



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

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

In Re: 10728911

Date: SEPT. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an ice rink business, seeks to classify the Beneficiary, an ice skating coach and choreographer, 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 Beneficiary had not received a one-time achievement and had not satisfied any of the 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)(A) 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 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 criteria 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). (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Beneficiary competed as a figure skater and has been employed by the Petitioner as an ice skating coach and choreographer.¹ In denying the petition, the Director determined that the Beneficiary did not receive a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), and she did not satisfy any of the Petitioner’s four claimed criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner does not assert the Beneficiary’s eligibility for a one-time achievement and maintains that the Beneficiary fulfills the previously claimed four criteria, including two additional ones. After reviewing all of the evidence in the record, we conclude that the record does not support a determination that the Petitioner satisfies the requirements of at least three criteria.

¹ We note that the USCIS Adjudicator’s Field Manual (AFM) provides:

In general, if a beneficiary has clearly achieved *recent* national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary’s area of expertise.

AFM ch. 22.22(i)(1)(C) (emphasis in original). *See* <https://www.uscis.gov/policy-manual/volume-6-part-f> (informing that in May 2020, USCIS retired its AFM, a collection of immigration policies and procedures, and it will be updated and incorporated into the USCIS Policy Manual, the agency’s centralized online repository for immigration policies. Until then, any remaining AFM content has been moved to its corresponding Policy Manual Part).

A. Evidentiary 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).

In order to fulfill this criterion, the petitioner must demonstrate that the beneficiary 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 Petitioner argues that the Beneficiary “was the winner of the [redacted] in Individual Sports for her accomplishments as a figure skater and artistic choreography” and submits screenshots from [redacted].fr without any English language translations. Any document in a foreign language must be accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a certified English language translation, the screenshots have no probative and evidentiary value.

Further, the Petitioner provides a 2001 article from *Les Informations Dieppoises*, reporting on the 12th Annual [redacted] Award Night “to honor the athletes from [redacted] [France] and the surrounding area.” Although the article shows that the Beneficiary received an award in the “Other Individual” sports category, the Petitioner did not demonstrate the significance of the award in the field. The article does not reflect the field’s view of a [redacted] Award as a nationally or internationally recognized award for excellence in the field. In addition, the Petitioner did not establish that reporting of the awards ceremony from a single paper signifies a level of media coverage of a nationally or internationally recognized award for excellence. In fact, the article indicates a locally recognized award rather than a nationally or internationally recognized award for excellence consistent with this regulatory criterion.

For these reasons, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

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 argues the Beneficiary’s eligibility for this criterion for the first time on appeal that the Beneficiary “belonged to FFSG (Federation Francaise des Sports de Glace)” and submits an affidavit from the Ministry of Youth, Education, and Research stating that the Beneficiary “is registered on the

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.*

list of elite athletes . . . in the [] category for the period from [] 2003 to [] 2004,” which is recognized on the recommendation of FFSG. Further, the Petitioner provides a 2005 letter from the Ministry of Youth, Sports, and Associations indicating “regist[r]ation on the list of elite athletes.”⁴ In addition, the Petitioner presents a 2004 affidavit from the National Institute of Sport and Physical Education reflecting that the Beneficiary “is enrolled in our institute as an elite athlete for the 2003/2004 school year and that she attends classes at []”

In order to satisfy the regulation at 8 C.F.R. §204.5(h)(3)(ii), a 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.⁵ However, the Petitioner did not demonstrate that membership with FFSG requires outstanding achievements, as judged by recognized national or international experts. The Petitioner, for example, did not provide the bylaws or other membership requirements to show that outstanding achievements are a condition of membership, and the judging of membership is comprised of recognized national or international experts. Here, the Petitioner’s evidence is insufficient to meet the regulatory requirements of this criterion.

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

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 claims eligibility for this criterion based on material from *L’Echo Republican*, *Patinage Magazine*, and *Les Informations Dieppoises*. In order to fulfill this criterion, the Petitioner must demonstrate published material about the alien in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁶

The record contains an article from *L’Echo Republican*. However, the article is about an ice show featuring two other figure skaters. In fact, the Beneficiary is never mentioned, and the article does not reflect published material about the Beneficiary relating to her work. Articles that are not about an alien do not fulfill 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 regarding a show are not about the actor). Further, the Petitioner did not include the required author of the material. The inclusion of the title, date, and author of the material is not optional but a regulatory requirement. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Moreover, the record includes two photographs of the Beneficiary from *Patinage Magazine*. However, the Petitioner did not establish how photographs represent published material about the

⁴ The letter is addressed to “Dear Sir/Madam” and does not indicate the letter’s recipient.

⁵ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (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).

⁶ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

Beneficiary relating to her work. Further, the Petitioner did not include the title and author of the material.

The record also reflects that the Petitioner submitted seven articles from *Les Information Dieppoises*. While six of the articles show published material about the Beneficiary, one article [redacted] does not. Specifically, the article discusses the [redacted] Olympic Club with the Beneficiary mentioned one time as being one of the competitors. Moreover, with the exception of one article [redacted] the remaining articles do not contain the date and/or author of the material. Thus, the Petitioner provided one article reflecting published material about the Beneficiary relating to her work that contains the title, date, and author.

However, the Petitioner did not demonstrate that *Les Information Dieppoises* qualifies as a professional or major trade publication or other major medium.⁷ Although the Petitioner asserts the circulation figures and background information for *Les Information Dieppoises*, as well as for *L'Echo Republican* and *Patinage Magazine*, the Petitioner does not support its assertions with corroborating evidence. While the Petitioner claims that *Les Information Dieppoises* has a reader circulation of 25,000, the Petitioner did not establish the significance of these numbers resulting in the status as a professional or major trade publication or other major medium. Further, according to the Petitioner, *Les Information Dieppoises* is a regional level newspaper in France rather than a major medium.

For the reasons discussed above, the Petitioner did not show that the Beneficiary satisfies 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 specification for which classification is sought. 8 C.F.R. 204.5(h)(3)(iv).

The Petitioner claims the Beneficiary's eligibility for this criterion for the first time on appeal. Specifically, the Petitioner asserts that the Beneficiary "is a member of Ice Skating Institute [ISI] in the United States, and completed her certification as a judge" and provides a certificate from ISI reflecting the Beneficiary's judging accreditation.

This regulatory criterion requires the petitioner to show that the alien has not only been invited to judge the work of others, but also that the alien actually participated in the judging of the work of others in the same or allied field of specialization.⁸ Although the certificate demonstrates the Beneficiary's qualification to judge, the Petitioner did not establish that the Beneficiary actually participated as a judge consistent with this regulatory criterion. The Petitioner, for instance, did not support the record with probative documentation reflecting the Beneficiary's judging experience at figure skating events or competitions.

Accordingly, the Petitioner did not show that the Beneficiary meets this criterion.

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

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

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary 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 Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, 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 did not demonstrate that the Beneficiary satisfies the criteria relating to awards, memberships, published material, and judging. Although the Petitioner claims the Beneficiary's eligibility for two additional criteria on appeal, relating to display at 8 C.F.R. § 204.5(h)(3)(vii) and leading or critical role at 8 C.F.R. § 204.5(3)(3)(viii), we need not reach these additional grounds. As the Beneficiary cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁹ 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 conclusion that the Petitioner has established the Beneficiary's acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification for Beneficiary, 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 the Beneficiary's 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 Beneficiary 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). Although the Beneficiary competed as a figure skater and has choreographed events, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

⁹ *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).

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's 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.