U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 11258330

Date: MAR. 15, 2021

Appeal of Vermont Service Center Decision

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

The Petitioner, a horse farm, seeks to classify the Beneficiary 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 Petitioner currently employs the Beneficiary as an endurance horse rider and trainer pursuant to an approved O-1 petition and seeks to extend her O-1 status for a period of one year.[1] 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).

[1] We note that there are inconsistencies regarding the dates of the Beneficiary's intended employment. Specifically, according to the Form I-129, the Petitioner will employ the Beneficiary for a one-year period. However, according to the Petitioner's October 2019 letter, summarizing the agreement between the parties, it intends to employ the Beneficiary "for at least a two-year period."

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).[2]

II. ANALYSIS

According to the record, equine endurance riding usually involves a timed long-distance competition, usually of 50 miles (80 km), 75 miles (120 km), or 100 miles (160 km).[3] The Petitioner, a horse farm that breeds and trains endurance horses, indicates it has employed the Beneficiary as an endurance horse rider and trainer since 2017.[4] It asserts that the Beneficiary "has risen to the very top of her field competing in international competitions," and that her master's research in equine nutrition "is the first of its kind and has generated high interest from [the] Scientific community and among riders and veterinarians." The record shows that the Beneficiary has been competing in equine endurance riding events since 2005, mainly in [redacted] and the United States, and has senior elite athlete status. She received her Master of Science degree in animal science at the University [redacted] in December 2019.

A. Evidentiary Criteria

Because the Petitioner did not establish that the Beneficiary has received a major, internationally recognized award,[5] it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). The Petitioner initially claimed that the Beneficiary meets three of the eight criteria, summarized below:

- (1), Receipt of nationally or internationally recognized prizes or awards;
- (2), Membership in associations; and
- (3), Published materials in professional or major trade publications or other major media.

[2] 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."

[3] The international governing body for the sport is the Federation Equestrian International (FEI) and the national governing bodies are the American Endurance Ride Conference (AERC) and the U.S. Equestrian Federation (USEF).

[4] The Petitioner also indicates that its owner, [redacted], is a former [redacted] champion in the sport of equine endurance.

[5] The Petitioner initially claimed that the Beneficiary's participation on behalf of [redacted] in the World Endurance Championships in 2012 and the World Equestrian Games in 2010, 2014, and 2018 constitutes a major, internationally recognized award, but does not contest the Director's determination that participation in those competitions does not satisfy the requirements of a receipt of a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A).

The Director determined that the Petitioner established eligibility under two of the criteria, relating to membership in associations and leading or critical roles with distinguished organizations at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Although we agree with the Director that the Petitioner has established that the Beneficiary met the membership in associations criterion, we do not concur with the Director's finding relating to the leading or critical roles criterion, as discussed later. On appeal, the Petitioner does not specifically address the regulatory criteria. On the Form I-290B and in an accompanying letter, however, the Petitioner discusses evidence and achievements relating to three criteria: the awards criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the original contributions criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), and the scholarly articles criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).[6] After reviewing all of the evidence in the record, we conclude that the record does not support a finding that the Petitioner meets at least three criteria.

> 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 satisfied this criterion based upon prizes and awards she received in equine endurance competition. We agree with the Director's determination that the documentation submitted does not satisfy this criterion. The Petitioner provided the Beneficiary's Athlete Performance record from the website www.data.fei.org,[7] and asserted that the Beneficiary satisfies this criterion based on her receipt of the following awards:

- 2nd place, FEI CEI1* [redacted] 2018)
- 1st place, [redacted] AERC [redacted] Benefit, [redacted] 2018)
- 1st place, FEI CEI3* [redacted] Challenge, Arabian Horse [redacted] 2012)
- 2nd place, FEI CEI2* [redacted] Endurance Fundraiser [redacted] 2019)[8]

Within its response to the Director's request for evidence (RFE), the Petitioner provided a copy of the FEI 2020 Endurance Rules. Article 802.1 shows that international-level endurance events are divided into Concours de Raid d'Endurance International (CEI), Concours de Raid d'Endurance International Officiel (CEIO), Championships (and test events for those Championships) and Games and Combined National/FEI events (CEN/CEI). Regarding one-day competitions like those in which the Beneficiary competed, Article 803.1 explains that CEIs, CEIOs and Championships are divided into three star

[6] On appeal, the Petitioner does not address the Director's determination that the Beneficiary did not satisfy the published materials criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Issues or claims that are not raised on appeal are deemed to be waived. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009). See also Sepulveda v. U.S. Att'y Gen., 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); Hristov v. Roark, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court determined the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

[7] On appeal, the Petitioner submits the Beneficiary's updated FEI Athlete Performance record.

[8] Although on appeal the Petitioner also discusses evidence of the Beneficiary's win in that event in [redacted] 2020, that competition took place subsequent to the filing of this petition in October 2019. 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).

levels (3* being the highest level); 1* competitions are between 100-119km, 2* competitions are between 120-139 km, and 3* competitions are between 140-160 km in one day. Article 833.1.2 indicates that Horses and Athletes, not necessarily as a Combination, progress through the star system, beginning with a successful completion at the 1-star level, thereby qualifying to move up through each star category as defined in Article 803. With reference to Championships, section 802.4.2 indicates, in relevant part, that they include 1* Championships between 100 km and 119 km in one day, 2* Senior Championships between 120 km and 139 km in one day, and 3* Senior Championships between 160 km and 139 km in one day. Further, section 802.4.3 states that "Championships at the Senior or Junior/Young Rider level may be organized on a regional, continental or world level, or as Games."

Upon review, while the Petitioner submitted documentation evidencing the Beneficiary's receipt of the above-mentioned awards, the Petitioner has not provided documentation that would sufficiently corroborate its claim that the awards received from these competitions are nationally or internationally recognized prizes or awards. For example, the Beneficiary's awards received at the [redacted] and the AERC [redacted] Benefit were in 1* competitions, the lowest level of senior competition, while those received at the [redacted] Challenge and the [redacted] Endurance Fundraiser appear to have been conferred in local regional competition. The record does not contain documentation regarding the above-referenced competitions, from which we can determine their significance in the field. Without supporting documentary evidence to provide information regarding the actual competitions themselves, such as official entry requirements from the sponsoring organizations of these events, the level of those who participated, 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. For instance, the Petitioner 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 recognizes the Beneficiary's awards as national or international awards for excellence. 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." The burden is on the Petitioner to demonstrate the level of recognition and achievement associated with the Beneficiary's awards.

In addition to the aforementioned evidence of the Beneficiary's prizes or awards as an equine endurance competitor, the Petitioner provides its listing of prizes or awards received by its horses that "trained and competed under the supervision and care of [the Beneficiary]" while she was employed by the Petitioner, which it claims shows "consistent top placing both here and abroad." The Petitioner cannot rely on prizes or awards received by horses the Beneficiary is claimed to have trained to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The description of this type of evidence in the regulation provides that the focus should be on "the alien's" receipt of the awards or prizes.

On appeal, the Petitioner also submits a letter from [redacted], chairman of the [redacted] who provides that the Beneficiary's "interactions with U.S. Citizens indirectly promote international camaraderie and aids a culture of calm between nations." A letter from [redacted], the Petitioner's equine veterinarian, indicates that the Beneficiary was selected to represent [redacted] the FEI World Equestrian Games in 2010, 2014, and 2018, and the FEI World Endurance Championships in 2012. [redacted] and [redacted] however, do not indicate that the Beneficiary received prizes or awards at the events they reference in their letters.

Overall, the evidence of record is insufficient to establish that the Beneficiary's competition victories resulted in her receipt of nationally or internationally recognized prizes or awards for excellence in the sport of equine endurance and, as such, do not satisfy this evidentiary criterion.

> 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 Director determined that the Petitioner meets this criterion. We note that simply being a member of a national team in her sport, or a registered member of the sport's international federation at the "senior elite" level, does not satisfy this criterion. However, we find sufficient evidence that the Beneficiary satisfies this criterion based on her membership on the [redacted] national teams selected to compete in equine endurance at the World Equestrian Games in 2010, 2014, and 2018, and the World Endurance Championships in 2012, the selection process for which has been explained by the secretary general of the national federation for the sport.

> 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 discusses evidence and achievements relating to this criterion for the first time on appeal. 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. The Petitioner submits a letter from [redacted], the Beneficiary's supervisor for her master's degree at the University [redacted] She states that the Beneficiary presented the findings of her thesis research evaluating [redacted] in horses at the [redacted] Symposium in June 2019,[9] and she and the Beneficiary are working on a manuscript of the Beneficiary's thesis research "to be published in a scientific journal." Although [redacted] asserts that the Beneficiary's research was "the first of its kind and has generated high interest from the scientific community," she does not describe how the Beneficiary's presentation of her original research findings at a professional conference constitutes a contribution of major significance to the field as a whole; rather the issue is the impact of the Beneficiary's work after dissemination at the aforementioned conference. [redacted]'s letter does not demonstrate the impact of the Beneficiary's

[9] Although [redacted] also indicates that the Beneficiary has been invited to discuss her research at the AERC [redacted] 2020, and the documentation submitted on appeal confirms that invitation, that conference was scheduled to take place subsequent to the filing of this petition in October 2019. Similarly, although the Petitioner provides the Beneficiary's master's degree certificate from the University [redacted] it cannot rely on the Beneficiary's receipt of her master's degree certificate in December 2019 to demonstrate her eligibility for this classification. 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). Regardless, the Petitioner has not demonstrated how the Beneficiary's master's degree in animal science represents an original scientific contribution of major significance in the field of equine endurance riding.

work after dissemination in the field. An original research contribution that has the likely potential to impact the field at some future time is not sufficient to demonstrate eligibility under this criterion

In addition [redacted] claims that the Beneficiary's "advanced degree in equine science, along with her expertise as a trainer and competitor for the sport of equine endurance racing gives [the Beneficiary] a unique skillset" which can fulfill the "large need for the application and sharing of evidence-based management practices within the horse industry." Assuming the Beneficiary's skills are unique, this criterion requires that her contributions be "of major significance in the field." [redacted] letter does not point to any of the Beneficiary's original scientific contributions of major significance in the equine endurance field. Here, the record does not include documentary evidence showing the widespread implementation of the Beneficiary's research, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field.

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. Upon review, the preceding letter of recommendation demonstrates that the Beneficiary's work has earned the respect and admiration of those with whom she has worked and collaborated, but the letter does not establish that she has made original scientific, scholarly, or business-related contributions of major significance in her field.

Based on the foregoing, the Petitioner has not established the Beneficiary's eligibility under this criterion.

> Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6)

The Petitioner discusses evidence relating to this criterion for the first time on appeal. The Petitioner provides evidence that the Beneficiary's conference abstract titled '[redacted]' was published in the Journal of Equine Veterinary Medicine in 2017, as an entry in the '[redacted]' However, the conference abstract appears to summarize research findings of the Beneficiary's 2019 master's thesis. In addition, the aforementioned letter from [redacted] indicates that the Beneficiary presented her thesis findings at one professional conference, the 2019 [redacted] Symposium. The record does not contain any documentation about the Journal of Equine Veterinary Science or the 2017 graduate student competition in which the Beneficiary was a contestant. Based on these inconsistencies, we find that this document alone is insufficient to establish that the Beneficiary's abstract was published in the Journal of Equine Veterinary Science in 2017.

Based on the above, the Petitioner has not established that the Beneficiary satisfies 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 Petitioner did not claim that the Beneficiary satisfied this criterion. The Director concluded, without discussion of the evidence, that the Petitioner satisfied this criterion. The scope of this evidentiary

criterion focuses on the Beneficiary and the relative importance of her position within the scope of the organizations that have employed her. A critical role or essential role should be apparent from a beneficiary's impact on the organization or the establishment's activities. The evidence must demonstrate that a beneficiary has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. The petitioner must also demonstrate that the organizations or establishments have a distinguished reputation.

The record shows that the Petitioner seeks to continue to employ the Beneficiary as an endurance horse rider and trainer. The Petitioner's initial letter indicated that it was seeking to employ "an experienced and capable person to assist [with the petitioning organization's] care, training and competition programs." The Petitioner specified that it sought "[a] top level trainer/rider who can continue [the petitioning organization's] successful record."

As previously discussed, on appeal the Petitioner asserts that the race records of "horses trained and competed under the supervision and care of [the Beneficiary]" show "consistent top placing . . . ." It provides its own list "of achievements of [the petitioning organization's] horses per FEI website while [the Beneficiary] has been working for [the Petitioner]" that includes 26 top-three finishes of 12 horses, and the highest one-day ranking for 2 of the horses.[10] The Petitioner further claims that "[t]o date [the Beneficiary] has taken over the management of our entire training program . . . ."

While the aforementioned documentation confirms that the Beneficiary worked for the Petitioner as an equine endurance rider and trainer between 2017 and the filing of the instant petition in October 2019, it does not demonstrate the relative importance of the Beneficiary's position within the scope of the Petitioner's organization. Not every member of an equine endurance training staff that performs effectively for the horse farm meets this regulatory criterion. The record does not contain sufficient evidence to establish that the Beneficiary's position with the petitioning organization was in a critical or essential capacity. For instance, the Petitioner did not provide an organizational chart or other evidence documenting where the Beneficiary's position fell within the general hierarchy of the organization, such as evidence showing how it related to other positions in the organization, the number of trainers employed, or how many of them trained top-level horses. The Petitioner's evidence does not elucidate how the Beneficiary's position differentiated her from the other trainers working for the Petitioner, or from other senior staff such as head trainers, or demonstrate sufficiently her established successful history of being the principal trainer of top-level horses. Further, although on appeal the Petitioner now asserts that "[t]o date [the Beneficiary] has taken over the management of our entire training program," the Petitioner's initial submission did not indicate that the Beneficiary performed in this role at the time of filing. Rather, within its initial filing the Petitioner indicated it was seeking to continue to employ the Beneficiary "to assist" with its care, training, and competition programs.

Upon review, although the Petitioner's letters speak highly of the Beneficiary's performance for its organization, they do not establish that she was responsible for its success or standing to a degree consistent with the meaning of "critical or essential capacity." General statements about the Beneficiary's work being critical without any description of specific instances in which she performed in an essential or critical capacity for the organization are not sufficient to establish that the Beneficiary

[10] While the Petitioner also provided other finishes and rankings of those horses, those occurred subsequent to the filing of this petition on October 30, 2019. See 8 C.F.R. § 103.2(b)(1).

was responsible for the Petitioner's success or standing to a degree consistent with the meaning of "critical or essential capacity." Here, the documentation submitted does not contain the detailed and probative information needed to establish that the Beneficiary's participation was of significant importance to the outcome of the petitioning organization's activities. Moreover, the record does not contain documentation showing that the petitioning organization has a distinguished reputation, as required.

In light of the above, the Petitioner has not established that the Beneficiary satisfies this criterion.

B. Prior Approval

The record indicates that USCIS has previously approved at least one petition for O-1 status filed on behalf of the Beneficiary. Prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's or beneficiary's qualifications. Texas A&M Univ. v. Upchurch, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In the present matter, the Director reviewed the record of proceeding and concluded that the Petitioner did not meet all eligibility requirements for the requested classification. Based on the lack of required evidence of eligibility in the current record, we find that the Director was justified in denying the instant petition. We are not required to approve applications or petitions where eligibility has not been demonstrated because of prior approvals that may have been erroneous. See, e.g., Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm'r 1988). Further, our authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the beneficiary, we are not be bound to follow the contradictory decision of a service center. Louisiana Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

III. CONCLUSION

The record does not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in athletics: 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). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary ability. 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.