



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

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

MATTER OF J-M-A-

DATE: NOV. 28, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a triathlete, 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 the record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of ten alternate initial evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that he meets four of the ten regulatory criteria and is one of the few triathletes at the very top of his field.

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).

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 Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about him in professional, trade or major media. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser national or international awards, membership in an association requiring outstanding achievements, and a leading or critical role for an organization with a distinguished reputation. After reviewing all of the evidence in the record, we find that he has not met the requisite three 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 Petitioner submitted evidence of his placings in several duathlon and triathlon events, as well as cross country competitions and awards he received at the collegiate level in Puerto Rico. However, the Director found the evidence insufficient to establish that these placings, and any awards or prizes received by the Petitioner as a result, were nationally or internationally recognized.

The record includes evidence of three placings by the Petitioner in duathlon events sanctioned by the [REDACTED]. The Petitioner refers to the [REDACTED] rules as evidence of the scope of competition for these awards, which include first place in the 2006 [REDACTED] and second place in the 2009 [REDACTED] and [REDACTED] both in the men's elite division. Based upon these awards received in

continental duathlon competitions at the highest level of competition, 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)*

The Petitioner bases his claim to this criterion upon his representation of Venezuela at the competitions mentioned above. Included in the Petitioner's initial filing was a letter from [REDACTED] who identified himself as the former president of the [REDACTED] along with several other prominent roles for governing bodies in the sport. [REDACTED] indicates in his letter that the Petitioner "is a member of the [REDACTED] team," and that an athlete "must have certain qualifying times and physical abilities to qualify for the National Team." He further explains that [REDACTED] selects the top two or three athletes for the team based upon times at qualifying competitions, and verifies that the Petitioner represented Venezuela as a member of the national team at the duathlon events mentioned above. However, the Director stated in his decision that the letter was not on [REDACTED] letterhead and that [REDACTED] former position with the organization was not corroborated.<sup>1</sup> In addition, he pointed to the lack of any official written guidance from [REDACTED] such as its bylaws.

On appeal, the Petitioner submits a letter on [REDACTED] letterhead, signed by its current president and dated April 24, 2018, which states that the Petitioner has been an active member in the Elite division since 2006 and has participated in several national and international events. It also states that "he will continue to represent this Federation and our country." In addition, a review of the [REDACTED] competition rules submitted with the initial evidence reveals that qualified athletes for the duathlon world championships are entered through their national federations, and are limited to six athletes per national federation. Together, these documents confirm that the Petitioner has been a member of the Venezuelan national team. Further, they show that the limited entries allowed for international competitions, based on sufficient qualifying times at regional and national competitions and the judgement of national federations, otherwise meet the remaining requirements under this criterion. As such, the Petitioner has established that he 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)*

The Petitioner initially submitted four newspaper articles as evidence in support of his qualification under this criterion. The Director found in his decision that the only qualifying article under this

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<sup>1</sup> [REDACTED] name appears with the title of President on a plaque awarded to the Petitioner by [REDACTED] in 2003, a photocopy of which was submitted at Exhibit 24.

criterion was published on [REDACTED] 2005, in what the Petitioner claimed was the Venezuelan national newspaper *El Universal*. While we agree with the Director that this article is about the Petitioner and his work as an athlete, the evidence does not establish that it was published in *El Universal*. Despite the Petitioner providing advertising information for *El Universal*, the copy of the newspaper clipping submitted identifies the periodical only as *El Deportivo*. Without additional evidence, we cannot conclude that this article was published in a professional or major trade publication or other major media. Further, of the remaining articles, which were published in Puerto Rican newspapers, two are about races in which he competed and another concerns an annual [REDACTED] awards ceremony. Articles that are not about the petitioner do 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). Therefore, we withdraw the Director's determination and find that the evidence does not establish that the Petitioner meets this criterion.

*Evidence that the individual 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)

Referencing the letter from [REDACTED] of [REDACTED], the Petitioner indicates that he meets this criterion in part based upon his role as a member of the Venezuelan national team. [REDACTED] states that because the Petitioner successfully competed in Ironman triathlon events, his role was critical for the team. In general, a critical role is commonly one in which a petitioner was responsible for the success or standing of the organization or establishment. However, the letter gives no explanation of how the Petitioner's individual successes were critical to other members of the team or to the team overall. In addition, the new letter from [REDACTED] submitted on appeal confirms his representation of Venezuela in [REDACTED] events, but provides no further information about the role he played for [REDACTED] overall.

The Petitioner also submitted copies of awards won as a track and cross country athlete at [REDACTED], as well as a letter from the university's athletic director, and asserted that he played a leading or critical role for the [REDACTED] in Puerto Rico. The letter indicates that as a member of the school's cross country team, he earned several medals and was named as the [REDACTED] Most Valuable Athlete in two years.<sup>2</sup> Although these awards are evidence of the Petitioner's individual successes as an athlete, they do not establish that his role was essential to the overall performance or standing of the [REDACTED]. In addition, the record does not demonstrate that the [REDACTED] has a distinguished reputation. Accordingly, the Petitioner has not sufficiently established that he meets this criterion.

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<sup>2</sup> The record indicates that the Petitioner actually received awards from [REDACTED] as "Most Outstanding Athlete" in cross country in 2007-2008, and in athletics, or track and field, in 2010-2011.

### III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-M-A-*, ID# 1757878 (AAO Nov. 28, 2018)