U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-B-

DATE: MAY 3, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a soccer player, seeks classification as an individual of extraordinary ability in athletics. 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 Texas Service Center denied the Petitioner's Form I-140, Immigrant Petition for Alien Worker, and his subsequent motions to reopen and reconsider the proceeding. We dismissed his appeal, and he has filed a motion to reconsider.[1] Upon review, we will deny the motion.

I. LAW

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). A petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the 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 submits qualifying evidence under at least three criteria, we will then 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.[2]

---

[1] The Petitioner requests an additional 30 days to supplement his motion. As of the date of this decision, however, we have received nothing further.

[2] *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); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that U.S. Citizenship and Immigration Services (USCIS) examines "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").

In addition, a motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Moreover, a motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

II. ANALYSIS

In dismissing the appeal, we determined that the Petitioner did not satisfy any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, we found that he did not meet the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii), the artistic display criterion under 8 C.F.R. § 204.5(h)(3)(vii), the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii), or the high salary criterion under 8 C.F.R. § 204.5(h)(3)(ix). On motion, the Petitioner requests reconsideration of the criteria relating to published material, artistic display, and leading or critical role.

Regarding the published material criterion, the Petitioner quotes excerpts of some of his previously submitted articles and claims that they were about him. In addition, he cites to the *Merriam-Webster Online Dictionary*, which defines "about" as "with regard to: concerning," and he states that the regulation does not require the articles to be primarily about him. As discussed in our previous decision, the Petitioner provided eight articles that were published in [redacted] a sports magazine. A review of the articles did not indicate that they pertained to the Petitioner. Rather, they discussed soccer matches in which he participated and teams of which he was a member. Although he was briefly mentioned along with other players, the articles did not include additional information about him, such as his biography or competitive history. The Petitioner has therefore not demonstrated that the articles constitute published material about him. *See, e.g.*, *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ, 2008 WL 10697512, at *3 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Furthermore, the Petitioner asserts that [redacted] is a major trade publication, and claims that in our previous decision we agreed that the magazine is the most popular and the highest-circulated print sports media in Georgia. On the contrary, we determined that the Petitioner did not demonstrate that [redacted] circulation of [redacted] was indicative of its status as major media in the country. In addition, we found that without supporting documentation, such as the circulation statistics for other publications in Georgia, the Petitioner did not establish that [redacted] is a major trade publication or other major media. In short, the Petitioner has not established on motion that his articles are consistent with the plain language of the published material criterion under 8 C.F.R. § 204.5(h)(3)(iii).

As pertaining to the artistic display criterion, we found that the Petitioner did not satisfy it because it applies to artists who have displayed their work at "artistic exhibitions or showcases," rather than soccer players who have participated in competitions. The Petitioner references *Merriam-Webster*

Online Dictionary, which defines "showcase" as "an event, occasion, etc., that shows the abilities or good qualities of someone or something in an attractive or favorable way." Moreover, he claims that "artistic" only relates to exhibitions, and that he displayed his work at athletic showcases. We are not persuaded by his arguments. The *Adjudicator's Field Manual* instructs adjudicators to "[d]etermine whether the venues (virtual or otherwise) where the alien's work was displayed were *artistic* exhibitions or showcases" (emphasis in original). The *Manual* emphasizes that the exhibitions or showcases must be artistic in nature.[3] The Petitioner has not pointed to legal authorities supporting his position that soccer matches are artistic in nature. Accordingly, he has not demonstrated that we incorrectly applied the regulation for this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

The Petitioner also argues that we erred in finding that he did not meet the leading or critical role criterion. He references the *Merriam-Webster Online Dictionary* and indicates that the term "critical" means "crucial," which in turn is defined as "very important." In addition, he maintains that we "[do] not dispute that [he] made significant contribution [*sic*] to the most important victories regarding the team's two bronze medals at the and that he played one of the decisive roles in the team's success – both as a player and as a person" (internal quotation marks omitted). While we quoted language from his reference letters that made such claims, we found that the letters did not sufficiently explain how the Petitioner's roles were either leading or critical, or whether his performances led to the successes or standings of his teams. We further concluded that neither he nor his references provided specific examples showing how his roles rose to a level of leading or critical.

On motion, the Petitioner maintains that no "such elaboration is required" and argues that we did not "follow the plain language of the regulations." As indicated in our previous decision, repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *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*, No. 95 CIV. 10729, 1997 WL 188942, at *5 (S.D.N.Y. Apr. 18, 1997). In the absence of corroborative evidence, statements made in reference letters are insufficient to illustrate that the Petitioner satisfies this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii). For these reasons, the Petitioner has not shown that we erred in our previous decision as relating to this criterion.

III. CONCLUSION

The Petitioner has not demonstrated that he meets any of the criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), of which he must satisfy three. Moreover, he has not established that our prior

[3] *See* USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM)* 9 (Dec. 22, 2010), https://www.uscis.gov/laws/policy-memoranda.

decision was based on an incorrect application of law or policy, or that it was incorrect based on the evidence in the record.

ORDER: The motion to reconsider is denied.

Cite as *Matter of V-B-*, ID# 377988 (AAO May 3, 2017)