U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20210933

Date: JULY 18, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a sports and culture envoy, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Nebraska Service Center denied the petition, concluding that the record does not establish the Petitioner qualifies for classification as an individual of exceptional ability. On appeal, the Petitioner reasserts that she qualifies for classification as an individual of exceptional ability.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> > (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United

States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, "exceptional ability" is defined as "a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business." 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

(A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;

(B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;

(C) A license to practice the profession or certification for a particular profession or occupation;

(D) Evidence that the alien has commanded a salary, or other renumeration for services, which demonstrates exceptional ability;

(E) Evidence of membership in professional associations; or

(F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

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 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we 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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

As noted above, the Director concluded that the record does not establish that the Petitioner qualifies for classification as an individual of exceptional ability. Specifically, the Director concluded that the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) but it satisfies none of the other criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A)-(F), of which at least three are required. On appeal, the Petitioner asserts that the record satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(B), (C), and (F). The Petitioner also asserts, in the alternative, that comparable evidence establishes that she qualifies for classification as an individual of exceptional ability. *See* 8 C.F.R. § 204.5(k)(3)(iii). The Petitioner does not assert on appeal, and the record does not support the conclusion, that she satisfies the criteria at 8 C.F.R. § 204.5(k)(3)(ii)(A), (D), or (E). For the reasons discussed below, the record does not establish that the Petitioner qualifies for classification as an individual of exceptional ability.

First, we withdraw the Director's conclusion that the record satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C). In the decision, the extent of the Director's analysis of that criterion is as follows:

> ***A license to practice the profession or certification for a particular profession or occupation***
>
> The [P]etitioner has met this criterion.

The extent of the Director's discussion of the same criterion in a prior request for evidence (RFE) was identical. The Director did not identify what evidence establishes that the Petitioner has either a license to practice any particular profession or a certification for a particular profession or occupation. As noted above, the Petitioner described her job title in the Form I-140, Immigrant Petition for Alien Workers, as "sports/culture envoy;" however, the initial evidence submitted in support of the Form I-140 did not establish, specifically, what the "sports/culture envoy" endeavor would entail. In response to the RFE, the Petitioner clarified that her endeavor would entail "the establishment of my own [redacted] academy aimed at cultivating the next generation of top-notch American [redacted] players and to further increase the popularity of this unique sport among American public in general." The Petitioner specified that she "personally will play a major role in the day-to-day operation and management of this institute by fully utilizing my previous experience as a [h]ead [c]oach of the [redacted] team of the Ministry of Foreign Affairs [redacted]." The Petitioner also asserted that the endeavor

would involve "the establishment of my own sports public relations firm to fully devoted to [*sic*] the further promotion and marketization of [redacted] with the goal of gradually transforming it into an American mainstream sporting event."

The record does not establish that coaching others to play [redacted] owning and operating a [redacted] academy, or owning and operating a sports public relations firm requires a license to practice the profession or certification for a particular profession or occupation, as contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(C). On appeal, the Petitioner does not identify any particular evidence in the record that is a license or certification to coach others to play [redacted] to own and operate a [redacted] academy, or to own and operate a sports public relations firm, beyond asserting that she has "[a] license to practice the profession ([redacted] coach)." We note that, in response to the RFE, the Petitioner submitted a copy of an English translation of a letter from the [redacted] Association that states the following: "In line with the professional technical qualification requirement and our comprehensive assessment of your credentials, this letter confirms that effective January 1, 2008, you have been certified as [redacted] 1st [C]lass Coach." However, the letter is not supported by corroborating evidence that establishes such a certification is required to work as a [redacted] coach in [redacted] the United States, or elsewhere. Because the record does not support the conclusion that the petitioner satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C), we withdraw the Director's conclusion that "[the Petitioner] has met this criterion."

A. At Least 10 Years of Full-Time Experience in the Occupation

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B) requires evidence in the form of letter(s) from current or former employer(s) showing that the Petitioner has at least 10 years of full-time experience in the occupation. As addressed above, although the job title provided in the Form I-140 is "sports/culture envoy," the Petitioner clarified in response to the RFE that the occupation would primarily be a [redacted] coach, with other activities in public relations and management. On appeal, the Petitioner asserts that "there are more than 8 letters, confirming the [Petitioner's] employment, which is more than 10-year full [*sic*] time engagement." Contrary to the Petitioner's assertions, however, the record does not establish that the Petitioner has any full-time experience coaching [redacted] or in public relations or management.

The record contains a letter dated May 2021 from the "[redacted] Sports School." The letter asserts that the Petitioner "served as part-time coach for our [redacted] team" from June 2008 until January 2016. The letter reiterates that the Petitioner worked part-time during that period, performing tasks "which normally are done by full time coaches."

The record also contains a letter dated June 2021 from [redacted] Chair of the [redacted] National Offshore Oil Corporation. The letter asserts that, since July 2008, the Petitioner "has been serving as coach for our [redacted] team . . . three times a week, a total of 8 hours/wk."

Next, the record contains a letter dated January 2020, indicating it is from the Union Committee of the [redacted]; however, the letter does not identify the author's name or position on the committee. The letter asserts that the Petitioner "has been serving as the Coach of the [redacted] Association of the [redacted] for many years;" however, it does not specify how

many years the Petitioner has been serving as that coach and whether she has been serving as that coach full time.

Although the record also contains a letter from [redacted], former [redacted] Ambassador to the Republic of Colombia, discussing the Petitioner's coaching experience, that letter is not from a current or former employer and, furthermore, it does not specify how many years the Petitioner worked as a [redacted] coach or whether she did so full time. *See id.* The other letters in the record address the Petitioner's experience as a [redacted] player, not as a coach; therefore, they do not address the Petitioner's experience in the occupations of [redacted] coach, public relations, or management.

In summation, the record does not contain evidence in the form of letters from current or former employers showing that the Petitioner has at least 10 years of *full-time experience* in the occupations of [redacted] coaching, public relations, or management. *See id.* Thus, the record does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(B).

B. Recognition for Achievements and Significant Contributions to the Industry or Field

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(F) requires evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations. On appeal, the Petitioner asserts that four letters—from the head coach of the Portugal National [redacted] Team, the former head coach of the [redacted] National [redacted] Team, the Embassy of [redacted], and the [redacted]—satisfy this criterion. We note again that, after initially describing the job title on the Form I-140 generally as "sports/culture envoy," in response to the RFE, the Petitioner clarified that her endeavor is to work as the owner, manager, and operator of a [redacted] academy and as the owner and operator of a public relations firm "fully devoted to the further promotion and marketization of [redacted]." Accordingly, the record indicates that the Petitioner's endeavor would not be a general "sports/culture envoy," promoting all sports as a form of culture; the Petitioner's endeavor would specifically be a coach of [redacted] players and a promoter of [redacted]. Therefore, the record indicates that the industry, for the purposes of 8 C.F.R. § 204.5(k)(3)(ii)(F), is the industry of [redacted].

Contrary to the Petitioner's assertions on appeal, the record does not establish that the Petitioner has been recognized for achievements and significant contributions to the industry of [redacted]. First, the record contains an undated letter from [redacted] "coach of the Portugal National [redacted] Team [redacted]." The letter asserts that the Petitioner "was a prominent player who captured the grand awards including championship of [redacted] International Invitation competition, [redacted] (2002, [redacted] Portugal) and Championship of [redacted], [redacted] (2003, [redacted] Portugal)." However, the record does not establish that winning the [redacted] International Invitation competition and the [redacted] are the types of achievements and significant contributions to the industry contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(F). For example, the record does not establish the requirements, if any, to qualify for participating in those competitions; the number of other participants in the competition; the level of local, national, and international attention the competitions drew from spectators and fellow [redacted] players; and other relevant details about the competitions.

Likewise, the record also contains a letter dated May 2020 from [redacted] former head coach of the [redacted] National [redacted] Team. The letter asserts that the Petitioner "was among the top 20

most outstanding [redacted] players nationally under age 18" when she was selected to the [redacted] National Youth [redacted] Team in 2000 and 2001. However, beyond being selected to the national team and being among the top 20 youth [redacted] players in [redacted] the letter does not address achievements and significant contributions to the industry that the Petitioner made.

Next, the record also contains a letter from the Embassy of the [redacted] in the Republic of Colombia dated January 2014, addressed to the Embassy of the Republic of Colombia. The letter indicates that the Petitioner "will visit Colombia from May 16 to 24 of this year in order to participate in a [redacted] Colombia Friendship [redacted] Tournament, organized by the Diplomatic Mission and the Colombian [redacted] Federation, to commemorate the 35-year diplomatic relations of our countries." However, similar to the letter from the coach of the Portugal National [redacted] Team, the Embassy letter does not establish that the Petitioner's participation in the [redacted] Colombia Friendship [redacted] tournament is the type of achievement and significant contribution to the industry of [redacted] contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(F). For example, the record does not establish the requirements, if any, to qualify for participating in the [redacted] Colombia Friendship [redacted] tournament; the number of other participants in the tournament; whether the Petitioner would participate as a player, coach, or otherwise; the level of local, national, and international attention the tournament drew from spectators and fellow [redacted] players; and other relevant details about the tournament.

As discussed above, the record contains a letter dated January 2020, indicating it is from the Union Committee of the [redacted] however, the letter does not identify the author's name or position on the committee. The letter asserts that the Petitioner "made great contributions to the improvement of the technical level of the members of the [redacted] Association of our [redacted]. At the same time, [the Petitioner] has also carried out a lot of meaningful work in the popularization and promotion of [redacted] as a form of public sports." However, the letter does not elaborate on the "contributions" the Petitioner made; how she improved the technical level of [redacted] players; the nature and specific results of the work the Petitioner carried out to popularize and promote [redacted] [redacted] and other relevant details that may establish whether the Petitioner's work was the type of achievement and significant contribution to the industry of [redacted] contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(F).

In summation, the record does not establish that the Petitioner has recognition for achievements and significant contributions to the industry of [redacted] by peers, governmental entities, or professional or business organizations, as required by 8 C.F.R. § 204.5(k)(3)(ii)(F).

C. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(k)(3)(iii) provides that, if the criteria at 8 C.F.R. § 204.5(k)(3)(ii) "do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility" for classification as an individual of exceptional ability. In contrast to the regulation at 8 C.F.R. § 204.5(k)(3)(ii)(F), which addresses a broader "industry or field," the regulation at 8 C.F.R. § 204.5(k)(3)(iii) specifically focuses on the particular occupation. As noted above, the Petitioner clarified in response to the RFE that her particular occupation would be the owner, manager, and operator of a [redacted] academy, wherein she would coach [redacted]

to others, and the owner and operator of a public relations firm that would specifically promote [redacted]

On appeal, the Petitioner asserts that "criteria for exceptional ability listed at 8.CFR Section 204.5(K)(3), do not readily apply to the filed [*sic*] of [redacted]. The Petitioner asserts that her "national/international award-winning record, recognition from [redacted] National [redacted] [*sic*] and, Embassy of [redacted] are more appropriate in evaluation of the [Petitioner's] exceptional ability." However, the evidence the Petitioner asserts is comparable, as contemplated by 8 C.F.R. § 204.5(k)(3)(iii), does not relate to her abilities in the occupations of a [redacted] coach, public relations agent, or business manager. To the extent that the Petitioner's awards, discussed above, establish her ability, they relate to her [redacted] *playing* ability, not to her coaching, public relations, or business management abilities. Relatedly, the letter from the former head coach of the [redacted] National [redacted] Team, discussed above, refers to the Petitioner's performance as a youth [redacted] *player*, not her coaching, public relations, or business management abilities. Additionally, as discussed above, the letter from the Embassy of the [redacted] in the Republic of Colombia addresses the Petitioner's participation in the [redacted]-Colombia Friendship [redacted] Tournament; however, it does not specify the nature in which the Petitioner participated. Therefore, it does not establish that the Petitioner has exceptional [redacted] coaching, public relations, or business management abilities.

The Petitioner does not otherwise identify on appeal comparable evidence that may establish that she has exceptional ability in the occupations of coaching, public relations agent, or business manager as contemplated by 8 C.F.R. § 204.5(k)(3)(iii), and the record does not support such a conclusion.

In summation, the record does not establish that the Petitioner has satisfied at least three of the criteria at 8 C.F.R. § 204.5(k)(3)(ii) and, in the alternative, the record does not establish through comparable evidence that the Petitioner has exceptional ability as a [redacted] coach, public relations agent, or business manager as contemplated by 8 C.F.R. § 204.5(k)(3)(iii). Therefore, the record does not establish that the Petitioner is an individual of exceptional ability. *See* section 203(b)(2)(A) of the Act; *see also* 8 C.F.R. § 204.5(k)(2)-(3).

III. CONCLUSION

As the Petitioner has not established that she qualifies for second-preference classification as an individual of exceptional ability, we conclude that the Petitioner has not established eligibility for, or otherwise merits, a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.