



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

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

In Re: 12509637

Date: DEC. 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a personal fitness trainer, 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 had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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

international 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 criteria 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).

## II. ANALYSIS

The Petitioner asserts that she “is among the very best in the world at training celebrities with normal physiques and transforming their bodies to appear as finely tuned athletes for major motion picture production. In this endeavor, her list of clients and accomplishments is truly among the very best in the world.” The Petitioner claims an “extensive list of [redacted] celebrity clients” in “multiple motions [*sic*] pictures,” but does not provide any such list, and she identifies only one film project. She helped to train actor [redacted] for her role in [redacted] a motion picture released shortly before the petition’s filing date in December 2019.<sup>1</sup>

### A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). At various times, the Petitioner has claimed to meet eight criteria, summarized below, either directly or through comparable evidence:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;

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<sup>1</sup> The Petitioner entered the United States in 2015 as an F-1 nonimmigrant student, a classification that generally does not permit employment in the United States. In an April 2019 interview in the record, the Petitioner states that she had already “finished school” at the time of the interview. Nevertheless, U.S. Citizenship and Immigration Services (USCIS) records do not show any change of nonimmigrant status or grant of employment authorization; record evidence from November 2019, less than six weeks before the filing date, shows that the Petitioner re-entered the United States, still as an F-1 nonimmigrant student.

- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met only the fourth numbered criterion, relating to participation as a judge. We will not disturb this determination.<sup>2</sup> On appeal, the Petitioner asserts that she also meets the other claimed evidentiary criteria.

We have reviewed all of the evidence in the record, and conclude, as discussed below, that it does not show that the Petitioner satisfies the requirements of at least three 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 Petitioner won medals at the 2019 [redacted] Classic, a competition held by the National Physique Committee (NPC). The Petitioner states: "The NPC is the world's largest physique competition, with competitions all over the world." A sports journalist and promoter states that prominent bodybuilders have competed at NPC events. Whatever the NPC's reputation, the Petitioner does not establish that prizes from the [redacted] Classic are nationally or internationally recognized. The journalist and promoter also states that the Petitioner "went on to finish an impressive ninth place at the 2019 [redacted] Championships," but ninth place is not a prize or award. The Petitioner has not submitted objective documentary evidence to establish the recognition of the prizes and awards she has received.

Beyond the above issues, the Director also noted that "these awards were given for competition as a bodybuilder," not as a fitness trainer. The Petitioner does not address this very significant point on appeal. Awards for the Petitioner's development of her own physique do not amount to recognition of her achievements or abilities in terms of training others.

The Petitioner has not satisfied the requirements of 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 asserts that she was "a member of the [redacted] organization," and that her various achievements (described elsewhere in this decision) are, collectively, comparable to membership in a qualifying association. The Director concluded that the Petitioner did not show that her participation in these activities constituted membership in associations or met the other regulatory requirements. The Director also determined that the Petitioner did not show that the criterion does not readily apply to her occupation, such that she could claim comparable evidence under 8 C.F.R. § 204.5(h)(4).

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<sup>2</sup> The Petitioner was one of three judges at a weightlifting competition in [redacted] California, in [redacted] 2019. We agree with the Director that this activity facially satisfies the language of the criterion. Had the case reached a final merits determination, we would have considered the evidence, or lack thereof, concerning the significance of the event.

On appeal, counsel for the Petitioner maintains that she “was selected to be a member of the association which produced [redacted] due to the **judgement of recognized experts** in the fitness and film industry” (emphasis in the original). The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). The Petitioner does not submit evidence to establish that a film production constitutes an association in the field of fitness training, or that nationally or internationally recognized experts in that field selected her to participate in the production.

Furthermore, even if we were to conclude that the film production qualified as an association in her field, the Petitioner has not established that her membership was due to her outstanding achievements. She describes how she came to be associated with the film in an interview with *VoyageLA*, where she stated:

[redacted]

[redacted] The record does not contain evidence demonstrating the events described by the Petitioner qualify as an outstanding achievement.

For the reasons discussed above, the Petitioner has not demonstrated eligibility for 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)*

The Petitioner submits material from three publications. The Petitioner claims that she “has been featured in *Oxygen Magazine*.” The submitted issue of *Oxygen* includes a 12-page article about workout techniques. The Petitioner posed for photographs to illustrate the exercises, but her name does not appear in the article. Counsel for the Petitioner claims that she “was featured to demonstrate the exercises as she is a top personal trainer,” but the record contains no evidence to support this claim.

A two-paragraph biographical sketch of the Petitioner appears elsewhere in the issue, more than 40 pages away from the article described above. However, this column does not include the author credit required by the regulations and therefore cannot establish eligibility under this criterion. The Petitioner asserts that the magazine’s editor in chief is the author of the biographical piece, but the editor’s name is not on the page with the sketch. Furthermore, this short piece does not describe the Petitioner as “a top personal trainer.” It describes the Petitioner’s participation in competitions, but does not indicate that she has any experience as a personal trainer or any plans to work in that field. The record does not establish that the Petitioner was chosen to model for photographs because “she is a top personal trainer.”

The Petitioner submits a screen print from the website of *Men’s Health*, showing part of an article about how actor [redacted] trained for [redacted]. The screen capture includes a frame of an accompanying video, showing the Petitioner with the actor in a fitness center. In the complete video,<sup>3</sup> the actor introduces the Petitioner, and she is intermittently seen standing beside him or acting as a spotter

<sup>3</sup> The video is available at [https://www.menshealth.com/\[redacted\]](https://www.menshealth.com/[redacted]) (last visited December 10, 2020).

as he performs and narrates various exercises, but she does not speak and the actor says nothing more about her after the one-sentence introduction, nor does he indicate that the Petitioner had taught him any of the exercises shown. The Petitioner's presence in the room while an actor demonstrates his own exercise regimen does not make the video published material about the Petitioner. The Petitioner does not establish that the accompanying written article mentions her.

An interview with the Petitioner appeared in the [redacted] category of the online publication *VoyageLA*. There is no author credit, as the regulations require. The article concludes with the Petitioner's own contact information. Furthermore, readership statistics from an unnamed website indicate that *VoyageLA*'s website attracts "about 7,657 unique visitors . . . per day." The Petitioner does not provide comparative figures to show that the site's view rate is consistent with major media.

The articles submitted by the Petitioner do not meet the regulatory requirements for the criterion.

*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)

Under this criterion, the Petitioner submits letters from six individuals, all of whom participated in [redacted]). Most of these individuals assert, in varying degrees of detail, that the Petitioner played an important role in preparing some cast members for filming. Of these [redacted], only one has a significant reputation relating to fitness and bodybuilding. [redacted]

[redacted] states:

[The Petitioner's] unique style combines both the traditional and modern bodybuilding and fitness styles, along with special High Intensity Fitness Training (HIIT) [*sic*], which shocks the muscles and body to obtain fast results.

. . . I am very impressed by [the Petitioner's] unique method . . . where she combines the exercises and intervals to stretch and strengthen the muscles. It produces better gains than the conventional training techniques and is making an impact and contribution in the industry. As someone who has been involved in the fitness industry for more than five decades, it is my opinion that [the Petitioner] is a top national fitness trainer.

....

[The Petitioner] is a hardworking and nationally acclaimed trainer.

[redacted] credentials qualify him as an authority in the field, and add weight to his opinions. While his statement attests to the originality of her approach to training, it does not provide specific information to address the degree, if any, to which her work has impacted the field.

Producer [redacted] calls the Petitioner "the best top trainer in the industry," while director [redacted] states that the Petitioner "is the best personal trainer and the top in her field." [redacted] states that the Petitioner "has a unique training style that she developed by comb[in]ing various exercises and High

Intensity Training in a unique combination that provides explosive results. Her unique style represents the future of fitness training. She is truly the best trainer in the country.” These rather general assertions do not suffice to establish that the Petitioner’s training methods have already had a demonstrable impact and influence on the field.

The Petitioner has not submitted documentation to establish that her work on film constitutes an original contribution of major significance to the field of fitness training. The letters are not primary evidence that the Petitioner has developed an influential new training regimen, or that her techniques have been widely used beyond the production of one film.

*Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.*  
8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner states that “the physique that [she] created” for [redacted] was displayed in [redacted] That motion picture, however, was not created or promoted as a showcase for the Petitioner’s work as a fitness trainer. Rather, the Petitioner was hired in an ancillary role to prepare one of the actors in the cast.

The Petitioner has not satisfied the requirements of 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)

In evaluating evidence offered under this criterion, we must examine whether the role is (or was) leading or critical. If a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. A supporting role may be considered “critical” if the alien’s performance in the role is (or was) important in that way.<sup>4</sup>

The Petitioner claims to satisfy this criterion by training actors in [redacted] The Petitioner does not establish that [redacted] is an organization or establishment in its own right. Whatever the reputation of [redacted] which distributed the film in the United States, the Petitioner does not cite any evidence to show that her role was leading or critical for [redacted] at the organizational level.

The Petitioner asserts that “the physiques of the actors” were “a vital part of that production,” and that, therefore, “without [the Petitioner’s] expertise, the film could not have been made.” In letters in the record, the film’s director, producer, and cast members praise the Petitioner’s participation, but they do not support the claim that “the film could not have been made” without her involvement. This argument is not persuasive. With respect to [redacted] the Petitioner has not shown her involvement in the film was critical.

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<sup>4</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* 10 (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

The Petitioner has not satisfied the requirements of this criterion.

*Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.* 8 C.F.R. § 204.5(h)(3)(ix)

On appeal, the Petitioner states: “The average trainer makes significantly less than [the Petitioner] . . . . [The Petitioner] is among the very best trainers in the world and the high cost of her services reflect[s] that.” The Petitioner does not provide any specific figures. The Petitioner’s vague, unsupported, and untimely assertion has no weight in this proceeding. The purpose of an appeal is to identify erroneous conclusions of law or statements of fact in the underlying denial decision. *See* 8 C.F.R. § 103.3(a)(1)(v). The claim of high remuneration was never put before the Director, and therefore the Director cannot have erred by failing to consider that claim.

For the above reasons, the Petitioner has not satisfied at least three evidentiary criteria.

### 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 conclusion 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. U.S. Citizenship and Immigration Services 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 her 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 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). The Petitioner claims to be among the top celebrity fitness trainers, apparently based on her work on one motion picture.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.