



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

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

MATTER OF G-A-

DATE: FEB. 13, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a professional swimmer, 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 of the Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner met at least three of the ten initial evidence requirements.

On appeal, the Petitioner submits a brief, asserting that he meets the necessary criteria and has shown his eligibility for the classification.

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

I. LAW

Section 203(b)(1)(A) of the Act describes qualified immigrants for this classification as follows:

- (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 two options for satisfying this classification's initial evidence

requirements. First, a petitioner can demonstrate a one-time achievement that is a major, internationally recognized award. Alternatively, he or she must provide 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).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).¹ This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a professional swimmer. Because he has not indicated or established that he has received a major, internationally recognized award, to meet the initial evidence requirements, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what it claims is “more likely than not” or “probably” true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm’r 1989). Here, we have reviewed all of the evidence in the record, and conclude that it does not support a finding that the Petitioner satisfies at least three criteria.²

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 submitted evidence in form of photographs and official statistics indicating that he won numerous medals in the [REDACTED] and [REDACTED]. The Director determined that he satisfied this criterion, and we concur with that determination.

¹ This case discusses 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).

² We will discuss those criteria the Petitioner has raised and for which the record contains relevant evidence.

Matter of G-A-

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).

The Petitioner demonstrated that he was a member of the [REDACTED] on multiple occasions, as well as a member of the [REDACTED] swim team. He has therefore satisfied this 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. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted an article that appeared on [REDACTED] a Lithuanian website. The regulation requires not only the title, date, and any necessary translation of the evidence, but it also requires the author of the material. *See* 8 C.F.R. § 204.5(h)(3)(iii). The translation does not contain the author of the article and consequently will not satisfy the plain language requirements of this regulatory criterion. Moreover, while he provided the website's "Traffic Statistics," which show it is ranked number [REDACTED] in Lithuania, the Petitioner has not offered sufficient evidence demonstrating that this website constitutes a professional or major trade publication or other major media.

The record also contains what appears to be an announcement by [REDACTED]. The nature of the submitted document is unclear, as it only indicates that it was "posted" on "August 14." There is no website address or other link demonstrating the manner in which this material was published or circulated. Assuming this material was published on [REDACTED] website, the mere act of posting an article online does not transform what is otherwise a local college newspaper article into major media. Even if the record contained sufficient evidence demonstrating that [REDACTED] published the material, the record does not establish that this site qualifies as major media. Finally, the article does not include the identity of the author. In light of the above, the Petitioner has not satisfied this criterion.

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).

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

The Petitioner claimed that he won many medals and scored many points for both the [REDACTED] swim team and the [REDACTED]. He further claimed that he was critical to [REDACTED] relay efforts, noting that the results of relays earn more points in competitions than those earned for individual finishes. As such, he claims that his contributions as a relay finisher and individual swimmer demonstrate that he has performed in a leading and critical role for both teams.

The Petitioner submitted a letter from [REDACTED] Head Coach of the [REDACTED] swim team and former assistant coach for [REDACTED] claims that the Petitioner played a leading and critical role for [REDACTED] “by scoring numerous points throughout the season, using his experience in major events to help inexperienced teammates prepare mentally and physically for major competitions, dominating the [REDACTED] and finishing amongst the best in the country at the [REDACTED]. He further claimed that the Petitioner’s role was more critical and leading than that of his teammates due to his “global swimming experience.”

He also submitted a letter from [REDACTED] President of the [REDACTED] [REDACTED] stated that the Petitioner played a leading and critical role for the team “because he won several medals and scored numerous valuable points for [REDACTED] at prestigious international competitions. He further claimed that the Petitioner’s role was more leading and critical than other team members “because he holds multiple [REDACTED] and because he is a consistent point scorer for the team.” In [REDACTED] second letter, he further states that he played a key role in the team by “introducing the team to [a] new weight room and dry land techniques he learned in the [REDACTED].”

While both [REDACTED] and [REDACTED] assertions are noted, their letters fall short of providing probative information that specifically addresses how the Petitioner’s role was critical for the teams. We cannot presume that he performed in a leading or critical role based simply on his team participation and because he possessed “global swimming experience,” as [REDACTED] claims, or because he was a “consistent point scorer” according to [REDACTED]. Moreover, while the addition of a new weight room is a benefit to the team, it is not indicative of a leading or critical role as contemplated by the regulation.

A letter from [REDACTED] Head Coach of the [REDACTED] team, claimed that he specifically recruited the Petitioner to swim relay, because he was one of the world’s fastest relay swimmers. He corroborates the Petitioner’s claim that relay points are more valuable in competitions than those earned in individual events, and concludes that his relay participation rendered him more critical to the team than his other teammates. [REDACTED] however, does not address how the Petitioner’s role differentiated him from the numerous other team members who presumably also scored points for the team in various competitions, including those who swam in relay events. In fact, [REDACTED] claimed that “*the best four [REDACTED] team members* are selected to swim relay.” (Emphasis added). It is unclear how the Petitioner’s individual role in a four-person relay event, composed of the four best swimmers on the team, is more leading and critical than the roles undoubtedly shared by his three fellow relay teammates.

Despite the letters from coaches of the [REDACTED] swim team, neither attest to the importance of the Petitioner’s role beyond the earning of points, nor do they explain how his competitive results impacted the team’s standing in the sport. While the coaches praised his relay abilities and his ability to earn valuable points for the team, they did not show that the [REDACTED] swim team garnered attention based on his top finishes at national or international swimming competitions in relays or individual events. Similarly, despite the submission of a letter from the President of the [REDACTED]

Matter of G-A-

there is no letter from the coach of the attesting that the team earned attention based on the Petitioner's medals and accrued points at various competitions.

Finally, the Petitioner has not demonstrated that the organizations have a distinguished reputation. With respect to the team, the Petitioner has submitted no objective, independent documentation to corroborate his claims that it possesses a distinguished reputation.

Regarding the team, the Petitioner submitted a letter from High Performance Director of the who states that the team "is a distinguished and selective team because it belongs to . However, mere membership in the does not automatically indicate a team has a distinguished reputation. No independent documentation establishing that the team's reputation is distinguished was submitted. The Petitioner has not demonstrated that this team enjoys a distinguished reputation independent of the university.

The Petitioner has not established that he performed in a leading or a critical role for either team, as required by the regulation. He also provides insufficient evidence to establish any of the above named teams enjoy a distinguished reputation. As a result, the Petitioner has not established that he meets this criterion.

III. CONCLUSION

The Petitioner is not eligible for the classification because he 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). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of G-A-*, ID# 873722 (AAO Feb. 13, 2018)