U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-J-G-R-

DATE: MAY 8, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an International Taekwondo Federation (ITF) athlete and instructor, 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 Director of the Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three. The Petitioner appealed the matter to us, and we dismissed the appeal.[1]

The matter is now before us on joint motions to reopen and reconsider. With the motions, the Petitioner submits a letter and additional evidence, asserting that he meets at least three criteria. Upon review, we will deny the motions.

I. LAW

A motion to reopen is based on documentary evidence of new facts, and a motion to reconsider is based on an incorrect application of law or policy. The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2), and the requirements of a motion to reconsider are located at 8 C.F.R. § 103.5(a)(3).

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,

[1] *See Matter of F-J-G-R-*, ID# 547045 (AAO Sept. 27, 2017).

(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, 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 (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).

II. ANALYSIS

As the Petitioner has not 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). In dismissing the appeal, we found that the Petitioner met the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). On motion, the Petitioner maintains that he also meets the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii) and the leading or critical role criterion under 8 C.F.R. § 204.5(h)(3)(viii). He further argues that he qualifies as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria, nor has he established the level of expertise required for the classification sought.

A. Motion to Reconsider

Preliminarily, we acknowledge the Petitioner's reference to and reliance on evidence submitted for a previously filed petition [redacted] For purposes of a motion to reconsider, the question is whether our decision was correct based on the record that existed at the time of adjudication. Therefore, while the Petitioner's references to his procedural history are noted, our review in adjudicating this motion will be limited to the instant record as constituted at the time of our appellate adjudication.

With respect to the published material criterion at 8 C.F.R. § 204.5(h)(3)(ii), in addition to providing new evidence, which will be discussed as part of his motion to reopen, the Petitioner contends that he meets the criterion based on previously submitted evidence. Specifically, he asserts that our decision, which afforded little weight to the published material based on the lack of complete English translations, was erroneous because said issue had never been raised by the Director. We disagree.

The regulation requires that "[a]ny document containing foreign language submitted to [U.S. Citizenship and Immigration Services (USCIS)] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." (Emphasis added.) 8 C.F.R. § 103.2(b)(3). The Director's denial, which focused primarily on the lack of evidence regarding circulation statistics of the publications, as well as the authors, dates, and names of publications in which the articles appeared, also noted that "[t]he petitioner must provide documentation which includes all of the information (e.g. name of publication, date it was published, *complete translation if applicable*, and independent documentation to show that it qualifies as major media) on any published material submitted to show that he meets this criterion." (Emphasis added).

Although the Petitioner was put on notice regarding the regulatory requirement for complete translations, he provided 31 articles and the transcript of a television interview on appeal to demonstrate his eligibility for this criterion. As noted in our decision, most of those articles were in Spanish and are accompanied by only summary or excerpt translations. An excerpt out of context does not allow a determination as to whether the published material is, in fact, about the Petitioner. As the regulation at 8 C.F.R. § 103.2(b)(3) requires the Petitioner to ensure that any foreign language document was "accompanied by a full English language translation," articles translated as excerpts have limited probative value. Consequently, we were unable to meaningfully determine at the time of adjudication whether the translated material was accurate and supportive.

Moreover, we found that of the articles that were accompanied by full translations or written in English, only two mentioned the Petitioner. As noted in our decision, however, these articles were not about the Petitioner, but rather focused on events or organizations (i.e., the 1999 [redacted] tournament or taekwondo schools in [redacted] Venezuela).

Finally, although the Petitioner submitted evidence of his interview on we found that the record lacked the original source material and relevant publication information. Moreover, our review of the translated transcription of the interview demonstrated that it focused on taekwondo training in general and not the Petitioner. As such, the Petitioner has not shown that the evidence in the record at the time of our decision established he met the plain language of the criterion.

Regarding the leading and critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner asserts that we erred by not determining that his roles as the Director of Promotions for the as the president of the Chapter of and as the founder and president of the were leading or critical as contemplated by the regulation.

With regard to his roles as director of promotions and president of the Chapter of we determined that the letters submitted from the board of directors and the executive president of the organization did not demonstrate how the Petitioner, in these roles, fit into the hierarchy of to show that they were leading or critical role. Specifically, we found that the letters described the Petitioner's roles in the organization in general terms, but did not establish the impact he had on the organization or its activities through corroborating evidence. On motion, the Petitioner asserts that we erred in not affording the letters appropriate evidentiary weight. The Petitioner cites *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), which discusses the weight to be afforded to expert opinions in an unrelated nonimmigrant visa classification, stating: "USCIS may reject an expert opinion letter, or give it less weight, if it is not in accord with other information in the record or if it is in any way questionable. *Matter of Caron International Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988)."

Contrary to the Petitioner's assertions, we did not find that evidence in the record explicitly contradicted the letters. Rather, we found that that the record lacked sufficient information and evidence to support the conclusions in the letters. With respect to *Matter of Skirball*, that case involved a regulation that expressly requires the submission of affidavits from experts, holding that USCIS may not reject the factual conclusions of experts if reliable, relevant, and probative. The regulation at issue in *Matter of Skirball Cultural Center*, 8 C.F.R. § 214(p)(6)(ii), explicitly requires affidavits or letters from recognized experts attesting to the authenticity of the group. Conversely, the regulation at 8 C.F.R. § 204.5(h)(3)(v) does not specify that affidavits alone may satisfy this criterion. Expert testimony should "assist the trier of fact to understand the evidence or to determine a fact in issue." *Matter of D-R-*, 25 I&N Dec. 445, 459 (BIA 2011). *See also Visinscaia v. Beers*, 4 F. Supp. 3d at 135 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

In general, a leading role is evidenced from the role itself, and a critical role is one in which a petitioner was responsible for the success or standing of the organization or establishment. Although the letters submitted praised the Petitioner's work for as both its director of promotions and the president of its Chapter, the Petitioner has not shown error in our finding that the letters do not establish that the Petitioner's roles were leading or critical.

Moreover, the Petitioner asserts that we discounted its statements and numerous articles submitted in support of [redacted] distinguished reputation. Although the Petitioner claimed that [redacted] represents Venezuela in international competitions, and numerous articles were written about the organization, the record at the time of adjudication contained little evidence to demonstrate that the government of Venezuela endorses or supports [redacted] activities and that the organization represents the country in international events.[2] Moreover, the articles submitted merely referenced [redacted] in passing, and thus are insufficient to demonstrate that [redacted] possesses a distinguished reputation. Considered in the aggregate, the record failed to establish that [redacted] has a distinguished reputation at the time of adjudication.

The Petitioner also claimed that he played a leading and critical role as a founder and president of the [redacted] school, a martial arts academy he began in 2009. We found that the record lacked direct evidence of the Petitioner's role in the formation and management of the [redacted] school. Upon review, however, the record as constituted demonstrates that the Petitioner played a leading role in the formation of the school and its ultimate operation. The Petitioner submitted copies of the school's articles of incorporation and bylaws, which demonstrate that the Petitioner was appointed the entity's president at the time of incorporation. Further documentation demonstrates that as the school's director, he has monitored and overseen instructors and represented the school at various events, and has additionally provided instruction to students as needed. A letter from the school's vice-president outlines the Petitioner's roles and responsibilities, noting that he has overseen the school's advertising, defined the school's mission and trajectory, and been responsible for hiring and supervising staff as appropriate.

This criterion, however, also requires that the organizations or establishments in which a Petitioner holds a leading or critical role must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.[3] Here, even if the Petitioner's role as a founder and president of the [redacted] School is considered leading or critical, the record at the time of our appellate decision did not contain evidence demonstrating that the school had a distinguished reputation. The Petitioner asserted that [redacted] is known in Venezuela as one of the best [redacted] schools," and claims that the school has won numerous awards during its eight years of existence. In addition to the list of titles he claims were attained by the school, such as [redacted] in various tournaments, the Petitioner submitted photographs of tournament trophies. Upon review, however, these photographs do not identify the recipients or verify that the [redacted] school received the awards, nor is there independent documentary evidence or comparative statistics to corroborate the claimed wins or their significance.

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[2] The Petitioner correctly notes on appeal that there is no requirement that a government support an organization. However, our decision referenced lack of evidence of government endorsement not as a requirement for showing distinguished reputation, but in determining whether the record supported the Petitioner's statements that it represented the country at international events.

[3] See USCIS Policy Memorandum PM-602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html.

The Petitioner also submitted numerous testimonial letters, such as a letter from executive president,[4] which states that is known by other members of the community as the best school of in Venezuela." A letter from the school's vice president further claims that it is "widely renowned as one of the best schools in Venezuela," noting that its "countless awards" are the main indicators of success in its field. The record, however, did not contain independent, objective evidence to substantiate these claims. For example, documentation in the record suggests that there are numerous other schools in Venezuela and abroad that routinely participate in the same competitions as the school. While the Petitioner asserts that its students routinely win medals and are top finishers in various events and tournaments, there is insufficient evidence corroborating these claims, and notably there is no evidence to show how the Petitioner's competitor schools fare in these same competitions. Therefore, while the Petitioner presented an article stating that his students won 14 gold medals at the tournament and received the title of the significance of this one achievement alone does not establish that the school is marked by eminence relative to other schools that may have also won similar medals and titles.

The Petitioner did not establish that the school enjoys a distinguished reputation. Therefore, while the record may demonstrate that the Petitioner held a leading role in the organization, and that it participated in numerous competitions and other events, it does not establish that the school's status is at a level of distinction.

The arguments the Petitioner offers on motion do not establish that our appellate findings were based on an incorrect application of the law, regulation, or USCIS policy, nor does the motion demonstrate that our latest decision was erroneous based on the evidence before us at the time of the decision. Therefore, the motion to reconsider is denied.

B. Motion to Reopen

In support of his motion to reopen, the Petitioner offers further evidence for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii).[5] Specifically, he submits certified translations of all published material that was previously submitted on appeal. In addition, he submits a transcript of a recent television interview along with a CD which contains the actual footage of the interview.

Regarding the television interview, the Petitioner submits documentation demonstrating that he was interviewed by a television show broadcast for one hour on Saturdays and Sundays via various cable providers. Although he submitted a transcript of the interview, the evidence does not include the title, date, and author of the media interview. Moreover, while he

[4] We note that executive president, claims to be the vice-president of the school. This statement directly contradicts a letter from who also claims to be the vice-president of the

[5] The Petitioner does not state and new facts or documentary evidence pertaining to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii).

submitted a translation of webpage, the Petitioner has not offered supporting documentation establishing that the listed channel is major media. Finally, while the exact date of this interview was not provided, he acknowledges that this interview took place after filing. 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).

The translations of the previously submitted articles are likewise insufficient to demonstrate that the Petitioner has satisfied the published material criterion. The regulation at 8 C.F.R. § 103.2(b)(3) requires the Petitioner to include the title, date, and author of the published material. A review of the articles submitted indicates that at least half of the articles omit either the author, the date of publication, the name of the publication, or evidence such as circulation statistics to demonstrate the qualifying nature of the publication. Of those remaining, numerous articles mention the Petitioner by name as either a competitor or organizer of various competitions or exhibitions. These articles, however, are not about the Petitioner and his work in the field of endeavor. One article, appearing in briefly discusses the Petitioner's career in martial arts; however, this article does not identify the author.

As the evidence does not establish that the Petitioner has received a major, internationally recognized award, or that he meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3), the motion to reopen will be denied.

III. CONCLUSION

In summary, the Petitioner's motion to reconsider does not demonstrate that our previous decision was incorrect and the evidence provided in support of his motion to reopen does not overcome the grounds underlying our previous decision. Specifically, the record does not include the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Furthermore, even if he had met a third criterion, the Petitioner's evidence is not sufficient to establish that he has sustained national or international acclaim, or that he is one of the small percentage at the very top of his field of endeavor.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of F-J-G-R-*, ID# 1107933 (AAO May 8, 2018)