined that the Beneficiary satisfied only one criterion – employment in a critical or essential capacity at 8 C.F.R § 214.2(o)(3)(iii)(B)(7). The Petitioner maintains that the documentation satisfies three additional criteria. We have evaluated all the evidence relating to the Beneficiary's soccer achievements as both an athlete and a coach. As discussed below, we find that the evidence does not meet at least three criteria, as required.

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

The Petitioner maintains that the Beneficiary satisfies this criterion based upon prizes and awards he received as a soccer player in national and regional soccer competition, including having participated on team in 1979, and its team in 1981.[2] We agree with the Director's determination that the submitted materials do not satisfy this criterion. The Petitioner provided two letters from general manager of the confirming that the Beneficiary was a member of team in 1979, and its team in 1981. On appeal, it also submits a letter from Head Coach, who states that he is familiar with "[the Beneficiary's] global reputation as a former soccer player," and cites among his "internationally recognized" achievements that "he lead the team who won the in 1981."

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.*; *see also Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Here, the aforementioned letters contain only conclusory language that the awards are nationally or internationally recognized prizes for excellence in the field, but do not provide details explaining the factual basis behind the conclusions. 8 C.F.R. § 214.2(o)(2)(iii). Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

[2] As previously mentioned, the evidence shows that the Beneficiary played for the from 1983 to 1985, however, the record does not contain evidence that he received any awards or prizes as a player on this team.

In addition, the letters were not accompanied by other evidence that would sufficiently corroborate the Petitioner's claim that the Beneficiary has won nationally or internationally recognized prizes for excellence in soccer. Without documentary evidence to provide information regarding the actual competitions themselves, such as the level of those who participated, the selection criteria, or the degree of attention the events attract within the field, we cannot conclude, based on the name of the competitions alone, that they are national or international and therefore that the results are recognized beyond the awarding entities as national or international awards. A competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." Further, the Beneficiary's awards appear to have been received in age-restricted competition. Even within a national-level competition, an award given to an athlete competing in age-restricted events would not necessarily be "nationally recognized." While age restricted awards may be nationally or internationally recognized, the burden is on the Petitioner to demonstrate the level of recognition and achievement associated with the Beneficiary's awards. Here, it did not demonstrate major trade or general media coverage of the competitions or equivalent evidence of their recognition in the field, to show that the field nationally or internationally recognizes these as awards for excellence.

The above-referenced letters from [redacted] and [redacted] also address the Beneficiary's accomplishments since 1998 as a soccer coach. [redacted] letters confirm that in 1998 the Beneficiary served as assistant coach for the [redacted] that played in the [redacted] in Argentina, and that he has been under contract with the [redacted] as youth soccer coach since 2001. [redacted] describes the Beneficiary as a "one of the most respected soccer coaches in the world," known for his "modern coaching methods that enhance the performance of elite youth teams" and "success in structuring academy programs that feed elite players directly into the professional ranks." However, neither letter discusses any awards that he has received as a coach. In light of the above, the record does not contain evidence that the Beneficiary has received a nationally or internationally recognized award for excellence as a soccer player or coach.

> *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 soccer player and coach. The record includes a newspaper article titled [redacted] which interviews several players on the team. It relates the Beneficiary's opinions of the local climate, cuisine, and music, and his hopes of raising a family and becoming a soccer coach. This article is not "about" the Beneficiary relating to his work in the field. In addition, the Petitioner does not provide the name of the publication and its date, and has not provided evidence of its significant national or international distribution to establish that the newspaper qualifies as major media.

Regarding the Beneficiary's coaching, the Petitioner submitted a foreign-language article dated 2010 published on the webpage www.diarioelpueblo.com.uy. On appeal, it provides an article published in 2018 on the webpage www.carasycaretas.com.uy. The article in Diario El Pueblo briefly mentions that the Beneficiary is working as coach of the youth soccer teams at The article on the webpage www.carasycaretas.com.uy discusses highlights of his coaching career since 2001 with the youth teams of and lists successful students of the clubs who went on to play with the national youth team and professional soccer teams.

Although not discussed by the Director, the article from Diario El Pueblo was accompanied by a translation of an excerpt of the article, not the full article. In addition, the translator certified that it was an "accurate" translation, but did not certify that it was a complete translation. The regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because this translation does not comply with 8 C.F.R. § 103.2(b)(3), it has diminished probative value. In addition, the article on the webpage www.carasycaretas.com.uy was published after the date the petition was filed on August 25, 2017. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Finally, it does not provide the author of these articles, and it has not been established that the webpages qualify as major media. Based on the foregoing, the Petitioner has not demonstrated that the Beneficiary satisfies this evidentiary 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 contends that the Beneficiary's authorship of soccer training manuals is an original contribution of major significance in the field of soccer coaching. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) requires "scientific, scholarly, or business-related contributions." Here, the Petitioner has not demonstrated how soccer training manuals are considered to be scientific, scholarly, or business-related contributions. Rather, as it has indicated, the manuals are in the field of athletic coaching.

Notwithstanding the above, on appeal the Petitioner also submits a letter from a soccer coach and sports director of a youth soccer club in Spain, and a former member of the soccer team. He indicates that his club uses a training manual developed by the Beneficiary, " ," as a reference guide. He claims that the Beneficiary "is well recognized nationally and internationally for his . . . innovative techniques which contribute significantly to the world of soccer."

The Petitioner also provides the above-mentioned letter from who states that the Beneficiary is known for his "modern coaching methods that enhance the performance of elite youth teams." It further provides a letter from Assistant Coach of the

who credits him with "creating one of the best youth soccer programs in the world."

In order to satisfy this criterion, the petitioner must establish not only that the beneficiary has made original contributions but that they have been of major significance in the field. For example, it may support the record with evidence that a beneficiary's contributions have been widely implemented, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, while letter states that the Beneficiary's manual has had an influence on it does not establish the manual's significance to the greater field of soccer and coaching. Demonstrating ability as a skilled soccer coach is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field of soccer or soccer 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). Here, the record does not include documentary evidence showing the widespread implementation of the Beneficiary's training manual, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field.

The Petitioner also submitted additional support letters. General Secretary of verifies that the Beneficiary worked as coach of the club's youth divisions between 2006 and 2010, including having coached the in 2009. and professional soccer coaches who have known him for many years, praise his ability to successfully coach young players.[3] General Manager of confirms the Beneficiary's employment as coach of the club's youth divisions between 2001 and 2006 and since 2010. He emphasizes that the Beneficiary has coached players who are now on the or on international soccer teams, and provides the names of some of those individual athletes. letter, however, is not sufficient to demonstrate the coach-athlete relationship between the Beneficiary and those successful athletes he is claimed to have coached at In addition, the achievements of those athletes are not documented in the record.

In addition, the Petitioner has provided a letter from a professional soccer player and member of the since 2014. He states that he was the Beneficiary's student at between 2006 and 2009, and credits him with teaching him how to be a professional player. His letter also indicates that after 2009 he played with several other teams before joining the including and While the record establishes that has gone on to successfully compete in , the evidence does not establish how his success is attributable to the Beneficiary rather than, for instance, to his senior soccer coaches and professional head coach.

Further, the record contains certificates confirming the Beneficiary's participation in a four-day course for youth soccer coaches sponsored by the Uruguayan Soccer Association and FIFA, and a coaching conference given by Real Madrid in Uruguay. The Petitioner has not demonstrated how the

[3] We note that letter is unsigned, and, therefore, has limited evidentiary value.

participation certificates represent original scientific, scholarly, or business-related contributions of major significance in the field.

Finally, the Petitioner provided an expert letter from Associate Professor of Sport Psychology and Physical Education at . With regard to this criterion, asserts that the Beneficiary has achieved "national or international acclaim" because has supported his career and "recognized [the Beneficiary] as an outstanding, internationally recognized coach." however, does not claim to be a recognized expert in soccer[4], and does not explain how the Beneficiary's coaching achievements to date are recognized in the field as original contributions of major significance.

As previously discussed, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* 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 these letters do not establish that he has made original scientific, scholarly, or business-related contributions of major significance in his field. Based on the foregoing, the Petitioner has not established eligibility under this criterion.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

The Director concluded, without discussion, that the Beneficiary was employed in a critical or essential capacity as a soccer player "on the Soccer Team," and as a youth soccer coach for and The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's position within the organizations that have employed him. Upon review of the record, we withdraw the Director's determination.

First, the evidence submitted does not establish that the Beneficiary's participation on 1979 team, and its 1981 team was in a critical or essential capacity for the soccer team as a whole. Not every athlete who performs effectively for a sports team meets this regulatory criterion. The Petitioner did not provide evidence documenting where the Beneficiary's position fell within the soccer team's general hierarchy, or evidence that elucidates how his position in Uruguay's youth divisions compared to the top-level soccer athletes on the soccer team. The evidence provided by the Petitioner does not establish that the Beneficiary was responsible for the soccer team's success or standing to a degree consistent with the meaning of "critical or essential capacity."

CV indicates that his only soccer experience was coaching high school and college students while teaching physical education in the 1980s

Regarding the Beneficiary's coaching, the record does not contain evidence that would establish that his position with [redacted] or [redacted] was in a critical or essential capacity. The Petitioner did not provide an organizational chart or other evidence documenting where his coaching position fell within general hierarchy of those clubs, such as evidence showing how it related to other coaching positions in the organizations, the number of coaches employed, or how many of them coached top-level athletes. The record does not elucidate how the Beneficiary's coaching position differentiated him from the other soccer coaches working for the clubs, such as their senior team coach and head coach.

Finally, the letters of recommendation provided do not describe the manner in which the Beneficiary's role as a coach was critical or essential for those soccer clubs. The above-referenced letters from [redacted] and [redacted] of [redacted] verify the dates of his employment as coach of the clubs' youth divisions. [redacted] asserts that the Beneficiary previously coached players who are now on the [redacted] or international soccer teams. The record does not include sufficient detail regarding when he coached these individuals or how his work with them was a critical or essential capacity for [redacted] as an organization. Without more, we cannot conclude that he played a critical or essential role. [redacted] states that he "coached, inspired and helped many young athletes . . . to become an internationally recognized soccer player." The above-discussed letter from his student, [redacted] indicates that he is an "incredible coach" who helped him achieve success through "his teaching, example and good advice." While the Beneficiary has earned the admiration of his colleagues, the letters do not demonstrate that his successes are reflective of having been employed in a critical or essential capacity for an organization or establishment as required under this evidentiary criterion.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the exhibits do not satisfy at least three of the evidentiary criteria specified in the regulation 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 a foreign national with 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. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met

ORDER: The appeal is dismissed.

Cite as *Matter of T-F-C-, Inc.*, ID# 1893702 (AAO Mar. 4, 2019)