U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24733936

Date: FEB. 13, 2023

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner is a judo and sambo athlete and coach who seeks classification as an alien of extraordinary ability. *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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish that he received a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To qualify under this immigrant classification, the statute requires the filing party demonstrate:

- The foreign national enjoys extraordinary ability in the sciences, arts, education, business, or athletics;
- They seek to enter the country to continue working in the area of extraordinary ability; and
- The foreign national's entry into the United States will substantially benefit the country in the future.

Section 203(b)(1)(A)(i)–(iii) of the Act. 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 a multi-part analysis. First, a petitioner can demonstrate international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying

documentation that meets at least three of the ten criteria 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 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, 1121 (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 Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022).

II. ANALYSIS

The Petitioner was previously a sambo and judo athlete, and he now applies for this restrictive immigrant classification as a judo coach or instructor. He indicates he will work in that area in the United States. The Petitioner claims that he has received a major, internationally recognized award—as a competitor—and he has satisfied the requisite number of regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

A. One-time Achievement

The Petitioner claims that his [redacted] awarded at the [redacted] World Sambo Championship is a major, internationally recognized award that constitutes a qualifying one-time achievement. The regulation at 8 C.F.R. § 204.5(h)(3) states that a petitioner may submit evidence purporting to be a major, internationally recognized award.

Congress intended to restrict this immigrant classification to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal.

The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field.

The Petitioner provided evidence of his [redacted] finish in his weight category at the World Sambo Championship in [redacted] including the official results of the competition as posted by the International

Sambo Federation, the international governing body of the sport. Although his [redacted] is a notable athletic achievement, the regulation at 8 C.F.R. § 204.5(h)(3) requires the one-time achievement to be "a major, international[ly] recognized award." The Petitioner did not present evidence, for example, establishing that the competition is widely reported by international media, is recognized by the general public, or garners attention comparable to other major, globally recognized awards such as Academy Award winners. He provided evidence that his receipt of the award was covered by a sports publication in his native country of Tajikistan, but the record does not contain evidence of international coverage of this event.

Accordingly, the Petitioner has not demonstrated that his receipt of a [redacted] at the [redacted] World Sambo Championships meets the requirements of a one-time achievement.

B. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Director decided that the Petitioner failed to satisfy any of the regulatory criteria associated with:

- Lesser prizes or awards;
- Membership;
- Published material;
- Participation as a judge;
- Contributions of major significance; or
- Performance of a leading or critical role for distinguished entities.

On appeal, the Petitioner maintains that he meets six of the regulatory criteria. After reviewing all the evidence in the record, we conclude not only that the Petitioner has failed to demonstrate eligibility, but we also observe a curious tactic he and his counsel appear to have employed that we will address after the final merits determination section of this decision.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

Citing to *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), the Director determined that competing and coaching are markedly different, and the Petitioner's coaching-related evidence and claims did not satisfy this criterion's requirements. We agree with this statement and note that awards a foreign national earns as a competitor generally cannot be relied upon to prove their extraordinary ability in coaching or instructing under 8 C.F.R. § 204.5(h)(3)(i). *See Mussarova v. Garland*, 562 F. Supp. 3d 837, 843–44 (C.D. Cal. 2022) (citing *Lee*, 237 F. Supp. 2d at 918); *see also Integrity Gymnastics & Pure Power Cheerleading, LLC v. United States Citizenship & Immigr. Servs.*, 131 F. Supp. 3d 721, 729–31 (S.D. Ohio 2015) (finding it appropriate to disregard distant claims and evidence as a competitor under the regulatory criteria when the foreign national is applying as a coach or instructor). This will be a recurring concept throughout this decision.

On appeal, the Petitioner does not address this aspect of the Director's decision (i.e., he failed to identify a specific error in the Director's decision under this criterion) to demonstrate why we should consider his prizes or awards as a competitor as being in his "field of endeavor" as the regulation requires. The reason for filing an appeal is to provide an affected party with the means to remedy what they perceive as an erroneous conclusion of law or statement of fact within a previous proceeding. *See* 8 C.F.R. § 103.3(a)(1)(v). By presenting only a generalized statement of eligibility without explaining the specific aspects of the Director's decision they consider to be incorrect, the affected party has failed to identify the basis for contesting this requirement on appeal. *Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) and finding when a filing party mentions an issue without developing an argument, the issue is deemed waived). The Petitioner has not demonstrated eligibility under 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. § 204.5(h)(3)(ii).

The Director determined that the Petitioner did not meet the requirements of this criterion. The Director noted his memberships were based on his performance as an athlete, but because he claims eligibility for this restrictive immigrant classification as a coach or instructor, the evidence in the record fell short of satisfying the regulatory requirements.

Within the appeal brief, the Petitioner revisits his claims regarding his memberships as a competitor but fails to address the Director's main point: his competitor-related memberships will not serve to satisfy the regulation because he is applying as a coach. As the Petitioner does not rebut the Director's primary basis for not granting this criterion, he has effectively abandoned or waived his claims to this criterion on appeal. *O-R-E-*, 28 I&N Dec. at 336 n.5. The Petitioner has not demonstrated eligibility under this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner's appellate claims under this criterion suffer a similar outcome as the two above criteria; the Director made an adverse finding based on the claims and evidence relating to his acclaim as a competitor when he was applying as an instructor. And again on appeal, the Petitioner focuses on aspects that were not part of the Director's decision. Instead of addressing the competitor versus coaching aspect, the Petitioner focuses on regulatory requirements that were not included in the denial. In sum, he has effectively abandoned or waived his claims to this criterion on appeal. *O-R-E-*, 28 I&N Dec. at 336 n.5. The Petitioner has not demonstrated eligibility under this criterion.

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

This criterion requires not only that the Petitioner was selected to serve as a judge, but also that the Petitioner is able to produce evidence that he actually participated as a judge. Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the Petitioner seeks an immigrant classification within the present petition. The Petitioner must submit evidence satisfying all these elements to meet the plain language requirements of this criterion.

Before the Director in the initial filing, the Petitioner submitted one reference letter to support his eligibility under this criterion. The Director issued a request for additional evidence and in response, the Petitioner only reiterated his previous claims. After reviewing the entire record, we note an issue with the Petitioner's previous evidence he submitted under this criterion when he filed a previous appeal in September 2019. Within our decision on that appeal, we acknowledged two letters he submitted that contained conflicting information between the letters and with the Petitioner's own claims about his service as a judge of the work of others. The conflict related to the years he served as a judge (i.e. between 2006 and 2013 as opposed to between 2007 and 2009). Based on those incongruities we determined the Petitioner did not satisfy his burden of proof.

Instead of addressing those inconsistencies within the current petition filing and this appeal, to deal with the inconsistencies the Petitioner simply omitted one of the letters. In general, a Petitioner must ameliorate discrepant information in the record. Such a resolution should be demonstrated through the submission of relevant, independent, and objective evidence that reveals which facts are true. *See Matter of Ho*, 19 I&N Dec. 582, 591–92 (BIA 1988). Because the Petitioner has not remedied the previous inconsistency, we cannot ignore it here and it serves to significantly diminish the evidentiary value of his claims and evidence for this criterion within the current petition.

It is permissible for us to consider significant similarities between statements submitted by petitioners in different proceedings. *Matter of R-K-K-*, 26 I&N Dec. 658, 659 (BIA 2015); *Singh v. Garland*, 20 F.4th 1049, 1054 (5th Cir. 2021); *Wang v. Lynch*, 824 F.3d 587, 592 (6th Cir. 2016) (finding that inter-application similarities can serve as a predominant basis for an adverse ruling, as long as the filing party is afforded an opportunity to explain them). Where the record contains more indications of questionable credibility in addition to dissimilarities between statements in the present and other cases, as long as U.S. Citizenship and Immigration Services (USCIS) details the other inconsistencies, it is not always necessary to afford the filing party the opportunity to explain the questionable materials. *Singh*, 20 F.4th at 1054. Our dismissal of the Petitioner's September 2019 appeal placed him on notice that he should provide additional probative evidence to resolve the inconsistency between his claims and the letters. Here, we have again notified him that he must address and resolve this issue in any future filing, to include a motion he might file on this decision.

The Petitioner has not demonstrated eligibility under this criterion.

We conclude that although the Petitioner claims he meets six criteria, because his arguments fail on any of the criteria discussed above, that means he cannot numerically meet the required number of criteria and it is unnecessary for us to reach a decision on his other claims under the contributions or

leading or critical role requirements. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve our evaluation of those requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the appeal); *see also Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. FINAL MERITS DETERMINATION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we do not need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119–20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown the significance of their work is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

IV. DUPLICATING CLAIMS FROM PREVIOUS PETITION

We begin this section noting an important finding. The Petitioner's identical claims he presents within this appeal, were submitted in a separate appeal to this office in September 2019. We not only addressed the issues he raised in that brief in our dismissal of that appeal, but we also upheld that determination in a subsequent motion to reopen and reconsider. As a result, the Petitioner's arguments and evidence as presented in this appeal have already been litigated with this office and were found to be inadequate.

A review of the current appeal brief and the brief he submitted with the September 2019 appeal, reveal they are identical—word-for-word—except the date and petition receipt number on the cover page, as well as counsel's signature on the final page. It appears the Petitioner's brief for this appeal was not tailored to the Director's decision on this petition, and instead was drafted to address the Director's August 2019 decision on a previous petition. While we will not go into detail of whether this constitutes a frivolous filing, it appears Petitioner's counsel drafted this brief and filed it with this office reflecting little or no attention to the specific factual or legal issues applicable to this case. Such a practice is not a proper means in which to file an appeal.

V. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated their eligibility as an individual of extraordinary ability. 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.