



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

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

MATTER OF J-A-

DATE: JUNE 8, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an attorney, seeks to classify the Beneficiary, a karate coach, as an individual of extraordinary ability in athletics. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director, Texas Service Center, denied the petition. The Director concluded that the Petitioner satisfied only one of the evidentiary criteria in the regulations, of which the Beneficiary must meet at least three.

The matter is now before us on appeal. In his appeal, the Petitioner submits a reference letter and maintains that the Beneficiary meets at least three of the criteria.

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

I. LAW

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

- (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,

- (i) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (ii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The implementing 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 his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he or she must provide sufficient qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *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); *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 U.S. Citizenship and Immigration Services (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

In the initial filing, the Petitioner explained that he is an attorney who represents foreign nationals of extraordinary ability and that he would assist the Beneficiary, a karate coach, with future employment contracts. The Petitioner did not indicate, and the record does not establish, that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). He must therefore establish eligibility under at least three criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). According to the Petitioner, the Beneficiary meets the criteria relating to awards, membership, judging, contributions, and leading or critical role. 8 C.F.R. § 204.5(h)(3)(i),(ii),(iv), (v) and (viii). The Director accepted that the Beneficiary had performed as a judge of the work of others under 8 C.F.R. § 204.5(h)(3)(iv), but found that the Petitioner has not satisfied the remaining criteria. For the reasons discussed below, we reach the same conclusion.

(b)(6)

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A. Evidentiary Criteria<sup>1</sup>

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).*

As evidence under this criterion, the Petitioner relies on awards received by members of the team the Beneficiary has coached, noting that we have previously accepted team awards as qualifying. The regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the Beneficiary's "receipt" of a qualifying award. While we will credit named members of an awarded team with the honor, we will not presume a coach to be the recipient of his team's prizes. The record contains a letter from [REDACTED] General Secretary of the [REDACTED] listing the team's awards, and photographs of medals and athletes receiving awards. Also, [REDACTED] Assistant General Secretary, credits the Beneficiary with the team's medals because he has "played an integral part in winning each of these medals."

While [REDACTED] affirms the Beneficiary's contribution to the team's victories, he does not suggest the Beneficiary is a named recipient of the awards. The record contains no award certificates issued to the Beneficiary or media reports listing him as a winner of any competition. For this reason, the Petitioner has not satisfied the plain language requirements for this criterion. Rather, as the Petitioner notes on appeal, awards received by a coach's athletes are more relevant as comparable evidence of the coach's contributions in the field under 8 C.F.R. § 204.5(h)(3)(v), and we will discuss them below under that 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. § 204.5(h)(3)(ii).*

Initially, the Petitioner relied on the Beneficiary's role as head coach for the [REDACTED] and now bases eligibility on that role and membership in the [REDACTED]. [REDACTED] affirms that "the [REDACTED] has the highest standards in the nation when selecting any of its members, be it the coaches, medical staff members or players." In response to the Director's request for the constitution or bylaws for the associations of which the Beneficiary is a member, the Petitioner maintained that as the Head Coach of the [REDACTED] the Beneficiary is both a member of that team and the [REDACTED]. [REDACTED] corroborates this information and explains that the head coach "must not only have a strong background competing in the sport, but also have extensive experience as a coach." The Director focused on the plural language in the regulation at 8 C.F.R. § 204.5(h)(3)(ii) and concluded that the record did not show that the [REDACTED] requires outstanding achievements of its members.

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<sup>1</sup> We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

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On appeal, the Petitioner reiterates that the [REDACTED] is a separate membership from the [REDACTED] and offers a new letter addressing the membership requirements for the federation. In his new letter, [REDACTED] states that the [REDACTED] “limits its members to the most accomplished and talented karate experts in the country, and consequently, admission criteria are very stringent.” Next, he explains that “a panel of lifelong karate administrators, former athletes, former coaches and championship winners” select coaches for the [REDACTED] and members of the [REDACTED]

While we do not find the use of the plural in the regulation to be determinative, we agree with the Director that the record does not document a qualifying membership. The Beneficiary’s role as a coach for the [REDACTED] is a job position rather than a membership in an association. We will consider the nature of his role for that team below under the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). While [REDACTED] characterizes the admission requirements for membership in the [REDACTED] as “stringent,” he does not detail those requirements. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.D.C. 1990). As the record lacks the constitution or bylaws of the federation as requested or other objective documentation regarding membership requirements, the Petitioner has not established that it admits members based on outstanding achievements. Accordingly, the Petitioner has not satisfied the plain language requirements of this criterion.

*Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv).

[REDACTED] confirms that the Beneficiary “has served for many years as a [REDACTED] on behalf of the [REDACTED] in its official [REDACTED].” The Director found that, in this role, the Beneficiary participated as a judge of the work of others and the record supports that conclusion. Based on these duties, the Beneficiary meets this criterion.

*Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

The achievements of the Beneficiary’s athletes are properly considered under this criterion as comparable evidence under 8 C.F.R. § 204.5(h)(4).<sup>2</sup> Specifically, as the Petitioner notes on appeal, the Adjudicator’s Field Manual explains that Olympic medals won by a coach’s athletes while primarily under that coach’s tutelage can serve as comparable evidence under this criterion. See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM)* 12 (Dec. 22, 2010), <http://www.uscis.gov/laws/policy-memoranda>. [REDACTED] lists several awards won by athletes on the [REDACTED] none of which are Olympic medals. In a personal

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<sup>2</sup> This provision allows the submission of comparable evidence where the above standards at 8 C.F.R. § 204.5(h)(3) do not readily apply to a beneficiary’s occupation.

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statement dated October 16, 2003, the Beneficiary affirmed that he has served as “the Head Coach of the [REDACTED] [REDACTED] and [REDACTED] offer similar information. The record, however, contains a September 23, 2012, article posted on [REDACTED] identifying [REDACTED] as the coach and quoting his reaction to the team’s results. The item does not name the Beneficiary. The record contains no equivalent material crediting the Beneficiary with the national team’s successes or letters from athletes confirming that they were primarily under the Beneficiary’s tutelage when they achieved their victories. Given that the Petitioner has not established the Beneficiary’s role for the athletes that won the named awards, he has not shown that the Beneficiary meets this criterion through comparable evidence.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).*

While we acknowledge the letters describing the Beneficiary’s role as Head Coach for the [REDACTED] [REDACTED] the record does not consistently demonstrate that the Beneficiary played a leading or critical role for this team or the [REDACTED] which administers the team. The letters from [REDACTED] and [REDACTED] both affirm that the Beneficiary is the Head Coach for the [REDACTED] [REDACTED] initially attested broadly to the Beneficiary’s contributions to the team and “crucial role” selecting members of the team. [REDACTED] characterized the Beneficiary’s role as “integral” and “crucial.” On appeal, [REDACTED] concludes that the Beneficiary holds “the ultimate leadership position on the team.” According to [REDACTED] the Beneficiary “makes all of the team’s tactical decisions, has the final say in all the fitness regimens, decides which competitors will partake in each match, and oversees the team’s training.” Yet, [REDACTED] has listed his own title as the [REDACTED] [REDACTED], responsible for the “training and preparation of athletes for domestic and international tournaments.” Reporting on the results of the [REDACTED] and [REDACTED] [REDACTED] at the [REDACTED] [REDACTED] in 2012, the article posted on peninsulaqatar.com identifies [REDACTED] title as [REDACTED] and quotes his reaction to the victories.

The above information does not show that the Beneficiary fulfills the regulatory requirements for this criterion. A leading role should be apparent by its position in the organizational hierarchy and the role’s matching duties. A critical role is evident from its overall impact on the organization or establishment. Given all of the information above, it is clear that there are multiple coaches for the national team. The Petitioner has not offered a list of all the coaches and explained how they all fit in the overall hierarchy of the team and the [REDACTED] [REDACTED]. The record also does not resolve how many individuals served on the jury selecting team members and where the Beneficiary fit within that group. None of the references discuss how the Beneficiary’s selection as a coach for the [REDACTED] impacted the results of its members, such as whether they increased their victories in international competitions. For these reasons, the Petitioner has not met his burden of demonstrating the Beneficiary’s eligibility under this criterion.

B. Summary

As explained above, the exhibits the Petitioner provided satisfy only one of the regulatory criteria. As a result, the Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

III. CONCLUSION

Had the Petitioner satisfied at least three evidentiary categories, the next step would be a final merits determination that considers all of the filings 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 field of endeavor,” and (2) that the individual “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20 (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). Although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

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.

Cite as *Matter of J-A-*, ID# 17312 (AAO June 8, 2016)