



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

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

MATTER OF Y-A-V-

DATE: JULY 30, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a handball 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets at least three of the ten 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). 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

The Petitioner is a handball player with the [redacted] Team Handball Club. Because he has not indicated or established that he has received a major, internationally recognized award, he 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 met only two of the initial evidentiary criteria, awards under 8 C.F.R. § 204.5(h)(3)(i) and judging under 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner received nationally recognized awards at handball tournaments in Russia. Accordingly, we agree with the Director that the Petitioner fulfilled the awards criterion. However, for the reasons discussed later in this decision, we do not concur with the Director’s determination that the Petitioner satisfied the judging criterion.

On appeal, the Petitioner maintains that he meets four additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

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 chosen to Olympic reserve,” and we have previously recognized membership on an Olympic team to meet this criterion. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.¹ In the case here, the Petitioner did not demonstrate his membership with an Olympic team. Although the Petitioner provides a letter from [redacted] for the Handball Sports School of Olympic Reserve, she does not confirm his membership with an Olympic team. Instead, [redacted] stated that the Petitioner “was chosen to the only national junior handball team of Russia (youngsters born in 1994 and earlier) for his results,” and “he was accepted to the main junior team of Russia in the position of the [redacted].” Furthermore, the Petitioner did not establish that being appointed as an Olympic reserve or alternate, as well as membership with a junior national team, is tantamount to membership with an Olympic team.

For the reasons discussed above, the Petitioner did not demonstrate that he 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 Petitioner contends that the Director overlooked the significance of a screenshot posted on the website, sobaka.ru. In order to meet this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, including the title, date, and author of the material.² The record reflects that the screenshot, which contains the title, date, and author, discusses the Petitioner as a handball player. However, the Petitioner did not establish that the website is a professional or major trade publication or other major medium.

Specifically, the Petitioner provides documentation showing that Sobaka.ru is both a printed publication (*Sobaka.ru*) and a website (sobaka.ru). Although most of his evidence for this criterion on appeal relates to the standing, nature, and history of the magazine, the issue here is whether the website is a professional or major trade publication or other major medium.³ Moreover, while the Petitioner presents a screenshot from sobaka.ru indicating that it receives “about 800 thousand people per month,” he did not submit independent, objective evidence supporting the website’s claims.⁴

¹ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

³ The Petitioner did not offer evidence reflecting that the article was published in *Sobaka.ru*.

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover a magazine as to the magazine's status is not reliant evidence of major media). Further, the Petitioner did not demonstrate the significance of "800 thousand" visitors per month or explain how such information reflects status as a major medium.

Accordingly, the Petitioner did not establish that he fulfills this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. 204.5(h)(3)(iv).

The Director determined that the Petitioner established eligibility for this criterion. This regulatory criterion requires a petitioner to show that he has acted as a judge of the work of others in the same or an allied field of specialization.⁵ For the reasons outlined below, a review of the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that he meets this criterion, and the Director's determination on this issue will be withdrawn.

The Petitioner submitted a letter from the Russian Handball Federation (RHF) confirming that he participated as a "referee" at eight handball matches. In addition, he presented "The Book of a Field Judge" from the Ministry of Sport of Russian Federation (MSRF) indicating the Petitioner's assignment as a "field judge" on four occasions. Moreover, he provided an RHF letter confirming his service as part of a "judging couple" at four handball events. Again, this regulatory criterion requires a petitioner to show that he has acted as the judge of the work of others in the same or an allied field of specialization. Here, the Petitioner's evidence does not reflect the duties of a handball referee/judge to demonstrate whether they involve evaluating or judging the work or skills of competitors as opposed to enforcing the rules of a match and ensuring sportsmanlike competition. Moreover, the record lacks other evidence, such as RHF's official competition rules or bylaws for referees and judges, showing that serving as a handball "referee," "field judge," or "judging couple" is consistent with participating as a judge of the work of others.

In addition, the Petitioner offered a letter from MSRF reflecting his appointment to "the post of the Breeder of the youth composition of the Handball Federation of the [redacted] region" that will "[e]nable the authority to call players to view the team, assign players to tournaments and championships of Russia, [and] cancel contracts with players." In order to meet this criterion, a petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.⁶ Although the MSRF letter indicates his appointment to a post, the Petitioner did not show that he actually served in the position. Moreover, the Petitioner did not establish that his duties listed in the letter involved his participation as a judge of the work of others.

Because the Petitioner did not demonstrate that he satisfied the regulatory requirements, we withdraw the findings of the Director for this criterion.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8.

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 argues that his role as team captain for [redacted] from 2012 to 2016 fulfills this criterion. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁷ Accordingly, we agree that the Petitioner performed in a leading role. However, for the reasons discussed below, the Petitioner did not demonstrate that [redacted] has a distinguished reputation.⁸

The record reflects that the Petitioner submitted screenshots of team standings for the Russian Handball Super League for four seasons from 2013/2014 to 2016/2017. Out of twelve teams, [redacted] finished [redacted] respectively. Here, the Petitioner did not establish how such finishes or standings indicate the team's eminent reputation. Moreover, while he provides screenshots regarding regulations for a team's participation in the league, the Petitioner did not demonstrate that membership with the league is tantamount to a distinguished reputation for the team. In addition, the Petitioner did not provide documentation, for example, showing the general field's view of [redacted] how its reputation compares to other handball teams, or how its successes relate to others, signifying that it enjoys a distinguished reputation consistent with this regulatory criterion.

For the reasons discussed above, the Petitioner did not show that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner contends that his salary is five times higher than the average monthly salary for an athlete in Russia. In order to meet this criterion, a petitioner must demonstrate that his salary or remuneration is high relative to the compensation paid to others working in the field.⁹ He provides his 2014 income tax documentation reflecting that he earned approximately 160,000 rubles per month. In addition, he submits 2018 average monthly wages for "activities in the fields of culture and sport" from the Federal Service of State Statistics (FSSS) showing the average monthly wages of 32,312 rubles.

Although he likens his salary to the average wages in the general field of culture and sport, the Petitioner did not show that he commands a high salary "in relation to others in the field," such as other handball players in Russia. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp.

⁷ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁸ *Id.* at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

⁹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Furthermore, the salary information from FSSS reflects that average wages rather than the high salaries of handball players in Russia.

Accordingly, the Petitioner did not demonstrate that he satisfies this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *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.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. at 954. Here, the Petitioner has not shown that the significance of his personal achievements is indicative of the required sustained national or international acclaim or that it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his 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. In visa petition proceedings, the petitioner bears the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of Y-A-V-*, ID# 3725113 (AAO July 30, 2019)