



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

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

In Re: 8285335

Date: MAY 27, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a competitive wrestler, 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 matter is now before us on appeal.

The petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). The Administrative Appeals Office (AAO) reviews the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we agree with the Director's determination that the Petitioner did not meet at least three criteria. Accordingly, 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 record shows that the Petitioner is a competitive athlete in [redacted] wrestling who has competed at the junior and senior levels in regional, national, and international competitions since 2008. In [redacted] the Petitioner was awarded the title “Master of Sport Of Uzbekistan” from the State Committee of Physical Education and Sport. The Petitioner indicates that he studied at the Uzbekistan State Institute of Physical Education from [redacted].

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 Petitioner claims that he meets five of the ten criteria at 8 C.F.R.(h)(3)(i)-(x), summarized below:

- (i) Nationally or internationally recognized awards or prizes;
- (ii) Membership in associations that require outstanding achievements;
- (iii) Published materials;
- (v) Original contributions of major significance; and
- (viii) Leading or critical roles for organizations or establishments.

In denying the petition, the Director found that the Petitioner did not meet any of these criteria. On appeal, the Petitioner asserts that he submitted sufficient evidence to satisfy all claimed criteria and to establish his eligibility for classification as an individual of extraordinary ability in athletics. After reviewing all the evidence in the record, we find that the Petitioner has not established that he meets at least three of the initial evidentiary criteria.

A. Evidentiary 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)

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the Petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion.¹ The Director acknowledged that the Petitioner submitted evidence that he was the recipient of "numerous awards and high-ranking finishes" but determined that there was insufficient evidence to establish that his awards are nationally or internationally recognized for excellence in his field.

While we agree that the Petitioner did not establish the significance of all of the submitted awards, particularly certain "international tournaments," the record establishes that he received silver and bronze medals at the Championship of Uzbekistan in the years [redacted] and that he was twice the national champion in his weight class at the [redacted] level. The record reflects that the Championship of Uzbekistan is sanctioned by the national federation for wrestling and the Uzbekistan Ministry of Physical Culture and Sports, and therefore is recognized as the official national championship in the sport in the Petitioner's country. Accordingly, we find that this criterion has been met.

Documentation of the individual'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 that he meets this criterion based upon his selection as a member of the Uzbekistan National Wrestling Team, and contends that "USCIS erred in not finding that Uzbekistan National Wrestling Team requires of its members outstanding achievements in the field of wrestling as judged by nationally or internationally recognized experts in the field of wrestling and/or that the Team does not qualify as an organization as INA does not define an organization in this context."

The Petitioner submitted two letters from [redacted] of the Uzbekistan Wrestling Federation, confirming the Petitioner's membership on the team since [redacted]. He states that admission to the national team requires "a consistent track record of outstanding achievements in this sport" and that "[the Petitioner] was admitted to the team on the basis of his outstanding achievements in [redacted] wrestling as judged by nationally or internationally recognized experts in this sport." Specifically, he stated that the Petitioner, at the time of admission, "has been a champion of the Republic of Uzbekistan in wrestling and multiple times winner of the national and international wrestling tournaments."

[redacted] further indicates that the Petitioner's admission to membership was recommended by [redacted] an Olympic bronze medalist in [redacted] and [redacted] who has multiple World Wrestling Championship medals. In addition, [redacted] states that the national team "only selects the best of the best and is highly selective" and names other past members of the team who have gone on to win medals in international events.

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>.

The Petitioner provided letters from [redacted] and [redacted] who state that in [redacted] they reviewed the Petitioner's "track record of achievements in the field of wrestling and recommended his admission" to the national team based upon his having been "a champion of the Republic of Uzbekistan in wrestling and multiple times winner of the national and international wrestling tournaments." They assert that based on their recommendations "[the Petitioner's] admission to the Uzbekistan National Wrestling Team clearly demonstrates membership in the organization that requires outstanding achievements of its members, as judged by nationally or internationally recognized experts in the field of wrestling."

In comparing the letters from [redacted] and [redacted] they contain large portions of identical or virtually identical language consistent with a common source. If testimonial material lacks specificity, detail, or credibility, there is a greater need for the Petitioner to furnish corroborative items. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In addition, these letters, as well as the two letters from [redacted] simply repeated the regulatory language of this criterion without providing details regarding how selection for the national team is actually made or what criteria must be met. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Cf. 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).

Further, the Petitioner relies solely on the above-referenced letters, which are not sufficiently specific with respect to the national team membership requirements or selection processes. As noted by the Director, the record does not contain corroborating evidence, such as official rules or procedures published by the national federation of the sport.

The Petitioner must show that he meets every element of a given criterion. Here, the Petitioner has not sufficiently demonstrated the procedures or criteria used for his selection to the national team. Therefore, he did not establish that he satisfies this criterion.

Published material about the individual 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.²

At the time of filing, the Petitioner submitted an article titled [redacted] published by German online sports portal *Sport aus Mainz* (www.sportausmainz.de) in [redacted] 2017. The article is about the results of the [redacted] World Championships held in Poland, and primarily focuses on the individual match results of Lithuanian athlete [redacted] who won a bronze

² See USCIS Policy Memorandum PM 602-0005.1, *supra* at 7 (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

medal at the event. The article mentions that a Kyrgyz wrestler who lost in the semi-final round and “entered the competition with victories over Uzbek [the Petitioner] (8:0) and a Finn. . .” This article, which only mentions the Petitioner’s early round defeat in passing, is not about the Petitioner and therefore does not satisfy the plain language of this criterion. Further, the article was not accompanied by evidence that *Sport aus Mainz* qualifies as a professional publication, major trade publication or other major media.

The Petitioner also submitted an online article titled [redacted] published by *News.az* (www.news.az) in [redacted] 2011. The article provides the results of the first day of the [redacted] Cup event, noting that Azerbaijan’s young [redacted] wrestlers won five gold, five silver and seven bronze medals and athletes from Kazakhstan and Georgia won two gold medals each. In addition, the article lists the medal results in each weight category and identifies the Petitioner as a bronze medalist in the [redacted] event. Although the Petitioner’s name is mentioned, the article is about the overall results of the [redacted] Cup and highlights the performance of the Azerbaijani team; it is not about the Petitioner. Articles that are not about the 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 about a show are not about the actor). In addition, the Petitioner did not submit evidence to establish that the online publication in which the article appeared is a major trade publication or other major media.

Finally, the Petitioner submitted an article titled [redacted], which was published as part of [redacted], posted to the website of the Embassy of the Republic of Uzbekistan to the United Kingdom in [redacted] 2011. The article is about the performance of 16 and 17-year-old Uzbek wrestlers at the [redacted] Youth Wrestling Championship and mentions the Petitioner’s bronze medal in the [redacted] weight class. The article does not identify the author of the material as required by the regulation and is not accompanied by evidence that an Embassy’s “information digest” qualifies as major media.

Later, in response to the RFE, the Petitioner submitted an article titled [redacted], published by *Sports of Bukhara* on [redacted] 2019. In addition, he submitted a [redacted] 2018 article titled [redacted] and an [redacted] 2019 article titled [redacted] [redacted] both published in Uzbekistan monthly sports magazine *Physical Culture and Sports*.

The Director acknowledged that these articles are about the Petitioner and his activities as a competitive wrestler; however, he noted that all three articles were published subsequent to the filing of this petition in July 2018. 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. As the published materials submitted in response to the RFE cannot establish the Petitioner’s eligibility as of the date of filing, we need not evaluate whether they otherwise satisfy the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Nevertheless, we agree with the Director's determination that the Petitioner did not provided sufficient evidence to establish that *Sports of Bukhara* or *Physical Culture and Sports* qualify as major trade media or other major media. The Petitioner provided letters from the editors of these publications attesting to their respective circulation and online readership. USCIS need not rely solely on self-serving assertions.³ Even if we were to accept the editors' information there is no evidence showing the distribution of these publications relative to other Uzbekistani media to demonstrate that the submitted articles from late 2018 and 2019 were published in professional or major trade publications or other major media.

On appeal, the Petitioner maintains that he submitted evidence from "major sport-related newspapers in his country of origin and beyond" and contends that the Director provided "no valid basis for the rejection of credible, clear and convincing evidence." However, as noted, the Director clearly explained in both the RFE and the decision why the evidence was insufficient to establish that the Petitioner meets this criterion. For the reasons discussed, we agree with the Director's determination.

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 meet this criterion, a petitioner must establish that he has made original contributions of major significance in the field.⁴ For example, a petitioner may show that his 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 Petitioner contends that he meets this criterion "by virtue of winning major national and international competitions" and that his "accomplishments in his athletic field constitute a contribution of major significance to the sport of Wrestling." He argues that the Director did not give appropriate weight to the submitted expert testimonials.

In support of this criterion, the Petitioner initially provided a letter from professional wrestler [redacted] [redacted] who, as an amateur competed at the [redacted] and [redacted] Summer Olympics, as well as World and Asian Championships as a member of the Uzbekistan national team. [redacted] affirms that the Petitioner became a member of the national team in [redacted] and provides a "summary list" of the Petitioner's results in "major national and international" [redacted] wrestling tournaments between [redacted] and [redacted]. He also states that he received the Petitioner received the Master of Sports of Uzbekistan title "for achieving outstanding accomplishments in the field of [redacted] wrestling," noting that the title is granted only to those athletes who have attained an exceptional level of mastery in their particular sport, as evidenced by success in major national or international tournaments."

The Petitioner's achievements in wrestling competitions and tournaments are more relevant to the awards category of evidence at 8 C.F.R. § 204.5(h)(3)(i), a separate and distinct criterion that he has

³ See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8 (finding that although work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

already satisfied. Consistent with the regulatory requirement that a petitioner meet at least three separate criteria, we will generally not consider here evidence relating to the awards criterion. Regardless, the Petitioner did not establish that his competitive wrestling results were indicative of original athletic contributions of major significance in the overall field.⁵ Likewise, the Petitioner did not demonstrate how his “Master of Sport” title qualifies as an original contribution of major significance in the field. He did not show, for example, that it was awarded based on a determination that his contributions to the sport had made a significant impact on the field.

In response to the RFE, the Petitioner submitted three additional letters. One letter is attributed to [redacted] head coach of [redacted] wrestling for USA Wrestling, the governing body of the sport in the United States. However, the letter reflects that [redacted] did not personally sign statement as someone signed “for [redacted]” on the signature line. This letter, and two additional letters (from USA Wrestling assistant national [redacted] coach, [redacted], and [redacted] University assistant wrestling coach [redacted]), summarize the Petitioner’s career and highlight his achievements, they did not establish how they reflect original contributions of major significance in the field.

The letter attributed to [redacted] states that the Petitioner’s “decided unique approach to wrestling, as well as his outstanding accomplishments in this sport definitely constitute an athletic contribution of major significance to this field,” and later notes that his “athletic achievements represent a significant contribution to the field of [redacted] wrestling due to his relentless work ethic and unique style.” However, having a unique style is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those skills and abilities to impact the field at a significant level. In the case here, the Petitioner did not establish how his physical abilities and “unique style” are viewed as an original contribution, as well as how they have significantly influenced the field.

We note that large portions of the letters from [redacted] and [redacted] are identical in content. Their letters address the Petitioner’s “Master of Sport” title and state that it is awarded “exclusively to those athletes who have made a contribution of major significance to their sport as judged by nationally recognized experts in the field.” However, this statement is not supported by evidence from the issuing organization documenting the criteria for awarding a Master of Sport title in [redacted] wrestling in Uzbekistan.⁶ Both these letters also state that the Petitioner’s “accomplishments clearly demonstrate that he has made a contribution of major significance to the sport of wrestling.” They also refer to his receipt of “major internationally recognized awards” at World Championships, which the Petitioner has neither claimed nor documented.

⁵ See USCIS Policy Memorandum PM 602-0005.1, 8-9; see also *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

⁶ The Petitioner submitted a printout from *The Free Dictionary*, that discusses the history of the “Master of Sport” title in the USSR. The Petitioner’s Master of Sport title was bestowed on him by the State Committee of Physical Education and Sport of the Republic of Uzbekistan and is not accompanied by evidence from that body explaining the criteria or achievements required to earn the title.

The letters submitted primarily contain attestations of the Petitioner's status in his sport without providing specific examples of original contributions that rise to a level consistent with major significance. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.⁷ Letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁸ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

While the Petitioner has competed in competitions and tournaments at the national and international level and participated in extensive [redacted] wrestling training, he has not shown how these activities equate to "original" athletic contributions of major significance in the field. The Petitioner has not established that he meets 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)

In a statement submitted with his initial submission, the Petitioner asserts that he has played a leading and critical role in the Uzbekistan National Wrestling Team since [redacted], but he does not specify what that role was or indicate that he was submitting evidence in support of the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

In his letter dated July 20, 2018, [redacted] stated that the Petitioner had been playing a "leading and critical role in the Uzbekistan National Wrestling Team as the team leader" since [redacted]. In response to the RFE, the Petitioner submitted a new letter from [redacted], dated May 3, 2019, indicating that the Petitioner served as the captain of the Uzbekistan National Wrestling Team from [redacted].

We note that the claimed dates of the Petitioner's leadership position and the title of his claimed role both changed from the date of filing, and neither the Petitioner nor [redacted] addressed these inconsistencies. Based on the conflicting statements provided by [redacted], we find that his letter alone is insufficient to establish that the Petitioner held the team [redacted] role for his national team. We also observe that neither [redacted] and [redacted] who wrote their letters as representatives of the Uzbekistan National Team and Wrestling Association of Uzbekistan, indicate that the Petitioner served as a team leader or captain on their team.

In his second letter, [redacted] notes that the "function of the team captain position is leadership and management, which is reflected in the Uzbekistan National Wrestling team by-laws." He noted that the captain is elected annually by team members and "can only be occupied by a true leader of the sports team, i.e. an authoritative and experienced athlete, one of the strongest on the team." [redacted] also provided a description of the functions performed by a team captain during competition "in accordance with the Rules of competition adopted by the Wrestling Association of Republic of Uzbekistan." However, the record does not contain the bylaws or rules of competition, nor does it contain

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁸ *Id.* at 9.

any independent documentation confirming the Petitioner's election as team captain for five consecutive years.

In light of [redacted]'s statement that the team captain is "an authoritative and experienced athlete," we note that the Petitioner himself was an 18-year-old college student in [redacted]. As of [redacted], at the end of his claimed tenure as team captain, he competed for the team in the [redacted] category at the world championships, where he finished 18th. The record reflects that, during the Petitioner's claimed tenure as captain [redacted] and [redacted] and other Uzbek wrestlers competed and won medals for the Uzbekistan National Team at major international events including the [redacted] and [redacted] Summer Olympics, World Championships and Asian Championships at the senior level. We while do not discount the possibility that the Petitioner had a leadership role on the team starting in [redacted] as initially claimed, additional objective evidence would be needed to support his later claim that he held the team captain role from [redacted]. The Petitioner has not established that he 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 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.