



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

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

In Re: 12854056

Date: FEB. 5, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a boxer, 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 while the Petitioner met the initial evidentiary requirements for this classification, the record did not establish that he has sustained national or international acclaim and is one of the small percentage of boxers at the top of the field.

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 withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

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 international 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 Petitioner is a boxer with a long amateur and professional career in his native [REDACTED], and more recently in the United States. The record shows that he has held the interim world champion title in the World Boxing Association (WBA) [REDACTED] class and the World Boxing Council (WBC) [REDACTED] but that in both cases the champion successfully defended his title by defeating the Petitioner. He was also a participant in the 2004 Olympic Games.

The Petitioner claims that his interim world champion titles constituted one-time achievements as major, internationally recognized awards, and that in the alternative he also met the requirements for five of the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). In his decision, the Director determined that the Petitioner had established his receipt of a major, internationally recognized award. On review, we agree with this conclusion. Despite this finding being sufficient for the Petitioner to meet the initial evidentiary requirement in the regulation, however, the Director went on to determine that the Petitioner also met two of the five evidentiary criteria that he claimed. Specifically, he found that the Petitioner had established his receipt of lesser nationally or internationally recognized awards, and that material about him and his work had been published in professional or major trade publications or other major media.¹ However, the Director determined that the Petitioner did not meet the evidentiary criteria pertaining to his membership in associations that require outstanding achievements, original athletic contributions of major significance, and serving in a leading or critical role for an organization with a distinguished reputation.²

The Director then conducted a final merits determination. In a final merits determination, the Director must examine and weigh all of the evidence in the record to determine whether the Petitioner has the high level of expertise required for this immigrant classification. Specifically, the Director must review the totality of the evidence, regardless of whether certain evidence was found to be sufficient to meet one of the evidentiary criteria, to determine whether the Petitioner has sustained national or

¹ 8 C.F.R. 204.5(h)(3)(i) and (iii), respectively.

² 8 C.F.R. § 204.5(h)(3)(ii), (v), and (viii), respectively.

international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

On appeal, the Petitioner asserts that in conducting the final merits determination, the Director ignored or failed to consider all of the evidence together in its totality. After review, we agree, and note that the Director's analysis includes statements which contradict his findings when considering the initial evidence requirements. For example, when discussing the Petitioner's receipt of a major, internationally recognized award, the Director focuses on evidence which does not meet that initial evidence requirement, including certificates from local organizations which congratulate him for his interim world championship title.

Also, while the Director determined that the record included material published in professional or major trade publications or other major media that was about the Petitioner and his work as a boxer, the discussion of this evidence in the final merits determination mentions only that evidence which did not qualify under 8 C.F.R. 204.5(h)(3)(iii). In addition, this evidence is described as being posted on blogs and web portals, but the Director did not identify which materials are from these sources or why he considered them to have reduced evidentiary weight. We note that much of this evidence was posted on websites devoted to the sport of boxing. The Director also refers to "published material requirements" which are an element of the evidentiary criterion, not a final merits determination. Having already determined that sufficient evidence had been submitted to meet the initial evidentiary requirement, rather than conducting an analysis of the requirements for the ten evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x), he should have considered whether the balance of the record established that the Petitioner has enjoyed sustained national or international acclaim and is among the small percentage of boxers at the top of the field.

In addition, in considering the Petitioner's ranking as a boxer, the Director referred to two reference letters which indicated that the Petitioner was ranked eighth by the WBA and fourteenth by the WBC at the time of filing, but concluded that the record did not support that he was "at the top of the list of professional boxers." However, the regulation at 8 C.F.R. § 204.5(h)(2) does not require a petitioner to be at the top of his or her field, but among those in the very small percentage at the top. Further, the record contains evidence from both organizations regarding the Petitioner's ranking which the Director should have considered.

We also note that the Director requested additional evidence that the Petitioner is coming to the United States to continue work as a boxer in compliance with 8 C.F.R. § 204.5(h)(5), which requires "clear evidence" and "detail[ed] plans." In response, the Petitioner resubmitted a letter in which he states that he will "continue my endeavors" as a boxer. While the record also includes a management contract for the Petitioner, it expired more than one year prior to the filing of this petition. On remand, the Director should consider whether the record includes clear evidence that the Petitioner will continue his boxing career in the United States.

Accordingly, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. Because the Director has already determined that the Petitioner meets the initial evidentiary requirements, the new decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim. It should also analyze whether the record demonstrates

that the Petitioner is one of the small percentage at the very top of his field of endeavor, that his achievements have been recognized in the field through extensive documentation, and whether the Petitioner submitted detailed plans and clear evidence that he will continue his boxing career in the United States. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2); 8 C.F.R. § 204.5(h)(5); *see also Kazarian*, 596 F.3d at 1119-20.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.