U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

In Re: 5235790

Date: NOV. 21, 2019

Appeal of California Service Center Decision

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

The Petitioner, a mixed martial arts academy, 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 Director of the California 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. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner maintains that the evidence satisfies at least three of the eight regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii)(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).

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).[1]

## II. ANALYSIS

The Petitioner operates as a martial arts school specializing in mixed martial arts (MMA) instructional programs. The evidence indicates that the Beneficiary trained in Brazilian Jiu-Jitsu (BJJ) in Peru and Brazil. Since 2010, he has competed in professional MMA tournaments in several countries including Peru and Brazil. The Petitioner seeks to employ the Beneficiary as a BJJ instructor and to compete on its behalf in several competitions sponsored by the International Brazilian Jiu-Jitsu Federation (IBJJF) and the North American Grappling Association (NAGA). The record shows that the Beneficiary has trained at the petitioning organization since 2017, and that it promoted him to black belt in 2018.

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, 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 Director found that the Beneficiary did not meet any of the evidentiary criteria at 8 C.F.R § 214.2(o)(3)(iii)(B) as an athlete, instructor, or both. On appeal, the Petitioner maintains that the exhibits satisfy three of those criteria. After reviewing all of the evidence in the record, we find that the exhibits do not satisfy any of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). We will analyze the evidence submitted under each of those criteria below.[2]

> *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 provided evidence, including information from www.tapology.com and what appear to be official event photographs of the Beneficiary with medals, regarding the following awards the Beneficiary received as an athlete, which it highlights on appeal:

- Winner 2010 [redacted] Proyecto
- Winner 2010 [redacted] Championship [redacted] (Peru)

[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] On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

- Winner 2014 [redacted] Championship [redacted] (Peru)

The exhibits also indicate that the Beneficiary received a medal in 2008 at a NAGA Grappling Championship, and two medals in 2010 at events sponsored by NAGA and the Confederação Brasileira de Jiu-Jitsu Esportivo (CBJJE).[3] It appears from the record that the Beneficiary won the aforementioned awards while competing in the [redacted] and [redacted] belt grades, and not at the highest level of competition as a black belt. The Director determined that the evidence the Petitioner provided regarding these awards did not meet the regulatory criterion.

The Petitioner initially provided several letters as evidence in support of this criterion. A letter from [redacted], a BJJ instructor in Brazil, indicates that the Beneficiary trained with him in Peru and Brazil, where he "developed a really unusual style of grappling." [redacted] states that he helped coach the Beneficiary "to some major Jiu Jitsu titles." [redacted], a professional MMA athlete, states that he met the Beneficiary in 2012 when, as a [redacted] belt, the Beneficiary prepared for the Worlds CBJJE tournament, which he describes as "the biggest Jiu Jitsu tournament in Brazil." He states that the Beneficiary "went on to win the [redacted] Tournament as a [redacted] belt" and that he "asked the Beneficiary to be a training partner."

Within the Petitioner's response to the Director's request for evidence, it provided several additional letters. [redacted] the owner and promoter of the [redacted] Championship, states that the Beneficiary won "the [redacted] Championship title belt." He indicates that the event is "an MMA promotion" which has "hosted over 35 events and has presided over 200 matches." He describes it as "a promotion where up and coming fighters want to get their MMA career started and where well established fighters can come in to reinvigorate their careers." He calls the Beneficiary "one of the best in the industry in grappling."

[redacted] a promoter for the [redacted] Championship, states that it is "a [MMA] organization located in the State of [redacted] in [redacted] Peru." He indicates that he invited the Beneficiary "to fight in our promotion and event" based upon his "superior fighting skills and high quality Jiu-Jitsu." He confirms that the Beneficiary won a [redacted] Championship match.

[redacted] the owner of "a promotion in Peru that deals with [BJJ] competitions," states that the Beneficiary has been his training partner from a very young age, and claims that the Beneficiary won eight [redacted] championships" in jiu-jitsu between 2008 and 2014 competing at the [redacted] and [redacted] level of competition. The record does not contain, however, primary evidence (copies of the awards) of those awards, or secondary evidence such as media coverage. A Petitioner may only rely upon affidavits after demonstrating that primary and secondary evidence is unavailable. 8 C.F.R § 103.2(b)(2).

We agree with the Director's determination that the above-referenced documentation does not satisfy this criterion because it did not establish that the awards are nationally or internationally recognized

[3] The record also includes evidence that the Beneficiary received an award at the NAGA [redacted] Grappling Championship in [redacted] 2018. However, he received this award after the date when the petition was filed on September 14, 2018. 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).

for excellence in the field. For example, the Petitioner has not shown that the Beneficiary's wins attracted the level of media attention that might indicate the award's national or international recognition. Moreover, it has not submitted information about the individuals who participated in the events, including their caliber and skill level, which might reveal the prestige and recognition of the competition. A competition may be open to individuals 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. Finally, although in its appeal brief the Petitioner provides information about NAGA and CBJJE, it did not submit any corroborating evidence to support its claims.

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

> *Published material in professional or major trade publications or other 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 Petitioner provided a copy of an article from an unknown Spanish-language newspaper and screenshots of an article from an unknown blog that do not comply with the regulation at 8 C.F.R. § 103.2(b)(3) requiring "a full English language translation." Because the Petitioner did not submit a complete translation of these items, it did not demonstrate that the articles are published material about the Beneficiary relating to his work. In addition, the Petitioner did not include the required title, date, and author of the material. Further, the Petitioner did not present evidence establishing that those sources are each a professional or major trade publication or other major medium.

Accordingly, the Petitioner did not show that the Beneficiary meets 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 evidence the Petitioner provided did not met this regulatory criterion. In its appeal statement, the Petitioner asserts that "[the Beneficiary's] prior position as world champion of [redacted] FC satisfies the prior employment of a critical position." As previously discussed, the evidence indicates that the Beneficiary was the winner of the 2010 [redacted] Championship [redacted] event. [redacted], the owner and promoter of the [redacted] Championship, confirmed that the Beneficiary won that competition, but he did not assert that the Beneficiary was employed in a critical or essential capacity for the organization. The contents of his letter also do not establish sufficiently that the organization has a distinguished reputation in the field.

In addition, within its appellate brief the Petitioner maintains that the Beneficiary played a critical role for its organization as an instructor of its elite fighters, including '[redacted], [redacted] [redacted] [redacted] [and] [redacted]," and that he "will coach and instruct in [the petitioning organization] in a very critical capacity which is the skill of grappling." The Petitioner's initial evidence included a letter from its owner and head BJJ instructor, [redacted] who claims to be "internationally

known" for training elite MMA fighters including "world champions." He indicates that the Beneficiary came to the petitioning organization in 2017, when he was competing at the [redacted] belt level. He describes the Beneficiary as an "excellent fighter," a "dedicated and gifted instructor," and "a valuable asset" to the petitioning organization with "a unique style of grappling that I want to have in my academy."

In addition, a letter from [redacted], a professional MMA athlete, indicates that the Beneficiary is his training partner in grappling at the petitioning organization, and calls him "an integral part of my training camp as I prepare for my fights." [redacted] states that the Beneficiary "has helped my grappling skills because he brings a grappling perspective that is very unique." Information from [redacted] indicates that [redacted] has been competing professionally since 2007, and is [redacted] ranked of 1540 active [redacted] Although it appears that [redacted] has successfully competed professionally, the evidence does not establish that such success is primarily attributable to the Beneficiary's instruction. The record also does not contain any evidence of the instructor-athlete relationship between the Beneficiary and the other successful athletes the Petitioner lists as those the Beneficiary has instructed.

The scope of this evidentiary criterion focuses on the Beneficiary and the relative importance of his position within the organizations that have employed him. The record does not contain evidence that would establish that the Beneficiary's position with the petitioning organization was in a critical or essential capacity, such as evidence establishing how the Beneficiary's instructor position related to other instructor positions in the organization, the number of coaches employed, or how many of the coaches took athletes to national events. The evidence submitted does not clearly show the Beneficiary's established successful history of instructing top-level athletes. Further, the evidence does not establish that the Petitioner has a distinguished reputation in the sport of MMA. Based on the forgoing, the Petitioner has not established that the Beneficiary satisfies this criterion.

## 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. 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.