U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-G-C-

DATE: MAY 16, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a gymnastics center, seeks to classify the Beneficiary as a gymnastics coach. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(P)(i)(a), 8 U.S.C. § 1101(a)(15)(P)(i)(a) and section 214(c)(4)(A)(i) of the Act, 8 U.S.C. § 1184(c)(4)(A)(i). This P-1A classification makes nonimmigrant visas available to certain high performing athletes and coaches.

The Director, Vermont Service Center, revoked the approval of the petition, and we dismissed a subsequent appeal. The Director concluded that the Petitioner did not establish the Beneficiary's eligibility for the requested classification. Specifically, the Director found that the Petitioner did not show the Beneficiary's eligibility as a coach of a U.S. team or franchise that is a member of a foreign league or association of 15 or more amateur sports teams. *See* section 214(c)(4)(A)(i)(III) of the Act, and subparagraphs (aa) through (cc). We reached a similar conclusion on appeal.

The matter is now before us on a motion to reopen and a motion to reconsider. In its motions, the Petitioner maintains that we misinterpreted the evidence and submits new documents.

Upon review, we will deny the motions.

I. LAW

In 2006 Congress passed the Creating Opportunities for Minor League Professionals, Entertainers, and Teams through Legal Entry Act of 2006 (COMPETE Act of 2006), Pub. L. 109-463, 120 Stat 3477 (2006), which amended section 214(c)(4)(A) of the Act, and authorizes certain athletes to be admitted temporarily into the United States to compete or perform in an athletic league, competition, or performance. Under the current statute, the P-1 nonimmigrant classification includes athletes who perform at an internationally recognized level of performance, individually or as part of a team; professional athletes as defined in section 204(i)(2) of the Act; athletes and coaches who participate in certain qualifying amateur sports leagues or associations; and professional and amateur athletes who perform in theatrical ice skating productions.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentation. 8 C.F.R. § 103.5(a)(2). However, any new facts must relate to eligibility at the time

the Petitioner filed the petition. *See* 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A motion to reconsider must offer the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. 8 C.F.R. § 103.5(a)(3). A motion to reconsider is based on the existing record and the Petitioner may not introduce new facts or new evidence relative to his or her arguments. A motion to reconsider contests the correctness of the original decision based on the previous factual record, as opposed to a motion to reopen which seeks a new hearing based on new materials. *Compare* 8 C.F.R. § 103.5(a)(3) *with* 8 C.F.R. § 103.5(a)(2).

II. ANALYSIS

The Director approved the Form I-129 and subsequently issued a notice of intent to revoke (NOIR) the approval of the petition, finding that the Petitioner had not established that it would employ the Beneficiary as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. *See* section 214(c)(4)(A)(i)(I) of the Act. In response to the NOIR the Petitioner explained that it was not basing the Beneficiary's eligibility under the internationally recognized athlete regulations but, rather, the Beneficiary's eligibility under the COMPETE Act as a coach of a U.S. team or franchise that is a member of a foreign league or association of 15 or more amateur sports teams. *See* section 214(c)(4)(A)(i)(III) of the Act, and subparagraphs (aa) through (cc). Upon review of the Petitioner's response, the Director issued a notice of revocation (NOR) in which she acknowledged the Petitioner's statement that it was relying on the provisions of the COMPETE Act, and determined that the Petitioner did not show the Beneficiary's eligibility under that act as a coach of a U.S. team or franchise that is a member of a foreign league or association of 15 or more amateur sports teams. *See* section 214(c)(4)(A)(i)(III) of the Act, and subparagraphs (aa) through (cc). We dismissed the petitioner's appeal on those stated grounds.

On motion, the Petitioner maintains that it satisfied the team requirements for a coach at section 214(c)(4)(A)(i)(III) of the Act and the provisions set forth in subparagraphs (aa) through (cc) of that statute, all components of the COMPETE Act.

In support of the motion, the Petitioner submits the following documentation:

- A cover letter;
- A brief;
- Our prior decision;
- A letter from [redacted] gymnastics coach, [redacted]
- An additional letter from [redacted] gymnastics coach, [redacted]
- Petitioner's Competition Schedules 2015-2016 and Highlights of Individual Gymnasts; and
- Documents previously submitted.

For the reasons discussed below, we find that the Petitioner and has not established that it satisfied the team requirements for a coach at section 214(c)(4)(A)(i)(III) of the Act and the provisions set forth in subparagraphs (aa) through (cc) of that statute. Therefore, we will deny the motions. Below, we address the new evidence as part of the motion to reopen and the analysis of the law under the motion to reconsider.

A. Motion to Reopen

First, the new evidence does not establish that the Petitioner has been recognized in any capacity as a "team," defined in the regulation at 8 C.F.R. § 214.2(p)(3) as "two or more persons organized to perform together as a competitive unit in a competitive event." On motion, the Petitioner states that it is "well-recognized as a team competing in the sports [*sic*] of Gymnastics." The Petitioner attaches letters from and referring to the Petitioner, respectively, as having a "team of amateur gymnasts" and "a recognized team of The Petitioner further supplies a document it prepared, showing competition highlights for individual gymnasts who have been students of its gymnastics center. The remaining items provided on motion were previously submitted by the Petitioner. We can find no basis to conclude that the petitioning gymnastics center can be considered a "team" for purposes of the P-1 classification, such that it participates in a team sport or that it is recognized in the industry as a sports team that performs together as a competitive unit.

In our appellate decision, we noted that the record does not show the team's organization, performance, and results performing together as a competitive unit in team events. Similarly, the evidence supporting the motion verifies that the Petitioner's gymnasts compete on an individual level, but does not demonstrate that the Petitioner's "gymnastics team" refers to anything more than the individual students who attend the Petitioner's gymnastics center. This material does not constitute "new facts," but, rather, additional substantiation of the information in previously submitted items. We reaffirm our prior conclusion because the exhibits do not confirm the team's organization, performance, and results performing together as a competitive unit in team events, or otherwise corroborate that the Petitioner is a "team" as defined for the P-1 classification.

Second, assuming arguendo that the Petitioner had established that it is a "team" as defined in the regulations at 8 C.F.R. § 214.2(p)(3), the Petitioner also has not identified a foreign league or an association of 15 or more amateur teams of which it is a member, as required under section 214(c)(4)(A)(i)(III) of the Act. The Petitioner corroborated its member status with and explained that it and the are at the national and world levels, respectively. A governing body is not synonymous with a league. The materials did not show that either is a foreign league or association of 15 of more amateur sports teams. On motion, the Petitioner provides a letter from confirming that "is the governing body for Gymnastics worldwide," and that "[the Petitioner] is a member of which is a member of Again, the discussion by does not constitute "new facts," but is a reaffirmation of information in previously

submitted items. The Petitioner has not overcome our finding that it has not identified a foreign league or an association of 15 or more amateur teams of which it is a member.

Assuming arguendo that the Petitioner previously identified a foreign league or an association of 15 or more amateur teams of which it is a member, the Petitioner has not established eligibility under the provisions set forth in subparagraphs (aa) through (cc) of the statute. Section 214(c)(4)(A)(i)(III)(aa) of the Act requires that the foreign league or association of 15 or more amateur sports teams "represents the highest level of amateur performance of that sport in the relevant country." The Petitioner affirmed that " is the highest level of amateur performance in the USA (the relevant foreign country)." On motion, reiterates that represents the highest level of amateur performance of gymnastics in the U.S." As we stated in our previous decision, serving in these roles, however, does not suggest that either is a foreign league or association of 15 of more amateur teams that represents the highest level of amateur performance of that sport in the relevant country.

Finally, on motion the Petitioner argues that "[the Beneficiary] has an internationally recognized reputation and [*sic*] as a gymnast and . . . is a member of a team that is internationally recognized." In support, the Petitioner provides an additional letter from describing the Beneficiary's skills as a gymnast. However, in response to the NOIR the Petitioner explained that it was not basing the Beneficiary's eligibility as an internationally recognized athlete pursuant to the regulations at section 214(c)(4)(A)(i)(I) of the Act. The Petitioner clarified that the evidence of the Beneficiary's participation in "several competitions of international importance from his career as a competing athlete" was submitted "to serve as a distinguishing factor to highlight his qualifications for his work as a gymnastics coach, not for the petition to be classified under [s]ection 214(c)(4)(A)(i)(I)."

In the NOR, the Director acknowledged the Petitioner's statement that it was relying on the provisions of the COMPETE Act at section 214(c)(4)(A)(i)(III) of the Act and adjudicated the petition under those provisions. On appeal, the Petitioner submitted a brief and additional documentation, continuing to rely on the provisions of the COMPETE Act, and we adjudicated the appeal under those provisions. We noted the Beneficiary will be employed by the Petitioner solely as a gymnastics instructor, according to the terms of his contract, and we noted that the Petitioner did not contest this issue on appeal. It is the Petitioner's position on motion that we erred by failing to acknowledge that gymnastics instructors perform the role of coaches. Our reference to the Beneficiary as an instructor, however, was not to suggest that he is not a coach, but rather to confirm that the COMPETE Act is the appropriate standard because it allows for coaches as well as athletes. Ultimately, as the definition of international recognized athlete does not include coaches, we reaffirm that the COMPETE Act contains the relevant provisions.

In sum, most of the documents offered on motion were previously supplied by the Petitioner. Regarding the new submissions, the Petitioner has not established that the information provided with the instant motion would change the results of the case. As such, the Petitioner's motion does not satisfy the requirements of a motion to reopen.

B. Denial of the Motion to Reconsider

First, in our appellate decision we determined that the Petitioner has not demonstrated that "participation" in the foreign league or association "renders *players* ineligible, whether on a temporary or permanent basis, to earn a scholarship in, or participate in, that sport at a college or university in the United States under the rules of the National Collegiate Athletic Association [NCAA]." (Emphasis added.) *See* section 214(c)(4)(A)(i)(III)(bb) of the Act. On motion, the Petitioner does not address this provision, which pertains to student-athletes rather than coaches. Instead, the Petitioner states that the Beneficiary "[a]s a party to an employment agreement which compensates him for the work he performs as a gymnastics coach . . . is ineligible for any scholarships under the NCAA rules." Assuming that the Petitioner had shown that the or is a foreign league, and that the foreign league represents the highest level of amateur performance of that sport in the relevant country, the Petitioner's argument does not establish that players in the or are rendered ineligible to play in the NCAA merely by "participating" in the league, as required by the plain language of section 214(c)(4)(A)(i)(III)(bb) of the Act. Therefore, the Petitioner has not overcome our finding.

In addition, in our appellate decision we determined that the Petitioner has not shown that a significant number of the individuals who play in the foreign league or association are "drafted by a major sports league or a minor league affiliate of such a sports league." *See* section 214(c)(4)(A)(i)(III)(cc). As we noted in our previous decision, the record does not demonstrate that there is a draft in the sport of gymnastics. Assuming that there is a system through which amateur gymnasts "turn professional" that can be considered a "draft" for purposes of section 214(c)(4)(A)(i)(III)(cc) of the Act, we concluded that the Petitioner did not establish that a significant number of amateur gymnasts are drafted into the professional ranks, noting that the Petitioner acknowledged in its statement on appeal that the sport of gymnastics is "purely amateur in nature," and that there are not "a 'significant number of the individuals who play in such a league' who can be drafted by a major or minor sports league."

On motion, the Petitioner affirms that "[a] significant number of gymnasts are drafted to perform in various professional productions" and that "the COMPETE [A]ct should not disregard that the professional work being done by gymnasts is the equivalent of that being done by hockey, baseball, basketball players or ice skaters[.]" The Petitioner's submission on motion, however, does not include any specific examples of amateur gymnasts who have succeeded in the professional leagues, or any gymnasts who were drafted into a major sports league or minor league affiliate of such a league. The Petitioner has not offered any information or evidence estimating the total number of amateur gymnasts who were drafted from such foreign league into a major sports league or minor league affiliate of such a league. Therefore, the Petitioner has not overcome our finding.

Further, the Petitioner notes that the legislative history of the COMPETE Act mentions ice skaters as athletes who would benefit from the COMPETE Act's provisions, and the Petitioner compares gymnasts to ice skaters in reaffirming the Beneficiary's eligibility under the

COMPETE Act. However, ice skaters who perform in theatrical ice skating productions are covered under a provision of the COMPETE Act separate from that pertaining to teams that are members of qualifying leagues. *See* section 214(c)(4)(A)(i)(IV) of the Act.

Upon review, the Petitioner does not cite to any legal precedent decisions or other authority indicating an error on our part in dismissing the Petitioner's appeal based on the reasons set forth above. Rather, the Petitioner advances positions that are similar to those that were previously raised and addressed on appeal. Accordingly, the Petitioner has not met the requirements for a motion to reconsider.

III. CONCLUSION

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 motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of I-G-C-*, ID# 16551 (AAO May 16, 2016)