



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

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

In Re: 7674392

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a mountain biker and cyclist, 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 satisfied only one of the ten initial evidentiary criteria, of which he 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 indicates employment at [redacted] Bicycle Store in [redacted] Ohio. Because the Petitioner has not claimed 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).

In denying the petition, the Director determined that the Petitioner fulfilled only one of the initial evidentiary criteria, published material at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner references eligibility for two additional criteria.¹ Moreover, although the Petitioner claims that he has “provided additional evidence in documents attached to this letter,” the record does not reflect that he presented any documentation accompanying his appeal letter. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

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 Petitioner argues that he “provided enough evidence” regarding the 2008 [redacted] National Downhill Championship, the 2016 [redacted] Mountain Bike Series, and the 2015 [redacted] European Games. In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

The record reflects that the Petitioner submitted a photograph of a medal and trophy claiming that it represented his first-place finish at the 2008 [redacted] National Downhill Championship. In addition, he submitted a letter from [redacted] of the [redacted] Cycling Union, who confirmed the Petitioner’s racing result and described the racing competition. However, the letter does not provide specific, detailed information demonstrating that a first-place finish at the 2008 [redacted]

¹ We decline the Petitioner’s request for oral argument. *See* 8 C.F.R. § 103.3(b).

² *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>.

³ *Id.*

National Downhill Championship represents a nationally or internationally recognized prize or award for excellence in the field consistent with this regulatory criterion. Instead, the letter focuses on the history and background of the racing event without showing the national or international significance of the prize or award.

Likewise, the Petitioner submitted a photograph of a second-place medal from the 2016 [redacted] Mountain Bike Series. Further, he presented a document entitled, “[redacted] History Timeline,” briefly highlighting some [redacted] events from 1990 – 2011. The document, however, did not mention the 2016 event, nor did the Petitioner establish that he received a second-place medal. Moreover, the Petitioner did not demonstrate that a second-place medal from the 2016 [redacted] Mountain Bike Series qualifies as a nationally or internationally recognized prize or award for excellence in the field.

Finally, the Petitioner provided a certificate and medal for his participation at the 2015 [redacted] European Games. However, the Petitioner did not offer any supporting evidence showing that his participation at the competition is tantamount to a nationally or internationally recognized prize or award for excellence in the field. In fact, the record contains a screenshot from mtbcrosscountry.com reflecting that the Petitioner finished in 37th place. Here, the Petitioner did not demonstrate that such a finish constitutes a prize or award “for excellence in the field of endeavor.”

For the reasons discussed above, the Petitioner did not show that he satisfies this criterion.

III. CONCLUSION

We find that although the Director determined that the Petitioner satisfied the published material criterion, he does not meet the awards criterion. Moreover, while he claims eligibility for an additional criterion on appeal, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.⁴ Accordingly, 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).

⁴ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

Although the Petitioner has experience in competing in mountain biking and cycling events, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.