



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

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

In Re: 21165150

Date: AUG. 1, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a [redacted] academy, seeks to classify the Beneficiary, as an under 16/under 18 assistant coach, for extraordinary ability classification. To do so, the Petitioner seeks O-1 nonimmigrant status, available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in athletics: either receipt of a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

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**

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) (“The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.”) Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).<sup>1</sup>

## II. ANALYSIS

### A. The Field of Expertise

As a preliminary matter, the Petitioner contends that “[t]he evidence provided . . . clearly demonstrates that the Beneficiary’s achievements earned him prestige and acclaim within his specific field of notoriety, U18[redacted].” Again, the Petitioner seeks to classify the Beneficiary as an assistant [redacted] coach for under 18- and 16-year-old players. However, we will not limit the Beneficiary’s field of expertise to coaching at the assistant level of a select group of youth [redacted] players. To hold otherwise would render meaningless the requirement that an individual be among the small percentage of the very top of his field by allowing a petitioner to narrow the beneficiary’s field until he ranks among the top of a small group in that “field.” *Cf., Buletini v. INS*, 860 F.Supp. 1222, 1229 (E.D. Mich. 1994) (*finding that the individual’s field was medical science rather than nephrology*). Thus, we will evaluate the documentation as it pertains to the Beneficiary’s field of expertise as a [redacted] coach.

### B. Major, Internationally Recognized Award

The Petitioner claims that the Beneficiary’s receipt of a silver medal for [redacted] at the 2006 World Junior [redacted] Challenge qualifies as a major, internationally recognized award. However, the record indicates that the Beneficiary participated as a player rather than as a coach. While a [redacted] player and a [redacted] coach share knowledge of the sport, the two rely on very different sets of basic skills. Thus, a [redacted] coach and a [redacted] player are not the same area of expertise. This interpretation has been upheld in federal court. In *Cf., Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918. The court noted a consistent history in this area; *see also Cf., Mussarova v. Garland*, 562 F.Supp. 3d 837 (C.D. Ca. 2022) (determining that the plaintiff’s awards as a water polo player were not awarded as a water polo coach); *Cf., Integrity Gymnastics & Pure Power Cheerleading, LLC v.*

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<sup>1</sup> *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.”

*USCIS*, 131 F.Supp. 3d 721 (S.D. Oh. 2015) (concluding that the AAO's reasoning, relevant statutory and regulatory language, and case law was not arbitrary, capricious, or otherwise not in accordance with the law in finding that an Olympic gold medal gymnast must meet the extraordinary ability classification through her achievements as a coach, her intended area of expertise).

While we acknowledge the possibility of a beneficiary's extraordinary ability in more than one field, such as both a [ ] coach and a [ ] player, the Petitioner seeks to exclusively employ the Beneficiary as a [ ] coach. Thus, the Petitioner must satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(A) through the Beneficiary's achievements as a [ ] coach. Because the Beneficiary did not receive a silver medal at the 2006 World Junior [ ] Challenge as a [ ] coach, we need not address whether such award qualifies as a major, internationally recognized award.

### C. Evidentiary Criteria

Because the Petitioner did not establish that the Beneficiary has received a major, internationally recognized award, it must demonstrate that the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). The Director determined that the Petitioner provided evidence relating to eight criteria, but the Beneficiary only met one: critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(B)(iii)(7). On appeal, the Petitioner argues that the Beneficiary fulfills seven additional criteria. After reviewing all of the submitted evidence, the record does not reflect that the Beneficiary meets the requirements of at least three criteria.

*Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)*

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) requires the alien's receipt of nationally or internationally recognized prizes or awards for excellence "in the field of endeavor."<sup>2</sup> On appeal, the Petitioner references the Beneficiary's 2006 – 2007 [ ] Most Promising Player Award, selection in the 2003 [ ] Major Junior [ ] League Draft, and silver medal at the 2006 World Junior [ ] Challenge. For the reasons discussed above, these claims relate to the Beneficiary's prior career as a [ ] player and will not be considered in his area of expertise as a [ ] coach. *See Cf., Lee*, 237 F. Supp. 2d at 914; *Cf., Integrity Gymnastics & Pure Power Cheerleading, LLC*, 131 F.Supp. 3d at 721; *Cf., Mussarova*, 562 F.Supp. 3d at 837.

The Petitioner also contends that the Beneficiary meets this criterion based on his "membership on the award-winning staff of [ ]". Specifically, the record contains evidence reflecting that [ ] won the 2016 – 2017 [ ] University Association Men's [ ] Coach of the Year Award and was a finalist for the [ ] Memorial Award. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) requires "[d]ocumentation of the alien's receipt" of the prizes or awards. However, the evidence points to [ ] receipt of the award and nomination rather than the Beneficiary's receipt of them.<sup>3</sup> Because the Beneficiary did not receive this award and

<sup>2</sup> See also 2 *USCIS Policy Manual*, M.4(C)(2), <https://www.uscis.gov/policymanual>.

<sup>3</sup> Although the Petitioner provides additional documentation on appeal, we will not consider new eligibility claims or evidence for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before

nomination, we need not address whether they qualify as nationally or internationally recognized prizes or awards for excellence in the field.

Accordingly, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

In order to meet this criterion, a petitioner must establish that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.<sup>4</sup> The Petitioner claimed the Beneficiary's eligibility for this criterion for the first time in response to the Director's request for evidence. Specifically, the Petitioner stated that the Beneficiary "is in the process of becoming [redacted] as a [redacted] coach in [redacted]. The Director indicated that the Petitioner did not show that the Beneficiary completed the certification. On appeal, the Petitioner provides evidence that the Beneficiary has been certified since October 2021. However, the Petitioner filed the petition in July 2021. A 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). Because the Beneficiary was not [redacted] certified at the time of filing, we need not address whether his certification qualifies as membership in an association that requires outstanding achievements of its members, as judged by recognized national or international experts.

As such, the Petitioner did not establish that the Beneficiary meets this criterion.

*Published material in professional or major trade publications or other major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the material.<sup>5</sup> The Petitioner contends that the Beneficiary fulfills this criterion based on articles published in the [redacted]. The record reflects that the Petitioner submitted three internet articles posted on the newspaper's website. The article, entitled [redacted] highlights various athletes, in which the Beneficiary is briefly referenced as a [redacted] player but does not relate to him as a [redacted] coach. See *Cf., Lee*, 237 F. Supp. 2d at 914; *Cf., Integrity Gymnastics & Pure Power Cheerleading, LLC*, 131 F.Supp. 3d at 721; *Cf., Mussarova*, 562 F.Supp. 3d at 837.

Further, the article entitled, [redacted]  
[redacted] is about the [redacted]

the denial, we will not consider evidence submitted on appeal of any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

<sup>4</sup> See also 2 USCIS Policy Manual, *supra*, at M.4(C)(2).

<sup>5</sup> See also 2 USCIS Policy Manual, *supra*, at M.4(C)(2).

Development camp. The Beneficiary is never mentioned in the article and is not about him.<sup>6</sup> Articles that are not about the beneficiary do not fulfill this regulatory criterion. *Cf., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

In addition, the article entitled [redacted] is about the [redacted] defeating the [redacted] at the [redacted] Tournament. Although the Beneficiary is mentioned one time as being credited as the coach, the article is about the [redacted] winning the tournament, as well as separate reporting on youth players earning roster spots on an under-16 [redacted] team and [redacted] introducing elite AAA [redacted] at peewee and bantam levels next year. Published material that includes only a brief citation or passing reference to a beneficiary's work is not "about" a beneficiary, relating to a beneficiary's work in the field, as required under this criterion.<sup>7</sup>

Finally, while the Petitioner submitted evidence regarding the history of the [redacted] the Petitioner did not show that the online version qualifies as a professional or major trade publication or other major media.<sup>8</sup> *Cf., Victorov v. Burr*, No. CV 19-6948-GW-JPRX, 2020 WL 3213788, at \*8 (C.D.C.A. Apr. 9, 2020). The Petitioner, for instance, did not provide evidence of any online statistics or data reflecting the major status of the website.

For the reasons discussed above, the Petitioner did not show that the Beneficiary fulfills this criterion.

*Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

A petitioner must show that a beneficiary has not only been invited to judge the work of others, but also that a beneficiary actually participated in the judging of the work of others in the same or allied field of specialization.<sup>9</sup> At initial filing, the Petitioner provided a letter from [redacted] development program officer for [redacted] who stated:

[The Beneficiary] has been an Instructor/Coach for us for [sic] at our U14 and U15 POE camps. He has played a pivotal role in the overall success of the camps. He did

<sup>6</sup> The article references [redacted] as the owner of the camp. While [redacted] shares the same last name with the Beneficiary, the record does not show that the Beneficiary and [redacted] are the same person. In Part 3 of the petition, the Petitioner did not list [redacted] as another name used by the Beneficiary. In addition, the article was published in 2008, when the Beneficiary was competing as a [redacted] player and prior to his coaching career.

<sup>7</sup> See 2 USCIS Policy Manual, *supra*, at M.4(C)(2).

<sup>8</sup> On appeal, the Petitioner provides new evidence regarding the history of the [redacted] See Soriano, 19 I&N Dec. at 766; see also Obaighbena, 19 I&N Dec. at 533.

<sup>9</sup> See 2 USCIS Policy Manual, *supra*, at M.4(C)(2).

an excellent job creating a plan for the clinic and delivering the material that exceeded our expectations.

In response to the Director's RFE, the Petitioner offered a screenshot from [redacted] website describing its "Program of Excellence" and submitted the "Minor [redacted] Development Guide."

The evidence, however, does not demonstrate that the Beneficiary actually participated as a judge of the work of others. Specifically, although [redacted] indicated that the Beneficiary served as an instructor and coach at the camps, including creating a plan for clinics and delivering material, he did not explain the Beneficiary's involvement in participating as a judge of the work of others. Moreover, [redacted] did not discuss that the Beneficiary's role as an instructor and coach at the camps involved serving as a judge of the work at others.<sup>10</sup>

Accordingly, the Petitioner did not demonstrate that the Beneficiary meets this criterion.

*Evidence of the alien authorship of scholarly articles in the field, in professional journals, or other major media. 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).*

Although the Petitioner previously claimed before Director that the Beneficiary satisfied this criterion through his authorship of a training guide, the Petitioner does not contest the Director's decision on this issue. Instead, the Petitioner submits an authored article by the Beneficiary posted on [redacted] website. The article, however, was published in November 2021, after the filing of the petition. Eligibility must be established at the initial filing of the petition. See 8 C.F.R. § 103.2(b)(1). Moreover, we will not consider new claims and new evidence for the first time on appeal. See *Soriano*, 19 I&N Dec. at 766; see also *Obaighena*, 19 I&N Dec. at 533.

For these reasons, the Petitioner did not establish that the Beneficiary fulfills this criterion.

*Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).*

If a petitioner is claiming to meet this criterion, then the burden is on the petitioner to provide appropriate evidence establishing that a beneficiary's compensation is high relative to others working in similar occupations in the field.<sup>11</sup> The record reflects that the Petitioner provided a contract offering the Beneficiary \$50,000 per year. In addition, the Petitioner submitted a screenshot from the Foreign Labor Certification Data Center, Online Wage Library showing that a Level 1 Wage for coaches and scouts is \$36,590, while a Level 4 Wage is \$76,850. Level 1 Wage relates to entry level employees and Level 4 Wage relate to fully competent employees.<sup>12</sup> Here, the Beneficiary's wages are below the Level 4, and is around the Level 2 (\$46,010). As such, Petitioner did not show that the Beneficiary will command a high salary. We also note that the Petitioner compared the Beneficiary's salary to the

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<sup>10</sup> On appeal, the Petitioner submits new evidence regarding an additional letter from [redacted] See *Soriano*, 19 I&N Dec. at 766; see also *Obaighena*, 19 I&N Dec. at 533.

<sup>11</sup> See 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

<sup>12</sup> See <https://www.flcdatcenter.com>.

general category of coaches and scouts. The Petitioner did not provide salary information relating to [ ] coaches.<sup>13</sup>

Accordingly, the Petitioner did not show that the Beneficiary satisfies this criterion.

### III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary received a major, internationally recognized award. Although the Petitioner also claims the Beneficiary's eligibility regarding original contributions at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5)<sup>14</sup>, we need not address this ground because he cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).<sup>15</sup> Accordingly, we reserve these issues.<sup>16</sup> Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. 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.

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<sup>13</sup> On appeal, the Petitioner provides new evidence regarding wage statistics for coaches and scouts and information regarding a competitor's construction of a new academy and arena. *See Soriano*, 19 I&N Dec. at 766; *see also Obaighena*, 19 I&N Dec. at 533.

<sup>14</sup> We note that the regulation at 8 C.F.R. § 214.2(o)(3)(B)(5) requires evidence of original scientific, scholarly or business-related contributions of major significance in the field rather than original athletic contributions of major significance in the field.

<sup>15</sup> *See also 2 USCIS Policy Manual, supra*, at M.4(B).

<sup>16</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).