U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-G-T- INC.

DATE: OCT. 16, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a taekwondo school, seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa 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.[1] *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 Vermont Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the Beneficiary 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. *See* 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner asserts that its petition should have been afforded a degree of favorable discretionary consideration, and there were no material errors in prior adjudications of the Beneficiary's O-1 nonimmigrant classification.

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 include the following definition: "Extraordinary ability in the field of science, education, business, or athletics means 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] The Petitioner seeks to continue to employ the Beneficiary as a taekwondo headmaster.

Next, DHS regulations set forth the initial 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). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, it may submit comparable evidence in order to establish the individual's eligibility. 8 C.F.R. § 214.2(o)(iii)(C).

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 the athletics under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[2]

II. ANALYSIS

A. Prior O-1 Nonimmigrant Status

The Petitioner claims that the Director denied its petition "after reviewing the case based on the recently published memorandum" that "rescinded the guidance regarding deference to prior approvals of petitions for extension of nonimmigrant status."[3] Moreover, the Petitioner asserts that the Beneficiary "achieved international acclaim and recognition as the top world class taekwondo competitor" and his "extraordinary abilities as the top taekwondo competitor are factors that distinguish him as the masterful taekwondo instructor." Further, the Petitioner contends that "[i]t is unreasonable to expect an applicant to receive a major, internationally-recognized award on a regular basis in between the O-1 extensions."

[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] *See* USCIS Policy Memorandum PM 602-0151, *Rescission of Guidance Regarding Deference to Prior Determinations of Eligibility in the Adjudication of Petitions for Extension of Nonimmigrant Status*, 1 (Oct. 23, 2017), http://www.uscis.gov/legal-resources/policy-memoranda.

The record reflects that the Beneficiary initially received O-1 nonimmigrant classification in 2002,[4] along with ten extensions of his status from 2004 to 2018.[5] However, the Director determined in the Petitioner's latest extension request that it did not establish that the Beneficiary satisfied any of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8) as an athlete, instructor, or both. In adjudicating petitions for immigration benefits, including nonimmigrant petition extensions, adjudicators must, in all cases, thoroughly review the petition and supporting evidence to determine eligibility for the benefit sought.[6]

In the case here, the Director properly followed policy guidance, reviewed the record and evidence, and found the Petitioner's documentation insufficient to demonstrate the Beneficiary's eligibility.[7] Furthermore, for the reasons discussed later, we concur with the Director's findings that the Petitioner did not establish that the Beneficiary met any of the categories of evidence. Moreover, the record does not show that the Beneficiary garnered national or international acclaim as an athlete and sustained that acclaim as a coach or instructor.[8] Further, we are not bound by prior decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

Finally, the Director's decision does not indicate that she required the Beneficiary to receive major, internationally recognized awards between extensions, as alleged by the Petitioner. Instead, as indicated in her decision, the Director explained that since the Petitioner did not claim that the Beneficiary received a major, internationally recognized award, such as a Nobel Prize, it must show that he satisfied at least three of the eight evidentiary criteria. Moreover, even if the Beneficiary met at least three of the criteria, the Petitioner must "demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise." 8 C.F.R. § 214.2(o)(3)(iii). Here, the Petitioner neither established that that the Beneficiary garnered national or international acclaim and recognition as an athlete earlier in his career, nor did he later sustain that acclaim and recognition as an instructor.

B. Evidentiary Criteria

The Director determined that the Petitioner provided evidence relating to four categories of evidence, but the Beneficiary did not satisfy any of them. On appeal, the Petitioner does not contest the Director's evidentiary criteria findings or offer additional documentation.[9] Nonetheless, for the reasons discussed below, we reviewed the record and conclude that the Beneficiary does not meet any of the following criteria.

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[4] *See* [redacted] with a validity period from November 9, 2002 to July 1, 2004.

[5] *See* [redacted] with a validity period from July 2, 2105 to July 1, 2018, for the most recent extension approval.

[6] *See* USCIS Policy Memorandum PM 602-0151, *supra*, at 2.

[7] *See* USCIS Policy Memorandum PM 602-0151, *supra*, at 3 (providing that an adjudicator's fact-finding authority should not be constrained by any prior petition approval, but instead, should be based on the merits of each case).

[8] The Petitioner asserts that the Beneficiary "has earned top awards in his field of international taekwondo competitions through blood and sweat along with his extraordinary physical abilities during his competition days and today he's using his knowledge, experience, skills, and fierce passion in teaching taekwondo to his students."

[9] Instead, as discussed above, the Petitioner contends that the Director that the policy memorandum "should not have been the absolute determining factor," and claims that the Beneficiary "in all of his year as the O-1 holder, dutifully complied with the terms of his non-immigrant visa status as well as with terms of his employment."

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*).

Initially, the Petitioner claimed that the Beneficiary received 6 international awards, 34 international awards, and 4 local awards as an athlete. The Petitioner submitted a "Certificate of Taekwondo Experience" from the [redacted] that listed 42 of the Beneficiary's medals from 1986 – 1999. In addition, the Petitioner provided copies of uncertified translations of various certificates and photographs of medals. Any document in a foreign language and must be accompanied by a full English language translation. 8 C.F.R. §103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit properly certified English language translations of the documents, it did not demonstrate that the translated material is accurate and supports its claims. Moreover, the Petitioner did not establish that any of the awards or medals are nationally or internationally recognized for excellence in the field.

Further, the Petitioner presented a certificate relating to his work as a coach/instructor for participating at the 2010 Junior [redacted] in [redacted] Florida and two certificates from the [redacted] Taekwondo Association for the "[redacted] Sparring Team Award" and the "[redacted] State Demonstration Award" in 2010. However, the Petitioner did not establish that the certificates represent recognized national or international prizes or awards for excellence in the field.

In response to the Director's request for evidence, the Petitioner asserted that the Beneficiary's students medaled at the [redacted] Championship in 2017 and 2018. However, the Petitioner did not submit any corroborating evidence to support its claims. Moreover, the Petitioner did not demonstrate that the Beneficiary received any medals or awards from these championships. In addition, the Petitioner did not show that the medals are nationally or internationally recognized for excellence in the field.

Accordingly, the Petitioner did not demonstrate that the Beneficiary satisfies this 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 Petitioner argued that the Beneficiary's membership with the [redacted] from 1992 – 1996 met this criterion. He referenced a letter from [redacted], president of the [redacted], who claimed the Beneficiary's membership with [redacted] and asserted that "an athlete has to be the best in his level nationally and compete in highly rigorous national qualifying tournaments." [redacted]'s letter, however, lacks detailed, probative information explaining how he was aware of the Beneficiary's membership, as well as the membership requirements of [redacted] In addition, the Petitioner did not present supporting evidence from [redacted] confirming the Beneficiary's membership, including the bylaws or other documentation showing the membership requirements. Furthermore, the Petitioner did not establish that membership with [redacted] is judged by recognized national or international experts consistent with this regulatory criterion.

Moreover, [redacted] claimed that the Beneficiary "is a [redacted] Dan black belt in the [redacted]" and "[a]n endorsement is given by the president of [a member national association] once he is satisfied that the applicant has proven himself to be an expert in Taekwondo through outstanding achievements." Moreover, [redacted] asserted that "[t]he panel of judges overseeing the examination are nationally and internationally recognized experts in Taekwondo." Again, [redacted] did not indicate how he knew of the Beneficiary's [redacted] membership or of the requirements.

In addition, the record contains a copy of the Beneficiary's "Dan Certificate" reflecting his receipt of [redacted] Dan "at a test conducted in accordance with the [redacted] Regulations for Promotion Test" in 1994. Further, the Petitioner provided copies of [redacted]'s regulations. The regulations, however, do not show that receiving a [redacted] Dan belt in [redacted] constitutes outstanding achievements, as judged by recognized national or international experts. Instead, promotion to each level depends on years at a prior level, age, and successful completion of a test.[10] Here, the Petitioner did not demonstrate that these requirements are consistent with "outstanding achievements." Moreover, the regulations do not reflect that [redacted] membership or Dan promotion is judged by recognized national or international experts.

For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary fulfills 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 partial, summary translation of an article posted on sf.koreatimes.com that does not comply with the regulation at 8 C.F.R. § 103.2(b)(3) requiring "a full English language translation." Moreover, because the Petitioner did not submit a complete translation, it did not demonstrate that the article is published material about the Beneficiary relating to his work. Furthermore, the Petitioner did not include the required title, date, and author of the material. In addition, the Petitioner did not present evidence establishing that sf.koreatimes.com is a professional or major trade publication or other major medium.

Accordingly, the Petitioner did not show that the Beneficiary meets this criterion.

> *Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*).

The Petitioner submitted an "International Referee Certificate" reflecting that the Beneficiary "attained the qualification in the 50th International Referee Seminar conducted by the World Taekwondo Federation [WTF]." In addition, the Petitioner submitted a certificate showing that the Petitioner participated as a "referee class level C4" at the 1st President's Day Taekwondo

[10] The [redacted] regulations show 10 levels of Dan promotion.

Championship hosted by the University of [redacted] in 2010. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*) requires a petitioner to show that a beneficiary has acted as the judge of the work of others in the same or an allied field of specialization. Here, the Petitioner's evidence does not reflect that duties of a taekwondo referee to demonstrate whether they involve evaluating or judging the work or skills of competitors as opposed to enforcing the rules of a match and ensuring sportsmanlike competition. Moreover, the record lacks other evidence, such as WTF's official competition rules or bylaws for referees, showing that serving as a taekwondo "referee" is consistent with participating as a judge of the work of others.

For these reasons, the Petitioner did not establish that the Beneficiary satisfies this criterion.

III. CONCLUSION

The record does not satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of P-G-T- Inc.*, ID# 4426688 (AAO Oct. 16, 2019)