



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

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

In Re: 25037746

Date: FEB. 14, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a sports equipment and athlete management business, seeks to classify the Beneficiary, a sumo wrestler, as an individual of extraordinary ability. This O-1 nonimmigrant visa classification is 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 Beneficiary had not 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). The matter is now before us on appeal. 8 C.F.R. § 103.3.

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

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).

II. ANALYSIS

Because the Petitioner did not indicate or 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)(I)-(8). The Director determined that the Beneficiary fulfilled only one criterion, awards at 8 C.F.R. § 214.2(o)(3)(B)(iii)(I). On appeal, the Petitioner maintains that the Beneficiary satisfies three 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 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).

The Petitioner claims that the Beneficiary meets this criterion based on his membership with the Egyptian National Team (ENT) through his participation in the Egyptian Judo, Aikido, and Sumo Federation (EJASF) and references a letter by A-A-M-A-S- who indicated:

... In order to be on [ENT], there are qualifying competitions that an aspiring athlete must compete in. The most famous competition is the Egyptian National Competition, which takes place in Egypt itself. Upon the completion of every competition, the corresponding National Team for an athlete's requisite sport will only take the Gold, Silver, and Bronze Medal winners to be on the team. The corresponding National Team for Sumo Wrestling is called The Egyptian Sumo Aikido and Judo Team. This organization holds several competitions every year, between 2-5 major competitions, and only the winners of the competitions are afforded the privilege to be on the National Team. Being on the National Team means that an athlete gets to compete with other National Team members, who are also at the upper echelon of their sport and compete on behalf of the National Team not only nationally, but internationally.

Being on the [ENT] is the highest rank that a person can obtain in athletics in Egypt. It is the most prestigious place an athlete can hope to find themselves. Anyone is afforded the opportunity to join athletic competitions in Egypt, but a member of the

National Team has to compete in every single competition that is held by the National Team in order to maintain his place within the ranks of the team. To put it simply, if you compete in one of the competitions and you don't medal, you get kicked out. You can get back on the team if you win again in a competition, but you have to keep medaling in competitions in order to maintain your place on the team – it is that prestigious.

Because of this rigorous standard, only the top athletes in Egypt qualify for spots on the National Team. It is also crucial because the National Team is the governing body in Egypt that sends people to the Olympics, which is the hallmark of a country's most important athletic organization

The Petitioner also asserts:

The various federations within [ENT] oftentimes do not maintain a rigorous, strict set of easily discoverable criteria, documented in black and white terms, that athletes are expected to follow and refer to when investigating earning a spot on their discipline's coveted national team. Rather, the general culture surrounding athletics in Egypt is based on personal knowledge and participation at various training camps and clinics, which then translates into a strict recruitment rubric upon an athlete's demonstration of skill and prowess at one of these events.

While the Petitioner claims A-A-M-A-S-'s letter supports his assertions, the letter makes no mention of the absence of written requirements, such as bylaws or other codified criteria, for establishing membership with ENT. Nor does the letter discuss the Petitioner's references to "general cultural surrounding athletics in Egypt," "personal knowledge," and "participation at various training camps and clinics." Furthermore, the letter does not cite to any governing authority or other supporting evidence as a basis for the ENT's membership requirements.

Similarly, the Petitioner asserts that "[j]ust because [ENT] does not maintain strict, black and white, written requirements for membership, but rather operates on a system of recruitment and personal familiarity with its athletes, does not mean that [the Beneficiary] was not a member of a prestigious organization requiring outstanding achievement of their members." This regulatory criterion does not require "strict, black and white, written requirements for membership." However, the burden remains with the Petitioner to establish eligibility for the benefit. *See* 8 C.F.R. § 103.2(b)(1). In this case, the Petitioner makes unsupported claims regarding the absence of written requirements for ENT membership. Neither A-A-M-A-S-'s letter cites to any established requirements as a basis for his opinion, nor does any of the other documentation contained in the record makes any mention of "general culture."

Notwithstanding the above, in order to meet this criterion, a petitioner must not only establish that membership in the association requires outstanding achievements its members, but those outstanding achievements are judged by recognized national or international experts for membership within the association.¹ Although A-A-M-A-S-'s letter discusses the importance of medaling in competitions, it

¹ *See also* 2 *USCIS Policy Manual*, M.4(C)(2), <https://www.uscis.gov/policymanual>.

does not address the selecting body who judges the outstanding achievements for membership and whether it is comprised of recognized national or international experts. In fact, based on the letter's content, ENT's membership is based on medaling in competitions rather than recognized national or international experts judging outstanding achievements for membership. While the Petitioner indicates that it provided Facebook posts from EJASF "shar[ing] news about the infinite achievements of its athletes, and news surrounding their various events and competitions" and evidence "of the high caliber of [ENT] as the governing body for sumo wrestling in Egypt," the issue for this criterion is whether membership with ENT requires outstanding achievements of its members, as judged by recognized national or international experts, rather than the association's reputation or standing in the field. Here, the Petitioner did not establish that membership with ENT requires outstanding achievements, as judged by recognized national or international experts consistent with this regulatory criterion.

Finally, the Petitioner contends that the Beneficiary "was previously awarded P-1 nonimmigrant status as an athlete of international recognition," "which should prima facie establish in the instant O-1A application that he is a member of an organization requiring outstanding achievement of its members." As relevant here, P-1 nonimmigrant status, a separate and distinct nonimmigrant visa classification, is reserved for individuals who are coming to the United States to perform services as an internationally recognized athlete, individually or as part of a group or team. See section 101(a)(15)(P) of the Act and 8 C.F.R. § 214.2(p)(1)(i). Neither the Act nor the regulations for P-1 nonimmigrant status require individuals to be members of associations requiring outstanding achievements, as judged by recognized national or international experts, as required for eligibility under the membership criterion for O-1 nonimmigrant status. Thus, the prior approval of P-1 nonimmigrant status does not demonstrate eligibility for the membership criterion under 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). Furthermore, the prior P-1 approval does not preclude USCIS from denying a nonimmigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-129 nonimmigrant petitions are denied after USCIS approved prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d at 41 (2d. Cir. 1990). 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 nonimmigration petition. See *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

For the reasons discussed above, the Petitioner did not establish the Beneficiary's eligibility for 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).

The Petitioner claims the Beneficiary's eligibility for this criterion based on having "been featured in *Al-Ahram*." 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.² The record reflects that the Petitioner submitted three translated articles entitled, [REDACTED]

[REDACTED] and [REDACTED]

[REDACTED] The translations, however, do not include the required dates and authors of the material. In fact, the translations do not show that *Al-Ahram* published the articles. Moreover, none of the articles reflect published material about the Beneficiary. Instead, the articles discuss wrestling championships and competitions with the Beneficiary mentioned one time in each article, simply listing him as a participant among the other competitors. 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).³ Because the Petitioner did not include the required dates and authors, show the articles qualify as published material about the Beneficiary, and *Al-Ahram* published them, we need not make a determination regarding the status as a professional or major trade publication or other major medium.⁴

The Petitioner also contends that he has been “feature[d] in the U.S. Sumo Federation and USA Sumo’s social media and websites, arguably, the two major trade publications for sumo wrestling in the United States.” The record reflects that the Petitioner provided screenshots from [REDACTED]

However, none of the screenshots mention the Beneficiary. Although many of the screenshots contain photographs, none of the captions credit the Beneficiary, let alone show published material about him relating to his work. Furthermore, some of the screenshots indicate videos; however, the Petitioner did not provide a transcript of the video footage or demonstrate published material about the Beneficiary.⁵ In addition, the material does not contain the required titles, dates, and authors of the material. In fact, it appears the postings occurred after the filing of the petition. Eligibility must be established at the time of filing of the petition. *See* 8 C.F.R. § 103.2(b)(1). As the material does not show the regulatory requirements and reflect published material about the Beneficiary, we need not make a determination relating to the standings of the websites and individual social media platforms.

Finally, the Petitioner claims that “since the filing of the original submission and since the submission of the response to the Service’s request for Evidence, [the Beneficiary] was interviewed by NTD Television . . . as part of his Gold medal win at the [REDACTED]” This event occurred after the initial filing of the petition. *See* 8 C.F.R. § 103.2(b)(1). Moreover, we will not consider this claim and evidence as it was not presented before the Director. *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 the denial, we will not consider evidence

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

³ *See also* 2 USCIS Policy Manual, *supra*, at M.4(C)(2) (providing that published material that includes only a brief citation or passing reference to the beneficiary’s work is not “about” the beneficiary, relating to the beneficiary’s work in the field, as required under this criterion).

⁴ *See* 2 USCIS Policy Manual, *supra*, at M.4(C)(2) (reflecting that in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media)).

⁵ *See* 2 USCIS Policy Manual, *supra*, at M.4(C)(2) (indicating an example of a transcript of professional or major audio or video coverage of the beneficiary and the beneficiary’s work).

submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceeding” before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

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

III. CONCLUSION

The Petitioner did not demonstrate that the Beneficiary met the membership and published material criteria. Although the Petitioner also claims the Beneficiary’s eligibility regarding critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), 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).⁶ Accordingly, we reserve these issues.⁷ 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.

⁶ *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

⁷ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (“courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach”); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).