



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

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

In Re: 7584963

Date: FEB. 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a competitive rower, 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.

The Director of the Nebraska Service Center denied the petition, concluding that the Petitioner did not satisfy any of the ten initial evidentiary criteria for this classification, of which he must meet at least three. The Director further found that the Petitioner did not establish that he would continue work in his area of extraordinary ability in the United States.

On appeal, the Petitioner asserts that the previously submitted evidence demonstrates that he meets at least three criteria and is otherwise qualified for the benefit sought.

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).

II. ANALYSIS

The Petitioner is a competitive rower who has participated in flat water, outrigger canoe, and ocean rowing endurance events in his native Brazil and in the United States.

A. Evidentiary Criteria

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).

The Director found that the Petitioner submitted evidence related to four of the ten criteria, but did not establish that he meets any of them. On appeal, the Petitioner asserts that the Director did not consider all of the submitted evidence and maintains that he meets the criteria related to nationally or internationally recognized awards, published materials, original athletic contributions of major significance, and lead or critical roles with organizations that have a distinguished reputation. After reviewing all of the evidence in the record, we find that the Petitioner has not established that he meets at least three criteria.

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)

In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.¹ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or

¹ 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>.

international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

In determining that the Petitioner did not satisfy this criterion, the Director acknowledged that the Petitioner submitted photographs of medals without award certificates, a letter from the [redacted] Rowing Federation noting some of his results in Brazilian rowing competitions, and a letter from USRowing that states that the Petitioner's awards in Brazil are nationally recognized, but not generally covered by the media. The Director found the evidence insufficient to establish the Petitioner's receipt of the medals and insufficient to demonstrate that they are nationally or internationally recognized prizes or awards for excellence in his field.

On appeal, the Petitioner asserts that the Director failed to acknowledge some of his more significant international awards and emphasizes that the Petitioner's medals themselves provide adequate evidence of his receipt of nationally-recognized awards in Brazil.

With respect to the Petitioner's medals in Brazilian state and national rowing competitions, we agree with the Director that the Petitioner did not submit sufficient evidence to corroborate his receipt of nationally or internationally recognized awards in these events. We acknowledge the Petitioner's claim that he did not receive award certificates with his medals and that his sport is not widely covered by the media. However, the record does not contain evidence such as official event results from the Brazilian rowing federations sponsoring the events, or a letter from the Brazilian national rowing federation corroborating his medal-winning finishes in national events.

Further, there appear to be some inconsistencies in the submitted testimonial evidence. For example, the Petitioner himself states that his "most important accomplishments" in flat water rowing include second and third place finishes in the 2007 and 2008 [redacted] Rowing Championships, and the title of 2004 Brazilian Rowing [redacted] in the [redacted] event. However, letters from his rowing club [redacted] and the [redacted] rowing federation [redacted] indicate that he was "[redacted] Champion" in the 2004 national competition with a second place finish. The letter from [redacted] also indicates that the Petitioner had a first place finish in the 2007 [redacted] while the Petitioner seems to indicate that he finished second, and the letter from [redacted] indicates that he had a third place finish at this same event. These discrepancies underscore the need for official event results.

Further, we note that even if rowing events were not reported in major media outlets in Brazil, it is reasonable to believe that events that resulted in the awarding of nationally recognized awards would be covered by the website of the sport's own national governing body. In fact, the Petitioner submitted screenshots from the websites of both [redacted] and Brazilian Rowing which seem to reflect that major events and their results are reported there. Here, as noted by the Director, the Petitioner opted to provide letters confirming some of his finishes without showing that the bestowed prizes or awards are nationally or internationally recognized for excellence in the field.

Nevertheless, we find sufficient evidence to establish that the Petitioner's first place finish in the 2016 [redacted] which was not mentioned in the Director's decision, meets this criterion. The

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6.

Petitioner submitted official race results, letters from USRowing and The [redacted] Rowing Society, and evidence of international media coverage of the event and his team's first place finish from sources including *Outside* magazine, *CNBC*, *Huffington Post*, as well as Brazilian media outlets and the official website of the Brazilian rowing federation. Based on this evidence, we find that the Petitioner has satisfied this criterion.

Published material about the individual in professional or major trade publications or other major media, relating to the individual'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 determined that the Petitioner did not satisfy this criterion, noting that some of the submitted articles were not about him but merely mentioned him and/or did not include an author. The Director found that another article in a Brazilian publication was not accompanied by a proper translation. Finally, the Director determined that the Petitioner did not provide "comparative statistics showing that the publications, all of which appear to be local, constitute major media."

On appeal, the Petitioner objects to the Director's determination that published material must be "about the beneficiary" in order to meet this criterion. However in doing so, the Petitioner misquotes the regulatory language at 8 C.F.R. § 204.5(h)(3)(iii), which does in fact require "Published material *about the alien* . . . and relating to the alien's work in the field." (Emphasis added).

The Petitioner's evidence includes an article titled "[redacted]" that was published by *Huffington Post*. According to the Petitioner, this article "talks almost exclusively about [the Petitioner's] [redacted]." While the Petitioner was on [redacted] and is named in the article as a member of the [redacted], the article is not about him or even primarily about the team. Rather, it identifies [redacted] as the current race leader, provides an overview of the standings of the [redacted] on the date of publication, provides background information about the race, and highlights the members of some of the other competing teams.

The Petitioner also submitted evidence that *Outside* magazine published an article, titled "[redacted]" which identifies the Petitioner as a member of [redacted], "[redacted]." The author interviewed two members of the team about the race and the challenges they faced, but the Petitioner was not interviewed and is not otherwise mentioned in the article. Articles that are not about a petitioner do not meet 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). Similarly, a press release discussing the team's win in the [redacted] was published by *CNBC* and other outlets, but only briefly mentions the Petitioner as a team member. Finally, the evidence reflects that [redacted] achieved a brief entry in the 2018 edition of the [redacted] for [redacted] in the [redacted] based on their time in the [redacted]. The entry, which is two sentences in length, names the Petitioner as a member of [redacted] but does not otherwise mention him and does not satisfy this criterion.

The Petitioner provided an article that is primarily about him and relating to his work in the sport. The article, titled [REDACTED] was published in the Brazilian magazine *Bem-estar*. However, the article does not identify the date of publication, and it is not accompanied by sufficient evidence to establish that *Bem-estar* magazine is a professional or major trade publication or other major media in Brazil.³ The Petitioner submitted a copy of an email from a person identified as [REDACTED] who indicates that the circulation of *Bem-estar* is around 30,000 per month. Even if this figure came from a clearly reliable source, the record does not contain any comparative circulation figures for Brazilian magazines or contain any additional information regarding this magazine or its intended audience that would support a finding that it is considered major media.

The Petitioner submitted additional articles about him and his participation in the [REDACTED] published by the website of the Brazilian Rowing League and *SupClub*, but these were also lacking supporting evidence demonstrating that either website is considered major media in Brazil. All other articles submitted post-date the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Finally, we acknowledge that the Petitioner submitted screenshots from videos as evidence of the Beneficiary's two appearances on Brazilian television. The Petitioner did not provide transcripts for these appearances documenting the content of the interviews or reflecting published material about him.

For the foregoing reasons, the Petitioner has not established that he meets this criterion.

Evidence of the individual'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 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.

The Director determined that while the Petitioner had submitted evidence that his team holds a [REDACTED] and submitted letters that discuss his achievements and abilities in rowing and his contributions to individual teams for specific events, he did not illustrate how he has been recognized for his original athletic contributions in the sport of rowing.

On appeal, the Petitioner disagrees with the Director's finding that his first place finish in the [REDACTED] [REDACTED] and resulting [REDACTED] is not evidence of an original contribution of major significance. The Petitioner emphasizes that he is "one of a handful of human beings who has

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics).

dared to, and survived, [redacted] in a row boat,” noting that this achievement is “the very definition of a ‘small percentage who have risen to the very top of the field of endeavor.’”

While the record contains a letter from USRowing indicating that [redacted] rowing has fewer participants than other rowing disciplines, the evidence as a whole does not establish that the act of competing in and winning a [redacted] event in [redacted] rowing is akin to an original athletic contribution of major significance. For example, [redacted] vice president of The [redacted] Rowing Society, explains that her organization was established in 1983 and serves as “the official adjudicator of [redacted] rowing records.” She talks about the history of the sport and of the [redacted], and states that a win in the race is regarding as an internationally significant prize. [redacted] founder of the company that organizes the [redacted] indicates that “only the most accomplished athletes are capable of participating” in the race, and notes that “to compete and win in this race is the apex for any rower.” He notes that eight world records were broken by participants in the 2016 race and states that “the fact that [the Petitioner] was able to break the [redacted] in this competition shows that he is an [*sic*] unique and exceptional athlete.” While these and other letters acknowledge that it was an achievement for the Petitioner to be selected for participation in the [redacted] they do not explain how such participation is an “original contribution” to the sport or how the Beneficiary’s participation had a significant impact on the sport of rowing or [redacted] rowing.

Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and simply use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁴

The record also contains several letters that more generally attest to the Petitioner’s athletic talent and dedication to the sport.⁵ For example, a letter from rower [redacted] praises the Petitioner’s physical conditioning, endurance, technique, and strength, noting his ability to demonstrate “self control, team spirit and resilience at all times, characteristics of a true rower.” One of the Petitioner’s former coaches, [redacted] praises his “rigid self-discipline” and describes him as “one of the most talented, dedicated and committed athletes” he has trained. However, these letters do not demonstrate how his overall athletic talent and commitment to rowing constitutes an original contribution that has impacted the sport at a significant level. Possession of advanced athletic skills is not a contribution of major significance in and of itself.

For the reasons discussed above, the Petitioner has not established that the Beneficiary meets the requirements for this criterion.

Evidence that the individual 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)

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

⁵ Although we discuss only some of these letters, we have reviewed and considered each one.

The Petitioner asserts that he meets this criterion based on his roles with [redacted] [redacted] and [redacted]. 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. 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.⁶

The Petitioner submitted a letter from [redacted] rowing manager for [redacted] [redacted], who states that the Petitioner was "an asset to [redacted]'s Rowing Team from 2003 to 2008. "[redacted] praises the Petitioner's dedication and athletic ability and lists some of best finishes in state, naval and national competition between 2003 and 2007. The Petitioner also provided a letter from [redacted] of [redacted], where he served on the team in 2002-2003 at the very beginning of his competitive career, and in 2008-2009. [redacted] states that the Petitioner "set himself apart from his peers in the same age group winning notable competitions in Brazil such as important regattas of the [redacted] Championship where we were consecrated champions of 2002." He indicates that the Petitioner "used to document new techniques and record his own time extensively and share across his broader team, helping everyone else become much more effective in the process." He concludes that the Petitioner "would be an asset to any rowing team."

These letters indicate that the Petitioner was considered a valuable member of these rowing clubs, but do not show how his training techniques or his competition results establish his leading or critical role with either organization. The record contains supporting evidence indicating that these clubs enjoy a distinguished reputation in Brazil and have produced world champions and Olympic athletes, but does not demonstrate that the Beneficiary's successes in primarily state level competitions, some at the junior and novice level, contributed in a way that was of significant importance to the outcome of these clubs' activities.

We also note that while the Petitioner provided statements from counsel indicating that he served as team captain for both of these clubs, this role is not mentioned in the Petitioner's own statements, or in the letters from representatives of the rowing clubs. 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)). Counsel's statements must be substantiated in the record with independent evidence, which may include affidavits and declarations.

In addition, the Petitioner claims that he held a critical role on team [redacted] that was of significant importance to the team's success and first place finish in the [redacted]. The record contains testimonial evidence from his teammate [redacted] and race organizer [redacted] explaining the Petitioner's critical role in the [redacted] boat's crew. However, the record does not establish that this team, which was formed for the sole and temporary purpose of competing in a single race, is an "organization or establishment" as required by the language of the regulation at 8 C.F.R. § 204.5(h)(iii)

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

Based on the above, the Petitioner has not submitted sufficient evidence to establish that he has performed in a leading or critical role for organizations that have a distinguished reputation in his field.

B. Summary and Reserved Issue

As explained above, the submitted evidence satisfies only one of the regulatory criteria. As 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), the appeal will be dismissed.

Since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding whether he established that he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii). *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

As discussed, 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 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. 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 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 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).

For the reasons discussed above, the Petitioner has not demonstrated 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.