



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

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

In Re: 6619081

Date: MAY. 1, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a Brazilian jiu-jitsu competitor, 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 Petitioner had not received a major, internationally recognized award, and satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three.

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 has competed in numerous national and international jiu-jitsu competitions. Because the Director found that the Petitioner did not establish that she received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In denying the petition, the Director determined that the Petitioner fulfilled only two of the initial evidentiary criteria, awards at 8 C.F.R. § 204.5(h)(3)(i) and published material at 8 C.F.R. § 204.5(h)(3)(iii). The record reflects that the Petitioner received lesser nationally and internationally recognized awards for excellence and major media published material about her. Accordingly, we agree with the Director that the Petitioner met the awards and published material criteria.

On appeal, the Petitioner asserts that she received major, internationally recognized awards and, in the alternative, meets an additional criterion. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that she garnered major, internationally recognized awards or satisfies the requirements of at least three criteria.

A. One-Time Achievement

The Petitioner argues:

The regulations merely cite the Nobel Prize, Pulitzer Prize, and Academy Award as examples of one-time achievements which enjoy major, international recognition. The World Championships hosted by the IBJJF [International Brazilian Jiu-Jitsu Federation] do not need to garner the same international recognition as an Olympic Medal or Nobel Prize. Nowhere in statute nor regulation does it state that the award must enjoy the same recognition as those enumerated. Rather, the Petitioner is only required to provide evidence that it is **more likely than not** that the IBJJF World Championship is a one-time achievement, that is, a major, internationally recognized award. Moreover, Pulitzer Prizes and/or Nobel Prizes do not exist in Brazilian Jiu-Jitsu and Brazilian Jiu-Jitsu is not among the martial arts included in the Olympic Games. Therefore, these awards do not exist for this field of endeavor. Instead, the World Championship is the highest award that anyone can win in the field of endeavor – and [the Petitioner] has won this award [redacted] (emphasis in original).

Contrary to the Petitioner's claims, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "[s]uch evidence shall include evidence of a one-time achievement (that is, a major internal[ly] recognized award)." The regulation does not "cite the Nobel Prize, Pulitzer Prize, and Academy Award as examples of one-time achievements which enjoy major, international recognition." However, the House Report specifically cited to the Nobel Prize as an example of a one-time achievement.¹ See H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Moreover, we have consistently recognized other examples of a one-time achievement include the Pulitzer Prize, an Academy Award, and an Olympic Medal. Further, we must look to Congress' intent that "admission under this category is to be reserved for that small percentage of individuals who have risen to the very top of their field of endeavor." *Id.* Thus, consistent with legislative history, a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards.

Further, we are not persuaded by the Petitioner's claim that "[t]he World Championships hosted by the IBJJF do not need to garner the same international recognition as an Olympic Medal or Nobel Prize." The selection of Nobel Laureates, the example provided by Congress indicated above, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized, not just acknowledged within the field as the highest award.

Here, the Petitioner presented evidence showing that the IBJJF World Championship is the top tournament for competitors in jiu-jitsu. For instance, screenshots from bjjee.com state that "[t]he World Jiu-Jitsu Championship (commonly known as Mundials) is the most prestigious Brazilian Jiu-Jitsu (BJJ) tournament in the world." Furthermore, the Petitioner submitted a letter from [redacted] of International BJJ Inc., who claimed that "[n]ot only is this the biggest tournament in the world – the IBJJF World Championship (known commonly as the *Mundial*) is widely regarded to be the uppermost competition in the sport." (emphasis in original). Moreover, [redacted] indicated that the IBJJF World Championship has the highest weighted points in order to calculate IBJJF rankings.

While she won the top award in jiu-jitsu [redacted] the Petitioner did not establish that receipt of such an award necessarily qualifies as a one-time achievement, nor are we persuaded that the top award in any field qualifies as a one-time achievement.² Furthermore, the fact that a major, internationally recognized award, such as an Olympic Medal, may not exist in a particular field does not mean that we should diminish the impressive nature of the one-time achievement and accept a lesser award. In cases where an alien cannot obtain a one-time achievement, including instances where it is not available in a field, "[a]n alien can also qualify on the basis of a career of acclaimed work in the field" by satisfying three of the ten categories of evidence. See H.R. Rep. at 59 and 8 C.F.R. § 204.5(h)(3). Moreover, awards that may be internationally recognized in the field do not necessarily demonstrate

¹ Although in the O-1 nonimmigrant context, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(A) provides an example of the Nobel Prize as an example of a major, internationally recognized award.

² On appeal, the Petitioner provides an article posted on flograpping.com indicating that she was "stripped of her [redacted] titles for [redacted]"

that they are also major or consistent with one-time achievements. In those instances, the regulation at 8 C.F.R. § 204.5(h)(3)(i) allows for an alien to submit lesser internationally recognized awards for excellence in the field.

Here, the Petitioner did not demonstrate that the IBJJF World Championship enjoys broad, significant, and international press coverage. Instead, the petitioner provided screenshots from websites geared towards the jiu-jitsu field, such as ibjjf.com, bjjheroes.com, and graciemag.com. The Petitioner, for example, did not offer evidence of wide media coverage from major publications and television outlets from around the world, comparable to other major, globally recognized awards such as a Nobel Prize, Olympic Medal, and Oscar. Moreover, the Petitioner did not establish that the IBJJF World Championship receives a similar level of attention or popularity by the general public rather than limited to within the jiu-jitsu field.

Although the Petitioner did not show that her IBJJF World Championships qualify as one-time achievements at 8 C.F.R. § 204.5(h)(3), she did demonstrate that they meet the requirements for lesser internationally recognized awards for excellence in the field at 8 C.F.R. § 204.5(h)(3)(i).

B. Evidentiary Criteria

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 Petitioner asserts eligibility for this criterion based on membership with the [redacted] [redacted] and the [redacted]. In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.³

Regarding the [redacted] the Petitioner claims that “[m]embers are chosen based on their extraordinary achievements, as judged by the IBJJF – the governing body of the sport, and a body that is undoubtedly made up of recognized national and international experts in the field.” However, the record does not support her assertions and assumptions. The record reflects that the Petitioner submitted screenshots from bjjheroes.com and ibjjf.com showing members of the [redacted] and their biographies and records. However, the screenshots do not provide the bylaws or eligibility requirements for [redacted]. Further, she presented screenshots from IBJJF’s website, ranging on various topics such as tournaments, news, rankings, and black belt listings that do not show the requirements for the [redacted]. In addition, the Petitioner submitted screenshots from graciemag.com and flograpping.com covering the IBJJF Awards Ceremony, which included the

³ 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> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

announcement of the [redacted]. The screenshots, though, do not show the [redacted]'s membership requirements. Here, the Petitioner's evidence does not corroborate the Petitioner's claims and demonstrate that [redacted] requires outstanding achievements, as judged by recognized national or international experts consistent with this regulatory criterion.

Likewise, the Petitioner submitted a letter from [redacted] for IBJJF, who stated that "[to] be considered, athletes must have [redacted] titles in the Adult Black Belt Division at the very least," and "these individuals must stand out amongst all the rest as the most dominant female competitors in the world." However, [redacted] did not offer any further information regarding the [redacted]'s membership requirements, nor did he reference or cite to any bylaws, governing regulations, or any other authoritative requirements for the [redacted]. Moreover, although [redacted] provided a minimum requirement of [redacted] titles for consideration, he did not explain the other achievements that recognized national or international experts judge in order to determine eligibility. In fact, [redacted] did not indicate whether recognized national or international experts conduct the judging for the [redacted], and if so, he did not identify those experts.

As it relates to the [redacted], the Petitioner claims that she is a member of an elite group within IBJJF. The record reflects that she submitted a letter from the [redacted] World Champion Ring Awards congratulating her for winning the IBJJF [redacted] division in [redacted] and [redacted] and inviting her to attend an awards ceremony recognizing champions from 1996 – 2018. Moreover, the letter indicates that the Petitioner will be entered into the IBJJF [redacted] World Champions Club. However, the Petitioner did not provide evidence establishing that membership with [redacted] requires outstanding achievements, as judged by recognized national or international experts. For example, the Petitioner did not submit the bylaws or other evidence showing the membership requirements. Based on the offered evidence, entrance into [redacted] is automatically based on winning the IBJJF championship in a particular year. Again, this criterion requires membership in an association that is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁴ Here, automatic admission into an association without being judged by recognized national or international experts does not meet this regulatory criterion.

For these reasons, the Petitioner did not demonstrate that she fulfills this criterion.

C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner 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 Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations,

⁴ 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> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

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. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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. 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 her 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 she 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 her 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.