



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

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

MATTER OF B-N-

DATE: OCT. 25, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a martial artist and martial arts instructor, seeks classification as an individual 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.

Following the Petitioner's timely response to the Director of the Nebraska Service Center's request for evidence, the Director 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 he must meet at least three.

On appeal, the Petitioner submits a brief and asserts 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

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 found that the Petitioner met only the criterion for judging at 8 C.F.R. § 204.5(h)(3)(iv). The record contains evidence that the Petitioner served as a judge for numerous martial arts events in Uzbekistan. Accordingly, we agree with the Director that the Petitioner meets the judging criterion.

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

### A. Regulatory Criteria

*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).

The Director acknowledged the Beneficiary’s receipt of multiple awards at martial arts competitions, but found that the record did not demonstrate that the awards are nationally or internationally

recognized. Specifically, he stated that, as these awards were “limited to members of that association and participants of that competition... such evidence has no probative value for meeting this criterion.”

As noted by the Director, the record reflects that the Petitioner has received numerous awards for martial arts competitions. The Petitioner establishes that in 2009 he received a bronze medal in [redacted] at the [redacted] Martial Arts Games in [redacted] Thailand. The record reflects that these games were hosted by the Olympic Council of Asia and that the attendees were National Olympic Committees from numerous countries. We find the record sufficient to demonstrate that the Petitioner has won an award that is nationally or internationally recognized for excellence in martial arts.<sup>1</sup> Accordingly, we disagree with the Director and find that the Petitioner meets 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).

In order to satisfy this criterion, the Petitioner must show that he is a member of an association in his field, 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.<sup>2</sup> The Director concluded that the Petitioner did not meet this criterion, finding first that Petitioner’s membership on the Uzbekistan National [redacted] Team “does not pertain” to this criterion. He further determined that, while the record included letters confirming the Petitioner’s membership in several martial arts federations,<sup>3</sup> it lacked evidence establishing that these associations required outstanding achievements of their members as judged by recognized experts in martial arts.

On appeal, the Petitioner references both the correspondence mentioned by the Director, and the statutes and rules for these associations provided in the record, and reiterates that this documentation establishes that he meets this criterion. He also includes an August 2018 letter from [redacted] president of the All-American [redacted] Federation [redacted], confirming his membership in that organization.

Regarding the documentation pertaining to statutes and rules, the record, in relevant part, contains the constitution of the [redacted].<sup>4</sup> While this federation extends membership to individuals, its constitution does not provide the requirements to join and the record lacks other materials demonstrating the

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<sup>1</sup> We note that we have reviewed the record in its entirety, and find that that the evidence regarding the remaining awards does not sufficiently establish their national or international recognition.

<sup>2</sup> 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> (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).

<sup>3</sup> We note that letters in the record related to these organizations confirm the Petitioner’s membership on national teams, rather than in the organization themselves.

<sup>4</sup> The record also contains the statutes of the Fédération Internationale de [redacted] and the articles of association of the Federation International Amateur [redacted]. However, the Petitioner does not claim membership in these organizations and so, while we have reviewed these documents, we do not discuss them here.

process by which the Petitioner was selected to be a member of this organization. Absent this information, the Petitioner has not demonstrated that his membership in [ ] is based upon outstanding achievements as judged by national or international experts in the field of martial arts.

The Petitioner also provides correspondence from [ ], president of the International [ ] Association's [ ] branch, and [ ] president of the Amateur and Professional [ ] Federation, stating that he is a member of the Uzbek National [ ] Team and the Uzbek National [ ] Team, respectively. Both authors indicate that the criteria for granting membership on these teams are the Petitioner's outstanding achievements in each discipline, as judged by nationally or internationally recognized experts. However, the language in these letters is identical, calling into question whether they were independently prepared by the authors, and therefore diminishing their probative value in establishing that the Petitioner's membership on these teams qualify for this criterion. Moreover, repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Regardless, the letters do not contain detailed, probative information that identify the requirements for membership on these teams, or demonstrate that membership is based upon outstanding achievements in the field of martial arts as determined by national or international experts.

As noted above, on appeal the Petitioner provides an additional letter on appeal from [ ] [ ] president of the Uzbekistan [ ] Federation, confirming his membership on the Uzbekistan National [ ] Team and stating that his admission to this team was recommended by athletes who are experts in the field of martial arts. The record includes correspondence from each of these athletes in which they attribute their recommendation to the Petitioner's having been "a champion... and winner many times in national and international tournaments." However, the correspondence does not contain detailed information identifying the membership requirements for this team, or otherwise demonstrating that membership on this team is based on outstanding achievements. In addition, while the Petitioner provided the accomplishments of the individuals who wrote these letters, he did not demonstrate that they are recognized national or international experts consistent with this regulatory criterion. We also note that the letters are written using identical language and this diminishes their probative value, as discussed above.

For these reasons, the Petitioner has not established that he meets the criterion for membership.

*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 Director concluded that the Petitioner had not met this criterion as he "submitted no independent, probative evidence" that the articles about the petitioner related to his work "are in major trade publications or other major media." On appeal, the Petitioner does not contest the Director's finding, instead referencing the articles previously provided and asserting that they are "numerous and persuading." While the record includes articles in *The World of News*, *Vatanparvar*, *The Army of the*

*Uzbekistan*, and *Eastern Pravda* about the Petitioner and related to his work that include the title, date, and author, it does not establish that these publications qualify as major media, as required.<sup>5</sup>

With respect to *The World of News*, the Petitioner includes a translated screenshot from the webpage <https://mirnov.ru/pr-promotion.html> titled “PR and Promotion,” and a second document “The World of News – weekly newspaper.” The former does not contain information, such as circulation statistics or other relevant data, which might demonstrate that *The World of News* rises to the level of major media. While the latter contains this data, the Petitioner does not demonstrate that its circulation is high relative to that of similar publications, and thus that it rises to the level of a major medium.<sup>6</sup>

The Petitioner also includes a webpage printout describing *Vatanparvar*, but lacking circulation statistics or other relevant data. In addition, the record includes an article published in *The Army of the Uzbekistan*, but the Petitioner does not provide information about this magazine. He therefore has not demonstrated that either publication rises to the level of major medium.

As it relates to the newspaper *Eastern Pravda*, the Petitioner submits an article published therein titled [REDACTED]<sup>7</sup> The Petitioner provides no additional information, such as circulation statistics or other relevant data, about *Eastern Pravda* or shown that its circulation is high relative to that of similar publications. Absent this information, the Petitioner has not established that *Eastern Pravda* is a major medium.

We note that the Petitioner subsequently included a properly translated statement regarding a newspaper named *The Truth of the East* that contains its circulation statistics. His intent was to demonstrate that the material in the initial petition “was published in major, nationally established media in [his] country of origin.”<sup>8</sup> However, the Petitioner does not explain the relationship between *The Truth of the East* and any of the publications discussed above or identify articles in the record published therein. Even had he done so, the Petitioner does not submit additional evidence demonstrating that the newspaper’s circulation statistics are high relative to that of similar media. Accordingly, he has not demonstrated that it rises to the level of a major medium.

For these reasons, the Petitioner has not demonstrated that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

*Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. For

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<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

<sup>6</sup> *Id.*

<sup>7</sup> The coversheet preceding this article in the initial filing provided this information.

<sup>8</sup> The Director issued a request for evidence (RFE) asking for, among other things, additional materials demonstrating that the articles in the record were published in major media. In the brief accompanying his response to this RFE, the Petitioner indicates that this documentation was intended for this purpose.

example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

Here the Petitioner asserts that he meets this criterion through his “original method of martial arts cross-training” that is “uniquely effective” and provides multiple letters of recommendation describing this method.<sup>9</sup> For example, one letter written by [redacted] states that “[the Petitioner] developed a uniquely-effective and highly-original method for cross-training martial arts disciplines” and that this method “has been recognized by national and international experts in martial arts to be a contribution of major significance.” In a second recommendation letter, [redacted] from [redacted] notes that the Petitioner has used this training method in his role as the coach at [redacted] (Sports Club) resulting in success for both himself and the [redacted] sports team. [redacted] explains that it is because of this success that the method is “considered by national and international experts in martial arts to be an original contribution of major significance to the field.”

However, neither letter provides specific details about how the Petitioner’s training methods are original when compared with traditional martial arts training, nor do they describe how his techniques have been applied or implemented in the broader field beyond the athletes he has coached. Letters that repeat the regulatory language but do not explain how an individual’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff’d in part* 596 F.3d at 1115. For this reason, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

*Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.* 8 C.F.R. § 204.5(h)(3)(vi).

On appeal, the Petitioner asserts that he meets this criterion but does not identify or submit evidence supporting this claim. Accordingly, we find that he has not demonstrated that he meets 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).

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.<sup>10</sup> 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.<sup>11</sup>

As noted above, the record reflects that the Petitioner served as the head coach of the [redacted] Sports Club martial arts team. It also contains a reference letter from the [redacted] indicating that he served as the head of the sports center for the [redacted] Sports Club. While

<sup>9</sup> Although we discuss only a sampling of these letters, we have reviewed all correspondence in the record.

<sup>10</sup> USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

<sup>11</sup> *Id.*

this demonstrates that Petitioner has served in a leading role for these organizations, the record lacks evidence demonstrating that either organization has a distinguished reputation, as required. Therefore, he has not met his burden in demonstrating that he meets the requirements of 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 he 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 those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that he has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not established his eligibility for the classification sought. 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 B-N-*, ID# 04364477 (AAO Oct. 25, 2019)