MATTER OF A-R-

DATE: NOV. 7, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a competitive ice skater, seeks classification 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, Nebraska Service Center, denied the petition. The Director concluded that the Petitioner met only one of the regulatory criteria, of which a petitioner must satisfy at least three.

The matter is now before us on appeal. In his appeal, the Petitioner maintains that the Director erred in his application of the regulatory criteria. We issued a request for additional evidence (RFE) to supplement the record. In response, the Petitioner presents new information about the scoring system for ice skating competitions.

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,

(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.

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

The Director concluded the evidence of record only related to the awards and published material criteria under 8 C.F.R. § 204.5(h)(3)(i) and (iii) and that the Petitioner meets the awards criterion. With respect to the published material, the Director determined that the Petitioner did not comply with the regulatory requirements because the translations were not complete and he did not offer distribution or circulation data for any of the publications in which the articles appeared.

On appeal, the Petitioner submits a cover letter addressing the criteria. The Petitioner affirms that he had documented several one-time achievements,[1] lesser nationally or internationally recognized awards,[2] the display of his work at artistic exhibitions or showcases,[3] and published material about himself.[4] More specifically, he maintains that his awards are evidence of the display of his ice

[1] 8 C.F.R. § 204.5(h)(3).
[2] 8 C.F.R. § 204.5(h)(3)(i).
[3] 8 C.F.R. § 204.5(h)(3)(vii).
[4] 8 C.F.R. § 204.5(h)(3)(iii).

skating. He also affirms that he supplied translations of the "relevant and highlighted parts" of the articles, which appeared in "major publications." In the alternative, he argues that the published pieces should be considered as comparable evidence under 8 C.F.R. § 204.5(h)(4).

In our RFE, we accepted that the Petitioner has received lesser nationally or internationally recognized awards and was a member of two national teams, thereby meeting the membership criterion.[5] We then requested additional evidence pertaining to a third criterion. In response, the Petitioner supplies material addressing the scoring of ice skating competitions and contends that the Beneficiary's participation on an team not only meets the membership criterion, but also the leading or critical role criterion. For the reasons discussed below, the Petitioner has not met his burden of presenting the necessary evidence to show that he meets a third criterion.

A. Evidentiary Criteria

One-time achievement, specifically a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3).

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which a foreign national must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public, and includes a large cash prize. While an internationally recognized award could constitute a one-time achievement without meeting all of those elements, it is clear from Congress' example that the award must be internationally recognized as one of the top awards in the foreign national's field.

While we acknowledged in our RFE that the Petitioner competed at two the record contained no evidence he had received an medal. We requested that the Petitioner identify each award that qualifies for this criterion and document the award's significance in the field through media attention or similar corroboration. In response, the Petitioner no longer maintains that he has a one-time achievement. Upon review of the record, we find that the Petitioner has not established that either of the international competitions where he finished in the top three are internationally recognized in the field as one of the top awards for ice skating.

[5] 8 C.F.R. § 204.5(h)(3)(ii).

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).

The Petitioner received first through third place from the at the event and third place at the competition in Italy. His competition results allowed him to represent at two in and The Director found that the Petitioner meets this criterion and the record supports that determination.

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).

In our RFE we noted that the Petitioner has competed in the in and We then found that the Petitioner's membership on a national team served to meet this criterion.

Published materials 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. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner initially supplied several articles. The translations expressly state that they are for "excerpts" and are significantly shorter than the foreign language items. The regulation at 8 C.F.R. § 103.2(b)(3) requires that the translator certify that the translations are complete. In addition, the Petitioner did not offer any data pertaining to the circulation or distribution of publications in which the materials appeared. Accordingly, the Director concluded that the translations were not in compliance with the regulation at 8 C.F.R. § 103.2(b)(3) and that the Petitioner had not established that the articles appeared in professional or major trade journals or other major media as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner maintains that the translations were sufficient because they covered the "relevant and highlighted parts" of the articles. The Petitioner further affirms that two of the publications were major media, but offers no exhibits in support of that statement. In the alternative, the Petitioner asks that the materials be considered comparable evidence under 8 C.F.R. § 204.5(h)(4).

In our RFE, we noted that with respect to comparable evidence, the Petitioner can only rely on this provision if the published material criterion does not readily apply to figure skaters, something the Petitioner has not advanced or documented. Next, we explained that items that are non-compliant with regulatory production requirements, specifically published materials that are not accompanied by complete translations and are not supported by distribution or circulation data for the publications, are not comparable to those that are. Accordingly, the RFE requested complete certified translations of each article and official or other reliable circulation or distribution data for

the publications in which the articles appeared. In his response, the Petitioner no longer indicates that he meets this criterion either directly or through the submission of comparable evidence.

Without complete translations of the articles, the Petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(3). In addition, the brief excerpts do not meet the Petitioner's burden of establishing that the articles are "about" the Petitioner as required by 8 C.F.R. § 204.5(h)(3)(iii). Further, the contention in the appellate brief that these materials appeared in major media is insufficient without documentary corroboration. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Finally, as noted in the RFE, the Petitioner has not properly advanced a position that these exhibits constitute comparable evidence by explaining how the criterion is not applicable to the Petitioner's occupation and how these excerpts in media of undocumented circulation are comparable to published material about an individual in professional, major trade journals, or other major media. For all of the above reasons, the Petitioner has not satisfied this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

On appeal, the Petitioner maintains that his awards not only meet the awards criterion, but also confirm that he has displayed his work at artistic exhibitions or showcases. In our RFE, we concluded that the Petitioner had not established that an athletic competition is a qualifying event under 8 C.F.R. § 204.5(h)(3)(vii). We requested evidence of the artistic nature of his displays. We noted that while athletic competitions are not artistic, other ice skating exhibitions, such as ' may be. In response, the Petitioner does not document that he displayed his skills other than when competing. Rather, the Petitioner contends that the artistic elements on which figure skaters are scored in competition demonstrate that those competitions are artistic exhibitions or showcases. The Petitioner offers a sports briefing from the noting that the new scoring system the approved in 2004 "is based on points for jumps, spins, footwork and artistic elements." The Petitioner also relies on the book chapter entitled by and an article in

At issue is the nature of the event where the skating is displayed, and not simply the display itself. Specifically, the criterion seeks evidence that the display occurs "at artistic exhibitions or showcases." Thus, the fact that the ISU includes artistic elements in the scoring, as reported in the does not transform what is essentially an athletic event into an artistic exhibition or showcase. equates the question of whether skating is an art or a sport with whether it is "for girls or boys, so gender-coded are these two categories in popular culture." The portion of the chapter the Petitioner presents discusses the evolution of scoring and concludes that "the requirement that skaters develop two sets of skills – athletic and aesthetic – remains." continues that the artistic element required of skaters is "what puts figure skating outside of the bounds of normative masculine behavior." Ultimately, the chapter focuses more on whether figure

skating is masculine than whether scored competitions at athletic venues are artistic exhibitions. The journal article in reports the results of a study with artistic roller and figure skaters as to whether self-concept, body-concept, and daily mood correlate with the ability to transfer success during training to results in competition. The article characterizes the subjects as "athletes" and those "in top level of competitive sports." Ultimately, while using the adjective "artistic" to characterize the nature of the skating, it does not suggest that athletic figure skating competitions are artistic exhibitions or showcases.

The Petitioner did not provide evidence that he has displayed his talent at exhibitions or showcases other than sports competitions. In addition, we reaffirm our position that sports competitions are not artistic exhibitions or showcases. While we do not question that competing successfully is relevant, probative information for eligibility, and acknowledge that some materials may be relevant to more than one criterion, the Petitioner's position that his awards create a presumption of meeting the display criterion effectively merges two criteria for athletes in any sport with artistic elements. This interpretation essentially allows a figure skater, for example, to meet two criteria through successful competition alone. That position is not consistent with the statutory requirement for extensive evidence.[6]

> *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).

In general, a leading role is evident from the role, its duties, and how it fits within the overall hierarchy of the organization. A critical role is apparent from a petitioner's impact on the entity. The Petitioner now maintains that his participation on an team not only meets the membership criterion, but also the leading or critical role criterion. The Petitioner does not elaborate on this contention or submit new evidence relating to it. As a general matter, we do not question the distinguished reputation of a national team. The competitive nature of the selection process for such a team is relevant to the membership criterion, which we find the Petitioner meets. Once again, however, the Petitioner's position is that meeting one criterion presumes meeting a second one, which is at odds with the statutory requirement for extensive evidence, although, again, exhibits can certainly relate to more than one criterion. The Petitioner does not explain why participating at the without more, demonstrates not only membership on a competitive national team, but also the leading or critical nature of his role for that team.

general secretary of the confirms that the Beneficiary has been a member of the since 2007, is rated second nationally, and has represented in two and four does not explain how the Petitioner fits within the hierarchy of the team other than his ranking among skaters. He also does not discuss the Petitioner's impact on the team.[7] and two skating coaches, attest in near

[6] Section 203(b)(1)(A)(i) of the Act.

[7] sent the same two skaters to the in both and The Petitioner's teammate finished

identical language that the Petitioner is an "amazing ambassador of the figure skating team for over ten years" and "represents himself, as well as host country[,] with the utmost dignity, class, and respect for the sport." Merely repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). As the Petitioner has not provided specific information as to how he fit within the hierarchy of the entire team or his impact on the team, he has not met his burden of proof to establish that his role was either leading or critical.

B. Summary

As explained above, the exhibits the Petitioner provided satisfy only two 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 criteria, 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 brief review of the record in its entirety confirms that the Petitioner is a talented skater who has successfully competed internationally at events of undocumented significance and twice participated in the While notable, the Petitioner has not met his burden of presenting the required initial evidence to show that his achievements are sufficient to meet the regulatory requirements of the classification sought.

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.

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higher than the Petitioner both years, receiving a bronze in

ORDER: The appeal is dismissed.

Cite as *Matter of A-R-*, ID# 73991 (AAO Nov. 7, 2016)