U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 30470568

Date: APR. 15, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner is a Brazilian jiujitsu 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 the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate he warranted a favorable determination in a final merits determination. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility to U.S. Citizenship and Immigration Services (USCIS) 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.

The Petitioner began as a Brazilian jiujitsu competitor in 2012 at the age of 15, then began coaching others in 2015. He states he intends to work as a jiujitsu coach in the United States.

The Petitioner provides numerous non-precedent decisions originating from this office. While 8 C.F.R. § 103.3(c) provides that this office's precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. We may consider the reasoning within the unpublished decision; however, the analysis does not have to be followed as a matter of law. Further, each case must be decided on its own facts with regard to the sufficiency of the evidence presented. *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982); *Matter of Serna*, 16 I&N Dec. 643, 645 (BIA 1978). A determination on the facts properly rests on what is implicated within the record. "Other cases presenting different allegations and different records may lead to different conclusions." *Twitter, Inc. v. Taamneh*, 598 U.S. 471, 507 (2023) (Jackson, J., concurring). We will therefore base this decision on the facts and evidence contained within this record of proceeding.

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119–20). *See generally* 6 *USCIS Policy Manual* B.2, https://www.uscis.gov/policymanual (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification). In this matter, we determine that the Petitioner has not shown his eligibility.

After reviewing the entire record, we adopt and affirm the Director's ultimate determination with the added comments below primarily addressing claims within the appeal brief. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Edwards v. U.S. Att'y Gen.*, No. 19-15077, 2024 WL 950198, at *5 (11th Cir. Mar. 6, 2024) (joining every other U.S. Circuit Court of Appeals in holding that appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

The Petitioner filed the petition in December of 2021. We note this filing date because some of his appellate claims relating to awards occurred after that date. And while he must show that he intends to continue working in his area of expertise, he may not rely on achievements earned subsequent to the petition filing date within this appeal. 8 C.F.R. § 103.2(b)(1), (12). USCIS may not approve a visa petition if the Petitioner was not qualified at the priority date but becomes eligible based on events that occurred after that time. *See Matter of Izummi,* 22 I&N Dec. 169, 175–76 (Assoc. Comm'r 1998); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). So, we agree with the Director that prior to the petition filing date, the most recent awards the Petitioner—or those he coached—earned were in the year 2019.

We note a similar issue considering the Petitioner's membership in associations, as his arguments on appeal is related to his degree of blackbelt attained in February of 2023. Because that postdates the petition filing date, we will not consider it in any proceeding relating to the petition before us.

Moving to published material about him, the Petitioner's appeal brief notes that even though his evidence was insufficient to satisfy the plain language requirements of the regulatory criterion it may still be considered under the final merits analysis. The Petitioner specifically identifies a photograph of him and its associated caption that accompanied an article about [redacted] chefs who have taken up jiujitsu. The Petitioner does not explain how this is indicative that he is among "that small percentage who have risen to the very top of the field of endeavor."

The Director explained why the Petitioner's judging performance did not amount to sustained national or international acclaim, and we agree. The Petitioner's experience was not shown to be the type associated

with those at the very top of the field. For instance, his performance as a referee was not at admired events such as the International Brazilian Jiu-Jitsu Federation's (IBJJF) World Championship, widely considered the most important and prestigious jiujitsu tournament of the year. Nor did he demonstrate the events where he performed as a judge were of similar stature. Although he performed at a single IBJJF event in 2019, the Petitioner does not identify what evidence would reveal this event's level of prestige. We do, however, question why the Petitioner provided a resume reflecting all of his judging experience was as a volunteer.

The Petitioner's most notable claims relate to his leading or critical role he performed at [redacted] Some consider the association located in [redacted] Brazil to be among the most prestigious jiujitsu academies in the world. It was at that location where the Petitioner performed as a competitor as well as a coach. Even considering the Petitioner's performance for this organization, it is not enough overall to demonstrate he has enjoyed sustained acclaim on a national or international level, or to place him among those who are part of the small fraction of individuals at the very top of the field of jiujitsu.

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those 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). Considering the full measure of the Petitioner's ability and achievements, we agree with the Director that the level of his national or international acclaim and the extent to which his achievements have been recognized in the field are not indicative of a record of sustained acclaim as a competitor and a coach. Also, he has not submitted extensive documentation exhibiting he has attained a level of expertise placing him among that small percentage that has risen to the very top of the field of endeavor.

ORDER: The appeal is dismissed.