



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

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

In Re: 6713343

Date: APR. 6, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a go player and teacher, 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 Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met any of the ten initial evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner subsequently appealed the Director's decision, and we found that he met one of the ten criteria, relating to his participation as a judge of the work of others in his field. In his motion to reopen, the Petitioner submits new evidence and asserts that he meets three additional criteria.

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 review, we will dismiss the motion.

## I. LAW

A motion to reopen is based on documentary evidence of *new facts*. The regulation at 8 C.F.R. § 103.5(a)(2) does not define what constitutes a "new" fact, nor does it mirror the Board of Immigration Appeals' (the Board) definition of "new" at 8 C.F.R. § 1003.2(c)(1) (stating that a motion to reopen will not be granted unless the evidence "was not available and could not have been discovered or presented at the former hearing"). Unlike the Board regulation, we do not require the evidence of a "new fact" to have been previously unavailable or undiscoverable. Instead, we interpret "new facts" to mean facts that are relevant to the issue(s) raised on motion and that have not been previously submitted in the proceeding, which includes the original petition. Reasserting previously stated facts or resubmitting previously provided evidence does not constitute "new facts."

The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

## II. ANALYSIS

The Petitioner is a go player and teacher at the [redacted] Go Center, competing in tournaments, organizing events and instructing students. With his motion to reopen, he submits evidence which he asserts relates to three criteria in addition to the judging criterion, each of which we consider below.

*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)

As indicated above, a motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). Regarding this criterion, the Petitioner first refers to documents showing the results of the [redacted] Go Tournament, also known as the [redacted] Cup, which he indicates shows that players participating in the “Main Championship,” in which he lost in the final round, are more highly rated than those in the “Ranked Block.” While we acknowledge that this appears to be the case,<sup>1</sup> this evidence was previously submitted with the Petitioner’s initial filing, and as such is not new evidence. Similarly, the Petitioner’s reference to other previously submitted evidence in his motion brief does not satisfy the requirements of a motion to reopen. Therefore, the Petitioner has not submitted new evidence to establish that he 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)

The Petitioner bases his claim to this criterion on his ranking and rating by the American Go Association (AGA). As a threshold issue, he addresses our finding in the previous decision that this ranking cannot be considered to be a type of qualifying membership under this criterion. However, in his rebuttal on motion, the Petitioner again references previously submitted evidence, in this case the AGA tournament rules which were submitted in response to the Director’s request for evidence (RFE). He has therefore not submitted new evidence to overcome our previous finding in this regard.<sup>2</sup>

The Petitioner goes on to assert that his AGA rating, which places him fairly high in the amateur ranks, “reflects that the [G]o player has risen to the level of outstanding achievements.” He refers to a previously submitted letter from the president of the AGA, who states that a player of the Petitioner’s rating “can sometimes beat a weaker Asian pro,” and also refers to new evidence showing that in the 2018 US Go Open Masters tournament, two top-ranked professionals lost games to lower ranked professional and top-ranked amateur opponents. We first note that the plain language of this criterion focuses on requirements for membership, rather than the relative skill levels of members. In addition,

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<sup>1</sup> The Petitioner resubmits this evidence in response to what he perceives to be an incorrect implication in our previous decision. However, we note that regardless of the go rating of the players against whom the Petitioner competed, our previous decision noted that it is the recognition of the prize or award he received that is the issue under this criterion. The Petitioner has not submitted new evidence to establish the national or international recognition of his [redacted] placing in this tournament, or of the other prizes or awards he has received as a go player.

<sup>2</sup> We nevertheless note that section VI.A.1.a of the rules, under “Ratings and ranks,” states that “A rating is a numerical expression of playing strength assigned to each AGA member by the Ratings Coordinator.” This statement clearly indicates that membership and rating are separate and unrelated statuses within the AGA.

the Petitioner's argument regarding outstanding achievements is moot because he has not established that even if his rating did result from outstanding achievements, it can be considered to be a membership for purposes of 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)*

In our previous decision, we found that although one article published in the [redacted] *Evening News* was about the Petitioner and his work as a go player, the evidence did not establish that this newspaper's circulation is sufficient to qualify it as a major medium in comparison to other media. On motion, the Petitioner submits evidence regarding the circulation of two newspapers, *The Boston Globe* and *The Guardian*, and asserts that a comparison with the previously submitted figures of the [redacted] *Evening News* shows that it qualifies as a major medium. However, the evidence does not indicate that either of these publications are published in Chinese or distributed in China, where the [redacted] *Evening News* is published. As indicated in our previous decision, circulation figures are key to our determination of whether a publication can qualify as a "major trade publication or other major media," but they must be considered in the proper context. The comparison of circulation figures of "the only metropolitan newspaper in [redacted]" to that of a regional newspaper in the United States or a nationally-distributed newspaper in the United Kingdom does not demonstrate that, in its market, the [redacted] *Evening News* can be considered as a major medium. Therefore, this new evidence does not establish that the material published about the Petitioner and his work appeared in a qualifying publication.

Because the Petitioner has not established that he meets at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), we need not conduct a final merits determination to consider whether he has sustained national or international acclaim and is one of the small percentage at the very top of his field.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established through the submission of new facts that he meets the initial evidence requirements as an alien of extraordinary ability.

**ORDER:** The motion to reopen is dismissed.