U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 19821564

Date: MAY 26, 2022

Appeal of California Service Center Decision

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

The Petitioner, a martial arts studio, seeks to classify the Beneficiary, an instructor, as an individual of extraordinary ability. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to individuals 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 demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in athletics: either receipt of 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 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

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 determined that the Petitioner provided evidence demonstrating that the Beneficiary met only one criterion – judging at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*). The Petitioner maintains on appeal that the Beneficiary fulfills five additional criteria. For the reasons discussed above, the Petitioner has not shown that the Beneficiary satisfies the requirements of at least three criteria.

> *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*).

In order to meet this criterion, a petitioner must establish that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[2] The Petitioner claims the Beneficiary's eligibility as an American Taekwondo Association (ATA) "Legacy Certified Instructor." Specifically, the Petitioner asserts:

> Legacy Certified Instructor is the highest level of instruction that can be achieved. In order to achieve Legacy Certified Instructor member, an athlete has to first be a Junior leader, a Trainee, a Level 1 Certified trainee, a Level 2 Training Certified Instructor and finally become a Level 3 Certified Instructor where he can train other instructors. In order to achieve a Legacy classification another certification must be achieved separately. [The] Beneficiary has attained all high levels of classification. To maintain this member classification, recertifications have to be done every 3 years. [The] Beneficiary's last certification was done in 2019. This means not only is he a member of an Elite group that requires high outstanding achievements of its members within the ATA, but in order to continue being a member he has to recertify his achievements and level of prowess every 3 years.

The record reflects that the Petitioner provided evidence relating to the Beneficiary's instructor examinations, include a certificate stating that the Beneficiary "has successfully completed the

[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] *See also* 2 *USCIS Policy Manual*, M.4(C)(2), https://www.uscis.gov/policymanual.

Instructors Examination and has fulfilled all certification requirements for Legacy Level 3." However, the Petitioner did not offer corroborating evidence to support his assertions regarding the significance of "Legacy Level 3" or as a "Legacy Level Instructor." Instead, the Petitioner submitted a document as it pertained to "Judging Levels and Certifications." The document does not discuss legacy level instructors; rather the document references judging levels at competitions and tournaments and pertains to obtaining judging level certifications. Because the evidence in the record does not support its claims, the Petitioner did not demonstrate that "Legacy Level Instructor" requires outstanding achievements of its members, as judged by national or international expert, consistent with this regulatory criterion.

For the reasons discussed above, the Petitioner did not show 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*).

In order to fulfill this criterion, a petitioner must demonstrate published material about a beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the published material, and any necessary translation.[3] On appeal, the Petitioner claims the Beneficiary's eligibility for this criterion based on an article from *The* [redacted] *News*. Specifically, the Petitioner asserts that *The* [redacted] *News* "is a daily morning newspaper published in [redacted] South Carolina" and "[i]t is one of the three largest papers in South Carolina." Although the article constitutes published material about the Beneficiary relating to his work, the Petitioner did not establish that the article was published in a professional or major trade publication or other major medium. In fact, the Petitioner did not show that the article was printed in *The* [redacted] *News*. Instead, the Petitioner submitted screenshots reflect the posting of the article on [redacted]online.com. While it did not provide any corroborating evidence to support his assertions relating to *The* [redacted] *News*, the Petitioner also did not supplement the record with any evidence regarding the major standing of [redacted]online.com.[4]

In addition, the Petitioner contends that he submitted "an [redacted] article thanking . . . [the] Beneficiary, for his seminar given on [redacted]2020 . . . which is an International Facebook page with more than 1000 members and who reaches a[n] even wider community." The record reflects that the Petitioner offered a screenshot without an English language translation. The screenshot does not contain a title, author, and translation as required under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). In addition, any document in a foreign language 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 it did not submit a properly certified English language translation of the document, the Petitioner did not establish that the article qualifies as published material about the Beneficiary relating

[3] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

[4] *Id.* (providing that in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional or major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media.)

to his work. Furthermore, the Petitioner did not present documentation supporting his assertions and showing the major status of the *Facebook* page.

Accordingly, the Petitioner did not establish that the Beneficiary satisfies 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).*

In order to meet this criterion, the Petitioner must demonstrate that the Beneficiary has not only made original scientific, scholarly, or business-related contributions but those contributions have been of major significance.[5] The Petitioner contends:

> [The] Beneficiary's contributions to the field are financial and business related. The ATA was able to open four new schools located in [redacted], [redacted] and two in [redacted] during his time there. Currently, the instructors he trained have themselves grown and trained others, thus further growing the ATA reach in [redacted] and the number of schools (see previously submitted evidence).

The record reflects that the Petitioner submitted a document entitled, [redacted] However, the Petitioner did not provide a certified English language translation. *See* 8 C.F.R. § 103.2(b)(3). Therefore, the Petitioner did not support his assertions and establish that the ATA was able to open new schools in [redacted]. Moreover, the Petitioner did not demonstrate how the ATA opening new schools related to the Beneficiary's original contributions. Again, the Petitioner claimed that the ATA opened the schools without explaining what the Beneficiary contributed or how the school openings are considered majorly significant in the field.

In addition, the Petitioner claims:

> In 2015, [the] Beneficiary started working in [redacted] in [redacted] SC. During the time he worked there the school grew and with his help it was able to open more locations in the nearby areas. [redacted] grew thanks to [the] Beneficiary's unique management skills and personal appeal to the clients. This is expressed in a letter from [redacted] from 2019 praising [the] Beneficiary and his contributions to their business (see previously submitted evidence).

The record contains a letter from [redacted] owner of [redacted] who indicated that she started her business in 2011 and currently has four studios in the [redacted] South Carolina area and is ready to open at least two more. Although she states that the Beneficiary began working for the school in 2015 and is "very satisfied with his performance," [redacted] does not identify any contributions the Beneficiary has made or credit him for the expansion of the school.[6] Similarly, while the Petitioner references [redacted] financial statements, the Petitioner did not show what the Beneficiary contributed and how he impacted the business' financial situation. Even if the Beneficiary was responsible for the

[5] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

[6] *See* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2) (providing that submitted letters should specifically describe the beneficiary's contribution and its significance to the field).

growth of [redacted] the Petitioner did not show the significance in the overall field rather than limited to the impact to [redacted].

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

> *Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).*

If the petitioner is claiming to meet this criterion, then the burden is on the petitioner to provide appropriate evidence establishing that the beneficiary's compensation is high relative to others working in similar occupations in the field.[7] On appeal, the Petitioner does not contest the Director's specific findings for this criterion.[8] Instead, the Petitioner states that it "wishes to introduce as changed in circumstances evidence [of the] Beneficiary's new employment contract" and "[the] Beneficiary will now earn $96,000 per year." At the outset, the Petitioner did not submit the "new employment contract" on appeal. Regardless, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Moreover, we will not consider new eligibility claims or evidence in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary satisfied the criteria relating to memberships, published material, original contributions, and high salary. Although the Petitioner claims the Beneficiary's eligibility regarding awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), we need not reach this additional ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).[9] Accordingly, we reserve these issues.[10] Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification 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.

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[7] *See* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

[8] *See Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived).

[9] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

[10] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

ORDER: The appeal is dismissed.