



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

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

MATTER OF L-S-

DATE: AUG. 24, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a gymnastics coach, seeks classification as an alien of extraordinary ability. *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 of the Texas Service Center denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is one of that small percentage of gymnastics coaches at the very top of the field.

On appeal, the Petitioner submits additional evidence and asserts that she meets the requirements of an additional evidentiary criterion in addition to the three that the Director found that she meets. The Petitioner also asserts that the Director conducted the final merits determination incorrectly, and that the totality of the evidence in the record establishes her national and international acclaim.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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 that 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), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Director found that the Petitioner meets three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)(x), those relating to service as a judge of the work of others, published materials about her, and authorship of scholarly articles. But he discounted the documentary evidence relating to the Petitioner’s career as a gymnast in his analysis of both the evidentiary criteria and the final merits determination. We disagree with the Director’s analysis on this issue, and will instead evaluate all evidence relating to the Petitioner’s gymnastics achievements as both an athlete and a coach.¹

¹ We note that the U.S. Citizenship and Immigration Services Adjudicator’s Field Manual (AFM) provides:

In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary’s area of expertise.

AFM chapter 22.22(i)(1)(C) (Emphasis in original)

On appeal, the Petitioner asserts that in addition to the criteria which the Director determined she met, she also meets the criterion for original athletic contributions of major significance, and that the record establishes her sustained national and international acclaim in her field. We have reviewed all of the evidence in the record of proceedings, and while the Petitioner has submitted the required initial evidence for at least three evidentiary criteria, it does not support a finding that the Petitioner has sustained national or international acclaim in gymnastics, or is one of the small percentage at the top of her field.

A. Evidentiary Criteria

Documentation of the individual'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 Director acknowledged the evidence of the Petitioner's awards received at national and international tournaments, but declined to consider these since the Petitioner is petitioning as a gymnastics coach. The record includes certificates and other evidence which establish that, as a gymnast, she participated in prestigious international gymnastics tournaments, including the 1991 and 1992 [REDACTED] contributing towards the Chinese women's team's fourth-place finish and finishing in tenth place individually at the 1991 event. The two certificates relating to the 1991 championships were presented for her individual participation, as well as the participation of the fourth place team of which she was a member. The Petitioner also submitted a certificate of participation in the 1992 [REDACTED] in [REDACTED]² However, neither a ranking nor acknowledgment of participation in an athletic tournament can be considered to be an award, as the record indicates that medals were awarded for only the top three finishers (or more in the case of a tie.)

The Petitioner also submitted evidence of awards she received at lesser international and national competitions, including second place in the women's all-around and uneven bar events at the 1991 [REDACTED] second place in the women's beam final at the 1991 [REDACTED] and first place in the uneven bars at the 1991 [REDACTED]. Based upon this evidence, we disagree with the Director's decision and find that the Petitioner meets this criterion.

Documentation of the individual'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)

² However, we note that an article in the record published in [REDACTED] indicates that the Petitioner did not attend or participate in the 1992 [REDACTED] due to injury. In addition, the record lacks evidence of her performance in gymnastics events at the 1992 [REDACTED]

The Director noted the Petitioner's submission of a certificate evidencing her membership on the Chinese women's national gymnastics team, but did not consider that evidence under this criterion based upon her claim as a gymnastics coach of extraordinary ability. After review, we disagree, and find that this evidence, together with the evidence demonstrating her participation at the 1991 and 1992 [REDACTED] establishes that the Petitioner meets this criterion.

Published material about the individual 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)

Four media articles were submitted under this criterion, all but one of which is about the Petitioner and her work in the field of gymnastics. One article, titled [REDACTED] discusses the number of local athletes at the upcoming and past [REDACTED] and mentions the Petitioner as one of four athletes from [REDACTED] province in China who will compete in [REDACTED]. However, although she is referenced, the article is not about the petitioner and does not meet this regulatory criterion. See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

An article, [REDACTED] is dated July 8, 1992, and describes the Petitioner, her career as a gymnast, and her preparations for the 1992 [REDACTED]. The evidence indicates that it was published in [REDACTED] a newspaper circulated in [REDACTED] province in China.

Another article is titled [REDACTED]. While the body of this article is about the Petitioner and her work as a gymnast, the record does not include information about the publication in which it appeared, nor does it indicate the date of the publication, and so does not meet the requirements of this criterion.

The most recent published material is dated March 24, 2008, and was published in [REDACTED], a free magazine produced by [REDACTED]. This article discusses the Petitioner's career as both a gymnast and a coach. However, the evidence does not include information about the circulation or distribution of [REDACTED], and therefore does not establish whether it qualifies as major media. In addition, the Petitioner has not established that the target audience of television viewers establishes the magazine as a professional or major trade publication.

Based only upon the second article discussed above, and the evidence regarding the circulation of [REDACTED] we agree with the Director that the Petitioner meets this criterion.

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

The Petitioner submitted a certificate which indicates that she was named as a [REDACTED] of the People's Republic of China, and another which states that she was given the title of [REDACTED] at the [REDACTED]. The record does not include further evidence pertaining to this certificate or event, or the basis upon which the Petitioner received this award.

While the Petitioner asserted in her petition brief that she received it due to her "professional performance as a gymnastics referee" during this meeting, she does not explain the duties of a gymnastics referee, whether this "meeting" was in fact a gymnastics tournament, the criteria for receiving this award, or the meaning of the term [REDACTED]. The Petitioner appears to have a qualification as a referee, but the evidence does not establish that she has acted in this capacity at a gymnastics tournament or has otherwise served as a judge of the work of others in the field of gymnastics or an allied field. Accordingly, we disagree with the Director and find that she does not meet this criterion.

Evidence of the individual'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)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. In his decision, the Director held that the evidence did not establish the major significance of the Petitioner's original contributions, but did not identify what those original contributions were or specifically how the evidence was deficient in demonstrating their significance to the field. On appeal, the Petitioner references three areas that were identified by the Director in his Request for Evidence as her contributions to the field of gymnastics: preventing injuries in gymnastics training, improving gymnastics coaching management, and training top level gymnasts.

The Petitioner's claim that she contributed to the prevention of injuries in gymnastics training is based upon her authorship of a paper while a coach at [REDACTED] in [REDACTED] China. The paper is titled [REDACTED] and the evidence indicates that it was accepted for publishing in [REDACTED] in October 2014, although the record does not include evidence of its actual publication. The article focuses on four causes of injury in gymnastics: non-standard movements, lack of consciousness of self-protection, insufficient warm-up, and physical overload. However, it does not propose specific methods for avoiding injuries arising from these causes. For example, the Petitioner suggests in her article that "we should develop targeted warming-up exercises," but does

not describe a specific regimen of exercises that should be implemented. Thus, the record does not establish that the Petitioner's article represents an original contribution.

Even if we found the Petitioner's publication made an original contribution, the record does not establish it has been of major significance to the field. A letter from [REDACTED] coach of the Chinese women's gymnastics team, refers to this paper and states that "method of full warm-up to reduce the sports injuries coach [REDACTED] mentioned in the article makes a big difference in gymnastics training, we proceed the method [sic] in the national team training." However, [REDACTED] does not describe any specific changes made to the Chinese national team's training program, such as any changes to the amount of time athletes spend warming up before training, or specific exercises performed.

[REDACTED] the owner of [REDACTED] in California, also discusses this article in his letter, and states that the Petitioner's methodology is "a very significant and revolutionary contribution to the field of gymnastics coaching" and has been applied in his gym. But like [REDACTED] does not describe specific ways in which he or other gymnastics coaches and gym owners have already altered their existing warm-up routines for gymnasts training under their guidance based upon the Petitioner's paper. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, 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).

Similarly, the Petitioner bases her claim to having made an original contribution to gymnastics coaching management upon another paper she authored, [REDACTED] which was accepted for publication in [REDACTED]. This article focuses on the state of gymnastics coaching in China, and suggests ways to improve the number and competency of coaches there. [REDACTED] writes that he agrees with many of the principles put forth by the Petitioner in this article, but does not indicate that it has affected the way that gymnastics coaches for the national team, or in China overall, are recruited and trained. [REDACTED] also indicates that he agrees with the Petitioner's ideas to provide incentives to coaches to improve their skills, and that he plans to apply this idea at his gym with the Petitioner's assistance. He does not provide information about any of the Petitioner's ideas that he might have already implemented, or explain how proposals developed specifically based upon conditions in China would apply to his gym or others in the United States and elsewhere.

The record also includes letters from two gymnasts who were trained in the early part of their careers by the Petitioner. [REDACTED] states that she competed with the Chinese national women's gymnastics team from 2007 until at least 2012, and that the Petitioner was her first coach before she moved on to the provincial team. [REDACTED] states that the Petitioner helped her to improve her

basic skills and corrected bad habits, and that the Petitioner emphasized exercises to prevent injuries. A second letter was submitted from [REDACTED] who had success in regional and national competitions after having been coached by the Petitioner in her early gymnastics career. While both women state that the Petitioner was an excellent coach and helped them at the beginning of their careers, neither indicates that the Petitioner made specific contributions that helped them achieve success years later at the national and international level. Nor does this evidence suggest that by coaching these gymnasts at the early stages of their careers, the Petitioner made an athletic contribution that had a major impact on the field of gymnastics in China or at the international level.

For all of the reasons stated above, we agree with the Director and do not find that the Petitioner meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

As previously noted, the Petitioner submitted evidence of having authored two papers while at [REDACTED] both of which were accepted for publication by professional sports journals in 2014. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires that the articles have been published. While the Petitioner has provided notices that indicate her articles have been adopted by journals, the record lacks evidence of their actual publication. Accordingly, we disagree with the Director and find that the preponderance of the evidence does not establish that these papers were published in professional or major trade publications or other major media.

B. Final Merits Determination

The Petitioner has submitted the requisite initial evidence, having provided documentation that she meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) as a gymnast. In a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. Here, the Petitioner has not offered sufficient evidence that she meets that standard.

We first note that much of the evidence in the record pertains to the Petitioner's career as a gymnast, which ended approximately twenty-four years prior to the filing of this petition. This includes the evidence of awards she received at national and international gymnastics tournaments, as well as media coverage of her expected participation in the 1992 [REDACTED] as a member of the Chinese women's gymnastics team. While this evidence establishes her national or international acclaim in the field at that time, the Act and implementing regulations require that an individual demonstrate *sustained* acclaim in order to qualify for an immigrant visa under this highly selective classification. The record does not establish that the single article published in [REDACTED] 16 years later, which provided a retrospective look at her athletic career, was widely circulated within

the field of gymnastics or to the general public, and it is insufficient to demonstrate that the Petitioner sustained her previous level of acclaim as an athlete after 1992.

After retiring as an athlete, the Petitioner's resume indicates that she began her gymnastics coaching career in 2000, then served in administrative positions from 2007 to 2011, when she resumed coaching. The evidence relating to her coaching career includes two papers she wrote, letters from two of her former trainees who went on to have success at the national and international level, letters from two prominent gymnastics coaches, and the article published in [REDACTED]. This evidence does not demonstrate that the Petitioner has received national or international acclaim while serving as a gymnastics coach. As previously noted, the 2008 article primarily provides a retrospective of her career as a gymnast, touching only briefly on her coaching career at that point. In addition, the letters from her former trainees indicate that the Petitioner provided a solid foundation for those gymnasts to excel later in their careers, but not that she helped them hone their advanced skills to the elite level required for success at the national or international level. The record shows that the Petitioner has coached at the [REDACTED] for most of her career, while her most successful students moved on to be coached by others at the provincial and national level. We also note that the evidence related to her coaching career pertains to her earliest years; to the extent that she successfully prepared young gymnasts for later success prior to 2009, the record does not demonstrate that the Petitioner has built upon this achievement to reach the very top of her field as a coach.

The Petitioner has established that she enjoyed international acclaim in her field through her early success as an athlete, but that acclaim cannot be considered to be recent. AFM ch. 22.2(i)(1)(C). Further, she has not achieved acclaim in her field at the national or international level as a coach since beginning that chapter in her career more than fifteen years prior to the filing of her petition. Accordingly, since the Petitioner has not established her extraordinary ability under section 203(b)(1)(A)(i) of the Act as either a gymnast or a coach, we need not determine whether she is coming to "continue work in the area of extraordinary ability under section 203(b)(1)(a)(ii).

III. CONCLUSION

In summary, the evidence demonstrates that the Petitioner meets the initial evidence requirements by qualifying under three of the ten evidentiary criteria. However, it does not establish that she has garnered sustained national or international acclaim, or that she is one of the small percentage at the very top of her field of endeavor. We find that the record as a whole does not reflect extensive documentation showing that the Petitioner's achievements have been recognized in the field.

ORDER: The appeal is dismissed.

Cite as *Matter of L-S-*, ID# 1445321 (AAO Aug. 24, 2018)