U.S. Citizenship and Immigration Services

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

In Re: 6084446

Date: JAN. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a weightlifter, 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 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 they 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 an [redacted] weightlifter. The record contains a letter from [redacted] (New Jersey) Weightlifting Club, indicating that the Petitioner "is a full-time athlete in good standing enrolled in our elite athlete program, and is welcome to continue his involvement indefinitely." It is not clear from this letter whether the Petitioner is an employee of the club or a client taking classes there. The record indicates that "[v]olunteers . . . maintain the facility," with no indication of how many paid employees (if any) work there.

### 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 met one of the evidentiary criteria, relating to prizes and awards. On appeal, the Petitioner asserts that he also meets four further evidentiary criteria, discussed below. After reviewing all of the evidence in the record, we find that the Petitioner meets two of the criteria (relating to prizes and to judging).

> *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 found that the Petitioner meets the requirements of this criterion. We agree, but we note that the Petitioner's evidence includes printouts from the website of the International Weightlifting Federation (IWF). The IWF printouts identify six events in which the Petitioner competed, including the following information:

| Year | Event | Rank |
|---|---|---|
| 2009 | [redacted] | 5 |
| 2010 | | 4 |
| 2011 | | 2 |
| 2011 | | 16 |
| 2013 | | DSQ |
| 2015 | | DSQ |

Printouts from the website of the International Wrestling Results Project show the results from 2013 and 2014, with the Petitioner's results printed in a lighter color, and struck through (e.g., " "). This is a further indication that the Petitioner's disqualification invalidated his scores.

The Petitioner states that he "became the winner of [redacted] Tournaments in 2016-2017," but submits no documentary evidence to support this claim or to show that the claimed tournament prizes are nationally or internationally recognized.

Letters and published articles in the record refer to the Petitioner's participation in the 2013 and 2015 events, but not to the Petitioner's disqualifications and forfeiture of any medals or other prizes that the Petitioner may have won in those competitions.[1] Had this case proceeded to a final merits determination, we would have taken into consideration that the Petitioner apparently has not competed in IWF events, without disqualification, since 2011, six years before he filed the petition.

> *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)

A copy of an apparently unsigned letter attributed to the [redacted] states that the Petitioner "became a member of the [redacted] Team in 2009," and that "[t]he criteria for membership for the beneficiary's level of membership in the team . . . were demonstration of outstanding achievements in the field of weightlifting as judged by the nationally and internationally recognized experts in the field of weightlifting." Merely repeating the language of the statute or regulations does not satisfy a 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). The letter noted that an Olympic gold medalist is also a member, but this does not demonstrate or imply that members must reach a comparable level of achievement.

The letter further stated: "We are unable to provide copies of the team's rules or organizational documents as these are not open to the public according to the Georgian law." The letter did not cite or identify any statute or regulation prohibiting disclosure of those materials. In immigration proceedings, the law of a foreign country is a question of fact which must be proven if a petitioner relies on it to establish eligibility for an immigration benefit. *Matter of Annang*, 14 I&N Dec. 502 (BIA 1973). An unsigned letter referring to an unidentified law cannot meet the Petitioner's burden of proof.

The letter from the [redacted] does not identify the outstanding achievements that purportedly qualified the Petitioner for team membership. The letter lists various competitions that the Petitioner won and indicates that "he was also nominated to represent Georgia at the [redacted] Championships," but all of these events occurred after 2009, when the Beneficiary was already a member of the [redacted].

[1] The record is inconsistent regarding the 2013 and 2015 competitions, variously indicating that the Beneficiary won bronze or silver medals.

We note that the letter attributed to the [redacted], dated March 2017, mentions the Petitioner's participation in the 2015 [redacted] Championships, but not his disqualification from that event.

We agree with the Director's finding that the Petitioner has not established membership in any association that requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

> *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 general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

In [redacted] 2016, a profile of the Petitioner, calling him [redacted]' appeared in *Public Education*. That publication circulates 3000 copies, with a "Target Audience [consisting of] schools, higher education institutions, education professionals, [and] readers interested in education." As described, *Public Education* is not a trade publication relating to weightlifting in particular or athletics in general.

The Georgian sports newspaper *Lelo* interviewed the Petitioner on various occasions between 2009 and 2017, and profiled him in [redacted] 2016. Background information indicated that *Lelo* has a circulation of between 2000 and 2500 copies. The *Lelo* articles do not identify an author, as required by the plain language of this criterion; translations show a collective credit to the newspaper's editorial board, without identifying the board's members.

Initially, the Petitioner cited Georgia's total 2017 population (3.72 million), but did not provide circulation data for other Georgian publications to provide context or show the significance of the circulation figures for *Lelo* and *Public Education*. On appeal, the Petitioner submits what he calls a "Market Research Survey" of "104 Georgian natives," indicating that nearly 80% of the respondents would be more likely to purchase *Lelo* than other Georgian sports newspapers.

The circumstances surrounding the survey are questionable. The survey results were compiled in November 2018, while the petition was pending and after the Director had first raised questions about *Lelo*'s status as major media. The survey was conducted via SurveyMonkey, a service that allows users to design and distribute customized online surveys; the record does not reveal who commissioned the survey or how the respondents were chosen. The survey, therefore, does not provide sufficient relevant data to establish that *Lelo* is a major sports newspaper as claimed.

The Petitioner also submits evidence that *Lelo* has been published, under various names, since 1934, but the age of the publication is not relevant to its status as a major trade publication or other major media.

A study of Georgian media, also submitted on appeal, cites estimated circulation figures of "from 5,000 to 12,000 copies" for "[m]ajor newspapers," and states: "Regional newspapers have lower circulation, at about 2,000 to 3,000." The cited circulation figures for *Lelo* are on the lower end of the latter, smaller range.

A translated online profile of *Lelo* and its publisher states: "The online versions of the Lelo publications are being posted on sportall.ge (http://sportall.ambebi.ge/)."[2]

Another article submitted on appeal reports competition results rather than focuses on the Petitioner, and several submitted articles are in Georgian without the English translations required by 8 C.F.R. § 103.2(b)(3). Further, the submissions on appeal include articles from publications which the Petitioner has not shown to be professional or major trade publications or other major media.

For all of the reasons described above, the Petitioner has not shown that he meets the requirements of this criterion.[3]

> *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 specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director found that the Petitioner had not met the requirements of this criterion. We disagree.

In separate letters, the president and general secretary of the [redacted] attested that the Petitioner had served as a referee at several specific national-level weightlifting tournaments, including serving as a "chief judge" or "chief referee" with responsibility to "adjudicate final results of a competition." This responsibility to decide the outcome of an event indicates a level of judging authority beyond simple enforcement of rules, and thus meets the plain language of this 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)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

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[2] We note that a search of that site for the Petitioner's surname, "[redacted]" yields 12 results, none of them matching the articles submitted by the Petitioner. The only article that mentions the Petitioner, rather than another athlete with the same surname, does so in the context of a list of results rather than an article specifically about the Petitioner.

[3] We note that although some of the submitted articles postdate the Petitioner's disqualifications, none of them mention these significant events in his career as a weightlifter. Thus there is reason to question the provenance of those articles and the circumstances under which they were published.

The Petitioner cites letters, discussed above, indicating that he has won various competitions. A different criterion, however, already covers prizes and awards. To assert that evidence under one criterion (prizes) inherently satisfies another criterion (contributions) is to undermine the statutory requirement for extensive documentation. The record does not identify any original contributions that the Petitioner made while competing.

Furthermore, as noted above, the Petitioner's most recent documented results from international competition have been stricken through disqualification. The submitted letters list the Petitioner's 2013 and 2015 competitions, but do not acknowledge the disqualification of those results. The Petitioner does not explain how disqualified results could constitute contributions to his field.

The head coach of the [redacted] states that the Petitioner's "particular style and techniques" amount to contributions, but he provides no further details as to what those techniques are, or how they differ from other techniques used in the sport. He also does not say how those techniques have influenced the field; speculation that the Petitioner's "expertise . . . will . . . inspire others to compete in this challenging field" cannot establish major significance.

The Petitioner has not established that he has made original contributions of major significance to his field.

> *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 his initial submission, the Petitioner asserts that he has played a leading or critical role for the [redacted] but he does not specify what that role was. Instead, the Petitioner refers to letters and background information about the team. The submitted letters do not indicate that the Petitioner has performed in a leading or critical role for the team or for any other entity.

The Petitioner has not revisited this claim, either in response to a request for evidence or on appeal. Because the Petitioner has not contested this finding on appeal, he has effectively abandoned it. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also*, *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011).

B. Continued Work/Prospective Benefit

As explained above, the evidence that the Petitioner has submitted does not establish eligibility for the benefit sought, and we will dismiss the appeal based on that evidence. But beyond the Director's decision, we note additional information that affects the Petitioner's ability both to continue working in the field, and to prospectively benefit the United States, as required under the Act.

Because the record shows significant gaps in the Petitioner's competitive history, and two disqualifications in international competition, we consulted the IWF's website, identified in printouts that the Petitioner submitted. The "Sanctioned Athletes" page of that website[4] shows that the Petitioner was suspended from international competition from [redacted] 2013 to [redacted] 2015, and again from

[4] https://www.iwf.net[redacted]/sanctions/ (visited Jan. 8, 2020).

[redacted] 2015 to [redacted] 2023, for [redacted] violations. Further research revealed that the Court of Arbitration for Sport (CAS) indicated that the suspension included "the disqualification of results and the forfeiture of all medals, points and prizes."[5]

Because the Petitioner has been suspended from international competition since 2013 (except for less than a month in [redacted] 2015) and will not be eligible to compete internationally until 2023, questions necessarily arise as to how he will be able to compete at a high level and substantially benefit the United States. (The suspension would also impede the Petitioner's ability to sustain national or international acclaim in athletics, if the Petitioner had demonstrated such acclaim in the first place.)

The Petitioner's omission of this highly significant and relevant information casts doubt on the credibility of not only his own assertions, but also every letter and media article written after the suspension was imposed, but which does not acknowledge that suspension. Withholding or concealing such information is not simply a matter of focusing on the most favorable information; rather, it borders on misrepresentation because it is essential to a proper understanding of the Petitioner's reputation and standing in his field.

Any future filings by the Petitioner, such as a motion to reopen this proceeding or a petition to initiate a new one, must fully account for this information, and account for how his purported national or international acclaim has survived and overcome a major disciplinary action by the sport's international governing body. Any such filing must also explain why the Petitioner did not fully disclose a suspension that was in effect at the time of filing, and which remains in effect now and years into the future.

## 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 the Petitioner has established the acclaim and recognition required for the classification sought.

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.

**ORDER:** The appeal is dismissed.

[5] The CAS decision is available at https://jurisprudence.tas-cas.org/Shared%20Documents/[redacted].pdf (visited Jan. 8, 2020).