



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

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

In Re: 7630282

Date: MAR. 2, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a business consultant for the fitness industry, 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 Texas Service Center denied the petition, concluding that while the record established that the Petitioner meets the initial evidentiary requirement, it did not establish that he has sustained national or international acclaim or is one of the few at the very top of the field of business consulting.

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 indicates that he at the time of filing he was the executive director of [REDACTED], a consultancy specializing in the fitness industry, and that he intends to come to the United States to continue to advise prospective and current gym owners.¹

A. Background

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 three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his authorship of scholarly articles, service as a judge of the work of others, and leading or critical role for distinguished organizations. On appeal, the Petitioner asserts that he also meets three additional evidentiary criteria which he previously claimed. After reviewing all of the evidence in the record, we disagree with the Director that the Petitioner has satisfied the criterion relating to a leading or critical role, and withdraw that portion of the decision. Further, because we do not find that the Petitioner meets any of the additional claimed criteria, he has not met the initial evidentiary requirement. Accordingly we need not conduct a final merits determination.

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 evidence of the Petitioner's receipt of the [REDACTED] at an event described as the [REDACTED] International Convention on Physical Activity" consists of a letter and a brief article in *Mercado Fitness*, a fitness industry trade magazine serving the Latin American market. In the letter, [REDACTED], president of [REDACTED] which organized the convention, states that the award's purpose is "to reward professionals who excel in the area of business management and, through their actions, contribute to the market development." He further writes that the Petitioner received this award "based on the excellent evaluations of the participants at the events organized by [REDACTED]".

¹ Several media articles in the record refer to the Petitioner's consulting business as [REDACTED] and we note that the evidence submitted in support of his claim to a high salary refers to income received from [REDACTED]. As the evidence does not indicate whether any relationship exists between [REDACTED] or [REDACTED] and [REDACTED], the Petitioner should address this issue in any further proceedings in this matter.

and notes that the Petitioner took part in six of those events as a speaker. The article, which confirms the Petitioner's receipt of this award, includes a photo of the Petitioner holding a trophy and a quote from him with much of the same language as appears in [redacted]'s letter.

While the above evidence suggests that the award is given for excellence in the Petitioner's field, the record does not establish that the [redacted] is nationally or internationally recognized. One additional article submitted focuses on the [redacted] event, of which the convention was a part, and mentions the convention and the awards presented only in passing. A second article, which appears to be a description of the sixteenth occurrence of the convention produced by [redacted], mentions the names of the award winners in that year. However, the record does not include a description of the nature of these websites or the organizations they are tied to, and the report from SimilarWeb which was submitted for each does not indicate that either has a widespread viewership or traffic rate on a national or international level. This evidence, including the brief article in *Mercado Fitness*, is insufficient to demonstrate that the [redacted] is a nationally or internationally recognized award.

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, the Director acknowledged several articles in the record that were published in Spanish and/or Portuguese language fitness industry trade magazines, including *Mercado Fitness*, *Fitness Business Latin America*, and *Revista Empresario Fitness*, but found that while these articles include quotations from the Petitioner, they were not "mainly" about him.

On appeal, the Petitioner asserts that the articles were about him and his expert opinion. However, a review of the evidence shows that the articles were about topics relating to the fitness industry, and included opinions not just from the Petitioner but other industry experts as well. For instance, the article which appeared in the [redacted] issue of *Mercado Fitness* is titled [redacted]. This article begins by describing the [redacted] market segment, including a short definition of this type of gym from the Petitioner. However, it then goes on to describe a particular [redacted] gym in [redacted] Brazil, and includes quotations from the gym's owner describing its services. Therefore, this published material is not about the Petitioner, but about [redacted] gyms in general and this specific gym in particular.

An article that more extensively quotes the Petitioner, titled [redacted], was published in the [redacted] issue of *Fitness Business*. This article focuses on the management of finances for managers in the fitness industry, and includes several tips from the Petitioner and another consultant. Although the Petitioner is identified as a consultant and his professional opinion presented, no other information is given about him or his work in the field.

While the Petitioner asserts on appeal that the Director's decision regarding this criterion "is a clear and material error" because it found that "not one of the articles presented was about the [Petitioner]," he does not identify a particular article which he feels most strongly supports his assertion. Upon review of all of the articles in the record, we agree with the Director 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 Petitioner submitted a letter from representatives of the [redacted] Brazil trade show which confirms that he helped to select speakers for the show and served as a judge on the panel for the [redacted] [redacted] in 2016, 2017 and 2018. We therefore agree with the Director that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The record includes copies of several articles authored by the Petitioner, many in 2004 and 2005 but some more recently. These articles were written to provide professional business advice to current and prospective gym owners, and appeared in trade publications including *Fitness Business Latin America* and *Mercado Fitness*. Accordingly, we find that the Petitioner meets 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 order to meet the requirements of this criterion, the Petitioner must demonstrate both that he played a leading or critical role, and that the organization or establishment for which that role was played is recognized as having a distinguished reputation. If a leading role, the evidence must establish that the 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. If a critical role, the evidence must establish that the 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 the alien's role, but rather the alien's performance in the role that determines whether the role is or was critical.

The Petitioner submitted pages from the website of his business, [redacted] which briefly describe the services offered and also include his professional profile, with a list of speaking engagements, articles written or contributed to, and consulting projects completed. However, the record does not include documentary evidence of the nature or size of this organization, and so does not provide sufficient information to determine whether the Petitioner acted as a leader, or played a critical role for an organization. We note that in the media articles authored by the Petitioner, as well as those in which he provided commentary or was mentioned, his is the only name mentioned in connection with his business or the consulting projects to which he contributed. In addition, the profile also references the Petitioner's establishment of a gym focused on aqua gymnastics and indicates that this grew into a business with six locations and over 150 employees, but the record lacks corroborating documentary evidence to support these claims.

The record also includes evidence regarding the Petitioner's work on individual consulting projects for his consulting company, which were submitted as evidence of the company's reputation in the fitness industry. For example, an article about a new fitness facility in [redacted] Brazil, called [redacted] [redacted] was published in *Fitness Business* and briefly mentions that he consulted on the project,

but does not describe the extent of his contribution. Further, while a similar article in *Mercado Fitness* indicates that he served as the “consultant and architect responsible for the project,” a different article in the magazine *Epoca* names another person as the architect. In addition, the evidence regarding another project on which the Petitioner consulted, [REDACTED] in [REDACTED] Brazil, consists of several articles about its opening and operation, but only a brief mention in a single article noting that the owner “has the advice of the [Ppetitioner.]” Although this evidence demonstrates that the Petitioner had some role in these visible projects, it does not provide detail about the nature or extent of his or his company’s contribution. It is therefore not sufficient to establish that [REDACTED] [REDACTED] has or had a distinguished reputation in the business consulting industry.

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)

The Petitioner bases his claim to this criterion on a document described as a copy of his 2017 Brazilian tax return, as well as salary surveys from several sources. We first note that the document presented as the Petitioner’s tax return is only partially translated from Portuguese into English, with potentially relevant information missing from the translation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not submit a complete English language translation of the document, we cannot meaningfully determine whether the translated material provides an accurate picture of his remuneration and supports his claims.

In addition, the translation provides no information regarding the preparation or filing of the tax return it is meant to represent. Without such information, we cannot determine whether the figure included in the original document and the translation represent accurate, verifiable figures which were reported to the appropriate Brazilian tax authority.

We also note that among the figures shown are “taxable income” of R\$ 11,244 and “exempt and non-taxable income” of R\$ 771,282, with the source indicated as [REDACTED] in both cases. However, there is no further explanation in the record of the source of these funds, such as whether they resulted from salary paid, services rendered or other financial or business transactions, or whether they reflect payments for work completed in previous years. Therefore, the Petitioner has not established that this evidence and the figures reported represent an accurate basis for comparison to the remuneration of other similar professionals in his field of endeavor. While the record includes salary surveys for what appear to be similar positions, there is no indication of whether these figures also include taxable and non-taxable income, or whether these are national average salaries or particular to the Petitioner’s location.² Therefore, for all of the reasons stated above, the Petitioner has not established that he meets this criterion.

² See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*, at 11 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, noting that it the petitioner’s burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high.

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.