



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

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

In Re: 15255769

Date: MAR. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a social and racquet sports club, seeks classification for the Beneficiary as an alien of extraordinary ability as a squash coach. *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 Beneficiary met the initial evidence requirement for this classification through receipt of a major, internationally recognized award or by meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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 currently employs the Beneficiary as a squash professional and instructor.¹ The record shows that the Beneficiary competed as a squash athlete on the [REDACTED] World Tour from 2007 to 2013, and since 2008 has participated as a squash coach in Qatar, South Africa, and the United States. The Petitioner indicates that it intends to continue its employment of the Beneficiary as a squash coach.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary did not meet any of the evidentiary criteria. On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets five of the evidentiary criteria.² After reviewing all of the evidence in the record, we partially disagree with the Director and find that she meets one of the evidentiary criteria. However, we agree that the Petitioner has not established that the Beneficiary satisfies the initial evidence requirement for this classification, and that she does not qualify as an alien of extraordinary ability.

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)

¹ The record indicates that she is employed pursuant to O-1 nonimmigrant status, valid through August 31, 2021.

² Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or on motion. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988). We will therefore not consider this newly submitted evidence in our decision.

The plain language of this criterion sets forth several elements which the Petitioner must establish in order to successfully show that the Beneficiary meets this criterion. First, it must be shown that she received a prize or award. Second, that prize or award must have been given to the Beneficiary for her excellence in the field for which she claim eligibility. Third, the Petitioner must show that the prize or award is nationally or internationally recognized.

In his decision, the Director concluded that while the record includes award certificates, it did not include sufficient evidence to show that these awards are nationally or internationally recognized. He also noted that official rankings do not constitute evidence of prizes or awards.

On appeal, the Petitioner lists evidence which refers to several of the Beneficiary's accomplishments as a squash player, some of which constitute prizes or awards and others which do not. For example, this list refers to articles appearing in *The Peninsula*, a newspaper distributed in Qatar, which mention that the Beneficiary will play in upcoming tournaments and is sponsored by local companies, but do not mention her receipt of an award. Similarly, selection for a particular team, such as the Beneficiary's selection to the University Sport [redacted] team and the [redacted] [redacted] provincial squad, is certainly an accomplishment, but the evidence does not show that the certificates given to commemorate these accomplishments are themselves prizes or awards.³

However, the evidence of the Beneficiary's membership on the [redacted] provincial squash team also shows that that team won a number of [redacted] tournaments, which later became known as the [redacted] Interprovincial Team Championship. The Petitioner submitted certificates and photographs which show her membership on the team in 2015, 2018 and 2019, and a letter from the Chairman of [redacted] confirms her membership on the team for 13 years since 2002. He also writes that the Beneficiary helped the [redacted] team win the [redacted] six times, which is corroborated in part by an article from thesquashsite.com covering the 2019 [redacted] [redacted] Interprovincials which indicates that the team was victorious seven times in the past decade. In addition, a 2007 article posted to the website gsport.co.za indicates that [redacted] won the [redacted] in 2002 and 2003. Together, this evidence demonstrates that as one of five members of the [redacted] squad for the Interprovincial Team Championship, the Beneficiary received awards for excellence in her field. Further, as the evidence indicates that the Interprovincial Team Championship is the top national tournament for squash teams in [redacted] it is a nationally recognized award in the field. Therefore, we disagree with the Director and conclude that the Petitioner meets 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)

In order to meet the requirements of this criterion, a petitioner must show that the individual was a member of an association within their field of expertise, that membership required outstanding

³ We note that the Petitioner's brief characterizes the evidence of the Beneficiary's membership on the [redacted] squad as "[redacted] National Team annual selection," but the evidence does not show that she was selected as a national team member. In any event, selection for a team does not constitute an award for purposes of this criterion.

achievements, and that those making the membership determination were themselves national or internal experts in their field.

The Petitioner, in its initial filing as well as in response to the Director's RFE, contended that the Beneficiary's membership on several teams and employment with squash clubs allow her to meet this criterion. The Director concluded that most of these "are not germane to this criterion," but did not provide an explanation for this conclusion. On appeal, the Petitioner reasserts these claims, and refers to evidence in the record which it claims supports them. Also, for each association membership claimed by the Petitioner, it lists as "outstanding achievements" the Beneficiary's selection for membership and her subsequent accomplishments as a member. However, this criterion calls for evidence of outstanding achievements as a requirement for membership, and therefore focuses on achievements judged to be outstanding that occurred prior to acceptance as a member.

Regarding the Beneficiary's membership in the [redacted], this is confirmed in a letter from the association's tour director, which also states that she achieved a ranking of 53rd on the [redacted] World Tour in October 2011. Another letter, from the [redacted]'s chief executive officer, goes into greater detail in describing the [redacted] World Tour, including several levels of tournaments and membership. Although the letters confirm that the Beneficiary was a "world member," competed in the World Championships, and reached the quarter final round in three tournaments, they do not describe the requirements for a world member or indicate that they are reviewed by recognized squash experts.

The Beneficiary's position on teams including the [redacted] Interprovincial Championship squad, the [redacted] student squash team and the University of [redacted] women's squash team is also supported by reference letters. While we disagree with the Director's conclusion that these memberships are "not germane," this evidence does not demonstrate that her membership on these teams meets the requirements of this criterion. Regarding the [redacted] team, a letter from the coach of the 2004 team on which the Beneficiary played states that she was one of four women from all [redacted] [redacted] universities selected for the team, which toured [redacted]. However, the letter does not indicate the criteria for selection or who made the selection, and other letters referenced in the Petitioner's brief simply confirm her membership and were not written by those with first-hand knowledge.

Similarly, a letter from the chairman of [redacted] confirms the Beneficiary's membership on the [redacted] team, and explains that the results from tournaments in the [redacted] league are considered and the five best players selected. As with the evidence regarding the [redacted] team, the letter does not specify any outstanding achievements required for membership, and does not indicate that those making the selection for this provincial team are recognized as national or international experts.

The Petitioner also refers to letters pertaining to the Beneficiary's employment as a squash coach and professional with squash clubs and training facilities such as [redacted] Academy and The Country Club [redacted]. We first note that the criterion requires evidence of "membership in associations," which has a different meaning than "employment." In addition, while the writers of these letters indicate that the Beneficiary was well-qualified to fill these roles due to her experience as a squash competitor and coach, they do not establish that they required achievements beyond those of any other employer seeking to hire the most qualified job candidate.

Lastly, the Petitioner asserts that the Beneficiary's selections as a coach for the [redacted] [redacted] and [redacted] meet the requirements of this criterion. In support of its claim of the Beneficiary's selection as a regional coach by [redacted], the Petitioner refers to a letter from this organization's president and chief executive officer dated August 12, 2020 and submitted on appeal. However, as previously noted, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal or on motion.⁴

As for the Beneficiary's position as a coach for the [redacted] the record includes a letter from [redacted] [redacted] the organization's former technical secretary, which confirms that she accepted this position in 2014 and began recruiting athletes to build a team. Although [redacted] notes that she was the first female squash coach in [redacted] which was important in allowing women to learn and play squash in the country, the letter does not establish that the Beneficiary's membership or employment as a coach for the [redacted] was based upon outstanding achievements.

Based upon the above analysis, we conclude that the Petitioner has not established 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)

In order to meet this criterion, the evidence must establish that material was published, that it was about the Beneficiary and her work as a squash athlete or coach, and that the medium in which it was published is a professional, major trade or other major medium.

Here, the Petitioner submitted several articles which are about the Beneficiary and her work as a squash athlete or coach. Two such articles were published in *The Peninsula*, dated [redacted] 2008 and [redacted], 2009, while a third article about her in this newspaper does not include a date. Other articles in the record about the Beneficiary were published in *Woman* magazine in [redacted] 2010 and *Abode* magazine. While the Petitioner submitted additional articles, the majority of these briefly mentioned the Beneficiary in reporting upon squash competitions in which she participated, and thus were about the competitions and not her. Also, one article which was posted on the website www.gsport.co.za with the tag "Personal Account" does not list an author and appears to have been written by the Beneficiary.

As to whether the media which published articles about the Beneficiary were one of the qualifying types under this criterion, the Petitioner submitted evidence from those publications' websites and those of the publishing companies. This evidence states that *The Peninsula* is an English-language daily newspaper published and distributed in [redacted] and boasted the "3rd best news website in the Middle East in 2017." We note that the evidence does not indicate the source of this claim, and that

⁴ See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

both articles about the Beneficiary were published well before 2017. This evidence is therefore not sufficient to establish that *The Peninsula* qualifies as a major medium.

Regarding the article published in *Woman*, the Petitioner submitted information about *Gulf Times*, another English-language newspaper and publishing company in [redacted] from its website. This evidence provides information about the history of the company and publication, and includes that statement that it “is the [redacted]” However, we need not rely on the self-promotional material of the publisher. *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 self-serving assertions on the cover of a magazine as to the magazine’s status is not reliable evidence of major media.) In addition, neither the article nor the evidence regarding the newspaper verifies the claimed relationship between it and *Woman*, the publication in which the article appeared.

Finally, the Petitioner provided information which indicates that *Abode* has been in publication since 2011 and is based in [redacted] However, this evidence does not include circulation figures or other data that establishes that *Abode* qualifies as a major medium.

After review and for the reasons described above, we find that the Petitioner has not established that the Beneficiary meets this criterion.

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)

To successfully establish that an individual meets this criterion, a petitioner must demonstrate that the role played for an organization with a distinguished reputation was either leading or critical. If a leading role, the evidence must establish that the individual is (or was) a leader. A title, with appropriate matching duties, can help to establish if a role is (or was), in fact, leading. On the other hand, if the role is claimed to be critical, the evidence must establish that the individual has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. A supporting role may be considered “critical” if the individual’s performance in the role is (or was) important in that way. It is not the title of the individual’s role, but rather their performance in the role that determines whether the role is (or was) critical.⁵

On appeal, the Petitioner first focuses on the Beneficiary’s role with the [redacted] [redacted] in [redacted] A reference letter from [redacted] who states that she was in charge of the Female Multisport Skill Development program at [redacted] states that the Beneficiary was “a critical part of the development of the first national female squash team in [redacted]” She indicates that the Beneficiary was part of the first team of female coaches (one of six) hired to develop a sports skills program for [redacted] girls, which introduced girls to sports. [redacted] further indicates that the Beneficiary oversaw the Talent Center where she selected athletes for [redacted]’s female sports teams, and wrote the squash coach program and trained other staff to implement it.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*. (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

The Beneficiary's role at [redacted] is also confirmed in two letters from [redacted] a highly-ranked squash player from [redacted] who trained at [redacted] and a letter from [redacted] former technical expert for the [redacted]. As further evidence of the criticality of the Beneficiary's role at [redacted] an article written by other [redacted] employees notes that its Talent Identification Programme is "the foundation of the [redacted]'s success." Considered together, this evidence demonstrates that the Beneficiary played a critical role at [redacted].

As to the reputation of [redacted] the Petitioner refers to information on its website. Although the website boasts that "By 2020, we will be recognized as the world's leading sports academy in the development of youth athletes," and [redacted] writes that [redacted] "is regarded as a beacon of excellence in sports and education," these statements are not sufficient to establish its reputation in the broader field of sports training institutions.

In addition, when responding to the Director's request for evidence (RFE), the Petitioner submitted an article posted on the website bleacherreport.com titled [redacted]. Although the article is very complimentary to [redacted] stating that it "has risen to the forefront of leading sporting centres around the world," we note that the article's author is listed as [redacted] and that it was previously featured on a blog site. As the source and affiliation of the author of this material is not identified, it does not establish that those outside of the [redacted] organization hold it in high regard.

The Petitioner also asserts that the Beneficiary's role in its own organization is a leading one. In his decision, the Director noted that the letters from the Petitioner's general manager and director of squash did not distinguish the Beneficiary from other coaches in its organization or otherwise show her overall influence on the Petitioner's organization. On appeal, the Petitioner highlights certain passages in these and other letters. In the case of the general manager's letter, these passages concern the importance of hiring "highest world caliber" squash coaches like the Beneficiary to maintain the club's reputation, and that she meets this standard through her previous coaching experience. Similarly, the letter from the Petitioner's director of squash describes the Beneficiary's qualifications, and that she has helped to raise the rankings of junior athletes who train at the club. She also describes the Beneficiary as "an incredible asset to our. . . coaching team" and states that junior players are benefitting from her expertise. However, neither letter indicates that she holds a leadership position in the Petitioner's organization, but is instead a member of its coaching team. As to whether the Beneficiary plays a critical role for the Petitioner, these letters indicate that she has helped junior players to raise their rankings, but do not demonstrate that any specific contributions she made were of significant importance to the Petitioner's overall operations. Although the employment of coaches in general is important to a racquet club and facility such as the Petitioner, this evidence does not demonstrate that the Beneficiary's performance as a coach was critical to its success.

In addition, the Petitioner asserts on appeal that the Beneficiary also plays a leading role for [redacted] as a regional coach for the [redacted] region. However, as previously noted, we will not consider new evidence on appeal where the Petitioner has previously been afforded an opportunity to submit evidence. In addition, 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).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In his decision, the Director concluded that the evidence did not demonstrate that the Petitioner's salary of \$79,194 in 2019 was high when compared to other coaches. He specifically focused on the salary data provided from the U.S. Department of Labor's Office of Foreign Labor Certification (FLC) and the Bureau of Labor Statistics (BLS), and noted that they did not show the salaries earned by top squash coaches in [redacted] or the United States. On appeal, the Petitioner submits additional evidence obtained from these sources, as well as from the CareerOneStop website. Because evidence from these sources was previously submitted and is publicly available, we will consider this new evidence.

As the evidence reflects the salary paid to the Beneficiary by the Petitioner in 2019, the appropriate basis for comparison is with other coaches in [redacted] in that year. While there is a slight disparity in the average wage reported from these sources, with a range between \$48,090 and \$58,400, the 75th and 90th percentile wages are consistently shown as \$73,640 and \$100,730, respectively. Although this evidence demonstrates that the Beneficiary's 2019 salary was above average, it is not sufficient to establish that it was high in relation to other coaches in [redacted]. Therefore, we conclude that the Petitioner has not established that the Beneficiary meets this criterion.

B. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) states that if the evidentiary criteria do not readily apply to the individual's occupation, comparable evidence may be submitted to establish eligibility. On appeal, the Petitioner refers to articles in the record about the role of sports coaches in general, as well as letters concerning the impact of the Beneficiary's coaching on her students, and concludes that their accomplishments serve as evidence of her "rating/standing in the field." However, the regulation allows for comparable evidence if the listed criteria do not readily apply to the Beneficiary's occupation.⁶ A petitioner should explain why it has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence it has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).⁷

Here, the Petitioner has not shown why it cannot offer evidence that meets at least three of the criteria. The fact that the Petitioner did not provide documentation that fulfills at least three is not evidence that a squash coach could not do so. As discussed, the Petitioner claimed that the Beneficiary meets five of the ten evidentiary criteria. In addition, the Petitioner did not show that coaches cannot present evidence relating to the other criteria. As such, the Petitioner did not establish that the Beneficiary is eligible to meet additional criteria through the submission of comparable evidence.

⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 12.

⁷ *Id.*

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 that the Beneficiary enjoys 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 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 that 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).

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.