U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 25232755

Date: APR. 03, 2023

Appeal of Vermont Service Center Decision

Form I-129, Petition for a Nonimmigrant Worker (Athlete, Artist, or Entertainer – P)

The Petitioner, an arena soccer team, currently employs the Beneficiaries as indoor soccer players and seeks to extend their classification as internationally recognized athletes.[1] *See* Immigration and Nationality Act (the Act) Section 101(a)(15)(P)(i)(a), 8 U.S.C. § 1101(a)(15)(P)(i)(a). This P-1A classification makes nonimmigrant visas available to certain high performing athletes and coaches. Sections 204(i)(2) and 214(c)(4)(A) of the Act, 8 U.S.C. §§ 1154(i)(2), 1184(c)(4)(A).

The Director of the Vermont Service Center denied the petition, concluding the Petitioner did not establish: (1) that the Beneficiaries intended to enter the United States solely to perform in athletic competitions that have a distinguished reputation and that require participation of an athlete who has an international reputation. *See* Section 214(c)(4)(A)(ii)(I) of the Act; 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A); and (2) that the Beneficiaries qualified as "professional athlete[s]," as defined under Section 204(i)(2) of the Act.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (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.

I. LAW

Under Sections 101(a)(15)(P)(i) and 214(c)(4)(A)(i)(I) of the Act, a foreign national having a foreign residence which he or she has no intention of abandoning may be authorized to come to the United States temporarily to perform as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. *See also* 8 C.F.R. § 214.2(p)(1)(ii)(A)(*1*). Section 214(c)(4)(A)(ii)(I) of the Act specifies that the foreign national must be entering the United States

[1] In part 3 of the O and P Classifications Supplement to Form I-129, the Petitioner selected Box e, the classification for a P-1 Athlete not affiliated with Major League Sports. Although in the letter accompanying the Form I-129 the Petitioner asserted that the petitioning organization qualifies as a team in "a major U.S. sports league," it indicated that the petition should be considered under the classification for a P-1 Athlete not affiliated with Major League Sports. The Director appropriately reviewed the record according to the classification requested on the Form I-129. On appeal, the Petitioner does not contest the classification the Director analyzed. As such, we will not consider whether the petitioning organization qualifies as a team in "a major U.S. sports league," as referenced in 8 C.F.R. § 214.2(p)(4)(ii)(B)(1) and (2)(i).

temporarily and solely for the purpose of performing "as such an athlete with respect to a specific athletic competition."

In addition, the regulation at 8 C.F.R. § 214.2(p)(4)(i)(A) states:

> *P-1[A] classification as an athlete in an individual capacity.* A P-1[A] classification may be granted to an alien who is an internationally recognized athlete based on his or her own reputation and achievements as an individual. The alien must be coming to the United States to perform services which require an internationally recognized athlete.

The regulation at 8 C.F.R. § 214.2(p)(3) provides the following relevant definition:

> Internationally recognized means having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country.

Further, the regulation at 8 C.F.R. § 214.2(p)(4)(ii)(A) sets forth the documentary requirements for P-1A athletes, stating:

> *General.* A P-1 athlete must have an internationally recognized reputation as an international athlete or he or she must be a member of a foreign team that is internationally recognized. The athlete or team must be coming to the United States to participate in an athletic competition which has a distinguished reputation and which requires participation of an athlete or athletic team that has an international reputation.

Moreover, the U.S. Citizenship and Immigration Services (USCIS) Policy Manual specifies:

> Relevant considerations for determining whether competitions are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete or team include, but are not limited to:
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> - The level of viewership, attendance, revenue, and major media coverage of the events;
> - The extent of past participation by internationally recognized athletes or teams;
> - The international ranking of athletes competing; or
> - Documented merits requirements for participants.
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> If the record shows the participation of internationally recognized caliber competitors is currently unusual or uncommon, this may indicate that the event may not currently be at an internationally recognized level of performance. In addition, while not necessarily determinative, the fact that a competition is open to competitors at all skill

> levels may be a relevant negative factor in analyzing whether it is at an internationally recognized level of performance. If the event includes differentiated categories of competition based on skill level, the focus should be on the reputation and level of recognition of the specific category of competition in which the athlete or team seeks to participate.

2 *USCIS Policy Manual* N.2(A)(1), https://www.uscis.gov/policy-manual/volume-2-part-n-chapter-2; *see also* USCIS Policy Alert PA-2021-04, *Additional Guidance Relating to P-1A Internationally Recognized Athletes* 1-2 (Mar. 26, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210326-Athletes.pdf.

II. ANALYSIS

According to pages 4 and 5 of the petition, the Petitioner seeks to continue to employ the Beneficiaries to work as "Indoor Soccer Player[s]." The record includes an executed "2021-22 Standard Contract Major Arena Soccer League [MASL] Professional Players," that substantiates that Beneficiaries [redacted] will receive a monthly wage of $2,200 and $2,000, respectively. The petition indicates that the Petitioner is a team in the MASL, which according to a June 2021 letter from its commissioner, [redacted] is "the top professional indoor soccer league in North America," comprised of 16 teams in the United States and Mexico.

The Director declined to defer to the approval of the previous petition filed by the Petitioner on behalf of the Beneficiaries, concluding that the Petitioner did not establish that the Beneficiaries qualified as professional athletes or internationally recognized athletes. On appeal, the Petitioner claims it has demonstrated eligibility to classify the Beneficiaries as P-1A nonimmigrants. It also contends that the Director did not follow USCIS policy guidance which requires officers to defer to a prior approval when adjudicating a request for extension involving the same petitioner, beneficiary, and underlying facts.[2]

For the reasons we discuss below, we conclude that the Petitioner has not shown its eligibility to classify the Beneficiaries as P-1A nonimmigrants because it has not demonstrated that they qualify as internationally recognized athletes. *See* Section 214(c)(4)(A)(i)(I)-(II) of the Act.[3] While the Petitioner points to USCIS' deference policy applicable to adjudication of petitions requesting an extension of nonimmigrant status, the circumstances presented here do not show any error on the part of the Director in applying that deference policy. Current USCIS policy provides that officers should not defer to prior approvals in cases where: there was a material error involved with previous approval(s); there has been a material change in circumstances or eligibility requirements; or there is new material information that adversely impacts the petitioner's or beneficiary's eligibility.[4] The Petitioner states that USCIS has approved other petitions filed on behalf of the Beneficiaries and others

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[2] Current policy guidance concerning deference to prior approvals is located at 2 *USCIS Policy Manual* A.4(B), https://www.uscis.gov/policy-manual; *see also* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf.

[3] While we may not discuss every document submitted, we have reviewed and considered each one.

[4] 2 USCIS Policy Manual, supra, at A.4(B)(1).

playing for teams in the MASL. As stated, we are not required to approve subsequent petitions where eligibility has not been demonstrated strictly because of a prior approval.[5]

A. Professional Athlete

As stated, the Petition initially claimed that the Beneficiaries qualify as professional athletes.[6] As discussed on pages 10 and 11 of the Director's decision, the record is insufficient to confirm that the Beneficiaries are professional athletes. Specifically, the evidence does not show that they are employed by "a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year," as required under Section 204(i)(2) of the Act.

In a letter dated April 30, 2021, the MASL's former commissioner, [redacted] listed 16 teams as members of the league and asserted that the "2018/2019 Total League Revenue" was $11,190,078. The letter states that "[a]s part of the MASL league membership rules, MASL teams must submit financial reports to the MASL on an annual basis." The record, however, does not include the referenced financial reports or any other evidence that substantiates the $11,190,078 figure.

The Petitioner also submitted its financial and tax documents alleging, through a December 2019 letter from its chief executive officer, that "for the 2018-2019 season . . . [the petitioning team] generated $578,861 in gross revenue." At issue is not the annual revenue of a particular team in the MASL. Rather, at issue is whether all the teams within MASL have total combined revenues that satisfy the statutory requirement. Other than the unsubstantiated figure noted in the MASL's commissioner's letter dated April 30, 2021, the record lacks evidence, such as financial reports or tax documents, corroborating the assertion that the MASL teams' combined revenues exceed $10,000,000 per year. *See* Section 204(i)(2) of the Act.

On appeal, the Petitioner does not contest the Director's adverse finding on this issue. Therefore, we deem this issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009); *see also Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived). As such, the Petitioner has not established that the Beneficiaries are professional athletes as the term is defined under Section 204(i)(2) of the Act, or that they may be classified as P-1A professional athletes under Section 214(c)(4)(A)(i)(II) of the Act.

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[5] *Id. See also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

[6] Section 214(c)(4)(A)(i)(II) of the Act provides that a foreign national may be classified as a P-1A nonimmigrant if he or she "is a professional athlete." Sections 204(i)(2) of the Act defines the term "professional athlete" as "an individual who is employed as an athlete by":

> (A) a team that is a member of an association of 6 or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or
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> (B) any minor league team that is affiliated with such an association.

B. Internationally Recognized Athlete

As discussed, to classify the Beneficiaries as P-1A internationally recognized athletes, the Petitioner must show that they intend to enter the United States solely to perform in athletic competitions that have a distinguished reputation and that require participation of an athlete who has an international reputation. *See* Section 214(c)(4)(A)(ii)(I) of the Act; 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A). The Petitioner has not made such a showing.

The record includes the aforementioned letters from commissioners of the MASL. In his letter dated April 30, 2021, [redacted] explains that "MASL member teams recruit a limited number of foreign players to compliment the domestic talent that makes up each team's roster." He further alleges that the league "must continue to provide [its] fans with the best talent from around the world" and "must have the best indoor soccer players in the world, with great reputations internationally, playing for MASL teams." [redacted] provides that "[s]ince the MASL plays internationally, this also necessitates internationally recognized athletes so that fans can see the best talent from around the world . . . ." While these letters confirm the league's aspiration and intention to attract top level soccer players, they do not confirm that the Beneficiaries' anticipated MASL games either have a distinguished reputation or require participation of an athlete who has an international reputation. *See* Section 214(c)(4)(A)(i)(I) of the Act; 8 C.F.R. § 214.2(p)(4)(i)(A), (ii)(A).

Additional letters from the Mexican Minifootball Federation, the Brazilian Minifootball Federation, and the Canada Arena Soccer Association confirm that their players have signed and competed with MASL teams. But they do not establish how the Petitioner's proposed MASL games have a distinguished reputation or require participation of an athlete who has an international reputation. Further, according to two undated letters from [redacted] President of the World MiniFootball Federation (WMF), players from the MASL played in the 2015 and 2017 WMF World Cups. The Petitioner has not presented sufficient evidence verifying the significance of this accomplishment and establishing that, having WMF World Cup players, the Petitioner's MASL games have a distinguished reputation or that the MASL games that the Beneficiaries intend to play require participation of an athlete who has an international reputation.

Other evidence in the record similarly does not confirm that MASL games have a distinguished reputation or that they require participation of an athlete who has an international reputation. For example, a 2018 article posted on the MASL website, which the Petitioner initially submitted in support of the petition, explains that the league has in place a five-year plan "because to really push this league to where we want to go, we need to start spending money on certain resources, including marketing, including players [] and nicer and better facilities across the board."

A 2021 article posted on USSoccerplayers.com, which the Petitioner provided in response to the Director's request for evidence (RFE), quotes MASL's president of communications and media, [redacted], who states that "[y]ounger people would not believe it that indoor soccer was a big deal in the 1980s." He provides that "[w]e don't think it's going back to the way it was in the 80's. We can grow this sport." He indicates MASL can grow by signing retired MLS players, and explains that "[t]here are MLS players looking to retire, keep getting traded, or suffering injuries. Maybe they want to play in their hometowns. . . . That's where we could come in." Other articles in the record reference [redacted], two former MLS players, who came out of retirement at

the age of 37 and 40, respectively, to play for MASL teams. Although other online postings discuss the MASL, its games, and its players, none of them, however, establishes that MASL games have a distinguished reputation or require participation of an athlete who has an international reputation.

Within its RFE response, the Petitioner provided a MASL memorandum from its commissioner dated December 21, 2021, implementing an "Internationally Recognized Player Requirement." The document states that "each team of the MASL must have at least one (1), but no more than twelve (12), internationally recognized players on its official roster. It also explains that "International recognition will be defined . . . . as set forth in the regulations defining P-1A visa qualification." The Petitioner, however, must establish that all eligibility requirements for the immigration benefit have been satisfied from the time filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Further, a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1988). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Because the above memorandum dated December 2021 and submitted in response to the RFE cannot establish the Petitioner's eligibility as of the date the petition was filed in September 2021, we will not consider it.

Further, the record lacks other credible evidence, such as documents showing that MASL games have attracted a high level of viewership, attendance, revenue, and/or major media coverage, which might indicate that the games are qualifying under the statute and regulation. For instance, in its 2020 U.S. Return of Partnership Income (Internal Revenue Service Form 1065), which the Petitioner initially submitted in support of the petition, the petitioning team lists an "Ordinary business income (loss)" of -$68,699. Within its RFE response, the Petitioner provided an "MASL Ticket Report Comparison 2019-2020" which showed the MASL and the petitioning team had total revenue, respectively, of $3,562,898 and $304,277. It also submitted "MASL Facebook Pay-Per-View Revenue Report 2019-2020," indicating the league's "Totals PPV Revenue" was $65,108. The Petitioner has not established that these revenue documents confirm that its MASL games have a distinguished reputation or that they require participation of an athlete who has an international reputation.

In addition, press releases dated September 2021 from sportsfieldmanagementonline.com, MASLSoccer.com, and businesswire.com announce AccuWeather's sponsorship of the MASL though game-day weather forecasts "to assist in event MASL planning." On appeal the Petitioner, through counsel, asserts that "evidence of such existing deals as well as those currently in negotiation is clearly an indicator of how prominent or distinguished the league is in comparison to its international counterparts." However, the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.[7]

[7] The record also contains evidence of MASL's sponsorship deals with [redacted] and anticipated sponsorship deals with [redacted] However, as these sponsorship agreements occurred after the date when the petition was filed in September 2021, we will not consider them. As stated, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. See 8 C.F.R. § 103.2(b)(1).

Further, the petitioning team submitted "MASL Average Attendance 2018-2020," showing that it had average and total attendance, respectively, of 2,550 and 30,596 in 2018-2019; and 3,124 and 31,238 in 2019-2020. The Petitioner has not demonstrated that these attendance documents establish that MASL games have a distinguished reputation or require participation of an athlete who has an international reputation.

Moreover, MASL press releases indicate that in 2018 it entered a partnership with Eleven Sports US "to televise selected games, including playoffs," and in 2019 it entered "several regional and local broadcast agreements" as "supplements to the games already streamed on MASLtv" and being broadcast on Eleven Sports US. This evidence shows that the MASL has entered broadcast agreements with regional and local networks, and with Eleven Sports US to broadcast "selected" MASL games. The Petitioner has not shown that any of the Beneficiaries' intended competitions will be televised or how this viewership evidence establishes that its MASL games are at an internationally recognized level of performance such that they require the participation of an internationally recognized athlete. Without additional corroboration, the Petitioner has not established that the Beneficiaries are internationally recognized athletes or that they maybe be classified as P-1A nonimmigrants as internationally recognized athletes under Section 214(c)(4)(A)(i)(I) of the Act.

III. CONCLUSION

The Petitioner has not demonstrated its eligibility to classify the Beneficiaries as P-1internationally recognized athletes, because it has not established that the Beneficiaries are entering the United States temporarily and solely to compete in qualifying competitions. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.