



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

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

In Re: 5061971

Date: FEB. 13, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a rowing coach, 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 and subsequent motion to reopen, concluding that the record did not establish that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and additional evidence and asserts that he meets at least three of the ten criteria, and that the record establishes his sustained national and international acclaim in his field.

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) (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 Petitioner is a rower that previously competed with the [redacted] national team and with the University of [redacted] rowing team. He also served as a coach with the [redacted] Rowing Association [redacted] and with the [redacted] Rowing Association [redacted]. The Petitioner indicates, and the record reflects, that he intends to continue to work as a rowing coach in the United States.

### A. Evidentiary Criteria

In his analysis, however, the Director discounted the documentary evidence relating to the Petitioner’s career as a rower. We disagree with the Director’s analysis on this issue, and will instead evaluate all evidence relating to the Petitioner’s rowing achievements as both an athlete and a coach.<sup>1</sup>

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<sup>1</sup> 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/managing 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)

In his decisions, the Director found that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), those relating to service as a judge of the work of others and to performance in a leading or critical role, but did not meet the criterion relating to awards.

The record contains race results and media coverage of the races, showing that the Petitioner was a crewmember in boats consisting of between two and eight rowers receiving medals at national and world championships. He also provides documentation establishing the distinguished reputation of the [redacted] national team and the [redacted] rowing team. Accordingly, we agree with the Director that the Petitioner meets the criterion for leading or critical role.

However, as discussed below, we do not find that the Petitioner meets the criterion for judging. This notwithstanding, we conclude that the Petitioner meets the requirements of two additional criteria, those for awards at 8 C.F.R. § 204.5(h)(3)(i) and membership at 8 C.F.R. § 204.5(h)(3)(ii).

*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 denying the initial petition, the Director acknowledged the Beneficiary's receipt of multiple awards as a rower, as well as evidence showing that rowing teams that he coached were recipients of several awards. He discounted the former as the Beneficiary received them as an athlete, as opposed to his intended field of endeavor as a coach, and the latter because these awards were "limited to participants of these competitions." The Director also found that the record lacked evidence of media coverage or other materials demonstrating that these awards were nationally or internationally recognized for excellence in the field of rowing.

Here, as noted by the Director, the record contains evidence that the Petitioner received a silver medal at the 2006 [redacted] Rowing Championships, a bronze medal at the 2008 [redacted] Rowing Championships. In addition, the record contains media articles published [redacted] newspapers about the Petitioner's success in these international competitions. The record further reflects that the Petitioner won a bronze medal in the [redacted] at the 2014 [redacted] National Championship, the men's [redacted] championship. The Petitioner also provides articles about the [redacted] championship published online at [usrowing.com](http://usrowing.com)<sup>2</sup> and in the *San Francisco Chronicle*. This is sufficient to show that he received nationally or internationally recognized awards for excellence in rowing.

The record also contains documentation showing teams he has coached were recipients of bronze medals at the 2015 [redacted] Regatta, a gold medal in the [redacted] in the 2017 and 2018 U.S. Rowing [redacted] Championships, and gold medals in the [redacted] at the 2017 [redacted] Regatta. However, the description of this type of evidence in the regulation provides that the focus should be on the alien's receipt of the awards or prizes.<sup>3</sup> Thus, documentation of awards won by teams the Petitioner has coached is not sufficient to demonstrate that the Petitioner meets this criterion

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<sup>2</sup> Usrowing.com is the website for US Rowing, the national governing body for rowing in the United States.

<sup>3</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>.

as a rowing coach. However, as we have concluded that the Petitioner meets this criterion as a rower, we will withdraw the Director's finding in this matter.

*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 record reflects that the Petitioner was a member of the [redacted] rowing national team competing at the 2005 and 2006 [redacted] Rowing Championships and the [redacted] rowing national [redacted] team competing at the 2007 and 2009 [redacted] Rowing Championships.<sup>4</sup> The Petitioner provides the selection plans for both the [redacted] national rowing team and the [redacted] national rowing teams that show that the selection criteria for membership on these teams is based upon wins at a series of international competitions, supervised by national experts. For example, the selection plan for the [redacted] rowing national [redacted] team requires a first or second place finish in "[redacted] category" on both days of the [redacted] International Regatta, as well as a first place finish for [redacted] in the [redacted] category or a medal in a [redacted] category on the first day of the [redacted] Open regatta, and a medal in a [redacted] category on the second day of the [redacted] regatta. This evidence is sufficient to demonstrate that the Petitioner meets 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 specialization for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director determined that the Petitioner provided evidence sufficient to establish that he met this criterion. However, upon review we disagree with the Director's conclusion. As evidence that he has served as a judge of the work of others in the field of rowing, the Petitioner submits his national rowing umpire license from the [redacted] Rowing Foundation [redacted]. He also provides a letter from [redacted] [redacted] secretary general of the [redacted] confirming that the Petitioner served as a licensed national umpire for numerous regattas, such as the 2008 [redacted] Rowing Cup [redacted] and the 2008, and 2011-2014 International Regatta [redacted] Open. In a second letter, [redacted] confirms, "[The Petitioner] took part in umpiring many state and regional regattas with great skill and focus on fair racing conditions." He describes the Petitioner's role in this capacity as overseeing "large numbers of rowers, ensuring that they complied with race rules demonstrating great responsibility and further ensuring fair conditions for all."

However, the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires that the Petitioner provide evidence of his participation "either individually or on a panel, as a judge of the work of others." Neither the umpiring license nor [redacted]'s letters demonstrate how the Petitioner's role in ensuring rowers' compliance with race rules and in providing fair conditions for their races equates to evaluating or judging their work or skill as rowers. The record lacks other evidence, such as the

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<sup>4</sup> The record includes an undated document titled [redacted] [redacted] explaining that the [redacted] Rowing Foundation [redacted] was established in [redacted] 2006, when [redacted] became an independent state. At that time [redacted]'s rowing team began to compete as the [redacted] National Team under the state emblem of the [redacted]. [redacted] replaced the Rowing Federation of [redacted], an entity that changed its name from the Rowing Federation of [redacted] in [redacted] when the Federal Republic of [redacted] ceased to exist.

official rules for these regattas, establishing that umpiring these races requires judging the work of others, as opposed to enforcing the rules of a race and ensuring sportsmanlike conditions. Further, the Petitioner does not submit evidence demonstrating that he has served as a judge of the work of other coaches. Accordingly, the Petitioner has not demonstrated that he meets this criterion, and we will withdraw the Director's finding to the contrary.

While we have withdrawn the Director's finding regarding judging, we do find that the Petitioner has established that he fulfills at least three regulatory criteria and will evaluate the totality of the evidence in the context of the final merits determination below.

## B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.<sup>5</sup> In this matter, we determine that the Petitioner has not shown his eligibility.

The Petitioner indicates that he began his career as a rower in 2003, competing as a member of [redacted] national team from 2004 until 2009, and on the [redacted] rowing team from 2011 through 2014. In 2015, the Petitioner served as the head coach in the [redacted] class and assistant coach for the [redacted] teams at [redacted]. In 2017, he joined the [redacted] as coach for the [redacted] teams and an assistant coach for the [redacted] team.

Regarding his sustained acclaim as a rower, the record reflects that the Petitioner has consistently competed and garnered awards in rowing championships, performing critical roles as a member of the [redacted] national team and the highly regarded [redacted] team. For example, in addition to the awards discussed above, the Petitioner provides documentation showing that he placed third in the 2008 [redacted] Championships, and competed in the finals of the 2007 [redacted] Rowing Championship and the 2007 [redacted] Rowing Cup. The record further reflects that he was recruited to and provided with a full athletic scholarship to [redacted] in 2011 where he competed on the [redacted] boat until 2014. As a member of the [redacted] rowing team, the record shows that the Petitioner won a bronze medal in the [redacted] Championship. The Petitioner has therefore established that he garnered sustained national or international acclaim as an athlete through 2014, and was one of the few at the top of his field.

However, the Petitioner indicates his intention to continue working in the United States as a rowing coach, not as a rower. Therefore, we must evaluate whether he has sustained his acclaim as an athlete into his career as a coach. Turning to the evidence regarding that aspect of his career, the record

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<sup>5</sup> *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

reflects that the Petitioner began his coaching career as a coach of the [redacted], and continued his work as a coach for the [redacted] in 2017. During his tenure with the [redacted], the [redacted] team that he co-coached with [redacted], head coach, placed third in the 2015 [redacted] Regatta. The [redacted] for whom he was head coach, placed first at the U.S. Rowing [redacted] Championships. While he was a coach for the [redacted] junior men's team, the record reflects that the [redacted] teams won gold medals in four boat classes at the U.S. Rowing [redacted] Championships.

With respect to the competitions attended and awards won by teams during the Petitioner's tenure as a coach, the record reflects that these were at a regional level, rather at the national and international levels in which the Petitioner demonstrated acclaim as an athlete. For example, as we discuss above, the record establishes the awards won by [redacted] at the U.S. [redacted] Championships, and by the [redacted] at the U.S. [redacted] Championships. However, the USRowing article indicates that there is an USRowing Youth Nationals Championship. The record does not show that members of the [redacted] freshman team competed at these national championships. Similarly, an article in the *Marin Independent Journal* states that members of the [redacted] boat competed at the [redacted] Rowing Championships, but does not indicate whether the members of the [redacted] team that the Petitioner coached did so. Further, the record does not provide evidence showing that the [redacted] teams competed at either the national or international rowing championships. Overseeing teams whose members competed and won at the regional level, in contrast with the national and international competitions for which the Petitioner garnered acclaim as an athlete, does not support a conclusion that the Petitioner has sustained this acclaim as a coach, or was one at the top of his field.

As it relates to the critical role that the Petitioner played in these outcomes, he submits numerous letters of recommendation. [redacted] two-time Olympic gold medalist, notes the Petitioner's role at [redacted] in, "building the technical, physiological and psychological foundation for [redacted] athletes" where [redacted] executive director and head coach for [redacted] states, "[h]e is individually responsible for his athletes on a daily basis." [redacted] notes that at [redacted] the Petitioner "regularly used to employ skills... such as stroke mechanics, motivational techniques, and workout regimes" that he learned from [redacted] with the "demonstrable outcome" being [redacted]'s third place finish at the [redacted] in the [redacted]'s 8. As it relates to [redacted], former [redacted] board president, asserts, "[the Petitioner] emphasized making changes together," an approach that "enhanced team cohesion and led to significant increases in boat speed." She attributes his work to [redacted]'s "[redacted] teams medaling in some of the most competitive events in the US." While these letters generally describe the Petitioner's contributions to these clubs as a coach, they lack detailed examples of how the Petitioner's work as a coach resulted in the stated outcomes. Further, they do not differentiate him from other coaches, either within [redacted] and [redacted] or nationally, in a manner that might demonstrate his national or international acclaim as a rowing coach. Thus, while the Petitioner has established that he enjoyed national and international acclaim through his success as an athlete, these letters do not demonstrate that he sustained this level of acclaim as a rowing coach.

For the reasons discussed above, the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act as a rowing coach. As such, we need not determine whether he is coming to "continue work in the area of extraordinary ability under section 203(b)(1)(a)(ii).

### C. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *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). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

### III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). However, he has not demonstrated sustained national acclaim and that his achievements have been recognized through extensive documentation. He therefore has not established his eligibility as an individual of extraordinary ability. 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.