



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

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

In Re: 8096029

Date: JULY 14, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a boxer and kickboxer, 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 the initial evidence requirement of either a one-time achievement or meeting at least three of the alternate evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Petitioner subsequently filed a motion to reconsider, which the Director granted, but he again found that the Petitioner met only one of the requisite three criteria. On appeal, he asserts that in addition to establishing his participation as a judge of the work of others in his field, the evidence shows that he meets an additional four criteria, and that he is eligible as an athlete of extraordinary ability.

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 competes as a boxer and kickboxer, and has received several awards in both sports in his native [REDACTED] as well as a Master of Sports [REDACTED] designation in kickboxing.

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). As noted above, the Director found that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(iv), based upon his participation as a kickboxing judge in several tournaments in [REDACTED]. On appeal, the Petitioner asserts that he also meets an additional four evidentiary criteria, and submits five new reference letters. Where, as here, a Petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). After reviewing all of the evidence previously in the record, we find that it does not establish that the Petitioner meets the initial evidence requirement.

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 noted above, the evidence includes copies of certificates showing that the Petitioner has received several awards in boxing and kickboxing tournaments. The Director found in his previous decision that because these awards were for competition at the amateur level, thus excluding professional athletes, they could not be considered as qualifying awards under this criterion. On appeal, the Petitioner points out that only amateur boxers are allowed to compete in the Olympic Games, and asserts that amateur boxing is a sport “with its “own identity”” apart from professional boxing. While we note that several items of evidence indicate that advancing to the professional level is the aspiration of many amateur boxers, including the Petitioner, we agree that the plain language of this criterion does not necessarily eliminate prizes or awards received in amateur competition from consideration.

As to whether the awards are nationally or internationally recognized, the Petitioner does not address this issue on appeal, but singled out some of the awards in a letter accompanying his motion to reconsider. He began by noting that six of the boxing tournaments were held outside of his native country, and that nine of them were titled as “international” tournaments. However, neither the location of a tournament nor the inclusion of the term “international” in its title is a determinative factor when considering whether prizes or awards issued at those tournaments receive national or international recognition. A more relevant factor, the significance of the awards in the field, is addressed in a reference letter from [REDACTED] of the Boxing Federation of [REDACTED]. [REDACTED] describes ranks that are applied to competitions “in the qualification norms and requirements for the types of sports recognized” in [REDACTED] with the Olympic Games among those receiving a rank of I and world and European championships receiving a rank of II. Although he concludes that based on these classifications, “[it] can be stated with confidence that the awards won by [the Petitioner] have unquestionable value as awards of the highest rank on the national scale,” he does not identify the ranking assigned to the Petitioner’s awards.¹

The Petitioner then went on to focus on two boxing awards received by the Petitioner at the “International [REDACTED] Tournament” and the “[REDACTED] tournament,” both of which occurred in Poland in 2015 and resulted in the Petitioner placing second in his weight class and fight category. He submitted two brief statements from the website bokser.org, one which states that the [REDACTED] Golden Gloves tournament is “known throughout Europe,” and another which states regarding a third tournament that “fans saw very high level matches.” However, the record does not include information about this website, and the brief, vague statements posted on it are insufficient to establish the significance of these tournaments and awards at the national or international level.

However, regarding the kickboxing awards, the evidence sufficiently establishes that the [REDACTED] kickboxing championship in [REDACTED] 2013 at which the Petitioner placed in two events served as a qualifying tournament for the Ukrainian national team. As such, we disagree with the Director and find that the Petitioner 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)

In order to meet this criterion, a petitioner must document their membership in an association within their field of expertise, and establish not only that the association requires outstanding achievements of candidates as a condition of membership, but that the determination of whether they possess the required outstanding achievements is done by recognized national or international experts.

In his most recent decision, although the Director acknowledged the Petitioner’s membership in the [REDACTED] Sports Club, WTKA², and the [REDACTED] National Kickboxing Team, he found that the record

¹ As discussed in detail further below, [REDACTED] also states that due to his receipt of these boxing awards, the Petitioner received the title of Master of Sport. However, while the record includes evidence that he received the Master of Sport title in WTKA kickboxing, there is no evidence to corroborate [REDACTED] claim regarding any boxing titles.

² Although the name of this association appears in the record as “[REDACTED] Sports Amateur Association WTKA,” we take

did not include sufficient evidence to demonstrate that these groups require outstanding achievements of their members. He also determined that the Petitioner's "Master of Sports in WTKA Kickboxing" title was similarly unsupported by independent and objective evidence of membership requirements.

On appeal, the Petitioner focuses on his Master of Sports title, and refers to two previously submitted reference letters which describe the requirements to receive that title. The first letter was written by [REDACTED] of the [REDACTED] WTKA, and describes the requirements for receiving the Master of Sports designation, but consistently refers to it as a title rather than a membership. The second letter, written by [REDACTED] as discussed above, refers to the Petitioner's boxing accomplishments and requirements to receive a Master of Sports in boxing, but the record does not include evidence to support his receipt of this title in boxing.³ Further, neither letter mentions an association into which the Petitioner was granted entry as a result of being conferred this title. As such, the Petitioner's receipt of a Master of Sports in WTKA Kickboxing title does not meet the requirements of this criterion.

In addition, while the Petitioner does not challenge the Director's previous decision regarding his membership on the [REDACTED] national kickboxing team and the [REDACTED] Sports Club on appeal, we agree that the evidence does not sufficiently establish that those associations require outstanding achievements of their members. Also, regarding the national team, we note that in an article titled "[REDACTED]" dated [REDACTED], 2013,⁴ the Petitioner's victories in that tournament are verified, but he is not one of the three individuals named as being selected for the national team. This directly contradicts [REDACTED] statement that he was a full member of the national kickboxing team from 2012 through 2016, as well as notations in the index of the Petitioner's RFE response which indicate that he qualified based on these results. The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, although the record includes evidence that the Petitioner earned awards at tournaments which served as selection criteria for the national team, we note that the record lacks evidence of his participation in any continental or world kickboxing championships, or other competitions, as a member of that team. Therefore, the Petitioner has not established his membership on the [REDACTED] kickboxing team, or that he otherwise meets 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 his decision on motion, the Director found that only one of the four articles submitted by the Petitioner was about him, and cited to two federal district court decisions for the proposition that media articles which are about a team or show of which an individual is a part are not about the individual.

administrative notice that this appears to be the [REDACTED] chapter of the World Traditional Kickboxing Association, one of four amateur kickboxing associations appearing in the record. The others are WAKO, WKF and IAKSA.

³ The Petitioner claimed in his RFE response to have received a Master of Sports title in both boxing and kickboxing. While he refers to [REDACTED] letter on appeal, he does not appear to continue to claim both titles.

⁴ We note that although the original version of this article was not initially submitted, an identical version including the original and translation, as posted on another website and referenced below, was submitted in his RFE response.

Noroozi v. Napolitano, 905 F.Supp.2d. 535 (S.D.N.Y. 2012), *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ (D. Nev. Sep. 8, 2008). The Petitioner asserts on appeal that the Director misapplied *Noroozi*, arguing that contrary to the court's finding in that case that the individual was mentioned "in passing," at least one additional article in the record goes beyond that threshold in its discussion of the Petitioner. That article, titled "[REDACTED]" and appearing on the website www.galsports.com, includes multiple introductory and concluding paragraphs describing the competition in general, and devotes one sentence each to the Petitioner and eight other athletes, describing their results in the competition. As the article does not provide details about any of the individual athletes beyond their results in the competition, it is about a group of athletes from the [REDACTED] who competed in the national kickboxing championships in 2018, and is not about the Petitioner. Another two articles similarly discuss other competition results of "[REDACTED] athletes" as a group, mentioning the Petitioner only to report his specific results, and so are also not about him.

The one article that is about the Petitioner, which focuses on his victory in a boxing tournament in [REDACTED] in 2012, was posted on the website www.sport.if.ua. Unlike the three articles mentioned above, this article mentions the Petitioner in its title, and includes two paragraphs wherein his coach describes the Petitioner's fight and future prospects as a boxer in detail. However, the Director cited reliability issues with articles retrieved from the Internet in general, and noted that while website traffic data was supplied for this domain, it was not sufficient to establish that in comparison to other news or sports websites, www.sport.if.ua is a professional, major trade or other major medium.

On appeal, the Petitioner asserts that Internet publications "are often the sole source of information" and are no less reliable than traditional print publications. Although he does not provide documentation to support these assertions, these issues are not determinative as to whether the website qualifies as a major medium. Rather, as noted by the Director, comparative circulation or similar data is most relevant to determining whether a particular publication qualifies under this criterion. The report supplied by the Petitioner indicates that www.sport.if.ua ranks 256,807 globally in terms of traffic, and 4,060 in Poland. However, without a comparative data showing its ranking in relation to similar websites based in [REDACTED] or focused on sports, this evidence does not sufficiently establish that this website qualifies as a major medium. In addition, we note that the translation of the webpage where this article was posted indicates that sport.if.ua is a "regional sporting Internet portal" and is therefore targeted towards a smaller readership than media focusing on sports news at the national and international level. We therefore agree with the Director and find that the Petitioner does not meet 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 found in his original decision that the Petitioner met this criterion, and repeated this finding in his decision on the Petitioner's motion to reconsider. The evidence includes a certificate noting that he was conferred a second category judge rank in WTKA kickboxing on [REDACTED] 2015 and a first category rank on [REDACTED] 2016. The other item of evidence submitted in support of this criterion is the reference letter from [REDACTED], who writes in detail regarding the role of a judge in WTKA kickboxing matches. However, we note that while he agrees that the Petitioner

achieved his second category judge ranking on the date indicated on the certificate, he states that the Petitioner received the first category qualification on [REDACTED] 2017, more than a year after the date indicated on the certificate. In addition, [REDACTED] reports that the Petitioner judged WTKA competitions beginning in 2012, before the evidence indicates that he had obtained any judging certification. The Petitioner must resolve these inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. at 591-92. Here, as the record does not include documentary evidence of the Petitioner having performed these judging duties, or an explanation and supporting documentation to verify his qualification to perform those duties before being certified, the inconsistencies have not been resolved. Accordingly, we disagree with the Director and find that the evidence does not serve to demonstrate that he has served as a judge of the work of other athletes.

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, a petitioner must establish that not only have they made original contributions to the field, but that they have been of major significance. 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. In his decision on the motion to reconsider, the Director concluded that the reference letters in the record were not sufficient to establish that the Petitioner had made original contributions of major significance to the field of athletics, or boxing or kickboxing in particular. On appeal, the Petitioner asserts that the Director “appears to have ignored the extent of fame and expertise” of the letter writers, who write of his achievements as an athlete.

Although he does not identify a specific contribution that he has made to the sports of boxing and kickboxing in his appeal brief, the Petitioner did assert on motion that he considered winning boxing tournaments to be an original contribution. However, he did not, and has not, explained how his victories at boxing and kickboxing tournaments have contributed to those sports, or influenced or impacted them in any way. Nor do the reference letters describe any original athletic contributions made by the Petitioner. [REDACTED] champion boxer and the [REDACTED] USA Boxing in the [REDACTED] metropolitan area, provides a list of some of the boxing tournaments in which the Petitioner received an award, and offers her expert opinion that he “is a spectacular athlete and one of the best boxers I have had the pleasure of watching compete.” While [REDACTED] complements the Petitioner’s skill as a boxer, she does not indicate that he has used this skill to make an original contribution to the sport that has influenced or impacted other athletes. Another boxer, [REDACTED] also lists several of the Petitioner’s victories, and concludes that his achievements “taken in totality definitely constitute a contribution of major significance to the field of boxing.” Simply repeating the language of the statute or regulations without elaboration does not satisfy the 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); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, *1, *5 (S.D.N.Y. Apr. 18, 1997). Regardless of the fame or expertise of these letter writers, this evidence does not establish that the Petitioner meets this criterion.

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.

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 that 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.