U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-M-E-

DATE: NOV. 20, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a competitive swimmer, seeks classification as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker. She concluded that although the Petitioner satisfied more than three of the regulatory criteria and is among the small percentage at the very top of his field of endeavor, he did not demonstrate that he will continue to work in his field in the United States and that he will substantially benefit prospectively our nation.

On appeal, the Petitioner submits a brief asserting that he will train and compete in the United States and that his presence will benefit the sport of competitive swimming in this country.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his or her occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In addition, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. *Id.*

II. ANALYSIS

At the time of filing, the Petitioner was training at the [redacted] "for a series of elite competitions in the United States and abroad as part of his [redacted]."[1] As the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the initial evidentiary requirements.

[1] A letter of support from [redacted] head coach of the [redacted] swimming program, explains that "[t]he [redacted] refers to competing in a series of major professional swimming competitions over four years that will allow [the Petitioner] to qualify for the [redacted]

A. Evidentiary Criteria

The Director found that the Petitioner met the awards, membership, published material, and leading or critical role criteria under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), and (viii), respectively. His documentary evidence indicates that he has won nationally and internationally recognized awards in swimming competitions, been a member of teams that require outstanding achievements as determined by national experts, received media coverage in his sport, and performed in a critical role for teams that have a distinguished reputation. For example, the record shows that the Petitioner won gold medals at the 2016 in multiple events. In addition, he was a member of the team in 2016 and has garnered media coverage in major swimming publications such as *Swimming World*. Lastly, he has performed in a critical role for distinguished organizations such as the men's swim team. Accordingly, the record supports the Director's finding that the Petitioner has satisfied at least three of the ten regulatory criteria.

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. We evaluate whether he has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, making him one of the small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. In the present matter, the Petitioner has shown his eligibility for this classification.

The Petitioner has competed for as a critical member of their swim teams. While competing for these teams, he won nationally and internationally recognized competitions such as the (2016) and (2016). At the 2016 the Petitioner represented Egypt placing 16th and 24th in the 400 and 200 meter freestyle events, respectively. More recently, at the in (2017), he placed 9th in the 400 meter freestyle. His swimming accomplishments have been covered in *Swimming World*, *SwimSwam*, *Egypt Daily News*, *Kingfut*, and *Al-Ahram News*. Additionally, the record includes a November 2017 letter from Executive Director of the indicating that the Petitioner is currently the Egyptian record holder in both the . This evidence sets the Petitioner apart through a "career of acclaimed work in the field." *See* H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

In summary, the Petitioner has demonstrated his extraordinary ability as a competitive swimmer. The totality of the evidence establishes that he possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has

documented sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20. *See also Matter of Price*, 20 I&N Dec. 953, 956 (Assoc. Comm'r 1994).

C. Continuing Work in the Area of Extraordinary Ability[2]

The Petitioner presented a personal statement detailing his plans for work in the United States. He states: "I am currently training at the [redacted] under [redacted] . . . . I plan to compete in the highest level swimming competitions in the world, such as the [redacted] and [redacted]." In addition to the aforementioned personal statement indicating that the Petitioner "will train and compete in the United States," the record includes two letters from [redacted] asserting that he will continue to train the Petitioner at [redacted]

The Petitioner also provided his schedule of competitive swimming events for 2018 and a letter from [redacted] stating: "Our Club agreed to sponsor [the Petitioner] beginning 1st April 2017 and ending 1st April 2021 for an estimated sum of $50,000 per year." Furthermore, he submitted a July 2017 letter from [redacted] indicating that it "agreed to sponsor [the Petitioner] beginning 1st April 2017 and ending 1st April 2021 for an estimated sum of $1,000 per month" in exchange for his service "as the face of [redacted] The record also contains an April 2017 sponsorship agreement with [redacted] reflecting that this company will provide products for his "personal and training use" and compensate him for appearance days at promotional events.

While the Director's decision raised concerns relating to the Petitioner's F-1 student nonimmigrant status and questioned whether he would "be employed as a swimmer being his main source of income," we find the aforementioned evidence sufficient to demonstrate that he seeks to continue work in his area of expertise in the United States pursuant to the regulation at 8 C.F.R. § 204.5(h)(5). Accordingly, the Director's determination on this issue is withdrawn.

D. Substantial Prospective Benefit to the United States[3]

We note that the U.S. Citizenship and Immigration Services Adjudicator's Field Manual (AFM) provides the following guidance:

> Section 203(b)(1)(A) of [the Act], which defines an alien of extraordinary ability, also requires that the alien's work substantially benefit prospectively the United States. Although the regulations do not specifically define this statutory term, it has been interpreted broadly. *See e.g. Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm. 1994)

[2] *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5).
[3] *See* section 203(b)(1)(A)(iii) of the Act.

> (golfer of beneficiary's caliber will substantially benefit prospectively the United States given the popularity of the sport). Whether the petitioner demonstrates that the alien's employment meets this requirement requires a fact-dependent assessment of the case. There is no standard rule as to what will substantially benefit the United States.

AFM ch. 22.2(i)(1)(B).

In his personal statement, the Petitioner explains: "[W]hile I am under a visa or Green Card, I will train and compete in the United States, but I will continue to represent Egypt in international competitions as mandated by the FINA Rules. When I become a U.S. citizen, I would like to represent Team USA in swimming." He further states that he "will benefit the United States by increasing the level of competitiveness, and thus improving the level of United States swimming" and by sharing his experience and knowledge with "American swimmers who will train and compete alongside me."

In support of his statement, the Petitioner provides a letter from a 2016 gold medalist, asserting: "It is difficult to find challenging training partners that will push my times and techniques to the next level. I can count on [the Petitioner] to serve as a reliable and challenging training partner." In addition, maintains that "elite international athletes like [the Petitioner] make a tremendous difference in our training by helping us stay competitive in the field against international opponents." Similarly, another 2016 gold medalist, contends that the Petitioner's presence "enhances the level of American swimmers," "offers an international perspective to our training," "makes our training more competitive, and helps popularize the sport."

Furthermore, states that the Petitioner's "work as a swimmer will benefit swimming in the United States because he brings a variety of winning techniques, including his highly-awarded and versatile freestyle and butterfly techniques. His presence at swim events raises the level of competitiveness and makes American swimmers stronger." Additionally, indicates that elite swimmers learn "from training and competing against other elite swimmers" and that "exposure to a variety of physical techniques as well as mental strategies" is also important. He further explains: "[The Petitioner] provides those tools to American swimmers. [The Petitioner] is one of the few top-level international swimmers that is able to provide that level of skill and experience to support American swimmers, and that is essential to elite-level swim training . . . ."

In denying the petition, the Director noted the Petitioner's statement that "he will continue to represent Egypt in international competitions as mandated by the FINA Rules." In addition, the Director pointed to the Petitioner's affiliation with the and their sponsorship agreement as his "main source of income while he is currently on an F-1 Student Status." The Director indicated that the Petitioner's benefit to U.S. athletes was "overstated" and concluded that the record did not establish "that he will 'substantially' benefit the United States."

We withdraw the Director's determination on this issue. In addition to the Petitioner's assertion that he intends "to represent Team USA in swimming" after becoming a U.S. citizen, the statements from [redacted] and [redacted] demonstrate his substantial future benefit to the United States in competitive swimming. Furthermore, given the popularity of the sport of swimming in this country, the record demonstrates that an athlete of the Petitioner's caliber will substantially benefit prospectively the United States. *See e.g. Matter of Price*, 20 I&N Dec. at 956.

III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that he will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

Cite as *Matter of M-M-E-*, ID# 1740178 (AAO Nov. 20, 2018)