



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: **JUL 22 2015**

FILE #: [Redacted]

PETITION RECEIPT #: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a competitive runner, seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.<sup>1</sup> The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. The director found that the petitioner’s evidence had met only two of the ten regulatory criteria, the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) and (iii).

On appeal, the petitioner submits a brief. The petitioner asserts that she meets the category of evidence at 8 C.F.R. § 204.5(h)(3)(v). In addition, with regard to the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner asserts that she submitted “comparable evidence of membership in associations” pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

For the reasons discussed below, we agree with the director that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted evidence demonstrating her sustained national or international acclaim as a competitive runner. See 8 C.F.R. § 204.5(h)(3). We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, we will dismiss the petitioner’s appeal.

## I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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,

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<sup>1</sup> According to information on the Immigrant Petition for Alien Worker (Form I-140) and an entry stamp in the petitioner’s passport, she was last admitted to the United States on September 11, 2013, as a B-2 nonimmigrant visitor for pleasure.

(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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who has risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The 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 her achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then she must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9<sup>th</sup> Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "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").

## II. ANALYSIS

### A. Evidentiary Criteria<sup>2</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

The evidence supports the director's finding that the petitioner meets this regulatory 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.*

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<sup>2</sup> We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts that she meets or for which the petitioner has submitted relevant and probative evidence.

The director determined that the petitioner had not established eligibility for this regulatory criterion. The petitioner submitted documentary evidence of her membership on the Olympic team representing [REDACTED] at the Olympic Games in [REDACTED]. In addition, the petitioner submitted documentation reflecting that she represented [REDACTED] at the [REDACTED]. On appeal, the petitioner asserts that her election to [REDACTED] Olympic team should be considered as comparable evidence for this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that her Olympic team membership is of the same caliber of evidence as that required by the regulation, and the director's determination on this issue will be withdrawn.<sup>3</sup> Accordingly, the petitioner has established that she meets this regulatory criterion.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The evidence supports the director's finding that the petitioner meets this regulatory criterion.

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.*

The director determined that the petitioner had not established eligibility for this criterion. The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original athletic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

The director found that the petitioner had not established that her contributions as a competitive runner were both original and of major significance in the field. On appeal, the petitioner asserts that the evidence she submitted for the membership criterion also meets this regulatory criterion. The petitioner's membership on teams representing Ethiopia in international competition was previously addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii). Evidence relating to or even meeting the membership criterion is not presumptive evidence that the petitioner also meets this criterion. The regulatory criteria are separate and distinct from one another. Because separate criteria exist for membership in associations requiring outstanding achievements and original contributions of major significance, USCIS clearly does not view the two as being interchangeable.

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<sup>3</sup> Although an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete can earn a place on a national or an Olympic team through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's membership on an Olympic team or a major national team such as a World Cup soccer team may serve as comparable evidence to meet this criterion as such teams are limited in the number of members and have a rigorous selection process.

To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

Regardless, there is no documentary evidence showing that the petitioner's membership on the [redacted] Olympic team in [redacted] and the national team at the [redacted] Championships has affected the field in a major way, has widely influenced other competitive runners, or otherwise constitutes original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's work has been unusually influential, has substantially impacted her sport, or has otherwise risen to the level of original contributions of major significance in the field, the petitioner has not established that she meets this regulatory criterion.

### B. Summary

The petitioner has submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

### C. Final Merits Determination

The next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20.

Regarding the documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(i), there is no evidence showing that the petitioner has received any nationally or internationally recognized prizes or awards for excellence as a competitive runner after 2009. In addition, with regard to the documentary evidence submitted for the criterion at 8 C.F.R. § 204.5(h)(ii), there is no evidence demonstrating that the petitioner has competed as a member of the [redacted] Olympic team subsequent to [redacted]. Lastly, with respect to the criterion at 8 C.F.R. § 204.5(h)(iii), the petitioner has not submitted any qualifying published material about herself in professional or major trade publications or other major media dated after [redacted]. The statute and regulations require the petitioner to demonstrate "sustained" national or international acclaim as an athlete. *See* Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The submitted evidence does not include documentation of any athletic achievements since 2009 that are commensurate with sustained national or international acclaim.

The petitioner submitted her biographical entry from *Wikipedia* (accessed on February 24, 2014), but the author of the material was not identified. Furthermore, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>4</sup> *See Lamilem Badasa v. Michael*

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<sup>4</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to

*Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, we assign little evidentiary weight to information for which *Wikipedia* is the source. Nevertheless, the 2014 information submitted from *Wikipedia* states that the petitioner's "last competitive outing" was in [REDACTED].

A review of the record does not reflect any [REDACTED] achievements from [REDACTED] until the Form I-140 was filed in March 2014 that are indicative of the petitioner's sustained national or international acclaim at the very top of her field. The submitted evidence, in the aggregate, is not sufficient to demonstrate the petitioner's sustained national or international acclaim in her sport. Again, we maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d at 145.

### III. CONCLUSION

Although the petitioner satisfied the initial evidence requirement of meeting three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the documentation submitted in support of the petition does not establish that the petitioner has demonstrated sustained national or international acclaim as a competitive runner. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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