



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

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

MATTER OF M-N-

DATE: JAN. 24, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a judo wrestler, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that the Beneficiary met any of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that she meets three criteria.

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 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 of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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) (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). 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 initially indicated that she is a freestyle judo, sambo, and jiu-jitsu wrestler and coach. In response to the Director’s request for evidence, the Petitioner stated that she “‘applied as a ‘judo wrestler,’ NOT as a wrestling coach.” In the appeal brief, the Petitioner contends that the Director’s decision primarily focused on her position as a coach, and she requests that we consider her area of expertise as a judo wrestler. Accordingly, our decision will evaluate the Petitioner’s expertise as a judo wrestler. As the Petitioner has not established that she has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner had not satisfied any of these criteria. On appeal, the Petitioner asserts that she meets the following criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), and published material at 8 C.F.R. § 204.5(h)(3)(iii).¹ For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

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 indicating that she won a gold, silver, and bronze medal at the [REDACTED] a gold medal at the [REDACTED] and a gold and bronze medal in [REDACTED]

¹ While the Petitioner previously claimed eligibility for the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), she does not continue to do so on appeal, nor does the record support a finding that she meets them. Accordingly, we will not further address these criteria in our decision.

among numerous other awards in judo, sambo, and jiu-jitsu competitions. She also provided media coverage of the competitions indicating that the awards are nationally recognized in her sport. Accordingly, the Petitioner has established that she meets this 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).

The Petitioner asserts that she meets this criterion due to her membership in the women's judo team, the women's jiu-jitsu team, and her role as an assistant coach of the sport club. The record does not support a finding that these organizations require outstanding achievements of their members. The evidence includes two letters from the head coach of the women's judo team, who indicates that she selected the Petitioner for the "because of the outstanding achievements she reached" and that she believed the Petitioner "would contribute to the Judo Team." further contends that she only selects candidates who have produced "major national and international victories," but she does not offer specific examples. The Petitioner also submits a letter from her jiu-jitsu coach, who indicates that the Petitioner represented in the in 2011, 2013, and 2014, but does not detail the criteria for her selection. As the Petitioner has not offered sufficient evidence of the selection process for the women's judo and jiu-jitsu teams, she has not demonstrated that they require outstanding achievements of their members.

The Petitioner states that she is relying on *Matter of K-S-Y-* (AAO, March 9, 2016), which she refers to as a precedent decision. First, this decision was not published as a precedent and therefore does not bind U.S. Citizenship and Immigration Services officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Second, the cited matter is distinguishable from the facts here. In the cited matter, the record demonstrated that the petitioner competed in selection matches to determine who would be on the national team. Additionally, the evidence indicated that "only those with the highest level of performance" made the which had the third highest number of medals in judo of any other country. Here, the evidence does not show the judo or jiu-jitsu teams' ranking compared to other countries or the specific level of achievement required for becoming a member of these national teams. Therefore, the record does not sufficiently establish that the judo and jiu-jitsu teams require outstanding achievements of its members as a prerequisite for joining the teams.

also claims that the Petitioner meets this criterion through having been an assistant coach and referee for the renowned judo club. The Petitioner submitted a letter from the senior coach of the who indicates that the Petitioner was employed as a wrestler at from 2003 to 2013 and as an assistant coach from 2007 to 2013. The record, however, does not demonstrate that the requires outstanding achievement of its members, as

judged by recognized national or international experts. The Petitioner has not established therefore that she meets 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 evidence from four publications, [REDACTED] the book [REDACTED] and the [REDACTED] newspaper of Kazakhstan. She asserts that this is evidence of published material about her in professional or other major trade publications. The plain language of the regulatory criterion requires "published material about the alien." Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor). Here, the record does indicate that these publications constitute major media. However, we find that the published material report on particular competitions and reference the Petitioner briefly and tangentially as having won a medal or competed in the event. Accordingly, the Petitioner has not met the plain language of this criterion.

III. CONCLUSION

The Petitioner is not eligible because she has not submitted the required initial evidence of either a qualifying 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 do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.² Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Beneficiary has the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of M-N-*, ID# 785070 (AAO Jan. 24, 2018)

² In addition, as the Petitioner has not established the Beneficiary's extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether she is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).