



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF D-S-

DATE: FEB. 13, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a professional basketball 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 Acting Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which she must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief arguing that she satisfies at least three of the ten criteria and qualifies as an athlete of extraordinary ability.

Upon *de novo* review, we will sustain 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). If that petitioner does not submit this evidence, then 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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

A. Evidentiary Criteria

As 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). In denying the petition, the Director found that the Petitioner satisfied the membership criterion under 8 C.F.R. § 204.5(h)(3)(ii), and the record supports that finding. For example, the evidence indicates that she competed as a member of the [REDACTED] women's basketball team at the 2008 [REDACTED] in [REDACTED].¹

In addition, we find that the Petitioner meets the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). Specifically, the Petitioner was a starting player on a women's professional team that won [REDACTED] national basketball championships in 2013 and 2016. She was also a starting player for the [REDACTED] national women's team that earned a bronze medal at the [REDACTED] in 2011. The Petitioner's supporting evidence includes media coverage demonstrating the national and international recognition of her championship awards. Furthermore, the evidence shows that the Petitioner has

¹ The record shows that only twelve national basketball teams qualify to compete in the [REDACTED] through an arduous competitive process.

performed in a critical role for distinguished organizations such as the [redacted] women's team that earned an [redacted] berth and [redacted] a professional [redacted] women's team.² Accordingly, the record demonstrates that she has satisfied at least three of the ten regulatory criteria.

B. Final Merits Determination

As the record satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we will analyze the 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. We evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, making her one of the small percentage who have risen to the very top of 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. In the present matter, the Petitioner has shown his eligibility for this classification.

The Petitioner has competed for [redacted] in Tennessee³, [redacted] national and [redacted] teams, and various professional teams in the top women's division in Europe⁴ as a critical member of their basketball teams. While competing for these teams, she won nationally recognized competitions such as [redacted] and [redacted] national basketball championships (2013 and 2016), as well as being selected as Most Valuable Player of the Finals of the [redacted]. In addition, her bronze medal at the [redacted] (2011) further demonstrates international recognition in her sport. Regarding the Petitioner's performance at the [redacted] sports coverage from [redacted] states that she received "the highest points award with 131 points" (averaging "16.375 points per-game") and "made the continent Top-5 list."

Furthermore, at the 2008 [redacted] in [redacted] the Petitioner represented [redacted] and had the second most rebounds per game among all players from the twelve qualifying teams.⁵ [redacted] has also honored her as the [redacted] (2011). The record includes coverage of the Petitioner's basketball accomplishments dating from the late 2000s until the Form I-140 was filed in 2016 in a variety of media outlets including Eurobasket.com, Afrobasket.com, ESPN.com, FIBA.com⁶, Basketfeminin.com, and *L'Avenir* (a

² The record includes media coverage and basketball statistics showing that the Petitioner played a key role for the [redacted] national team and [redacted] and that these teams had a distinguished reputation.

³ While playing for [redacted] her team won the [redacted] in 2006.

⁴ The evidence shows that the Petitioner has played under contract for professional basketball teams in [redacted]

⁵ For example, [redacted] top rebounder [redacted] ranked fifth in rebounds per game averaging 8.4, while the Petitioner ranked second averaging 10.0 per game. The Petitioner's high statistical ranking relative to other [redacted] elevates her to the very top of her sport at the international level.

⁶ [redacted] is the official website of the [redacted], the governing body for the sport of

Matter of D-S-

Belgian newspaper). This evidence sets the Petitioner apart through a “career of acclaimed work in the field.” See H. Rep. No. 101-723, at 59 (Sept. 19, 1990).

In summary, the Petitioner has demonstrated her extraordinary ability as a professional basketball player. The totality of the evidence establishes that she possesses a level of expertise that is consistent with a finding that she is one of a small percentage at the very top of the field of endeavor and that she has documented sustained acclaim. See section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20. See also *Matter of Price*, 20 I&N Dec. 953, 956 (Assoc. Comm’r 1994).

III. CONCLUSION

The Petitioner has established that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and that her achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that she intends to continue working in her area of expertise and that she will substantially benefit prospectively the United States. She therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.

Cite as *Matter of D-S-*, ID# 2025090 (AAO Feb. 13, 2019)

basketball worldwide.