



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

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

In Re: 8421489

Date: MAY 28, 2020

Motion on Administrative Appeals Office Decision

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

The Petitioner, a martial artist, 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 won a major, internationally recognized award or satisfied at least three of ten initial evidentiary criteria, as required. We dismissed the Petitioner's appeal from that decision. The matter is now before us on a motion to reopen.

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 review, we will dismiss the motion.

I. MOTION REQUIREMENTS

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Under the above regulations, a motion to reopen is based on documentary evidence of *new facts*. We may grant a motion that satisfies this requirement and demonstrates eligibility for the requested immigration benefit.

The regulation at 8 C.F.R. § 103.5(a)(1)(i) limits our authority to reopen or reconsider to instances where the Petitioner has shown "proper cause" for that action. Thus, to merit reopening, a petitioner must not only meet the formal filing requirements (such as submission of a properly completed Form I-290B, Notice of Appeal or Motion, with the correct fee), but also show proper cause for granting the motion. We cannot grant a motion that does not meet applicable requirements. *See* 8 C.F.R. § 103.5(a)(4).

II. 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 their 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).

III. ANALYSIS

The Petitioner claimed that he has received a major, internationally recognized award, but neither the Director nor we found that he had done so. Therefore, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Petitioner abandoned criterion (vii) on appeal, but claimed to have met the remaining five criteria. In our appellate decision, we found that the Petitioner had satisfied only the first two criteria. On motion, the Petitioner maintains that he satisfies the criteria numbered (iii) and (viii) and submits evidence intended to address those criteria.

After reviewing the newly submitted evidence, we find that it does not warrant reopening the petition, as explained below.

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)

The Petitioner previously submitted a transcript of a news story about him on Pan Armenian TV, an Armenian-language television station “available on all major SoCal [Southern California] Cable TV providers” and “covering entire USA, Southern Canada and Northern Mexico” through a satellite service.

In our dismissal notice, we stated: “the record does not demonstrate who interviewed the Petitioner or the date when the interview was broadcast. In addition, the Petitioner did not provide documentary evidence of the viewership statistics for the specific television program on which the interview was broadcast.”

On motion, the Petitioner submits a letter from the station's chief executive officer (CEO), confirming that the broadcast took place on [redacted] 2017, about two months before the petition's filing date. In terms of viewership, the CEO asserts that “[s]pecific statistics on how many people watched the interview . . . are not yet reported,” but he claims: “PAN ARMENIA has over one million viewers all over the world [of whom the] majority viewed [the Petitioner's] interview.” He did not explain how he knew that most of the station's viewers watched the interview. The Petitioner does not provide average per-episode viewership figures for the weekly program on which the interview appeared. That average would not require figures for the specific episode on which the Petitioner appeared.

Notwithstanding the reference to “viewers all over the world,” a printout from Pan Armenian TV's own website indicates that most of those viewers (620,000) are on the West Coast of the United States. A map from the same website appears to indicate that viewership is heavily concentrated in the Los Angeles area. The Petitioner has not submitted viewership figures for other Los Angeles television stations to provide a basis for comparison. Furthermore, the record does not specify whether the “over one million viewers” figure refers to active viewers, or rather the *potential* viewership comprised of cable and satellite subscribers who have access to the channel, whether or not they actually watch it.

The evidence does not establish that a minority-language television station, with a predominantly local viewership, constitutes major media.

The Petitioner had previously submitted an article published in the [redacted] University's newspaper. [redacted] In our prior decision we found that “this article does not satisfy the

plain language of this criterion, as it is not about the Petitioner, but about the [] Martial Arts Club, and does not identify the author of the material.”

The Petitioner had also previously submitted a translated article which the Petitioner attributed to the newspaper *Vardadzor*. In our prior decision, we identified two deficiencies with this evidence. First, the translation did not identify the source of the article. Second, the submitted circulation information appeared to indicate modest, regional circulation, and did not show that the online edition constitutes “major media relative to other online news sources.”

On motion, the Petitioner submits more specific circulation data for the print editions of [] and *Vardadzor*, which does not address the above findings.

For the above reasons, the Petitioner has not overcome our findings regarding published material.

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)

The Petitioner claims that he performed in a leading or critical role as a member of Armenia’s national karate team in []. In our appellate decision, we found that the Petitioner had not submitted corroborating evidence to set him apart from other team members to show that his role, in particular, was leading or critical. We also found that “the record does not contain sufficient evidence to demonstrate that the Armenian national karate team has a distinguished reputation in the field.”

On motion, the Petitioner submits a new letter from [] of the Armenian Karate Federation, who is also [] of the Armenian National Karate Team. This official asserts that the Petitioner’s role in international competition “was leading and critical, especially during the World Championship that took place in [] in []” At that event, the Petitioner placed first in Kumite in his weight class, which, the official states, placed the team in the top three for the competition. He adds that the Petitioner “won a first place as a part of the Armenian National Team in [] California in May of [] which was a very prestigious win for our Team.”

In our prior decision, we found that the Petitioner did not establish the significance of the awards from the competitions in [] and [] and did not establish that the Armenian national team has a distinguished reputation. The new submission on motion does not include objective, documentary evidence to overcome those findings, or to show that the Petitioner’s participation in the above-mentioned competitions significantly affected that reputation.

IV. CONCLUSION

For the reasons discussed, the Petitioner has not shown proper cause for reopening the petition, and has not overcome the grounds for dismissal of the appeal. The motion to reopen will be dismissed for the above stated reasons.

ORDER: The motion to reopen is dismissed.