



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF S-F-F-C-

DATE: SEPT. 7, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a fencing club, seeks to classify the Beneficiary as a foreign national of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The Director of the California Service Center denied the petition. The Director determined that the exhibits did not satisfy the evidentiary requirements applicable to foreign nationals of extraordinary ability in the athletics, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A) (a major, internationally recognized award) or (B) (at least three of eight possible forms of documentation).

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence and asserts that the Director erred in determining that the Beneficiary is not eligible for the classification sought.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary 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) provides, 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 a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the beneficiary's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized

Matter of S-F-F-C-

award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(iii)(C).

The submission of documents relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must 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." *Id.* Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) sets forth evidence that must accompany petitions for O foreign nationals, which includes documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate.

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, seeking to employ the Beneficiary as a fencing coach for a period of three years. The record consists of the petition with supporting documentation, a request for additional evidence (RFE) and the Petitioner's reply, the Director's decision, and the Petitioner's appeal. The Beneficiary's background in athletics includes competitive fencing and fencing instruction in Ukraine, his native country. The record shows that he competed in several national and regional fencing competitions between 2004 and 2009. He holds several certifications as an athlete and coach/referee. As an athlete, the Beneficiary received the designation as a [REDACTED]. He completed undergraduate, graduate, and doctoral degrees in physical education and sport in the specialty of [REDACTED] at the [REDACTED] which included obtaining the qualification of fencing coach and physical education instructor, and he has participated in several scientific conferences. The Beneficiary is licensed to officiate in foil fencing by [REDACTED] the governing body of Olympic-style fencing at the world level.¹ He indicated on his resume that he has been employed since 2009 as a secondary school fencing coach at the [REDACTED] in [REDACTED] and since 2013 as head coach of the cadet and junior teams of the [REDACTED].

¹ The Petitioner's submission indicates that there are three forms of Olympic fencing weapons: foil, épée, and sabre.

Matter of S-F-F-C-

In its initial letter, the Petitioner described the Beneficiary as a fencing coach whose students “have earned top placements in World cups, international tournaments and national championships,” and stated that his duties in the proffered position will be “to coach our club’s high-ranking national and international competitive fencers for competitions.” The Petitioner’s agreement with the Beneficiary indicated that he will be employed as a fencing coach, “providing individual lessons and coaching sessions” and providing “training to fencers including physical training through classes, day camps and individual lessons,” at its facilities in [REDACTED] and [REDACTED] California.

B. Area of Expertise

As a preliminary matter, we note that the Petitioner has submitted evidence related to the Beneficiary’s achievements as both a competitive fencer and a fencing coach. The statute requires that the Beneficiary seek entry into the United States “to continue work in the area of extraordinary ability.” Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). On appeal, the Petitioner asserts that “[the Beneficiary’s] record of coaching international-caliber fencers . . . and his own extensive record of competition at the national and international levels, demonstrate his ‘overall pattern of sustained acclaim and extraordinary ability.’” In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002)

United States Citizenship and Immigration Services (USCIS) will not assume that coaching is necessarily within a competitive athlete’s area of extraordinary ability.² Rather, given the relationship between athletic competition and coaching or sports instruction, 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 such that it can be concluded that coaching is within the beneficiary’s area of extraordinary ability. Specifically, in such a case, USCIS will consider the level at which the beneficiary acts as a coach. A beneficiary who has served as the primary coach for athletes competing at the national level has a stronger claim than a coach of novices.

In this matter, however, the Beneficiary’s athletic accomplishments are not recent. The record reflects that the Beneficiary intends to continue to work in the area of coaching rather than competition. We also note that, according to the record, the Beneficiary has been coaching since 2009 and, thus, has had sufficient opportunity to earn acclaim as a coach. As a result, the Beneficiary must satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(iii) through his achievements as a fencing coach. As such, the evidence submitted by the Petitioner regarding the Beneficiary’s achievements as a competitor will not be considered here. For the reasons discussed below, the Petitioner has not satisfied at least three of the evidentiary criteria required to demonstrate extraordinary ability.

² See *Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002).

(b)(6)

Matter of S-F-F-C-

C. Extraordinary Ability in Athletics

In denying the petition, the Director determined that the Petitioner did not claim to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and did not meet any of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). Regarding the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (2), (4), (5), (6), and (7), the Director discussed the submitted evidence and found that the Petitioner did not establish that the Beneficiary met these criteria. The Director also concluded that the Petitioner had not claimed that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and (8). On appeal, the Petitioner does not contest the findings of the Director for the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(A) or (o)(3)(iii)(B)(2), (3), (5), and (8), or offer additional relevant evidence or arguments, and we agree with the Director's findings on those issues. We will address the remaining criteria below. After careful review, the evidence of record does not establish that the Petitioner has overcome the grounds for denial.

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

The Petitioner maintains that the Beneficiary satisfies this criterion based upon prizes and awards he received as an athlete in national and regional fencing competition between 2004 and 2009, including his designation as a [REDACTED] and the receipt of prizes and awards by ten of his students between 2010 and 2014. The Director determined that the submitted materials do not establish that the Beneficiary satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

As discussed above, because the Beneficiary has served as a coach since 2009 and plans to continue work in that capacity, we will not consider prizes or awards that he may have garnered as a competitor. The submitted documentation shows that qualifying awards may exist for fencing coaches. For instance, on appeal the Petitioner submits a reference letter from [REDACTED] a former foil fencing coach of the [REDACTED] with an accompanying article indicating that [REDACTED] was inducted into the [REDACTED] in 2015 based on his achievements as a coach. While we need not and do not decide whether this honor might be a qualifying nationally or internationally recognized prize or award, the record does not contain evidence that the Beneficiary has received nationally or internationally recognized prizes or awards for excellence in coaching.

The awards of the Beneficiary's students do not satisfy the plain language of this criterion, which requires his own receipt of qualifying awards or prizes. Regardless, the submitted documentation does not sufficiently demonstrate that the Beneficiary's students are competitors at the adult, professional level, or have won national or international tournaments or other nationally or internationally recognized prizes or awards for fencing excellence. The Petitioner provided materials pertinent to the Beneficiary's experience coaching/instructing ten cadet/junior fencing athletes. The record contains copies of award certificates, medals and trophies, received by eight of the Beneficiary's students between 2010 and 2014, and letters from several of the students praising his coaching skills and crediting him with improving their fencing skills and ranking. Two students

(b)(6)

Matter of S-F-F-C-

credit the Beneficiary with helping them to obtain a spot on the [REDACTED]

Although not discussed by the Director, the Petitioner initially provided foreign-language documents that were accompanied by uncertified translations pertaining to the students' prizes or awards. In response to the Director's RFE, the Petitioner submitted copies of certifications for translations of some of the students' awards, which do not identify the translations they certify. Rather, they reference "the above translation" or "the above summary of awards." The regulation at 8 C.F.R. § 103.2(b) states: "Any document containing foreign language submitted to 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." Copies of certifications that do not identify the translations they certify are not probative evidence that the translator(s) certified each translation in the record. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have diminished probative value.

Upon review, the submitted materials do not show that competition for the students' awards was open to established professionals already working in the field rather than limited to cadet/junior athletes. The Petitioner submitted testimonial letters that contain summary statements that the Beneficiary's students include "some of the most internationally accomplished fencers in the world," a "Ukrainian national champion" or a "repeat Ukrainian national champion." While age restricted awards may be nationally or internationally recognized, it is the Petitioner's burden to demonstrate this level of recognition. An international award received by a student competing at the cadet/junior level would not carry the same evidentiary weight as an international award received by a competitor at the adult, professional level, without some additional explanation as to how the sport is governed at the cadet/junior level. In addition, even if the Petitioner established through evidence that some of the Beneficiary's students went on to successfully compete as members of the [REDACTED] there is no evidence that such success would be attributed to the Beneficiary rather than to the senior team fencing coach and head coach.

In sum, the evidence is insufficient to establish that the Beneficiary has received a nationally or internationally recognized award for excellence as a fencing instructor or coach, or that his students have won nationally or internationally recognized awards for excellence. In light of the above, the Petitioner has not established that the Beneficiary satisfies the plain language requirements of this regulatory 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

The Petitioner asserts that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), based upon his participation in 2011 and 2014 as an official/referee licensed by [REDACTED] in several national and international junior foil fencing competitions. In response to the Director's RFE, the

Matter of S-F-F-C-

Petitioner provided the letters of fencing coaches [REDACTED] and [REDACTED] which it contends are additional evidence in support of this criterion. The Director determined that the submitted evidence does not satisfy this criterion because the Petitioner did not demonstrate the significance of acting as an official/referee at these events. We will withdraw the decision of the Director for this criterion.

Upon review, the record establishes that the Beneficiary's role as an official/referee at the above-mentioned events equates to participating as a "judge" of the work of others. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually, participating in such activities as assigning points or determining winners. The submitted evidence sufficiently establishes that the Beneficiary has participated individually as a judge of junior fencing competitions as a [REDACTED] referee, with control over the match, its rules, and the awarding of points. As such, the Petitioner has established that his position as a referee in those events satisfies the plain language requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media

The Director determined that the Petitioner did not establish that the Beneficiary satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6). The evidence indicates that the Beneficiary has undergraduate, graduate, and doctoral degrees in Physical Education and Sport in the specialty of Olympic and Professional Sport. The Petitioner submitted several articles that he authored or co-authored relating to biomechanics and techniques in fencing. The initial submission also contained certificates showing that the Beneficiary participated in several scientific conferences pertaining to [REDACTED]. Although not discussed by the Director, the Petitioner did not provide certified translations of the Beneficiary's articles and several of the participation certificates. In addition, although the Petitioner translated the titles and publishers of many of the articles, those translations are uncertified. As previously discussed, because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have diminished probative value.

The Director determined that the Petitioner did not establish that the research papers were published in professional journals or other major media. On appeal, the Petitioner emphasizes that the Beneficiary "holds a Ph.D. in [REDACTED] which alone is extraordinary in the fencing world," and submits the above-referenced letter from [REDACTED] a former foil fencing coach of the [REDACTED] as supporting evidence that the Beneficiary's academic background in sports science would provide him with technical knowledge not found among all athletic coaches.

Upon review, we agree with the Director's finding on this issue. Beyond the lack of certified translations, the Petitioner did not provide specific information regarding the publications in which his articles appeared to establish that they were professional journals or other major media. Based on the above, the Petitioner has not established that the Beneficiary satisfies the plain language requirements of this criterion.

Matter of S-F-F-C-

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

The Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). On appeal, the Petitioner maintains that the Beneficiary performed in a leading or critical role for the [REDACTED] in his role as the head coach of its [REDACTED]. The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's position within the organizations that have employed him.

The Petitioner initially submitted a letter from [REDACTED] Secretary General of the [REDACTED] [REDACTED] who confirmed the Beneficiary's employment since September 2013 as "a chief coach" of [REDACTED] training cadet and junior fencers, and making recommendations for foilsmen for the [REDACTED] "and their individual coaches."

The Petitioner also provided an attestation that in 2012, prior to the Beneficiary's employment, the findings of his state-sponsored doctoral research were presented to representatives of the [REDACTED] [REDACTED] who agreed to adopt the recommendations of his thesis to use opto-electronic technology in training the Ukrainian team's cadet/junior foilsmen.

In response to the Director's RFE, the Petitioner provided expert letters from [REDACTED] head coach of the [REDACTED] and [REDACTED] head coach of the [REDACTED] [REDACTED] stated that the Beneficiary's position as chief coach of the [REDACTED] reflects his status as an elite coach in Ukraine, since, "only the most accomplished coaches are chosen to coach the [REDACTED] [REDACTED] letter indicated that the chief coach of a national team "is a critical position necessary to ensure the continued international and national level success of its fencers."

On appeal, the Petitioner submits letters from five of the Beneficiary's cadet and junior students, [REDACTED] and [REDACTED] crediting him with their success, as well as the above-referenced expert letter from [REDACTED] a former foil fencing coach of the [REDACTED] who states that "[a]s the head coach of the [REDACTED] [the Beneficiary] coaches the top four fencers in each category for the entire country," and that "[s]ome of his most accomplished students, including [REDACTED] and [REDACTED] are well-known competitors in the international circuit."

At issue is whether the Beneficiary performed in a leading or critical role for the [REDACTED] [REDACTED] as a whole, as maintained by the Petitioner. Not every member of a coaching staff who performs effectively for a sports team meets this regulatory criterion. The record does not contain evidence which would establish that the Beneficiary's position with the [REDACTED] [REDACTED] was in a critical or essential capacity. The Petitioner did not provide an organizational chart or other evidence documenting where the Beneficiary's coaching position fell within the [REDACTED]

(b)(6)

Matter of S-F-F-C-

general hierarchy, such as evidence showing how it related to other coaching positions in the organization, the number of coaches employed, or how many of them coached top-level athletes. As previously stated, the record lacks documentation that clearly demonstrates the Beneficiary's established successful history of coaching top-level athletes. The Petitioner's evidence does not elucidate how the Beneficiary's coaching position differentiated him from the other fencing coaches working for the such as its senior team fencing coaches and head coach.

For the above reasons, the evidence submitted by the Petitioner does not establish that the Beneficiary was responsible for the success or standing to a degree consistent with the meaning of "leading or critical role." Further, the record does not contain sufficient evidence to demonstrate that the has a distinguished reputation in the field.

In sum, the Petitioner has not presented the type of sustained national or international recognition of accomplishments necessary for O-1 classification through the satisfaction of at least three of the regulatory criteria.

D. Itinerary

Although not discussed by the Director, the Petitioner has not met its burden to provide an itinerary. The regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C), which lists the required evidence for all O-1 visa petitions, mandates that all petitions must include "[a]n explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities." While all petitioners are expected to explain the nature of the event and provide specific dates for the Beneficiary's activities, the use of the non-mandatory word "any" recognizes that an itinerary may not be required in all circumstances. The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(A) states that "a petition which requires the alien to work in more than one location must include an itinerary with the dates and locations of work."

The Petitioner indicated on the Form I-129 that the Beneficiary will be employed as a Fencing Coach at the Petitioner's location on a full-time basis, but its employment agreement with the Beneficiary indicated that he will provide services "at [the Petitioner's] facilities in and California." Although the employment agreement included a detailed description of the nature of the Beneficiary's activities, the Petitioner has not provided an itinerary of dates and locations the Beneficiary will work during the requested validity period. The Petitioner has, therefore, not fulfilled the regulatory requirements set forth at 8 C.F.R. § 214.2(o)(2)(ii)(C) and 8 C.F.R. § 214.2(o)(2)(iv)(A). The appeal will be dismissed on this additional basis.

III. CONCLUSION

The Petitioner has not submitted qualifying material under 8 C.F.R. § 214.2(o)(3)(iii)(A) and the exhibits do not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The Petitioner also has not submitted an itinerary, as required at 8 C.F.R. § 214.2(o)(2)(ii)(C) and 8 C.F.R.

Matter of S-F-F-C-

§ 214.2(o)(2)(iv)(A). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in athletics.

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. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-F-F-C-*, ID# 17919 (AAO Sept. 7, 2016)