



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

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

MATTER OF H-M-E-A-

DATE: JUNE 11, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a wrestler, 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 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 wrestler who has competed at the 2016 [redacted] and in local and international tournaments. 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 memberships under 8 C.F.R. § 204.5(h)(3)(ii). The record reflects that the Petitioner medaled at international tournaments, such as the [redacted] Championships. In addition, the Petitioner was a member of the 2016 [redacted] [redacted] team. Accordingly, we agree with the Director that the Petitioner fulfilled the awards and memberships criteria.

On appeal, the Petitioner maintains that he meets two 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.

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 published material submitted in the original filing includes publications featured in the *BBC News*, [redacted] and *Sports & Fitness*, which are each read by

an international audience numbering in the tens of thousands.” Moreover, he argues that “the articles are centered around the wrestling achievements of [him] and his upcoming international competitions as work in his field of expertise.” 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.¹

As it relates to *BBC News* and *Sports & Fitness*, the Petitioner did not include the authors of the material. The inclusion of the author is not optional but a regulatory requirement. See 8 C.F.R. § 204.5(h)(3)(iii). Moreover, as it relates to *BBC News*, the Petitioner provided a screenshot from bbc.com reflecting the listing of the results for the 2016 [redacted] wrestling matches. Similarly, regarding *Sports & Fitness*, the Petitioner submitted an excerpt of brief [redacted] athletes’ profiles for the [redacted]. Likewise, concerning [redacted] the Petitioner presented screenshots from [redacted] pertaining to a preview of the [redacted] where the Petitioner is mentioned among all of the other wrestling competitors. However, the documentation is not about him but rather an overview of upcoming and completed [redacted] wrestling matches and [redacted] athletes. Articles that are not about a petitioner do not fulfill 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 regarding a show are not about the actor).²

In addition, the Petitioner did not offer any supporting documentation to corroborate his assertions that the publications “are read each by an international audience numbering in the tens of thousands.”³ Moreover, while we recognize the *BBC News* and its website as major media, the Petitioner did not demonstrate that a readership of “tens of thousands” is tantamount to a major medium.

For these reasons, the Petitioner did not establish that he satisfies 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).

The Petitioner argues that his recommendation letters show his role with the [redacted] [redacted]. 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.⁴ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.⁵

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 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (finding that the published material should be about the petitioner relating to his or her work in the field, not just about his or her employer or another organization with whom he or she is associated).

³ 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).

⁴ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁵ *Id.*

According to [redacted] wrestling and life coach, the Petitioner “continued to prove his leading and critical role with [redacted] through successive wins at the [redacted] Championships and [redacted] Games in 2014 and 2015 to qualify for the 2016 [redacted]” and “[t]his impressive representation of his country further helps to demonstrate his critical role as an award winning wrestler with the [redacted] and the contributions he has made in elevating the status and international rankings of the country’s team.” Furthermore, [redacted] wrestling coach, indicated that the Petitioner “was a critical member of [redacted] due to his winning record and encouraging sportsmanlike attitude that he displayed towards his teammates.”

Although [redacted] and [redacted] claimed that the Petitioner performed in a leading and critical role for [redacted] they did not provide specific information.⁶ Instead, they made general statements relating to his role and contributions to the team without demonstrating how his role was either leading or critical. For instance, [redacted] did not explain how the Petitioner’s achievements of winning wrestling tournaments and qualifying for the [redacted] was leading or critical to [redacted] overall. Moreover, [redacted] did not further elaborate on how the Petitioner’s wins elevated the status and rankings of [redacted]. Likewise, [redacted] did not detail how the Petitioner’s winning record and sportsmanlike impacted or contributed to the team. Again, the letters do not contain sufficient information to establish the significance of the Petitioner’s role with [redacted]. For example, the letters do not show how the Petitioner’s role as a wrestler differentiated from the others wrestlers or positions with [redacted] or how he was essential in contributing to the overall successes of [redacted].

In addition, the Petitioner did not demonstrate that [redacted] enjoys a distinguished reputation consistent with this regulatory criterion.⁷ The Petitioner does not mention, nor does the record contain, evidence reflecting [redacted] reputation. As discussed above, [redacted] referenced [redacted]’s “international rankings of the country’s team” but did not indicate [redacted] international ranking. Moreover, the Petitioner did not provide, for example, documentation showing the general field’s view of [redacted] how its reputation compares to other national wrestling teams, or [redacted]’s successes in relation to others.

Accordingly, the Petitioner did not show that he fulfills 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.

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical). See also *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.) (repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof).

⁷ *Id.* at 10-11 (defining *Merriam-Webster’s Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

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. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work 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 H-M-E-A-*, ID# 3385357 (AAO June 11, 2019)