U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-Y-P-R-TKO INC.

DATE: FEB. 9, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR NONIMMIGRANT WORKER

The Petitioner, a taekwondo studio, seeks to employ the Beneficiary as a taekwondo master. *See* § 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1101(a)(15)(O)(i). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified individual who has extraordinary ability in the sciences, arts, education, business, or athletics which 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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part: "*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."

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) sets forth options for satisfying the initial evidentiary requirements necessary to show a beneficiary's sustained acclaim and recognition of his or her achievements in the field. First, a petitioner can demonstrate the Beneficiary's receipt of a major internationally recognized award. 8 C.F.R. § 214.2(o)(3)(iii)(A). Second, a petitioner can submit documentation that meets at least three of the eight categories listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*).

The submission of satisfactory initial evidence does not, in and of itself, establish eligibility for O-1 classification. We must also consider the totality of the record in assessing whether a petitioner has demonstrated extraordinary ability. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). The truth is to be determined not by the quantity of documents alone, but by their quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

On appeal, the Petitioner submits a brief raising several points and additional evidence.[1] First, it states the Director impermissibly denied the petition based on the revocation of the Beneficiary's previously approved O visa. A thorough review of the denial reveals, however, that the revocation of the prior approval was not used as a basis for the decision rendered in this case. The Petitioner also notes on appeal that it has a need for the Beneficiary's skills. Demand for the Beneficiary's skills, however, is not a consideration with respect to whether the Beneficiary has extraordinary ability. *See* § 101(a)(15)(O)(i) of the Act; 8 C.F.R. § 214.2(o)(3)(ii), (iii). Further, the Petitioner notes that U.S. Citizenship and Immigration Services (USCIS) previously approved two O visas on behalf of the Beneficiary. Despite prior approvals, we are not precluded from denying future petitions where eligibility has not been demonstrated, especially when previous approvals may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). We need not treat errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Furthermore, our authority over the service centers, which issued the approvals, is comparable to the relationship between a court of appeals and a district court. We are not bound to follow an earlier determination made by a service center where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir.2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000)) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp.2d 800, 803 (E.D.La.1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001). Finally, the Petitioner references the Beneficiary's qualifications, competitive results, and a certificate that postdates the filing of the petition. We will consider these accomplishments below. Upon *de novo* review, we conclude that the Petitioner has not established the Beneficiary's extraordinary ability or submitted a sufficient contract and itinerary.

A. Extraordinary Ability

The statute requires that the Beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." § 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). According to the Petitioner, it will hire the Beneficiary as "taekwondo master," who will lead it in competitions and taekwondo demonstrations. The Beneficiary will serve as the team captain, train with the junior and senior athletes, and discuss strategy for winning championships. The Petitioner must therefore document the Beneficiary's extraordinary ability in taekwondo instruction.

[1] The Petitioner was previously represented and that attorney provides a cover letter with the appeal. The record, however, does not contain a new Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, as required by 8 C.F.R. § 292.4(a). On October 5, 2015, we requested a new Form G-28. We did not receive a response. Accordingly, there is currently no representative of record. The Petitioner, however, signed the Form I-290B, Notice of Appeal or Motion, and, thus, the petition is properly filed.

1. Initial Evidence[2]

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award; nor has the Petitioner asserted that the Beneficiary satisfies this criterion. Therefore, the Petitioner must establish the Beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). After careful review of the record and for the reasons discussed herein, the Petitioner has not satisfied three of the eight criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B).

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor*

The Director determined that the Petitioner did not satisfy this criterion. The Director noted that the Petitioner showed the Beneficiary won medals in national championships. He concluded, however, because the Beneficiary earned these awards as a student or in the military, they did not establish that the Beneficiary is extraordinary or that he has risen to the very top of his field of endeavor. The Petitioner did not contest the Director's ruling on appeal and has therefore abandoned this criterion. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's assertions abandoned as he failed to raise them on appeal).

Even if the Petitioner had not abandoned this criterion, however, we agree that it has not satisfied the plain language of the criterion, which requires that the Beneficiary received awards that are nationally or internationally recognized for excellence in the field of endeavor. The Petitioner submitted evidence showing that the Beneficiary achieved the following results in taekwondo competitions:

- [redacted] third place;
- [redacted] third place;
- [redacted] first place;
- [redacted], third place;
- [redacted] third place; and
- [redacted] first place.

Although the Petitioner provided confirmation of the above finishes, he did not provide objective evidence regarding the prestige or recognition afforded these achievements. The materials in the record do not contain details regarding the competitions themselves, such as the level of those who

[2] We have reviewed all of the evidence and will address those criteria the Petitioner asserts it meets or for which it has submitted relevant and probative evidence.

participated, the selection criteria, or the distribution of the media that reported the results. In its initial submission, the Petitioner described the tournaments in Korea as follows: "These national tournaments are very prestigious, and are attended by the most skilled athletes in South Korea." The record does not, however, contain corroboration of this characterization. Regarding the tournament held in the Petitioner again called it prestigious and stated that "the competition was ripe with highly skilled taekwondo athletes," but provided no supporting evidence. Many of the letters of recommendation submitted by the Petitioner mention the prestige of the Beneficiary's victories in these tournaments, but do so in the same general and conclusory language used by the Petitioner. The letters lack detail regarding the competitions and do not provide the basis for conclusions regarding their prestige. Going on record without supporting documentation is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Further, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990). As a result, the Petitioner has not demonstrated that his victories constitute "nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

In addition, as noted above, the Petitioner must demonstrate the Beneficiary's extraordinary ability in taekwondo instruction. In contrast, the honors cited by the Petitioner reflect the Beneficiary's successes in taekwondo competition. While a taekwondo competitor and instructor share knowledge of the sport, the two rely on different sets of basic skills. Thus, taekwondo athletic competition and taekwondo coaching/instruction are generally not the same area of expertise. *See Integrity Gymnastics & Pure Power Cheerleading, LLC v. U.S. Citizenship & Immigration Servs.*, No. 2:10-CV-440, 2015 WL 5380643 (S.D. Ohio Sep. 14, 2015); *Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002).[3] We do not assume that an individual with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. As a result, the Petitioner's victories as an athlete are not awards received for excellence in the field of endeavor and cannot satisfy this criterion.

Lastly, the Petitioner initially asserted:

> [The Beneficiary] has also been recognized by the for his contribution to the development of taekwondo in the U.S. In he was singled out by the for his deep involvement in making Taekwondo a world class sport. This is an international award given by the single most influential Taekwondo organization in the world. This means that [the Beneficiary] has established himself as one of the leading personalities in the sport and martial art.

[3] In a case where the beneficiary has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability as an athlete such that it can be concluded that coaching is within the beneficiary's area of expertise. In this case, the Petitioner has not documented extraordinary ability as an athlete through satisfaction of at least three criteria such that we would consider both coaching and competing within the Beneficiary's area of expertise.

The Petitioner provided a copy of a "letter of commendation," which reads: "In recognition of your outstanding contribution to the development and dissemination of Taekwondo." The Beneficiary's name, if it appears on the document, is not translated from the Korean. The Petitioner provided no other information regarding such letters of commendation, their prestige or significance. The Petitioner concluded that, because the letter was issued "by the single most influential Taekwondo organization in the world," the Beneficiary has therefore "established himself as one of the leading personalities in the sport and martial art." In assessing this criterion, however, the determining factor is not the prestige of the issuing body, but the recognition of the award itself. The record contains no corroboration to show that that a letter of commendation from Kukkiwon enjoys the recognition described by the Petitioner. Again, unsupported assertions are not sufficient to meet the Petitioner's burden of proof. *Soffici*, 22 I&N Dec. at 165 (citing *Treasure Craft of California*, 14 I&N Dec. at 190). For the above reasons, the Petitioner has not produced evidence of the Beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. As a result, it has not satisfied the plain language requirements of 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*

The Director determined that the Petitioner did not satisfy this criterion. He noted that the Petitioner provided evidence of the Beneficiary's Sixth Dan black belt registered with [redacted] The Petitioner also submitted [redacted] testing and age requirements for promotion to the Sixth Dan. The Director acknowledged these materials, but concluded the Petitioner did not meet this criterion because it did not show that outstanding achievements were required of Sixth Dan candidates.

A print-out from [redacted] website indicates that applicants for the Sixth Dan must be at least 30 years of age and must be applying at least five years after their last promotion. From the Sixth Dan on, testing includes a practical and theoretical component. Promotion tests must be conducted by a "Higher Test Grade Test Commission" with three to ten members of at least the Seventh Dan. According to the Petitioner, as of 2010, there were 12,803 individuals registered with [redacted] who held a Sixth Dan or higher out of a total of 4,155,981 Dans worldwide.

At issue under this criterion is whether the association requires outstanding achievements as a condition for membership. The overall prestige of the association is not determinative, as the relevant issue is membership requirements. In this case, the Petitioner has not shown that the age and testing requirements for becoming a Sixth Dan constitute outstanding achievements. Reaching a certain age is not an outstanding achievement, and the Petitioner does not provide information regarding the Sixth Dan test to confirm that passing it is the equivalent of an outstanding achievement in taekwondo. While the Petitioner illustrated that the number of Sixth Dans is small as compared to worldwide totals, the record does not establish that the total number of Dans is limited to those working in that occupation rather than including the numerous individuals who practice recreationally. Without additional material, we cannot conclude that the relatively low number of Sixth Dans is because passing the test constitutes an outstanding achievement. For these reasons, the

Petitioner has not produced evidence of the Beneficiary's membership in associations which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines. As a result, it has not satisfied the plain language requirements of 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.*

In the denial, the Director noted that the Petitioner provided evidence that the Beneficiary served as a judge and referee at events such as the [redacted] He found the Petitioner did not satisfy this criterion, however, because it did not establish the significance of being a judge for these competitions or the criteria based on which judges were selected.

A review of the record shows that the Petitioner provided photographs of the Beneficiary acting as a judge and scoring participants at various judo tournaments. These materials demonstrate that the Beneficiary judged others' work in the same or an allied field. Therefore, the Petitioner has satisfied the plain language requirements of this criterion.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.*

The Petitioner indicated in the initial submission that the Beneficiary was the [redacted] In a request for evidence (RFE), the Director acknowledged this assertion and requested additional information to show the critical or essential capacity of the Beneficiary's role, as well as the distinguished reputation of the organization. The Beneficiary did not respond to this request and the Director found he did not satisfy the criterion. On appeal, the Petitioner does not respond to the RFE or otherwise contest the Director's finding. The criterion is therefore abandoned on appeal. *See Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9 (finding the plaintiff's claims abandoned as he failed to raise them on appeal to us).

2. Summary

As noted above, the documentation provided satisfies only one of the three required criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B). Even if the Petitioner had submitted the necessary initial evidence, however, an evaluation of the totality of the record does not show that the Beneficiary is one of the small percentage who have risen to the very top of the field of endeavor. *See Chawathe*, 25 I&N at 376. The Petitioner has therefore not established that the Beneficiary is an individual of extraordinary ability.

B. Contract and Itinerary

Beyond the decision of the Director, the regulation for this classification requires copies of any written contracts for the Beneficiary's employment, as well as an itinerary and explanation of the events or activities in which the Beneficiary will be involved when working for the Petitioner. *See* 8 C.F.R. § 214.2(o)(2)(ii). The Petitioner provided these documents. The employment contract indicates that the Beneficiary will work for the Petitioner for a period of three years starting on or about August 1, 2013, commencing when this visa is approved. The itinerary runs from July 2013 through October 2016. In reviewing the Form I-129, however, the Petitioner lists the Beneficiary's dates of employment as November 1, 2014, to October 31, 2017. Upon review, the contract and itinerary do not establish the need for the Beneficiary's services in the United States for specific events for the three-year period requested in the petition. For this additional reason, the petition cannot be approved.

III. CONCLUSION

Based on the foregoing, the Petitioner has not shown that the Beneficiary has received a major, internationally recognized award, or provided documentation that meets three of the eight other criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not produced the initial evidence necessary to corroborate the Beneficiary's eligibility for classification as an individual with extraordinary ability.

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. § 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-Y-P-R-TKO Inc.*, ID# 15416 (AAO Feb. 9, 2016)