U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20629011

Date: NOV. 23, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a soccer coach, seeks classification as an individual 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 Director of the Nebraska Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements for this classification, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage at the very top of his field of endeavor. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). We review the questions in this matter *de novo*. *See 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

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339, 1343 (W.D. Wash. 2011).

II. ANALYSIS

The record reflects that the Petitioner was a professional soccer player in Brazil and [redacted] from 1993 until 2009, when he transitioned to coaching. The Petitioner initially held coaching roles with [redacted], a professional team in Trinidad and Tobago, and has coached youth soccer teams since 2015. At the time of filing in August 2020, he was employed as the head soccer coach for the Under 14 (U14) and Under 12 (U12) teams for [redacted] in [redacted], California.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed that he could meet up to seven of the ten criteria.

The Director determined that the Petitioner had met four of the evidentiary criteria and therefore satisfied the initial evidence requirements for this classification. Specifically, the Director determined that the Petitioner submitted evidence of published material about him and relating to his work as an athlete and coach; evidence that he had participated as a judge of the work of others in the field; evidence that he had performed in a leading or critical role for an organization with a distinguished reputation, and evidence that he has commanded a high salary in relation to others in the field. *See* 8 C.F.R. §§ 204.5(h)(3)(iii), (iv), (viii) and (ix). We will not disturb the Director's determination that the Petitioner satisfied the initial evidence requirements by meeting at least three criteria at 8 C.F.R. § 204.5(h)(3).

The Director further determined that the Petitioner claimed, but did not establish, that he could meet three additional criteria, including lesser nationally or internationally recognized awards at 8 C.F.R. §

204.5(h)(3)(i), membership in associations that require outstanding achievements, at 8 C.F.R. § 204.5(h)(3)(ii),[1] and original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v). Nevertheless, because the Director determined that the Petitioner met at least three of the regulatory criteria, he proceeded to a final merits determination.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, 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 their successes are sufficient to demonstrate that they have 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); *see also Kazarian*, 596 F.3d at 1119-20.

The Director, noting a lack of recent evidence in the record, determined that the Petitioner had attained significant successes and achievements as a soccer player and coach in Trinidad and Tobago resulting in national acclaim in the past, but did not demonstrate that he had sustained national or international acclaim and that he is among the small percentage of soccer coaches at the very top of the field.

On appeal, the Petitioner maintains that the Director failed to raise the issue of sustained acclaim in the request for evidence (RFE) issued prior to the denial of the petition and therefore improperly based the denial on a lack of such evidence. We observe that the RFE included the following statement: "Any evidence submitted in response to this request should also articulate how the record establishes that the beneficiary possesses the required high level of expertise for the E11 immigration classification." The Director emphasized that establishing this "high level of expertise" requires evidence that the Petitioner possesses sustained national or international acclaim, noting that acclaim must be maintained and that a petitioner "may have achieved extraordinary ability in the past but then failed to maintain a comparable level of acclaim thereafter." Therefore, we find that the RFE informed the Petitioner that he must not only submit evidence that satisfies at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), but also demonstrate that he has sustained national or international acclaim that places him among the small percentage of coaches at the very top of his field.

The Petitioner further asserts that the Director overlooked evidence relating to his most recent achievements as a coach and submits supplemental evidence in support of the appeal, including evidence that post-dates the filing of the petition. While we will address this newly submitted evidence, we emphasize that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Upon review, and for the reasons discussed below, we agree with the Director's determination that the Petitioner did not establish eligibility for this highly restrictive classification.

[1] While the Petitioner initially claimed that he could meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii), he did not pursue that claim in his response to the Director's request for evidence.

As noted, the Petitioner is a soccer coach who began his career as a professional soccer player in Brazil. According to the Petitioner's resume, he played for [redacted] from 1993 to 1997 and for three different Brazilian teams [redacted], and [redacted] in 1998 and 1999. He indicates that his play [redacted] "was pivotal in bringing the [redacted] championship to the [redacted] in 1995." The record reflects that the Petitioner left Brazil in 2000 after being recruited by the Trinidad and Tobago Football Association (TTFA) and [redacted], which competes in the Trinidad and Tobago Professional League (TT Pro League). The Petitioner played with [redacted] from 2000 to 2006 and 2007 to 2009, during which time he received several team-issued awards including [redacted] (2000, 2001), [redacted] (2003), and [redacted] (2005). In 2013, he was one of several recipients of the [redacted] "Lifetime Achievement Award" for his contributions to the team as a player and member of the coaching staff. In [redacted] 2005, he played in six international matches with the Trinidad and Tobago [redacted]

According to a letter from [redacted] CEO of [redacted] the Petitioner immediately transitioned to coaching at the end of his playing career. Specifically [redacted] states that the Petitioner was an assistant coach of the [redacted] team from 2009 until 2015, while also functioning as the head coach for the [redacted] Team during this same period.[2] From 2015 to 2017, the Petitioner served as [redacted] for [redacted] Football Academy in Trinidad and Tobago, before moving to [redacted] to work for [redacted] as Head Soccer Coach for its U14 and U12 teams in 2018. The Petitioner emphasizes that the [redacted] team was particularly successful during his tenure as an assistant coach in 2013 and 2014 when they were TT Pro [redacted] and [redacted] Winners. His training and credentials as a coach include a U.S. Soccer Federation E License, a National Soccer Coaches Association of America Level 1 Diploma, a two-week coaching internship at La Masia Academy in Spain, and completion of a Youth Coaching Training Course. The Petitioner states that he has coached four players who went on to play for the [redacted] National Team, two of whom have also played for U.S. Major League Soccer teams.

As noted by the Director, the Petitioner established that he received media coverage in Trinidad and Tobago during his playing and coaching career there, that he has commanded a high salary, that he has had responsibility for judging the work of others in the field, and that he served in a leading or critical role for [redacted] which enjoys a distinguished reputation in the sport in Trinidad and Tobago. At issue is whether the record establishes that he is one of that small percentage who has risen to the very top of his field and that he has sustained national or international acclaim under 8 C.F.R. § 204.5(h)(2)-(3). Here, the record does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

Regarding published materials, the Petitioner submitted more than 30 articles published by Trinidad and Tobago publications, including national newspapers *Trinidad Guardian*, *Newsday*, and *Trinidad*

[2] While the record documents the Petitioner's coaching roles with [redacted] we note that the Petitioner indicates in his resume and in his own personal statement in support of the petition that he served in these coaching roles with [redacted] from 2013 to 2015 (rather than from 2009 to 2013), and that his "first coaching assignment" was as a Head Soccer Coach for "Under 11-Under 16" with [redacted] a public secondary school in Trinidad and Tobago, from 2012 to 2013.

Express. Many of the submitted articles are dated between [redacted] 2004 and [redacted] 2005 and are about the Petitioner's efforts to obtain [redacted] to play on its national team in qualifying matches for the 2006 FIFA World Cup. The evidence from this period reflects significant media interest in the Petitioner, including feature articles lauding his skills as a player, frequent coverage of his training with the national team, and articles about the matches he ultimately played with the team in international competition. For example, a [redacted] 2004, article published by *Express* states that the Petitioner "has helped [redacted] to two [redacted] and has been one of the most [redacted] in the [TT Pro League] over the last five years." This evidence indicates that he enjoyed national acclaim as an athlete at the time and was regarded as a key player for [redacted] which is further evidenced by the team awards he received for his performance between 2000 and 2005. In addition, articles published by the *Trinidad Guardian* and the website of the TT Pro League mention that the Petitioner was among [redacted] "former top performers and captains" of [redacted] who were selected to receive "Lifetime Achievement Awards" from [redacted] at the team's [redacted] awards ceremony.

The Petitioner also submitted seven articles relating to his career as a coach, but unlike the articles discussed above, he was not specifically featured in any of these materials. A *Newsday* article from [redacted] 2009 titled [redacted] mentions the Petitioner's transition to coaching in passing, noting that he would not be playing at the start of the season but would "join the technical staff as an assistant coach" for the [redacted] team. A [redacted] 2009 *Guardian* article titled [redacted] also mentions the Petitioner as one of two new assistant coaches of [redacted], but the article is a feature story about another member of the team's coaching staff. The Petitioner also submitted two 2012 articles from *Daily Express* which cover the [redacted] and briefly mention the Petitioner's role as head coach of the [redacted] team. Further, the Petitioner submitted three articles from 2014 which mention his role as coach of the [redacted] team. Two of the articles are about the results of this team's matches and simply identify the Petitioner as the team's coach, while the remaining 2014 article, titled [redacted] is about [redacted] and national team player [redacted] The article mentions that [redacted] during a recent break in playing due to medical issues, served as assistant coach to the Petitioner with the club's [redacted] team.

While the record reflects some ongoing media coverage of the Petitioner's career in Trinidad and Tobago following his transition to coaching in 2009, the number of articles and the nature of the coverage does not reflect the level of acclaim he enjoyed during the height of his career as an athlete playing for a professional team and in international competition. Regardless, even if we concluded that the Petitioner achieved national acclaim as both a player and a coach in Trinidad and Tobago based on the submitted published materials, the Director correctly observed that the record contained no articles dated after September 2014, which was nearly six years prior to the filing of the petition. Therefore, the published materials evidence does not support a determination the Petitioner has achieved *sustained* national acclaim as a soccer coach that places him among "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

On appeal, the Petitioner asserts that, notwithstanding the lack of recent media coverage of his career, he submitted other, more recent evidence which establishes his sustained acclaim as a coach that the Director failed to consider. He emphasizes that the evidence must be considered in its totality in order

to determine whether he has the sustained acclaim required under section 203(b)(1)(A)(i) of the Act. Specifically, the Petitioner contends that the Director did not give proper weight to evidence of his recent judging activities in the final merits determination.

In addressing the evidence of the Petitioner's participation as a judge, the Director observed that he relied on letters of recommendation detailing his roles and responsibilities as a coach and assistant coach. He specifically referenced a letter from [redacted], CEO of [redacted] who stated that the Petitioner had input on the decision-making process regarding coaching assignments for the club's [redacted] teams. The Director determined that while the Petitioner had judged the work of others, his judging activities "took place as part of his job responsibilities" and were performed "with the organization for which he previously played." The Director concluded that the record did not establish that the Petitioner was specifically invited to serve as a judge of others based on his acclaim as a coach or that his judging activities garnered him national or international acclaim or recognition.

As it pertains to the Petitioner's service as a judge of others, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. *See Kazarian,* 596 F. 3d at 1121-22. Therefore, the Director did not err by considering the nature of the Petitioner's judging activities and noting that he performed internal judging activities as part of his job responsibilities for his employer.[3] However, we agree with the Petitioner that the submitted evidence demonstrates that he participated as a judge for organizations other than [redacted] and not solely as part of his coaching responsibilities for this club.

A letter from [redacted] of TTFA confirms that the Petitioner was invited by [redacted] "to judge the performances of the players seeking to make the selection for the [redacted] Team of Trinidad & Tobago that would participate in the FIFA [redacted] World Cup." [redacted] indicates that these activities took place in Trinidad in [redacted] 2019, where the Petitioner designed drills for the 40 prospective players and assisted in the selection of 26 players to participate in a two-year World Cup training program.

On appeal, the Petitioner submits an additional letter from [redacted] head coach and technical director [redacted] who confirms that the TTFA invited the Petitioner to participate in the [redacted] selection activities described by [redacted] He also indicates that, even after the Petitioner left the staff of [redacted] he was invited by the team's board of directors to judge the players' performance (in conjunction with the technical staff) to select the best starting team for TT Pro League competition in the 2016 to 2018 seasons.

Therefore, the record supports the Petitioner's claim that he was invited to participate in judging the work of others and did not solely perform these duties in the context of his responsibilities as a coach for his employer. We also acknowledge that he participated in these activities as recently as 2019. The evidence reflects that the Petitioner maintains a relationship with the [redacted] coaching staff, that he has had one invitation from TTFA to participate in team selection, and that these

[3] *See* 6 *USCIS Policy Manual* F.4(B)(2) (stating that as part of the final merits determination, the quality of the evidence should also be considered, such as whether a petitioner's judging responsibilities were internal).

organizations value his input as a judge of athletic and coaching abilities. However, the Petitioner did not establish how the recent judging activities documented in the record place him among the small percentage of coaches at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). He did not show, for example, how his judging experience compares to others at the top of the field or demonstrate how his judging activities have either resulted from or contributed to his sustained national or international acclaim. Further, the regulations require that the Petitioner provide "extensive documentation" to show that his achievements have been recognized in the field. The Director found that the Petitioner had little or no evidence of such recognition in the five years preceding the filing of the petition; his submission of more recent evidence of his participation in judging activities does not automatically meet this high standard or demonstrate that he has sustained national or international acclaim as a coach.

The Director determined that the Petitioner established that he served in a leading or critical role as a player and coach with the [redacted] organization, and that the team enjoys a distinguished reputation. The Director also concluded that he submitted sufficient evidence to establish that he had commanded a high salary in relation to others as a player with this organization (based on his 2006 contract) and as a coach, from 2013 to 2015. However, the Director emphasized that the Petitioner's tenure with [redacted] ended in 2015 and the record did not establish that he had commanded a high salary or held leading or critical roles with another organization that has a distinguished reputation since that time. As such, the Director concluded that the record lacked recent evidence that would demonstrate the Petitioner's national acclaim had been sustained.

On appeal, the Petitioner maintains that he served in a leading or critical role for both [redacted] from 2018 until 2020, and that he has served in a leading or critical role for [redacted] since February 2021. He also submits evidence intended to establish that he currently earns a high salary as a head coach and director of [redacted] which is described by its Executive Director "one of the premier clubs in the [redacted] with over 14 teams and 200 student athletes.

The evidence submitted on appeal includes a letter from [redacted] President [redacted] and additional information about [redacted] from various websites. We do not doubt that the Petitioner had a leading or critical role as a head coach with this organization. However, even if we determined that [redacted] enjoys a distinguished reputation among youth soccer clubs in [redacted] California where it operates, the record does not establish that the Petitioner has garnered national or international acclaim in the field based on his coaching role with a regional youth soccer club. The same is true with respect to the evidence submitted regarding the Petitioner's leading or critical role with [redacted], a youth soccer club in California that he joined six months after the filing of this petition.[4] It is evident that these two U.S. organizations value the Petitioner's years of expertise in the sport and regard him as a highly effective coach who has positively impacted both individual and team performance for their respective clubs. However, the record does not demonstrate that he has achieved or sustained a level of acclaim in these roles that is comparable to the level of national acclaim he achieved during his time as a player and coach with [redacted] or a level of acclaim that places him at the top of the field among soccer coaches.

[4] As noted, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

The record is similarly lacking evidence that the Petitioner commanded a high salary or other significantly high remuneration for his services as a soccer coach between his departure from the [redacted] coaching staff in 2015 and the filing of this petition in 2020. On appeal, the Petitioner has supplemented the record with evidence intended to establish that he has commanded a high salary with [redacted] compared to other youth soccer coaches in the United States. As noted, the Petitioner did not join this organization until six months after he filed this petition. Further, while his salary with this club (which is slightly above the 90th percentile nationwide according to the one source submitted) may demonstrate some degree of recognition of his achievements in the field, he has not submitted evidence showing his earnings are at a level reflecting that he is one of the small percentage who has risen to the top of the field.

Therefore, the record supports the Director's conclusion that any national acclaim the Petitioner achieved as a member of the coaching staff of a professional team in Trinidad and Tobago has not been sustained since he left the team and moved on to youth coaching roles in the five years preceding the filing of the petition.

We have also considered the Petitioner's claims that he has made contributions to coaching through the development and implementation of training methods and through the success of individual players he has coached. A letter from [redacted] assistant coach of the [redacted] team of Trinidad and Tobago, states that the Petitioner has developed training drills designed to develop players' agility and coordination. He states that the Petitioner's "methodology and style of coaching is revolutionary" and continues to be used in coaching Trinidad and Tobago's national team. In his own statement, the Petitioner referenced his publication [redacted] and indicated that it is a manual "used in every practice through the [Trinidad & Tobago Professional] league." However, he concedes that "there are no records of it" being incorporated by the league, noting that "most likely, it has been photocopied and passed along to coaches and teams." The record contains a copy of a seven-page document illustrating a soccer [redacted] and bearing the seal of the [redacted] Even if we concluded that the Petitioner developed a training drill or methodology that is in widespread use in Trinidad and Tobago, he states that he has not been widely acknowledged for such contribution and the record does not support a determination that this largely uncredited contribution has garnered him national or international acclaim or recognition in the field of soccer coaching. Other testimonial evidence in the record identifies specific players who were coached by the Petitioner during their careers and who have gone on to play on collegiate, professional or national teams. While such evidence supports a determination that the Petitioner is a talented and successful coach, there is insufficient objective evidence to establish whether or how the players' achievements contributed to the Petitioner's own acclaim and recognition in the field.

The Petitioner seeks a highly restrictive visa classification, intended for individuals who are at the top of their respective fields, rather than for individuals progressing toward the top or those who achieved, but did not maintain, the required national or international acclaim. 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).

On review, the balance of the record demonstrates that the Petitioner was an acclaimed professional soccer player with a top team in Trinidad and Tobago and possessed the skills to make the successful transition to coaching at a high level with his former team's organization. However, the record does

not establish that any national acclaim he achieved as a player and coach in Trinidad and Tobago has been sustained since he left [redacted] in 2015 to pursue other coaching opportunities with youth soccer organizations. He did not demonstrate through "extensive documentation" that his work in subsequent years has brought him the requisite sustained acclaim at a national or international level, such that we could conclude that he has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. As such, the record does not indicate he currently has a degree of recognition for his achievements consistent with the sustained acclaim that the statute demands. Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

We acknowledge that the Petitioner has been the beneficiary of an approved O-1 petition, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Eligibility as an O-1 nonimmigrant does not automatically establish eligibility for immigrant extraordinary ability classification, as each petition is separate and independent and must be adjudicated on its own merits, under the corresponding statutory and regulatory provisions.

Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.