



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

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

MATTER OF D-R-O-D-F-

DATE: MAR. 6, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a professional water polo player, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not show his intent to continue to work in his area of expertise or that his entry into the United States will substantially benefit prospectively the United States.

On appeal, the Petitioner presents additional documentation and a brief stating that he will engage in employment in the United States in the area of water polo.

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). In addition, if a petitioner demonstrates that the listed criteria do not readily apply to his or her occupation, then he or she may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

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, a professional water polo player, did not indicate that he received a major, internationally recognized award, but contended that he satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, he stated that he met the awards criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The Director found that the Petitioner submitted the requisite evidence under three of the evidentiary categories identified above. He did not, however, render a final merits determination in accordance with the *Kazarian* opinion that considered whether the Petitioner’s evidence 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 alien 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) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Rather, the Director found the Petitioner’s evidence insufficient to demonstrate that he intended to work in his field of expertise or that his entry into the United States would bring a substantial benefit prospectively to the country. The Director denied the petition on these issues without first analyzing the Petitioner’s

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).

accomplishments and weighing the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See id.*

In order to qualify for the requirements of section 203(b)(2)(B) of the Act, a petitioner must show that: (1) he has extraordinary ability in the sciences, arts, education, business, or athletics, (2) he seeks to enter the United States to continue his work in his area of extraordinary ability, and (3) he will substantially benefit prospectively the United States. Here, the Director did not consider whether the Petitioner is an individual of extraordinary ability before deciding whether he intends to continue to work in the United States in her area of expertise. However, the Director's omission is harmless because we conduct a *de novo* review, evaluating the sufficiency of the evidence in the record according to its probative value and credibility.

We notified the Petitioner of the deficiencies in the record through a request for evidence (RFE), and afforded him time to supplement the record with additional documentation. Upon review, we find that the record as presently constituted is insufficient to establish that the Petitioner satisfies at least satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 record demonstrates that the Petitioner has received multiple certificates, awards and medals from entities including the [REDACTED] and the [REDACTED]. The Petitioner therefore satisfies 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 claims that he was a member of the [REDACTED] on multiple occasions beginning in the early 2000s. He submitted a letter from [REDACTED] Director of [REDACTED] and former head coach of the [REDACTED] team. [REDACTED] confirms that the Petitioner was a member of the team on multiple occasions, and states "the country selects a new [REDACTED] for each major international competition based on qualifying times." He also states that [REDACTED] is the entity that selects the [REDACTED] which he describes as "a group of highly qualified experts in the field."

In response to our RFE, the Petitioner submits a second letter signed by three officials of [REDACTED]. The letter states that [REDACTED] "are selected by [REDACTED] in accordance with the [REDACTED] rules." The letter further states that "[t]he rules for selection to the [REDACTED] are prescribed by the [REDACTED] Director of [REDACTED] and he is an expert in the field."

Upon review, the record does not include sufficient evidence, such as team rosters or statistics, to corroborate the claims that that the Petitioner was a former member of [REDACTED] team. In addition, the Petitioner has not established that the individuals who selected him to be a team member are “recognized national or international experts in their disciplines or fields,” as required under this criterion. While we note [REDACTED] assertion that [REDACTED] is an expert in the field, there is no independent documentary evidence to support this statement. While various articles submitted into the record identify [REDACTED] as the former coach of the [REDACTED] team, there is no documentation to confirm his credentials and experience such that he can be deemed a recognized national or international expert in his field.

Finally, the record lacks evidence demonstrating the manner in which the national water polo team selects its members. As noted above, [REDACTED] indicated that selection to each [REDACTED] was based on “qualifying times.” Although the second [REDACTED] letter submitted in response to the RFE indicates that selection is made in accordance with [REDACTED] rules, the Petitioner did not supplement the record with copies of those rules or other guidelines to outline the actual selection process. It appears based on assertions in the record that selection to the [REDACTED] does not involve the actual judging of outstanding achievements by recognized national or international experts, but rather is based on national rankings, qualifying times, and winning records.

The record also contains a letter from [REDACTED] coach of the [REDACTED] Team. [REDACTED] confirms that the Petitioner was a member of the university’s team from 2011 to 2014. However, as with the [REDACTED] there is no evidence demonstrating that selection to the university team is judged by recognized national or international experts in their disciplines or fields. Although [REDACTED] claims that he qualifies as an expert because he has been head coach of [REDACTED] water polo team for 26 years, won [REDACTED] divisional championships, and has a total of [REDACTED] wins, there is no independent evidence corroborating that he is a recognized national or international expert in the field. Moreover, in a second letter submitted in response to our RFE, he claims that “it is up to the expertise and experience of the coaching staff to develop membership criteria for athletes.” While he provided an overview of the selection criteria, which includes evaluation of speed and endurance tests, scrimmages, past experiences, and general compliance with [REDACTED] requirements such as academic eligibility, there is no indication that recognized national or international experts in the field of water polo judge the achievements of these potential members.

Absent corroborating evidence regarding the qualifications and claimed expertise of the coaching staff, we cannot determine that either the [REDACTED] or the [REDACTED] team require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

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 Director found that the Petitioner did not satisfy this criterion, and we agree with that determination. Although he submitted several articles regarding his athletic performances published in various forms of media, including the [REDACTED] sports page, [REDACTED] and on various web pages, the evidence is insufficient to demonstrate that these articles appeared in professional publications, major trade publications, or other major media as required under the regulation. The Petitioner does not address this criterion or offer further evidence to rebut these findings on appeal or in response to our RFE.² Therefore, absent additional evidence, he has not demonstrated he meets 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).

The Petitioner claims that his position as goalkeeper on both the [REDACTED] and the [REDACTED] teams demonstrate that he has performed in a leading and critical role.

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.

Here, the evidence of record is insufficient to satisfy this criterion. The Petitioner submitted a letter from [REDACTED] president, which states that as a goalkeeper for the [REDACTED] he occupied an "essential" and "the most important position" on the team. While [REDACTED] assertions are noted, his letter falls short of providing probative information that specifically addresses how the Petitioner's role was critical for each of the [REDACTED] for which he played. We cannot presume that he performed in a leading or critical role simply by his title of goalkeeper within the organization; additional probative, corroborating evidence must also be part of the record.

In response to our RFE, the Petitioner submitted a second letter from [REDACTED] which states that he "has played a critical role for the [REDACTED] because he has won medals and lead

² In response to our RFE, the Petitioner submits an article in the [REDACTED] featuring a photograph of him playing water polo at the age of 16, and indicates that the article is submitted for consideration under the leading and critical role criterion. Nevertheless, we note that this article would not satisfy the instant criterion because the copy provided does not clearly identify the date of publication and the name of the article's author as the typeface is too small and thus illegible. Moreover, the single photograph of the Petitioner appears in an article about summer camps and does not appear to constitute published material about him in the field of water polo as contemplated by the criterion.

[sic] the [REDACTED] to numerous victories.” The Petitioner must provide specifics relating to how his role was critical to the organization as a whole. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012). Simply claiming that he won numerous medals and led his team to numerous victories, without more, falls short of providing probative information that specifically addresses how the Petitioner’s role was critical for the team.

We note [REDACTED] assertion in response to our RFE that the Petitioner is “more important than the other team members because he can score for his team but he is also the only one who can block goals past the defense line.” However, the letters considered above do not specifically state how the Petitioner’s contributions as a goalkeeper (of which there are two to a team) impacted the team as a whole and thus establish a critical role.

Similarly, the letters from [REDACTED] do not specifically detail the manner in which the Petitioner’s role was leading or critical to the [REDACTED] team. He states in response to our RFE that the Petitioner “was a leading and critical force for the team, especially in our defensive efforts,” and provides a list of successes for the team which he claims are directly attributable to the Petitioner’s “critical role as a goalie,” yet provided no additional explanation regarding these achievements. Furthermore, a review of the list indicates that many of the listed achievements are attributable to the Petitioner individually, such as his awards of the “[REDACTED]” and “[REDACTED]”. The record does not explain how the Petitioner’s individual achievements constitute a leading or critical role for the [REDACTED] team as a whole.

Even if the Petitioner had demonstrated that his role was leading or critical as contemplated by this criterion, he must also demonstrate that the organizations have a distinguished reputation. The record, however, contains insufficient evidence to establish that these teams are organizations with a distinguished reputation. While the Petitioner submitted a copy of the [REDACTED] record book outlining the team’s accomplishments over the years, there is no independent documentation establishing that this team enjoys a distinguished reputation independent of the university. Likewise, the record contains no evidence demonstrating that the [REDACTED] enjoys a distinguished reputation as contemplated by the regulation.

III. CONCLUSION

The Petitioner is not eligible because he 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. Nevertheless, we advise that 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. In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to “continue work in the area of extraordinary ability” under section 203(b)(1)(A)(ii).

Matter of D-R-O-D-F-

ORDER: The appeal is dismissed.

Cite as *Matter of D-R-O-D-F-*, ID# 671253 (AAO Mar. 6, 2018)