U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF Q-C-M-, INC.

DATE: JUNE 27, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a nonprofit youth soccer organization, seeks to classify the Beneficiary, a soccer player and coach, as an artist or entertainer who performs in a culturally unique program. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(P)(iii), 8 U.S.C. § 1101(a)(15)(P)(iii). This P-3 classification makes visas available to foreign nationals who perform, teach, or coach as artists or entertainers, individually or as part of a group, under a culturally unique program.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that soccer is an art or that the Beneficiary is an artist.

On appeal, the Petitioner asserts that a specific soccer strategy from Barcelona, Spain, is a culturally unique form of art. In addition, it maintains that the U.S. Citizenship and Immigration Services (USCIS) had previously granted the Beneficiary P-3 classification under a similar set of facts, and thus should approve this petition.[1]

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(P)(iii) of the Act provides that a foreign national may be eligible for the P-3 classification if he or she:

> (I) performs as an artist or entertainer, individually or as part of a group, or is an integral part of the performance of such a group, and
>
> (II) seeks to enter the United States temporarily and solely to perform, teach, or coach as a culturally unique artist or entertainer or with such a group under a commercial or noncommercial program that is culturally unique.

[1] The Petitioner indicates that the Beneficiary had entered the United States as a P-3 nonimmigrant in 2015, and subsequently departed the United States in 2016.

The regulation defines "culturally unique" to mean "a style of artistic expression, methodology, or medium which is unique to a particular country, nation, society, class, ethnicity, religion, tribe, or other group of persons." 8 C.F.R. § 214.2(p)(3). The regulation at 8 C.F.R. § 214.2(p)(6)(i) further provides:

> (A) A P-3 classification may be accorded to artists or entertainers, individually or as a group, coming to the United States for the purpose of developing, interpreting, representing, coaching, or teaching a unique or traditional ethnic, folk, cultural, musical, theatrical, or artistic performance or presentation.
>
> (B) The artist or entertainer must be coming to the United States to participate in a cultural event or events which will further the understanding or development of his or her art form. The program may be of a commercial or noncommercial nature.

To demonstrate a foreign national's eligibility for the P-3 classification, a petitioner must submit:

> (A) Affidavits, testimonials, or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching, or teaching the unique or traditional art form and giving the credentials of the expert, including the basis of his or her knowledge of the alien's or group's skill, or
>
> (B) Documentation that the performance of the alien or group is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials; and
>
> (C) Evidence that all of the performances or presentations will be culturally unique events.

8 C.F.R. § 214.2(p)(6)(ii).

II. ANALYSIS

The Petitioner seeks to employ the Beneficiary as a soccer instructor, specialized in the Barcelona or [redacted] style of playing, whereby players maintain ball possession through short passes. On the Form I-129, Petition for a Nonimmigrant Worker, O and P Classifications Supplement, the Petitioner characterized the job duties as coaching a series of training sessions demonstrating the methodologies and techniques unique to the Catalonia region of Spain. The Director concluded that while Barcelona has an "indigenous" style of playing soccer, it is not a culturally unique art form.

On appeal, the Petitioner asserts that the determination of what constitutes art is a philosophical and subjective one, and that because USCIS had previously approved a P-3 petition that the Petitioner filed on behalf of the Beneficiary, it should now approve this petition. For the reasons discussed

below, we find that (1) the statute and regulation distinguish between athletics and arts, (2) the Beneficiary, as a soccer instructor experienced with a specific soccer strategy, is not an artist who engages in a culturally unique art form, and (3) the proposed events in the United States will not be culturally unique.

A. Prior Approval

The record indicates that USCIS has previously approved a petition for P-3 status that the Petitioner filed on behalf of the Beneficiary. The prior approval does not preclude USCIS from denying a subsequent petition based on a reassessment of the Petitioner or Beneficiary's qualifications.[2] In the present matter, the Director reviewed the record of proceedings and concluded that the Petitioner did not satisfy all eligibility requirements for the requested classification. As discussed below, we find that the evidence supports the Director's denial.

B. The Beneficiary as an Artist or Entertainer

The P-3 classification is reserved for artists or entertainers seeking to enter the United States to perform, teach, or coach a culturally unique art form. Section 101(a)(15)(P)(iii) of the Act; 8 C.F.R. § 214.2(p)(6)(i)(A). Before we can reach the issue of whether the Beneficiary's skill in a soccer strategy is a culturally unique art form, we must address whether a soccer coach can be classified as an artist or entertainer for purposes of the P-3 classification.

Both the relevant statute and the regulation contain separate provisions for athletes and artists or entertainers. With respect to the statute, sections 101(a)(15)(P)(i) and 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A), address athletes, and sections 101(a)(15)(P)(ii) and 214(c)(4)(B) of the Act address artists or entertainers. The relevant regulation defines arts as including "fields of creative activity or endeavor such as, but not limited to, fine arts, visual arts, and performing arts." 8 C.F.R. § 214.2(p)(3). While this definition contemplates arts beyond those identified, it still limits them to activities and endeavors that are creative in nature. The same regulation, although it does not define athletics, provides that a "[c]ompetition, event, or performance" means "an activity such as an athletic competition, athletic season, tournament, tour, exhibit, project, entertainment event, or engagement." 8 C.F.R. § 214.2(p)(3).

At issue is whether, despite these distinctions between athletes and artists or entertainers in the Act and regulation, a soccer coach can be considered an artist or entertainer whose work will further the

[2] *See Texas A&M Univ. v. Upchurch*, 99 F. App'x 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition that involves the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, USCIS is not required to approve a petition if, by mistake or oversight, it previously approved another petition. *See also Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with its own record and burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that specific record of proceedings. *See* 8 C.F.R. § 103.2(b)(16)(ii).

understanding or development of an art form. The Petitioner relies on *Matter of Skirball Cultural Center*, 25 I&N Dec. 799 (AAO 2012), asserting that it clarified "the term 'arts' to include non-traditional forms." That decision, however, addressed hybrid music that was a combination of traditional Jewish and Argentine styles. It did not suggest that, in the P-3 classification, arts or entertainment incorporates athletic competitions or coaching.

The Petitioner also asserts that the notion that sport is an art is accepted among contemporary philosophers and traditional artists alike. The record contains the article ' In it, the authors argue that the concept of art is flexible, and "modern transformations of the concept of art in particular allow sport to be viewed as art." The authors note that while sports are competitive, victory is only accomplished through performing, and that although rules govern sport, plays are scripted. They also discuss the dramatic aspects of sport, concluding that because the outcome cannot be anticipated, sport "is creative in the highest sense." Finally, the article singles out soccer, characterizing it as a celebration of contingency. In addition, the Petitioner offers a posting on website arguing that because of its visual elements, soccer is an art. The item notes that the "aesthetics of football [soccer] are now on display at the ' in an exhibit that examines "the world's most popular sport." The event, however, does not focus on competitive soccer as an art, but "features the work of who look at the sport through the lenses of celebrity, nationalism, commerce, spectacle and athleticism."

The above materials do not demonstrate that, in the statutory or regulatory scheme for the classification sought, athletics, or soccer specifically, fall under the arts, or that a soccer coach is an artist or entertainer. While the Beneficiary is a soccer coach experienced with the soccer strategy, the articles in the record about this style focus on its competitive success and do not suggest it is an aesthetic tradition or in a field of "creative activity or endeavor." *See* 8 C.F.R. § 214.2(p)(3).

Notwithstanding the philosophical arguments in the record, because sections 101(a)(15)(P)(ii) and 214(c)(4)(B) of the Act address athletes separately from artists, we conclude that Congress did not consider athletics to fall within the arts or that an athlete qualifies as an artist or entertainer in this classification.[3] While there are certainly avenues for athletes to be creative in their strategy, many fields require or benefit from some amount of creativity. For example, engineers designing new products and researchers formulating new studies utilize considerable inventiveness. Both nonimmigrant and immigrant classifications, however, separate the sciences from the arts.[4] We find that an occupation that requires or benefits from ingenuity does not, without more, constitute a field

[3] As with arts, the statute separates athletes from entertainers. Section 101(a)(15)(P)(ii) of the Act. However, section 203(b)(2) of the Act, 8 U.S.C. 1153(b)(2), relating to foreign nationals of exceptional ability in the sciences, arts, or business, makes no distinction between arts and athletics. *See also Matter of Masters*, 13 I&N Dec. 125 (Dist. Dir. 1969). That decision, which predates the Act by several years, determined that professional tournament golfers are basically entertainers and may be included within the arts, but solely in the context of a statute that referenced arts, and not athletics. Although not raised by the Petitioner, we note that in the instant matter, the relevant statute contains different provisions for athletes and artists or entertainers, thus *Matter of Masters* is not relevant.

[4] *See* sections 101(a)(15)(o), 203(b)(1)(A), 203(b)(2) of the Act.

of creative activity or endeavor. *See* 8 C.F.R. § 214.2(p)(3) (definition of arts). Finally, while athletic competitions draw crowds of fans, the regulatory definition of "competition, event, or performance" distinguishes between "athletic competitions" and "entertainment events." 8 C.F.R. § 214.2(p)(3). For these reasons, the Petitioner has not demonstrated that soccer is an art form or that a soccer instructor qualifies as an artist or entertainer under section 101(a)(15)(P) of the Act.

Nevertheless, the Director appropriately reviewed the petition according to the classification requested. Our analysis of the regulatory requirements for that classification follows.

C. Culturally Unique Art Form

In the above section, we looked at the Petitioner's contention that soccer in general is an art, which we concluded it is not. Here, the question is specific to whether [redacted] is a culturally unique art form. The regulation at 8 C.F.R. § 214.2(p)(6)(ii) requires that the Petitioner establish that the Beneficiary's performance is culturally unique through submission of affidavits, testimonials, or letters, or through published reviews of his work. The Petitioner has presented both types of evidence, but has not shown that the Beneficiary's work as a soccer instructor represents a culturally unique art form.

1. Recognized Expert Opinion

Affidavits, testimonials, or letters from recognized experts must attest to the authenticity of the Beneficiary's skills in performing, presenting, coaching, or teaching the unique or traditional art form and give the credentials of the experts, including the basis of their knowledge of the Beneficiary's skill. 8 C.F.R. § 214.2(p)(6)(ii)(A).

Dr. [redacted] director and professor of the Sport Management program of the [redacted] indicates that he has a contract with the [redacted] to lead its [redacted] He explains the importance of [redacted] to [redacted] a professional soccer club in Spain, and the Spanish national team. Based on the Beneficiary's course work and coaching experience, Dr. [redacted] concludes that his "qualifications as an expert in the culturally-unique Barcelona-style of soccer . . . are beyond question."

[redacted] owner and chief executive officer of the [redacted] explains that each region has its own playing style, with the Barcelona model "based on the game of possession and where players expand their creativity based on the collective game, seeking favorable situations and knowing how to exploit them." Mr. [redacted] however, does not specifically address the Beneficiary's skills.

Dr. [redacted] and Mr. [redacted] both characterize the [redacted] strategy as unique to Spain. In addition, Dr. [redacted] details the Beneficiary's experience with coaching that style of playing soccer. As discussed above, however, the regulatory definition of "culturally unique" requires that the form of

"expression, methodology, or medium" be "artistic." 8 C.F.R. § 214.2(p)(3). Neither testimonial overcomes our conclusion above that athletics do not fall under the arts or that a soccer coach is not an artist or entertainer.

2. Documentation That the Performance Is Culturally Unique

The regulation at 8 C.F.R. § 214.2(p)(6)(ii)(B) allows the Petitioner to submit documentation showing that the performance of the Beneficiary is culturally unique, as evidenced by reviews in newspapers, journals, or other published materials. The record contains a posting on website entitled " " The item indicates that "few individual teams can boast a style of play so distinct that a term must be coined to describe it and it only," using as an example. The Petitioner also provides posted at in which the authors analyze passing motifs, and conclude that the team is "able to maintain its rare, distinct style."

" in recounts the history of soccer in Spain. It notes that while Spanish club soccer has become increasingly globalized, crafted its contemporary identity with star players who developed " " in characterizes the Barcelona style as a "hypnotic, brilliant, and occasionally boring short passing attack [that] allows Barcelona to control the ball for more than 70% of the game."

None of the above materials specifically review the Beneficiary's performance as a coach of a culturally unique art form. Rather, they focus on the unique strategy known as While the Beneficiary trained as a coach in Barcelona, these articles do not meet the requirements set forth at 8 C.F.R. § 214.2(p)(6)(ii)(B). Moreover, although they are relevant to the unique nature of the Barcelona strategy, they do not establish that athletics constitute a form of artistic expression or that a soccer coach is an artist or entertainer.

3. Performances or Presentations

In addition, the regulation at 8 C.F.R. § 214.2(p)(6)(ii)(C) requires evidence that all of the Beneficiary's anticipated performances or presentations in the United States will be culturally unique events. These events must further the understanding or development of his "art form." 8 C.F.R. § 214.2(p)(6)(i)(B). The Petitioner lists the location of the trainings and away games that its team will play against other teams. The issue, therefore, is whether these occasions will further the understanding or development of an "art form."

Even if we were to accept that *training* in the style is a culturally unique art form, and we do not for the reasons discussed above, the regulation requires that "all" of the occasions must be culturally unique. *See* 8 C.F.R. § 214.2(p)(6)(ii)(C). Soccer matches between the Petitioner's teams and other teams are athletic competitions. While the teams may use a unique strategy based on

coaching from the Beneficiary, the Petitioner has not demonstrated that the matches, which will be ordinary soccer games, will further the understanding or development of an art form.

III. CONCLUSION

The Petitioner has not demonstrated that soccer is an art form or that the Beneficiary, an athletic coach, is an artist or entertainer. It has also not shown that the soccer strategy from Barcelona with which the Beneficiary is experienced constitutes a culturally unique art form or that the events in which he will participate will further the understanding or development of an art form.

ORDER: The appeal is dismissed.

Cite as *Matter of Q-C-M-, Inc.*, ID# 321049 (AAO June 27, 2017)