



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

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

MATTER OF M-A-R-

DATE: OCT. 30, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a taekwondo athlete, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not shown that she has received a major, internationally recognized award or, in the alternative, that she met at least three of the ten initial evidentiary criteria.

On appeal, the Petitioner submits additional evidence and contends that she has received a major internationally recognized award and that she meets at least four of the initial evidentiary 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 is a taekwondo athlete who indicates that she intends to work as a taekwondo instructor. In the Director’s request for evidence (RFE), he stated that the Petitioner must submit evidence demonstrating that she qualifies as an individual of extraordinary ability in coaching. In response to the RFE, the Petitioner indicated that she is applying for classification as an athlete, not as a coach. Accordingly, our decision will evaluate the Petitioner’s expertise as a taekwondo athlete.

The Director found that the Petitioner has not established that she has received a major, internationally recognized prize or award under 8 C.F.R. § 204.5(h)(3) and that the evidence in the record demonstrates that she only meets two of the ten alternate criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), of which she must meet at least three. Specifically, the Director held that she only met the criteria for awards under 8 C.F.R. § 204.5(h)(3)(i) and published material under 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner asserts the following: (1) that she has received a major, internationally recognized award; and (2) that she meets these alternate criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). For the reasons discussed below, we conclude that the record does not support a finding that the Petitioner satisfies the requirements for an individual of extraordinary ability.

A. Major International Award

We find that the Petitioner has not established that she has earned a one-time achievement of a major internationally recognized award under 8 C.F.R. § 204.5(h)(3). This regulation is consistent with the legislative history of section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), stating that a one-time achievement must be a *major, internationally recognized* award. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement.

Here, the record reflects that the Petitioner competed in the [REDACTED] in 2004 and 2008, and that she received a fifth place ranking in 2004. The record contains a Certificate of Participation from the [REDACTED] recognizing her for participating in the 2004 [REDACTED]. The record also includes similar certificates from the president of the [REDACTED] for 2004 and 2008 with a separate document indicating she received 5th Place at the 2004 [REDACTED]. These documents do not constitute an award to meet this requirement. A certificate of participation and a fifth place ranking indicate that she competed at these events, but they do not represent an actual award.

The Petitioner states that the [REDACTED] in which she won a silver medal, is the second largest multi-sport event after the [REDACTED]. However, she has not submitted documentation to substantiate this claim or to establish that a medal received at the [REDACTED] would constitute a major international award. Therefore, the evidence in the record does not establish that the Petitioner has earned a major internationally recognized award.

B. Evidentiary Criteria

We conclude that the record does not establish that the Petitioner meets at least three of the ten criteria listed 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 Director held that the Petitioner met this criterion. The record contains evidence indicating that the Petitioner won gold medals in the [REDACTED] in 2001, as well as the [REDACTED] in 2003, 2004, 2005, and 2009, among other awards. We agree that this demonstrates that the Petitioner 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).

On appeal, the Petitioner asserts that she meets this criterion due to her membership in the [REDACTED]

She submits a certification from the [REDACTED] which states that she has been a member of this association from 2002 to 2012. This certification also states that the Petitioner is affiliated with the [REDACTED] the [REDACTED] the [REDACTED] and the [REDACTED]. However, the record does not contain evidence demonstrating that the Petitioner is a member of these organizations and does not provide the membership requirements for the [REDACTED] or these other organizations. The Petitioner provides a page from the [REDACTED] website about the organization, which states that “it was established in the mid-70s to propagate the Korean martial art sport in the country.” This document states that the [REDACTED] manages the national team, among other Taekwondo groups, but it does not indicate what is required for membership in the association or the national team.

Counsel states that the national team’s members “are the best of the best Taekwondo practitioners who participate in different national and international tournaments and/or competitions all over the world.” Counsel further states that the [REDACTED] the CEO of the [REDACTED] is an expert in the field of Taekwondo and that he requires outstanding achievement of all members of the [REDACTED]. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel’s statements must be substantiated in the record with independent evidence. The Petitioner must show that she meets every element of a given criterion, including that she is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. She must meet her burden of proof by submitting relevant, probative evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; see also section 291 of the Act, 8 U.S.C. § 1361. Here, she has not sufficiently established the procedures utilized for her selection on the national team or the [REDACTED] or that either organization requires outstanding achievements of its members as a prerequisite for membership.

The Petitioner states that she automatically became a member of the [REDACTED] because she represented the Philippines and participated in many international competitions as one of the top athletes in Taekwondo. The Petitioner submits a certification from the [REDACTED] indicating that the Petitioner “is a member of the [REDACTED] team under the supervision of the [REDACTED] a duly recognized [REDACTED] of the [REDACTED]. Thus, it appears that the [REDACTED] is a member of the [REDACTED]. The record, however, does not demonstrate that the [REDACTED] allows for individual membership or that it requires outstanding achievements for such membership as judged by recognized national or international experts.

The Petitioner also claims membership in the [REDACTED] to meet this criterion. The record contains a Certificate of Recognition stating, “In recognition of your achievement as an [REDACTED] you are granted use of the post-nominal letters [REDACTED] to signify your ongoing role in society as an [REDACTED], living and promoting the [REDACTED] values.” The record contains a page from the [REDACTED] website stating that the [REDACTED] provides assistance to these national associations to “help their [REDACTED] members and spread the spirit of [REDACTED] in their country.” However, the certificate in the record does not establish membership in the [REDACTED] and we note that

the organization's constitution limits membership to national [REDACTED] organizations, rather than individual [REDACTED]. Therefore, the Petitioner has not shown that she has membership in the [REDACTED] and has not established 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 Director concluded that the Petitioner met this criterion. We agree. The record contains published material about the Petitioner in professional publications, such as Taekwondo Flash, the official publication of the [REDACTED]. Therefore, the Petitioner 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.² If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. A supporting role may be considered "critical" if the petitioner's performance in the role is or was important in that way. It is not the title of the petitioner's role, but rather his or her performance in the role that determines whether the role is or was critical.³

The Petitioner asserts that she has performed a leading or critical role for the Philippines, a large organization or establishment, in that she excelled in Taekwondo and represented her country in the 2004 and 2008 [REDACTED]. Counsel states that the Petitioner "was hailed as a modern 'hero' by her countrymen" and that in 2004 and 2008 "she was considered as the athlete most likely to bring home a medal from the [REDACTED]. . . . "not a small feat for a then 16-year-old Tae Kwon Do athlete." While we acknowledge the honor it was for the Petitioner to represent her country in the [REDACTED] her position was not consistent with the requirements of this criterion. The record does not contain evidence of a title or duties she held, and thus does not establish that her membership on the [REDACTED] team equated to a position of leadership for the country or that she played a critical role on the [REDACTED] team. Moreover, the Petitioner has not shown that her contributions on the [REDACTED] team were of significant importance to the activities of the country. While news articles in the record indicate hope that she would win the first gold medal for the country since 1996, the record

² See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 10* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

³ *Id.* at 10.

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does not identify specific activities and explain how they were affected by her performance. Therefore, the Petitioner has not established that she meets this criterion.⁴

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 1119-20. 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 acclaim and recognition required for the classification sought. In addition, as the Petitioner has not established her 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).

ORDER: The appeal is dismissed.

Cite as *Matter of M-A-R-*, ID# 1671976 (AAO Oct. 30, 2018)

⁴ The Petitioner highlights other factors to be considered with this petition, such as the commendation she received from the president of the Philippines and the Senate in 2005 and 2006 as well as the endorsements and many invitations she received to speak at seminars and symposia. While we find these factors to be noteworthy, it is unclear as to which of the above criteria these factors apply. Such evidence would be considered under a final merits determination regarding sustained acclaim in the field upon meeting the initial evidentiary requirements under 8 C.F.R. § 204.5(h)(3).