U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16215738

Date: MAY 7, 2021

Appeal of California Service Center Decision

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

The Petitioner, a non-profit arts organization, seeks to temporarily employ the Beneficiary as a basketball player and coach. To do so, the Petitioner seeks to classify the Beneficiary as an O-1 nonimmigrant of extraordinary ability in athletics. This classification is 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 the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability, 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).

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 to work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "[e]xtraordinary 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 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).

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

II. ANALYSIS

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking employment for the Beneficiary as a basketball player and youth basketball coach for a period of three years. The Beneficiary's resume indicates that between 2012 and 2016 she competed as a basketball player on the women's [redacted] teams of the professional women's basketball club [redacted] and the women's [redacted] Spanish national teams. Between 2014 and 2018, she competed as a basketball player while attending [redacted] University in [redacted] and [redacted] University in [redacted] On her resume, the Beneficiary indicated coaching duties between 2013 and 2020, including as a basketball school assistant coach for [redacted] a coach at a youth summer camp for [redacted] in USA in Wisconsin, and a developmental league coach for [redacted] Basketball School in [redacted]

The Petitioner's initial submission included its signed agency agreement with the Beneficiary and signed offers of employment from the Petitioner, [redacted] Basketball School, and [redacted] in USA, indicating her proposed duties will include performance in an online documentary about "professional female basketball players and their athletic careers," and as a basketball coach of young athletes.

In denying the petition, the Director determined that the Beneficiary had not received a major, internationally recognized award at 8 C.F.R. § 214.2(o)(3)(iii)(A) or satisfied any of the criteria described at 8 C.F.R § 214.2(o)(3)(iii)(B). On appeal, the Petitioner maintains that it has provided evidence of a major, internationally recognized award and, alternately, that the Beneficiary meets five criteria. As discussed below, we find that the exhibits satisfy only one of the evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).[2]

A. Major, Internationally Recognized Award

The Petitioner maintains on appeal that the Beneficiary's fourth place finish at the 2015 [redacted] Championship, gold medals at the 2015 and 2016 [redacted]

[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] While the Petitioner previously claimed the Beneficiary's eligibility for high salary under 8 C.F.R § 214.2(o)(3)(iii)(B)(8), it does not continue to do so on appeal, nor does the record support a finding that she meets it. Accordingly, we will not further address this criterion in our decision.

Championships: Division A, gold and bronze medals at the 2013 and 2014 [redacted] Championships: Division A, bronze medal at the 2014 [redacted] and gold medal at the 2012 [redacted] Championship: Division A constitute a major, internationally recognized award.

The regulation at 8 C.F.R § 214.2(o)(3)(iii)(A) requires a beneficiary's "receipt of a major, internationally recognized award, such as the Nobel Prize." Other examples that enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. These major, internationally recognized awards are generally reported in the top media internationally regardless of the nationality of the awardees, reflect a familiar name to the public at large, or include a significant cash prize. While a major, internationally recognized award could conceivably not contain those elements, the award must be global in scope and internationally recognized in the field as one of the top awards.

The Petitioner argues that the Beneficiary satisfies this criterion based on having "being selected on the National Team and . . . leading the team to a [redacted] Championship." Although the Petitioner documented the Beneficiary's receipt of medals, the Petitioner did not substantiate its arguments with independent evidence. The regulation requires "a major, international[ly] recognized award." The Petitioner did not present evidence, for example, establishing that the competitions or awards are widely reported by international media, are recognized by the general public, or garner attention comparable to other major, globally recognized awards such as Olympic medal winners. In addition, the Petitioner did not demonstrate how membership on the above-referenced teams is equivalent to receiving a major, internationally recognized award. Accordingly, the Petitioner has not demonstrated that the Beneficiary meets the requirements of a major, internationally recognized award.

B. Evidentiary Criteria

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

The Director found that the Petitioner did not satisfy this criterion. As discussed above, the Petitioner established that the Beneficiary received lesser internationally recognized awards for excellence as evidenced by her medals. Therefore, the Petitioner demonstrated that the Beneficiary meets this criterion, and the Director's determination on this issue will be withdrawn.

> 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 did not establish that the Beneficiary satisfies this criterion. The Petitioner contends on appeal that the Beneficiary satisfies this criterion based on her selection, as a [redacted] player, "to the Spanish National Team, to the [redacted] professional basketball team (as a player and a coach), and being selected [redacted] as a U.S. collegiate player." The Petitioner references evidence of the Beneficiary's membership in those entities.

While an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete can earn a place on a national or an Olympic team only through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's or coach's membership on an Olympic team or a major national team such as a World Cup team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the Petitioner's burden to demonstrate that the Beneficiary meets every element of a given criterion, including that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought. We will not presume that every national team is sufficiently exclusive. 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.

Here, the selection process for membership on the [redacted] Spanish national teams has not been explained. [redacted] of the Spanish Basketball Federation, the national federation for the sport, states that he was [redacted] of the 2016 Spanish National Team [redacted] in which the Beneficiary played, and which placed first at the [redacted] Championship. He also notes her membership in the 2012 Spanish National Team [redacted] and the 2013 Spanish National Team [redacted] which won gold medals at the [redacted] Championships. Although [redacted] praises the Beneficiary for her basketball experience and skills, he does not indicate that outstanding achievements, as judged by recognized national or international experts, are required for membership with the Spanish national [redacted] basketball teams.

Similarly, [redacted] the technical coordinator of [redacted] states that the Beneficiary was part of his "exclusive and elite [redacted] teams . . . ., winning two [redacted] Championships – in 2012 and in 2014, playing in the [redacted] categories, respectively," and worked as the teams' youth practice coach, without discussing the membership requirements for the [redacted] [redacted] teams. [redacted] and [redacted] athletic director and head coach, respectively, at [redacted] University indicate that the Beneficiary was named to the [redacted] [redacted] team in her senior year, without providing the membership requirements. Here, the Petitioner did not provide evidence documenting that the [redacted] Spanish national teams, the [redacted] [redacted] teams, or the [redacted] team require outstanding achievements, as judged by recognized national or international experts consistent with the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

Based on the above, the Petitioner did not show that the Beneficiary meets this criterion.

> 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 Director determined that the Petitioner did not meet this criterion. The Petitioner claims media articles referencing the Beneficiary's achievements which qualify under this criterion were not given sufficient weight. The record, however, does not reflect that it provided published material about the Beneficiary in professional or major trade publications or other major media, which included the title, date, and author. First, we note that the documentation submitted by the Petitioner in support of this criterion includes translations of foreign language articles and an interview with the Beneficiary. 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." Here, the Petitioner submitted translations that do not comport with the regulation. Instead many translations are accompanied by blanket certifications for the "attached documents" that do not identify any specific document being translated. Other translations are uncertified. Finally, the translations do not represent the whole foreign language document but clearly omit sentences or passages from the foreign language document. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have significantly diminished probative value.

In addition, the Petitioner provided articles from the print editions of Diario AS and El Mundo, and screenshots from various websites, such as FIBA, Federacio Catalana de Basquetbol, www.coe.es, Avance Deportivo, El Pais, www.zonarookie.com, www.masbasket.com, www.teldeporte.com, and www.devuestreobasket.com, reflecting coverage of basketball tournaments where the Beneficiary is simply mentioned or listed as a competitor. These screenshots are about basketball tournaments rather than about the Beneficiary. Articles that are not about a beneficiary do not meet this regulatory criterion. Cf., e.g., Negro-Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). We also note that many of these articles do not provide the "author of the material," as required by the regulation.

The Petitioner also submitted a 2014 newspaper article titled [redacted]" and indicates that the source of the article is Gigantes Del Basket. The translated portion of the article provides that the Beneficiary, who participated in a 2014 [redacted] championship and a 2012 [redacted] Championship, plans to play basketball at "a university in [redacted] Because the article was not fully translated, we cannot determine that the article is about the Beneficiary.

The Petitioner also provided articles about the Beneficiary from the websites [redacted] and [redacted] that indicate that prior to her freshman year she won a bronze medal with the Spanish national team at the [redacted] in China. However, the article from [redacted] does not include the author, as required by the regulation. An additional article from www.solobasket.com relates that the Beneficiary is transferring from [redacted] University to [redacted] University in [redacted] to study drama and continue playing basketball. An interview with the Beneficiary from www.zonadostres.com discusses the Beneficiary's gold medal with [redacted] in the [redacted] 2014 [redacted] Championships. The interview is not 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. 8 C.F.R. § 103.2(b)(3). Further, the Petitioner did not provide supporting evidence indicating that the above publications qualify as major media.

For the aforementioned reasons, the Petitioner has not met its burden in demonstrating that the Beneficiary meets the requirements of 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 Director determined the Petitioner's documentation was insufficient to establish that the Beneficiary's playing and coaching work constitutes original contributions of major significance in her field. On appeal, the Petitioner contends that the Beneficiary "has made original contributions by excelling and leading the Spanish National Team." In order to satisfy this criterion, 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.

As evidence under this criterion, the Petitioner offered several recommendation letters praising the Beneficiary's skills and experience in her sport, but they do not identify her particular contributions of major significance in the field.[3] For example, [redacted], a basketball scout who recruited the Beneficiary to [redacted] University, mentions her participation on Spain's 2015 and 2016 [redacted] Championship team, its 2013 [redacted] Championship team, and its 2012 [redacted] Championship team. He also recounts her selection to the [redacted] Team while competing for [redacted] University and her coaching of young athletes, including for [redacted] Regardless, the Petitioner has not demonstrated that the Beneficiary's accomplishments with the youth divisions of the Spanish national team or [redacted] as an athlete or coach, rise to the level of original contributions of major significance in the field. [redacted], who competed with the Beneficiary on Spain's [redacted] Championship teams, describes her as "dedicated" and "one of the most natural and extraordinary talents on the court." In his above-mentioned letter, [redacted] states that the Beneficiary is "the rare athlete with unparalleled abilities and a very adept understanding of what it takes to win." [redacted] assistant coach at [redacted] University, refers to the Beneficiary as an "immense talent."

The letters of recommendation offered by the Petitioner primarily contain discussions of the Beneficiary's playing skills and coaching activities, and attestations of her status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. USCIS need not accept primarily conclusory statements. 1756, Inc. v. The *U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Furthermore, uncorroborated statements from the Beneficiary's references are insufficient to demonstrate her eligibility. Cf. Visinscaia v. Beers, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013); see also *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought). Without additional supporting evidence showing that the Beneficiary's work has been unusually influential, has substantially impacted her sport, or has otherwise risen to the level of original contributions of major

[3] Although we discuss a sampling of letters, we have reviewed and considered each one.

significance in playing or coaching basketball, the Petitioner has not established that the Beneficiary meets this regulatory criterion. Further, although the record contains certificates confirming the Beneficiary's designation as a [redacted] by the Higher Sports Council of Spain, the Petitioner has not demonstrated how the Beneficiary's designation as a [redacted] represents an original scientific, scholarly, or business-related contributions of major significance in the field.

Upon review, the preceding letters of recommendation demonstrate that the Beneficiary's work has earned the respect and admiration of those with whom she has worked and collaborated, but these letters do 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 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 determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). On appeal, the Petitioner maintains that the Beneficiary has been employed in a critical or essential capacity for "the Spanish National Team" as a "major contributor to its success in winning major international competition," and as a player and coach "for a very prestigious professional basketball team [redacted]"

The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's position within the scope of the organizations that have employed her. First, the evidence submitted does not establish that the Beneficiary's participation on Spain's 2015 and 2016 [redacted] Championship team, its 2013 [redacted] Championship team, and its 2012 [redacted] Championship team was in a critical or essential capacity for the Spanish national basketball team as a whole, as claimed. Similarly, the documentation submitted does not show that the Beneficiary's participation on [redacted] s 2012 and 2014 [redacted] Championship teams was in a critical or essential capacity for [redacted] 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 Spanish national basketball team's general hierarchy, or evidence that elucidates how her position in Spain's youth divisions differentiated her from the top-level basketball athletes on the Spanish national basketball team. The documentation submitted also did not establish where the Beneficiary's position fell within [redacted] s general hierarchy, or evidence that elucidates how her position in its youth divisions differentiated her from the top-level basketball athletes on the [redacted] basketball team. Here, the evidence provided by the Petitioner does not establish that the Beneficiary was responsible for the success or standing of the Spanish national basketball team or [redacted], to a degree consistent with the meaning of "critical or essential capacity."

Further, the Petitioner has not documented that the Beneficiary's coaching role for [redacted] which her resume indicates was as an "Basketball School Assistant Coach," was critical or essential for [redacted] This subordinate role is designed to provide assistance to a head coach or other more senior coach. The Petitioner's evidence does not demonstrate how the Beneficiary's role differentiated her from other coaches.

Finally, the letters of recommendation provided do not describe the manner in which the Beneficiary's role as an athlete or coach was critical or essential for those basketball teams. Although the above-referenced letters from [redacted] and [redacted] show her successful participation in continental and regional competition with the youth divisions of the Spanish national team and [redacted] they do not demonstrate, as claimed, that she contributed in an important way to the overall success or standing of the Spanish national basketball team or [redacted] as a whole. While the Beneficiary has earned the admiration of her colleagues, the letters do not demonstrate that her successes are reflective of having been employed in a critical or essential capacity for an organization or establishment as required under this evidentiary criterion. Further, the record does not contain evidence sufficient to demonstrate that [redacted] has a distinguished reputation in the field.

For these reasons, the Petitioner did not demonstrate that the Beneficiary meets this criterion.

III. CONCLUSION

The record does not establish that the Beneficiary has received a major, internationally recognized award under 8 C.F.R. § 214.2(o)(3)(iii)(A) or that she meets at least three of the eight evidentiary criteria 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 an individual of extraordinary ability.

ORDER: The appeal is dismissed.