U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-M-S-

DATE: MAR. 7, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a boarding school, seeks to classify the Beneficiary as an individual of extraordinary ability in education. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas 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.

The Director, California Service Center, denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the exhibits did not satisfy the applicable evidentiary requirements pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A) (a major, internationally recognized award) or (B) (at least three of eight possible forms of documentation). Specifically, the Director determined that the Petitioner established that the Beneficiary satisfied only two of the evidentiary criteria.

The matter is now before us on appeal. In its appeal the Petitioner maintains that the Director erred in determining that the Beneficiary is not eligible for the classification sought. The Petitioner submits a brief and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary who has extraordinary ability in the sciences, arts, education, business, or athletics which 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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, in pertinent part: "*Extraordinary ability in the field of science, education, business, or athletics* means 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."

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the beneficiary's achievements

in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner 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, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(iii)(C).

The submission of documents relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must 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." *Id.* Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

Finally, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) sets forth evidence that must accompany petitions for O foreign nationals, which includes documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate.

II. ANALYSIS

A. Introduction

The Petitioner, a boarding school for students in grades 9–12, filed the petition seeking to employ the Beneficiary as an orienteering (competitive land navigation) instructor for a period of three years. In its initial letter, the Petitioner described the Beneficiary as "an expert of extraordinary ability in the field of orienteering-focused physical education" who has received "national and international acclaim for her original, innovative orienteering focused curriculums developed for trainers and competitors." The record contains award certificates won by the Beneficiary in 1994 in [redacted] competitions. The evidence also indicates that she has an MS degree in Sport and Health Sciences, and has been employed since 1998 as a teacher of physical education and health at [redacted] in Finland.

The Director denied the petition, finding that the materials did not establish that the Beneficiary qualifies as a foreign national with extraordinary ability in the field of education. Specifically, the Director determined that the Petitioner satisfied only two of the eight evidentiary criteria, participation as a judge of the work of others in the field, as described at 8 C.F.R § 214.2(o)(3)(iii)(B)(*4*), and employment in a critical or essential capacity for organizations and establishments that have a distinguished reputation, as described at 8 C.F.R § 214.2(o)(3)(iii)(B)(*7*). Upon review, we agree that the Petitioner has met those criteria. The Director also discussed the

submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (*2*) and (*5*), but found that the Petitioner did not establish that the Beneficiary met these criteria. The Director further concluded that the Petitioner did not attempt to meet the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A), or 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (*1*), (*3*), (*6*) and (*8*).

In its appeal, the Petitioner does not contest the Director's findings or offer additional relevant evidence or arguments regarding the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (o)(3)(iii)(B) subparagraphs (*1*), (*3*), (*6*), and (*8*), and we agree with the Director's findings on those criteria. The Petitioner maintains that the submitted exhibits satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (*2*) and (*5*). We will address these criteria below.

B. Evidentiary Criteria

> *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 contends that the Beneficiary satisfies this criterion based upon her membership in the of the (National Board), and the which it describes as "two relevant elite associations where membership is significant and where the associations require qualifications for membership." On appeal, the Petitioner provides a letter from managing director of the explaining that there is no Finnish national or international membership organization or federation in orienteering-focused physical education, rather, "[t]he only membership associations in Finland to which an individual can be nominated for . . . membership are those in the broad sports related areas, such as . . . the etc. These organization[s] all have criteria for appointments."

In order to demonstrate that membership in an association meets this criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based only on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, 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 is membership requirements rather than the association's overall reputation. Upon review, the Petitioner has not provided sufficient evidence establishing the membership requirements of either the or

The Petitioner provided several testimonial letters pertaining to the Beneficiary's membership in the and director and senior advisor, respectively, of the National Board's stated that "[a] membership of a

Qualification Committee requires outstanding expertise of the field of the Committee." The letter also quoted the Finnish Adult Education Act of 1998, which indicated that committee members represent employers, employees, teachers, and self-employed professionals. In her letters, chairman of the explained that it "requires its members to meet rigid criteria based on training, certification and experience," and have demonstrated expertise and outstanding achievement in the field of physical education and sport. She indicated that the Beneficiary was "proposed and then selected to the based upon her extensive experience in implementing competence-based qualifications in practice" as well as her expertise in the area of orienteering-focused physical education. Other letters, such as those from director of developing youth orienteering, and the principal of the described those who are selected to the as "top in their discipline" and possessing "outstanding expertise."

While the authors of the above letters indicate that qualification for the requires "outstanding achievements," the Petitioner has not provided sufficient evidence relating to the membership requirements of this association. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.) The letters do not provide sufficient information identifying the specific qualifications required to become a member of the The statute referred to in the letter from and does not set forth the membership eligibility criteria establishing that the association requires outstanding achievements of its members, as judged by recognized national or international experts. As previously stated, having qualification criteria based only on training, certification, and experience in the field does not satisfy this criterion.

Several testimonial letters also discussed the Beneficiary's participation with For instance, information manager for the provided two letters in which she stated that the Beneficiary has worked with since 2015. She averred that "prospective candidates must meet strict criteria based upon education, [and] specialization in sports with outstanding achievements," and must undergo a rigorous selection process which "includes proposing by a sports institute and appointment by She indicated that the Beneficiary was chosen, "based upon her eligible education, specialization in sports and being [a] retired top athlete with outstanding achievements." Membership requirements based on "eligible education," "specialization in sports" or "proposing by a sports institute," do not satisfy this criterion, as such requirements do not constitute outstanding achievements. While letter indicates that membership in also requires "outstanding achievements," her letter does not identify the specific qualifications required to become a member of such as its bylaws or rules of admission establishing that the association requires outstanding achievements of its members, as judged by recognized national or international experts. Again, merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. While the Petitioner provided a brochure from the brochure does not address the specific qualifications required of individual participants like the Beneficiary.

Based on the forgoing, the Petitioner has not established that the Beneficiary's appointment to the [redacted] or membership in [redacted] constitutes membership in associations in the field which require outstanding achievements of their members as judged by recognized national or international experts. Accordingly, the Beneficiary does not meet 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*)

The Petitioner submitted several testimonial letters from the Beneficiary's colleagues and former employers in support of its claim that the Beneficiary has made two original scholarly contributions of major significance in the field: designing a unique orienteering-focused curriculum, and developing a unique orienteering-focused teaching methodology and implementation style. To satisfy this criterion, the Petitioner must demonstrate not only that the Beneficiary's contribution is "original," but also that it has had a demonstrable impact on her field. Upon review, the letters, while complimentary of the Beneficiary and her abilities and accomplishments as a health and physical education instructor, do not establish that she has made an original contribution of major significance in the field.

The exhibits included the above-referenced letter from letter from [redacted] director of developing youth orienteering for the [redacted] The Beneficiary's CV indicates that she has volunteered at the [redacted] youth summer program at [redacted] since 2006 and at its [redacted] youth orienteering camp, and that she was employed by the [redacted] as an education developer in the 1990s. [redacted] stated that the Beneficiary created a unique curriculum for [redacted] youth training camps which has "gained recognition and admiration from her peers in the field from across the world." [redacted] council member at the [redacted] stated he has known the Beneficiary since the 1980s and also attested that the Beneficiary "gained recognition and admiration from her peers in the field from across Finland and the world" based upon her expertise in curriculum development. In one of her above-mentioned letters, [redacted] of the [redacted] explained that orienteering concepts which the Beneficiary incorporated into her work for that association were "recognized immediately by other experts in the physical education field as cutting edge."[1]

Upon review, we find that the authors' contentions regarding the significance of the Beneficiary's contributions and achievements are stated in a conclusory manner. They do not specifically explain how the Beneficiary's work is being applied in the field of orienteering-focused physical education. The fact that the Beneficiary's methods or curricula have been useful to the above-referenced individuals or institutions, without more, is insufficient to establish that her contributions rise to the level of "major significance."

[1] While we discuss only a sampling of the submitted letters, we have reviewed and considered each one.

We note that U.S. Citizenship and Immigration Services (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. *Id.* 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. *See id.* It is the Petitioner's burden to establish how and to what extent the Beneficiary's contributions have impacted the field. While the preceding letters of recommendation demonstrate that the Beneficiary's work has earned the respect and admiration of those with whom she has worked, consulted, and volunteered in the field of orienteering-focused physical education, and that her work on projects has benefited them, the letters do not demonstrate that she has made original contributions of major significance in the field as a whole, rather than to specific organizations.

According to the plain language of this criterion, a foreign national's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). In addition, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *Cf. Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *8 (D.D.C. Dec. 16, 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). Without documentation showing that the Beneficiary's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

III. CONCLUSION

The Petitioner has not submitted qualifying material under 8 C.F.R. § 214.2(o)(3)(iii)(A) and the exhibits do not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Accordingly, the Petitioner has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of S-M-S-*, ID# 170881 (AAO Mar. 7, 2017)