



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

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

In Re: 4597661

Date: DEC. 18, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a swimmer, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which she must meet at least three.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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 Petitioner attends and swims for the University of in

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met one of the evidentiary criteria, awards at 8 C.F.R. § 204.5(h)(3)(i). The record reflects that the Petitioner received nationally and internationally recognized awards from swimming events, discussed further below. Accordingly, we agree with the Director that the Petitioner fulfilled the awards criterion.

Further, we find that the Petitioner demonstrated membership with the Uzbekistan meeting the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). In addition, the record reflects that the Petitioner established published material about her in two major media publications, satisfying the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). Because the Petitioner has shown that she fulfills three criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

¹ *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* 13 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing that objectively meeting the regulatory criteria in part one alone does not establish that an individual meets the requirements for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim,² that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.³ In this matter, we determine that the Petitioner has not shown her eligibility.

The Petitioner submitted evidence reflecting successes in some national and international swimming events, including at the youth and collegiate levels. In addition, she documented her membership with the 2012 Uzbekistan [redacted]. Moreover, she demonstrated that two media publications produced a few articles about her. The record, however, does not reflect that her achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

At the outset, the Petitioner has not sufficiently documented her swimming career. Specifically, while the Petitioner presented evidence showing her finishes in selected tournaments and championships, she did not demonstrate her standings or results in the majority of her other swimming events. For example, the Petitioner provided documentation showing that she received a bronze medal at the 2009 [redacted] Games; three gold medals, five gold medals, and one gold medal at the 2010, 2011, and 2015 Uzbekistan [redacted] Championships, respectively; and a gold medal and a silver medal at the 2016 [redacted] Championships. However, she did not show her placements at any of her other swimming competitions. For instance, she submitted a letter from [redacted] [redacted] the Uzbekistan Swimming Federation (USF), who indicated numerous swimming competitions in which the Petitioner participated but did not disclose her finishes, such as the 2005 [redacted] Championships, 2006 [redacted] Championships, 2006 [redacted] Games, 2007 [redacted] Championships, 2007 [redacted] World Championships, 2008 [redacted] World Junior Swimming Championships, 2009 [redacted] Championships, 2009 [redacted] Championships, 2009 [redacted] World Championships, 2009 [redacted] Indoor Games, 2010 First [redacted] Games, 2010 [redacted] Games, 2010 [redacted] World Championships, 2011 [redacted] World Championships, 2013 [redacted] World Championships, 2014 [redacted] Games, and 2015 [redacted] World Championships.

Moreover, although the Petitioner participated at the 2012 [redacted], she did not establish her results or standings. In fact, she offered a letter from [redacted] the Uzbekistan National [redacted], who briefly stated that the Petitioner "was one of

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 14 (stating that such acclaim must be maintained and providing *Black's Law Dictionary's* definition of "sustain" as to support or maintain, especially over a long period of time, and to persist in making an effort over a long period of time).

³ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4 (instructing that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

the top 50 competitors in the [redacted] ranking.” Further, the record contains another letter from [redacted], who claimed that the Petitioner “finished among the top 40 athletes in the world in the [redacted] ranking.” Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Because the Petitioner provided conflicting letters, neither of which is supported by documentation of her official results, she did not demonstrate whether she finished in the top 40 or 50 at the 2012 [redacted] as claimed in these letters.

In addition, at the collegiate level, she submitted a letter from [redacted], head coach of [redacted] who indicated that the Petitioner placed third at the 2014 [redacted] Championships and second at the 2015 [redacted] Championships. Further, [redacted] stated that the Petitioner won medals during the 2015 - 2016 [redacted] Championships and was named CollegeSwimming.com’s [redacted] Swimmer of the Week. While [redacted] highlighted her swimming career at [redacted], the Petitioner did not show her complete swimming record with the university.

The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).⁴ Here, the Petitioner’s partial account of her swimming history does not meet this very high standard.

Notwithstanding the above, the Petitioner has not demonstrated that her personal swimming achievements have garnered her sustained national or international acclaim and that they reflect a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723 at 59. In the case here, the Petitioner has not established that she received any awards since 2016. In fact, besides the [redacted] Open Championships, she has not shown that she has competed against the top swimmers since 2015, let alone winning medals or awards, reflecting that she “is one of that small percentage who [has] risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Rather, the Petitioner has been recently swimming at [redacted] against other collegiate athletes. She has not shown that she has been competing against renowned or accomplished swimmers, demonstrating that her latest “achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Again, the Petitioner demonstrated that she was a member of the Uzbekistan [redacted] for the 2012 [redacted]. However, the Petitioner did not show that her single team membership over five years ago resulted in sustained national or international acclaim or reflects “that small percentage who [has] risen to the very top of the field of endeavor.” See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. §204.5(h)(2) and (3). The record, for instance, does not contain any media coverage or other evidence showing that she received national or international recognition based on her membership with the Uzbekistan [redacted]. Furthermore, although the Petitioner provided a press release from swimswam.org reflecting that she “has one more opportunity to post fast swims in [redacted]

⁴ See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 2.

eters and qualify for 2016 [redacted] competition,” she did not establish that she qualified for the 2016 [redacted] reflecting continued, sustained national or international acclaim on two consecutive [redacted]. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. §204.5(h)(3).⁵

Regarding published material about her, the Petitioner offered one article (2011) from the Uzbekistan National News Agency and three press releases (2015) posted on swimswam.org.⁶ However, the Petitioner did not demonstrate that four pieces published about her are consistent with the sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act. Further, the Petitioner did not show that her overall press coverage is indicative of a level of success consistent with being among “that small percentage who [has] risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Moreover, the Petitioner did not establish that the limited media reporting reflects a “career of acclaimed work in the field” or a “very high standard . . . to present more extensive documentation than that required.” See H.R. Rep. No. at 59 and 56 Fed. Reg. at 30704.

Beyond the three criteria that the Petitioner satisfied, we consider additional documentation in the record in order to determine whether the totality of the evidence demonstrates eligibility. Here, for the reasons discussed below, we find that the evidence neither fulfills the requirements of any further evidentiary criteria nor contributes to an overall finding that the Petitioner has sustained national or international acclaim and is among the small percentage of the top of her field.

The Petitioner asserts that she performed in a leading or critical role with USF [redacted] the [redacted] University Swim Team, and the [redacted] Swim Team. However, the Petitioner did not demonstrate that her role was reflective of, or resulted in, widespread acclaim from her field or that she is considered to be at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2). Again, besides letters of recommendation and a few media articles relating to [redacted] she did not offer evidence establishing that she garnered extensive acclaim or recognition from the field. Further, the record does not reflect that she held leading or critical roles for organizations or establishments with distinguished reputations, nor does it show that her roles represent sustained national or international acclaim or a “career of acclaimed work in the field.” See section 203(b)(1)(A) of the Act and H.R. Rep. No. at 59.

The record as a whole, including the evidence discussed above, does not establish her eligibility for the benefit sought. Moreover, the Petitioner did not fully document her swimming career. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. Even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Price*, 20 I&N Dec. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that she has sustained national or international acclaim and is among the small percentage at the top of her field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

⁵ On appeal, the Petitioner claims that she “represented [USF] at two [redacted]” However, as indicated above, the Petitioner did not submit independent evidence to corroborate her assertions.

⁶ The Petitioner offered two additional press releases posted on swimswam.org that mentioned her as one of the competitors but did not reflect published material about her.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.