



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

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

In Re: 4688663

Date: NOV. 19, 2019

Appeal of Texas Service Center Decision

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

The Petitioner, a rower, 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 Texas Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three. In addition, the Director found that the Petitioner did not establish that his entry will substantially benefit prospectively the United States.

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).

II. ANALYSIS

The Petitioner competed in rowing competitions in his native country of Ukraine, Europe, and the United States. Because the Petitioner 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 determined that the Petitioner fulfilled two of the initial evidentiary criteria, memberships at 8 C.F.R. § 204.5(h)(3)(ii) and judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner argues that he meets an additional criterion, awards at 8 C.F.R. § 204.5(h)(3)(i).

We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria. Although the record reflects that the Petitioner competed as a member of the [redacted] Team satisfying the membership criterion, for the reasons discussed later, we do not concur with the Director's decision relating to the judging criterion. In addition, for the explanations discussed below, the Petitioner did not demonstrate that he fulfills the awards criterion.

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)

In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.¹ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

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

² *Id.*

The Petitioner submits documentation reflecting his first, second, and third place finishes at over four dozen national and international rowing competitions from 2003 – 2018, such as the “Rowing Championship for [redacted]” “ [redacted] Championship in Rowing,” “ [redacted] Championship in Rowing,” “ [redacted] in Rowing,” “ [redacted] Rowing Federation of Ukraine [redacted]” “ [redacted] Ukrainian Rowing Federation [redacted]” “ [redacted] in Rowing,” “ [redacted] in Rowing,” “ [redacted] in Rowing,” “ [redacted] of Rowing Federation in Ukraine [redacted]” “ [redacted] of Rowing Federation of Ukraine [redacted]” “ [redacted] Rowing Championships,” “ [redacted] Championship,” “ [redacted]” “ [redacted] Rowing Championships,” “ [redacted] Championship,” “ [redacted]” and “ [redacted] Rowing Championships.”³ While the Petitioner offers copies of certificates, diplomas, and medals, he did not establish that they qualify as nationally or internationally recognized prizes or awards for excellence in the field.

Specifically, the Petitioner provides letters confirming his finishes without showing that the bestowed prizes or awards are nationally or internationally recognized for excellence in the field. For example, [redacted], stated that the Petitioner “decently represented Ukraine at international and national competitions and achieved the highest results” and listed his results at over a dozen competitions.⁴ Moreover, [redacted] described the nature and types of competitions, such as an “All-Ukrainian competition,” “international competitions,” and “international meets.” However, [redacted] did not discuss the national or international significance of the prizes or awards from the competitions. Likewise, the Petitioner offers a letter from [redacted], who confirmed the Petitioner’s finishes at six competitions. Again, [redacted] did not provide any further information or elaborate regarding the field’s recognition of the Petitioner’s placements as national or international prizes or awards for excellence.

Furthermore, the Petitioner presents screenshots from worldrowing.com regarding the background, vision, mission, and principles of [redacted] the governing body of the sport of rowing. However, the screenshots make no mention of prizes or awards. Moreover, he submits rules, procedures, and regulations for the “ [redacted] Rowing,” “ [redacted] in Rowing,” “ [redacted] Rowing,” “ [redacted]” and “ [redacted]” Although the evidence indicates that winners will receive diplomas, cups, and other awards from the competitions, they do not discuss the standing or view of the awards in the field. In addition, while the documentation indicates that Ministry of Youth and Sports in Ukraine will distribute the diplomas and awards, the Petitioner did not show that government-based prizes or awards are necessarily recognized by the field for excellence. Likewise, the Petitioner did not establish that prizes or awards from sanctioning bodies, such as [redacted] are automatically nationally or internationally recognized for excellence in the field.

³ The Petitioner also documented his eighth place finish at the 2012 [redacted]

⁴ While we discuss a sampling of letters, we have reviewed and considered each one.

Moreover, the Petitioner offers translations of four articles published in the Ukrainian newspaper, *Grivna*, and argues that “the articles were about [his] success in academic rowing throughout his multi-year career and should have probative value.” The articles mention that the Petitioner became a three-time champion of the [redacted] games,” received three gold medals at the [redacted] Championship in rowing,” and is “a merited Master of Sports of Ukraine in rowing, repeated champion and country championships winner, 2004 [redacted] Champion among juniors, three-time winner of [redacted] championships, holder of the [redacted] for 2012 [redacted] in [redacted].” While the Petitioner submits screenshots from similarweb.com regarding website traffic for grivna.ka.ua showing a global rank of 432,190 and country rank of 11,567, he did not demonstrate that the articles were posted on grivna.ka.ua. Rather, as indicated, the Petitioner provides articles published in the newspaper, *Grivna*. In addition, the articles report on finishes and results from sporting events without discussing the national or international significance of the prizes or awards.

Further, the translations for the articles claim that the circulation for *Grivna* ranges from 52,500 – 60,000. However, the original articles do not contain circulation statistics. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the translations include material that is not in the original foreign language documents, the Petitioner did not submit complete and accurate English language translations. Regardless, the Petitioner did not demonstrate that the circulation statistics from a single newspaper, as well as the country rankings for grivna.ka.us, represent widespread media coverage of his awards, signifying nationally or internationally recognized prizes or awards for excellence in the field.

For these reasons, considered both individually and collectively, the Petitioner did not establish that he qualifies for the awards 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner fulfilled 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, 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 record reflects that the Petitioner submitted a certificate from URF showing his qualification as a “Referee of the 1st Category.” In addition, the Petitioner offered an income certificate listing his positions as “Deputy Chief judge,” “Informing referee,” “Umpire,” and “Referee for participants” at five rowing competitions in the Ukraine. Moreover, the Petitioner presented letters indicating his

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

membership on “the Regional Judicial Panel in rowing in the city of [redacted]” [redacted]
[redacted].

However, the Petitioner’s evidence does not demonstrate that he judged or evaluated the work or skills of competitors as opposed to enforcing the rules of events and ensuring sportsmanlike competitions. In fact, the Petitioner submitted the “Law of Ukraine of Physical Culture and Sports,” which defined sports refereeing as “individuals who have been trained and have an appropriate level of proficiency and are authorized to enforce the rules of sports, regulations of competitions and to ensure the reliability of the results recorded.” Moreover, the record contains the “On Approval of the Rules of Rowing Competitions” for the Ministry of Youth and Sports of Ukraine showing that the deputy chief judge supervises the work staff, controls the equipment on the distance, arranges the delivery of reserve equipment to the start line, ensures the preparation of the competition venues and equipment for official ceremonies, determines the location of participants’ equipment and specialized vehicles placement and storage, and controls the equipment repair. In addition, the main responsibility of the referee is “control over the compliance by the participants with rules on the distance.” Furthermore, [redacted] indicated that as part of the Regional Judicial Panel, the Petitioner attended methodological seminars for judges and conducted briefings for judges in accordance with qualification requirements.

Here, although the Petitioner held various positions, such as “Referee” and “Deputy Chief Judge,” he did not establish that he participated as a judge of the work of others consistent with this regulatory criterion. As discussed above, the Petitioner’s roles involved enforcing the rules and regulations and briefing other judges rather than evaluating the skills of rowers, determining the winners, or otherwise judging the work of others.

For the reasons discussed above, the Petitioner did not demonstrate that he participated as a judge of the work of others. Accordingly, we withdraw the decision of the Director for 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. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his athletic 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.⁶ 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.

⁶ As the Petitioner has not demonstrated his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not consider whether his entrance will substantially benefit prospectively the United States under section 203(b)(1)(A)(iii) of the Act.