U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-H-S-A-

DATE: MAR. 14, 2019

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a rhythmic gymnastics and dance association, seeks to temporarily employ the Beneficiary as a 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 California Service Center denied Form I-129, Petition for a Nonimmigrant Worker, 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 asserts that the Beneficiary meets the regulatory requirements 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 include the following definition: "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." 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

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 Petitioner provided evidence relating to four criteria but did not satisfy any of them. The Petitioner submits additional documentation and maintains that the Beneficiary qualifies for O-1 visa classification.[2] As discussed below, we find that the exhibits do not meet any evidentiary categories.

> *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 record reflects that the Petitioner presented a "Labour Contract" regarding the Beneficiary's employment as a coach for the [redacted] at the [redacted]. In addition, the Petitioner submitted an unsigned letter that she claimed to be from [redacted], head coach of the [redacted] asserting her membership with [redacted] from 1991 – 2001.

[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] The Petitioner does not specify which criteria it contests, nor does it indicate how the new evidence relates. Accordingly, we will consider the evidence submitted under the criterion we find to be most applicable.

In order to meet this criterion, the Petitioner must establish the Beneficiary'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. The evidence, however, indicates the Beneficiary's employment with rather than her membership. Moreover, without credible or supporting evidence, the assertions in an unsigned letter are not sufficient to show membership with Further, the Petitioner did not offer, for example, the bylaws or other evidence for the associations revealing that membership requires outstanding achievements and is judged by recognized national or international experts consistent with the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*).

Accordingly, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

> *Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*).

Initially, the Petitioner provided an untranslated copy of a credential from the The Petitioner indicated that the Beneficiary "can take tests for judging and be the 1st judge in Colorado." Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the claims are accurate. Moreover, while the international judge credential may show the Beneficiary's capability to judge competitions, it does not demonstrate that she actually participated as a judge. Likewise, the potential or prospective ability to judge in the United States is not sufficient to show that the Beneficiary has already participated as a judge of others consistent with this regulatory criterion.

In addition, the Petitioner referenced the above-mentioned letter from who claimed that she "requested [the Beneficiary] as a senior judge of region to judge all regional and national competitions." Notwithstanding the unsigned letter and lack of supporting evidence discussed above, the letter indicates that "requested" the Beneficiary to judge competitions. The letter, however, does not show that the Beneficiary actually participated as a judge. Further, the letter does not provide specific information, such as the names of the gymnasts and competitions and the dates of the events, to corroborate the statement.

On appeal, the Petitioner presents a letter from rhythmic program director for the who claimed that the Beneficiary "was a National judge in Ukraine, who judged all National and Regional competitions." In addition, the Petitioner presents a letter from senior gymnastics coach, who stated that the Beneficiary "had a certificate of a judge of the national category, so she judged all invitational,

regional and national competitions of Ukraine." Although both letters assert that the Beneficiary judged regional and national competitions, the authors do not explain how they are aware of the Beneficiary's judging experience. As both letters are similarly worded, the authors did not indicate that they personally witnessed the Beneficiary's judging or based their letters on secondhand knowledge or statements by the Beneficiary. In addition, the letters do not contain detailed and probative information, such as the names and dates of the competitions, to support their claims.

For the reasons stated above, the Petitioner did not establish that the Beneficiary fulfills 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 indicates that the Beneficiary "is an extremely rare coach," possesses a "certificate of Coach of Highest Category in Ukraine," and submits recommendation letters. 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 the traits and qualifications of a rhythmic gymnastics coach can be considered to be scientific, scholarly, or business-related contributions rather than athletic contributions, a field that is not applicable to this criterion.

Notwithstanding the above, the Petitioner provided a copy of the Beneficiary's "Teacher/Coach Personal Card" from the [redacted] State Administration, Department of Physical Culture and Sports. In addition, the record contains recommendation letters confirming the Beneficiary's coaching experience and praising her overall abilities and accomplishments. On appeal, the Petitioner submits a letter from [redacted] former owner of [redacted] and [redacted] coach at [redacted] in [redacted] Japan. Both authors indicated that the Beneficiary taught their daughters and commented that "[h]er level of professionalism and knowledge in rhythmic gymnastics is extremely rare and is beyond most coaches we trained in the United States," and she "is a one-of-a-kind highly qualified coach."

In order to satisfy the regulation at 214.2(o)(3)(iii)(B)(*5*), 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 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, the Petitioner has not explained how possessing a high level coaching certificate or credential demonstrates a contribution of major significance in the field. Further, having a "rare" or "unique" skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence showing that the Beneficiary has already used those skills to impact the field at a significant level. Moreover, while the letters applaud the Beneficiary's coaching abilities, they do not identify original contributions that she has made to the field, nor do they explain how her contributions have been of major significance.

Accordingly, the Petitioner has not met its burden of showing that the Beneficiary has made original scientific, scholarly, or business-related contributions of major significance in the field.

> *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 found that although the Petitioner submitted evidence of the Beneficiary's employment, such as labor contracts and employment records, it did not establish that she has been employed in a critical or essential capacity for organizations or establishments with distinguished reputations. On appeal, the previously discussed letter from [redacted] indicated that the Beneficiary held the position of a "Head Coach of the [redacted] region in rhythmic gymnastics," which "above this position is only [redacted] herself (the head of [redacted] of Ukraine [redacted]"

While the evidence confirms her employment with various organizations, such as [redacted] and the [redacted] region of [redacted] the Petitioner did not demonstrate that the Beneficiary held critical or essential positions for these organizations. The Petitioner did not indicate what contributions the Beneficiary made to the organizations and how she was vital to their overall achievements. For example, the Petitioner did not show how the Beneficiary's role as head coach of the [redacted] region was important to [redacted] overall. Moreover, the Petitioner did not present evidence reflecting the distinguished reputations of the rhythmic organizations.

For the reasons stated above, the Petitioner did not establish that the Beneficiary meets this criterion.

III. CONCLUSION

The record does not satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). 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 M-S-H-A-*, ID# 2481302 (AAO Mar. 14, 2019)