



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

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

MATTER OF A-L-S-

DATE: OCT. 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a martial arts instructor, seeks classification as an “alien 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 petition, concluding that the Petitioner had not provided documentation satisfying the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria. The Director further found that the Petitioner did not establish that he would continue work in his area of expertise in the United States.

In his appeal, the Petitioner argues that the Director erred in finding he did not meet the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3). The Petitioner further states that the evidence demonstrates his standing as an individual of extraordinary ability.

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 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 the petitioner does not submit this evidence, then he or she must provide documentation that meets at least three of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as qualifying 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 record shows that the Petitioner has been a competitive athlete, instructor, referee, and judge in several martial arts forms including kung fu, wushu, karate, and tai chi. He seeks to continue his work as a martial arts instructor in 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).¹ In denying the petition, the Director found that the Petitioner did not meet any of the ten criteria.

A. Evidentiary Criteria

On appeal, the Petitioner maintains that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). For the reasons discussed below, we find that he has not satisfied the initial evidentiary requirements.

¹ We note that the Petitioner states on appeal that his gold medal at the 2017 [redacted] Martial Arts [redacted] Championship is “comparable to a Nobel prize or other internationally recognized award,” but he does not specifically claim that it satisfies the one-time achievement criterion at 8 C.F.R. § 214.2(h)(3). Rather, the Petitioner submitted the award as evidence of his eligibility under 8 C.F.R. § 204.5(h)(3)(i). We briefly note that the regulation at 8 C.F.R. 204.5(h)(4) does not allow for submission of “comparable evidence” relating to the one-time achievement of a major, internationally recognized award, nor does the record demonstrate that the noted award qualifies as such an achievement.

Documentation of the individual'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)

The Director acknowledged the evidence of the Petitioner's awards received as a competitive martial arts athlete, but declined to consider these since the Petitioner is petitioning as a martial arts instructor. We disagree with the Director's analysis and will consider this evidence.²

The Petitioner claims that he meets this criterion because he received a gold medal at the 2017 [redacted] [redacted] Martial Arts Championship held in [redacted].³ The record includes what appears to be an official event photograph of the Petitioner with a medal, on which he is identified as the "[redacted] Gold Medalist." Based on the limited information provided by this document, this event was sponsored by [redacted]. The record does not contain any other evidence related to this event or to the Petitioner's performance in the event, such as official results, a list of competitors, the event's entrance requirements or rules, or media coverage of the event.

The language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. The record is insufficient to confirm that the Petitioner's win at the 2017 [redacted] event constitutes his receipt of a nationally or internationally recognized prize or award for excellence in the field.

The Petitioner submitted testimonial evidence that referenced his gold medal at this event. This evidence included a letter from his current employer, [redacted] Law College in [redacted] which notes that his award is "a noteworthy and exemplary achievement as he is the first [redacted] to bag this Gold Medal in the history of [redacted] Martial Arts Championship." The Petitioner also submitted a letter from the Rotary Club of [redacted], where he teaches tai chi on a voluntary basis. The club's secretary references the 2017 gold medal and notes that the Petitioner "is the first person from our country to get this top award." However, these statements from individuals who know the Petitioner personally but have not claimed or established expertise in martial arts are insufficient to establish that he won a nationally or internationally recognized award.

² We note that the U.S. Citizenship and Immigration Services Adjudicator's Field Manual (AFM) provides:

In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managering at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

AFM chapter 22.22(i)(1)(C) (emphasis in original).

³ The Petitioner submitted documentation of two other awards that he received as a competitive athlete but he has neither claimed nor provided evidence that these are lesser nationally or internationally recognized awards for excellence in the field. One is a "Certificate of Merit Participation" indicating that he was awarded first place in the "Kata" category at the 1997 [redacted] Karate Championship held at the [redacted] Academy of Martial Arts at the age of 13. The other is a certificate indicating his first place medal in the [redacted] at The [redacted] Taekwondo Championships held in [redacted] in 2004. Neither award was accompanied by any additional evidence that would establish that they are nationally or internationally recognized awards.

For example, he has not shown that his win attracted the level of media attention that might indicate the award's national or international recognition. Moreover, he has not submitted information about the individuals who participated in the event, including their caliber and skill level, which might reveal the prestige and recognition of the competition. See USCIS Policy Memorandum PM 602-0005.1, *supra*, 6 (providing that for this criterion we should consider “[t]he number of awardees or prize recipients as well as any limitations on competitors” and that “an award limited to competitors from a single institution . . . may have little national or international significance”).

The Petitioner also submitted two letters, one from the [redacted] Full Contact Association, and one from the [redacted] National Sports Council, which refer to the Petitioner's receipt of a gold medal in the [redacted] Championship held in [redacted] 2017. However, the only corroborating evidence provided is an “International Certificate” issued to him for participation in this event as a referee. A letter from the event sponsor, the [redacted], confirms that the Petitioner was invited to serve as a judge at the event and to perform a demonstration for the closing ceremony. The [redacted]'s statement indicates he was awarded a gold medal “as a [t]oken of [a]ppreciation.” Therefore, evidence does not establish that the Petitioner earned a nationally or internationally recognized award for excellence at this event.

Finally, we note that the Petitioner initially submitted certificates of his qualifications issued by the World United Martial Arts Federation (WUMA). These certificates indicate that he was recognized as a Class A WUMA International Referee, a 3rd degree black sash in kung fu, and a 2nd degree black belt as a wushu instructor. These certificates do not equate to nationally or internationally recognized prizes or awards for excellence in the field. The certificates establish that the Petitioner earned these ranks based on his successful completion of a required skills test or examination, but he has not established that these rank certificates constitute either prizes or awards, nor has he submitted documentation, such as media reports, demonstrating that his rankings have received national or international recognition.

For these reasons, the Petitioner has not submitted documentation that satisfies this criterion.

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 Director found that the Petitioner did not submit evidence that satisfies this criterion. On appeal, the Petitioner asserts that he submitted evidence that he is the General Secretary of the WUMA Kung Fu Association [redacted]; the Vice President of the [redacted] World Martial Arts Association; an honorary member of the [redacted] Goju-Kai Karate Association; and a member of the [redacted] Kyokushin Karate Association.⁴ The Petitioner asserts that this evidence was not properly evaluated. In order to

⁴ The submitted documentation indicates that the Petitioner was approved as a “Lifelong Member” in the [redacted] Kyokushin Karate Association in November 2018, ten months after he filed this petition. Therefore, this evidence cannot establish his eligibility at the time of filing and we will not further address it. See 8 C.F.R. § 103.2(b)(1). For the same reason, we will not consider evidence indicating that the Petitioner was appointed as an honorary member of the World Martial Arts Committee (WMAC) in October 2018. A petition cannot be approved at a future date after the petitioner

satisfy this criterion, the Petitioner must show that he is a member of an association, and 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.⁵

The Petitioner submitted a letter from [redacted] Administrative Officer of the Association Coordination Section of the [redacted] National Sports Council. He confirms that the Petitioner was formerly the “Founder General Secretary” of the [redacted] WUMA King Fu Association and is currently a vice president of that association. [redacted] mentions the Petitioner’s experience as an athlete, referee, and judge at various martial arts competitions, and states that he is “a valued extraordinary player, trainer, Judge and official.” However, while the record confirms the Petitioner’s roles as both general secretary and, later, vice president of the [redacted] WUMA Kung Fu Association, neither this letter nor the other evidence in the record mentions the membership requirements for this association to show that it requires outstanding achievements, as judged by recognized national or international experts.

The Petitioner states that a “letter dated 11/06/2018 from the National Sports Council” indicates that he is “Vice President of the [redacted] World Martial Arts Association.” However, the evidence does not establish that the [redacted] WUMA Kung Fu Association” and the [redacted] World Martial Arts Association” are two different associations. In fact the referenced letter states that the Petitioner was elected vice president of [redacted] WUMA Kung-Fu Association as of March 2018. We note that the Petitioner submitted little other information about the association. The record reflects that WUMA Kung Fu Association [redacted] was designated the National Martial Arts Committee (NMAC) [redacted] by the World Martial Arts Committee (WMAC) in January 2017, but without evidence of the association’s membership requirements and selection criteria, we cannot determine that the Petitioner’s officer roles with this association meet the requirements of this regulatory criterion.

The Petitioner provided a letter from the Secretary General of [redacted] Goju-kai Karate-do Association along with a “Certificate of Honorary Member” issued by this organization. The letter states that the Petitioner was recommended for honorary membership by the “National Specialist Selection Committee of Sports” with a full quorum of three members, and approved by the Central Executive Committee. The letter mentions the Petitioner’s “outstanding success and extraordinary achievement in the field of Martial Arts.” However, the Petitioner provided insufficient independent evidence of the membership requirements for this association and the record does not establish that membership qualifications are judged by recognized national or international experts.

For these reasons the Petitioner has not shown 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.

becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176.

⁵ 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).

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 Director did not directly address the published materials in his decision, although the Petitioner initially claimed he was submitting evidence to meet this criterion. The Director, citing to *Matter of Nevarez*, 15 I&N Dec. 550 (BIA 1976), did not consider the evidence because the submitted certificate of translation did not accompany the translated documents or certify the translations as complete.

We have reviewed the published materials and note that even if the Director had found that the submitted certificate of translation was sufficient, the submitted evidence would not meet this criterion. The Petitioner submitted 24 articles published in [] newspapers *Rajdhani*, *Annapurna*, *Himalaya Times*, *Gorkhapatra*, *Naya Patrika*, *Nepal Samarchar Patra*, and *Commander Post*. While most of the articles briefly mention the Petitioner, none of them are about him. For example, many of the articles are identical in content and note that the Petitioner participated alongside 21 others in a two day seminar for kung fu instructors which was organized by [] WUMA Kung Fu Association. Other articles note the achievements of students at the academy where the Petitioner works as an instructor and note that he served as the team trainer, while others reported that the [] WUMA Kung Fu Association traveled to Bangkok for the First World Martial Arts Competition with the Petitioner as their team leader. 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). We also note that none of the submitted articles identify the author of the material, as required by the regulations. Furthermore, the Petitioner did not provide documentation demonstrating that any of these newspapers are considered professional or major trade publications or other major media.

For these reasons the Petitioner did not show that he satisfies 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 did not meet this criterion, noting that the Petitioner submitted evidence that identified him as a “referee” and testimonial evidence regarding his performance as a judge that was not corroborated by other evidence in the record. We disagree and find that the record supports the Petitioner’s claim that he meets this criterion.

The evidence confirms the Petitioner’s participation as a judge at the aforementioned [] Open Championship where, according to the [] president, he “served as a judge for several fights that were being held.” The Petitioner also submitted an invitation letter, a certificate, and a letter from the WMAC confirming his role as a “Judge in forms and kickboxing categories” at the 2016 [] Martial Arts [] held in []. The corroborated evidence of the Petitioner’s participation as a judge of the work of others was not limited to these two events.

Therefore, the evidence sufficiently establishes that the Petitioner has participated as a judge of the work of others in the same or an allied field of specification for which classification is sought. *See* 8 C.F.R. § 204.5(h)(3)(iv).

C. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible because he has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.⁶

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 accomplishments 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).

In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to “continue work in the area of extraordinary ability” under section 203(b)(1)(A)(ii) and will not address the Director’s separate finding with respect to that issue.

III. CONCLUSION

The Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. In visa petition proceedings, it is the petitioner’s 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 A-L-S-*, ID# 5107649 (AAO Oct. 1, 2019)

⁶ This review included consideration of testimonial evidence that was not claimed to satisfy any particular regulatory criterion, such as reference letters from the Petitioner’s current and former students and references from professional associates familiar with the Petitioner’s skills as a martial artist.