



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

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

In Re: 17184754

Date: MAY 27, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a [redacted] coach, 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 Texas Service Center denied the petition, concluding that while the Petitioner met the initial evidence requirements for the requested classification, the record did not establish that he had sustained national or international acclaim in his field and was one of the small percentage of those volleyball coaches 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 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).

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 has competed as a [redacted] athlete for several years as a member of teams in the top leagues in Ukraine, Italy, France, and Greece. He is currently employed as a master coach with the [redacted] Athletic Club d/b/a [redacted] and states that he wishes to continue working as a [redacted] coach and athlete in the United States, with the goal of starting his own [redacted] club.

A. Evidentiary Criteria

Because the Petitioner has not indicated 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). The Director found that the Petitioner met three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to his receipt of lesser awards, membership in an association in his field, and his judge of the work of others in his field. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to published material about him, original contributions of major significance to the field, and leading or critical roles for organizations with a distinguished reputation.¹ After reviewing all of the previously submitted evidence in the record, we disagree with the Director's conclusions regarding two criteria and partially withdraw his decision as detailed below.²

¹ In counsel's brief, he did not contest the findings of the director regarding the criterion relating to a high salary at 8 C.F.R. § 204.5(h)(3)(ix) or offer additional arguments. We therefore consider this issue to be abandoned. *See Sepulveda v. U.S. Atty Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

² We note that the Petitioner has submitted new evidence with his appeal brief. Where, as here, 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. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). We will therefore not consider this new evidence in our analysis.

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 record demonstrates that the Petitioner was a member of [redacted] teams which received the highest awards in competition at the national level, including:

- 2005-06, [redacted] champion season, second place league cup, [redacted] Super League [redacted]
- 2006-07, [redacted] second place season, second place league cup, [redacted]
- 2007-08, [redacted] second place season, champion league cup, [redacted]
- 2008-09, [redacted] champion season, champion league cup, [redacted]
- 2013-14, [redacted] second place league cup, [redacted]
- 2014-15, [redacted] first place league cup, second place season [redacted]

As the evidence shows that the Petitioner played an important role for these teams and was one of a small number of contributors to the award, we conclude that this evidence shows that he meets this criterion.

The Petitioner also claimed that [redacted], a team he was a member of for the 2016-17 and 2017-18 seasons, won third place in the [redacted] League championship, but we note that the evidence of this consists only of a page from a Wikipedia article. As there are no assurances about the reliability of the content from this open, user-edited Internet site, information from *Wikipedia* will be accorded no evidentiary weight. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).³ In addition, a letter from the President of [redacted] does not mention this award, and the record does not include images of a trophy or certificate acknowledging the award. The Petitioner has therefore not established that the team received this award.

The record also includes evidence of individual awards received by the Petitioner, which include:

- 2008, [redacted] tournament, Best Player [redacted]
- 2015, Most Valuable Player, Games 5 and 9 of [redacted]
- 2016-17, [redacted] League best players of the regular season ("all-star team") [redacted]
- May 2017, Most Valuable Player, [redacted]'s Cup Tournament in [redacted]

³ See also the online content from [http://en.wikipedia.org/wiki/Wikipedia: General_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on May 10, 2021, and copy incorporated into the record of proceeding is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

The evidence shows that the [redacted] League “all-star team” was selected by a jury of journalists and league coaches and reported in *L’Equipe*, a national sports newspaper. Accordingly, we agree with the Director’s conclusion 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)

The Petitioner bases his claim to this criterion upon his membership in the [redacted] national men’s [redacted] team. A petitioner’s participation as a member of a national team may demonstrate eligibility for this criterion, as such teams typically limit their number of members and have a rigorous selection process. It is the Petitioner’s burden, however, to demonstrate that he meets every element of a given criterion. We will not assume that every national team is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines.

The Petitioner submitted a letter from [redacted] president of the [redacted] Federation, who confirms that he was a member of the Ukrainian men’s national [redacted] team from 2009 to 2018. [redacted] states that national team members are selected “on the competitive basis,” and is based upon their “performance of target programs and plans of training for the corresponding year.” He further writes that the coaches of the national team are responsible for choosing the athletes for the national team based upon “observing the players’ acts during the game and through studying of their individual statistics during the game season, as well as the player’s compliance with the playing type and model results of the competitive activities.” [redacted] does not identify any specific benchmarks required of national team members, and the letter does not explain how the “performance of target programs and plans of training” and “compliance with the playing type and model results” are outstanding achievements. While he notes that the Petitioner earned a “Master of Sports” title as a member of the [redacted] championship team, he does not indicate that this or other achievements were requirements or led directly to his selection to the national team. In addition, [redacted]’s letter is not supported by any corroborating documentation such as official rules or selection procedures for the national team. We therefore disagree with the Director’s conclusion and find that the Petitioner does not meet 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 his decision, the Director acknowledged that several articles about the Petitioner and his [redacted] career had been submitted, but he found that the evidence did not establish that any of the media in which these articles appeared were one of the qualifying types under this criterion. On appeal, the Petitioner focuses on articles published on the [redacted] websites [redacted] and sport.ua, as well as midilibre.fr and sport-fm.gr, and the interview of him carried on Greek television channel “Novasports.” Although all of these media published articles about the Petitioner and his work as a

[redacted] player, the evidence does not establish that any of them are professional or major trade publications or other major media.

In support of his assertion that these media are one of the qualifying types, the Petitioner submitted varying sources of information. Regarding the [redacted] ua website, which published an interview of him on [redacted] 2017,⁴ as well as a brief story about his transfer to [redacted] he included a website traffic report from SiteSTMT.com and another from websiteoutlook.com. These provided metrics such as “daily pageviews” (between 2,450 and 3,920) and ranks (612,029 and 449,133, respectively), but does not provide any other context showing that these websites qualify as major media. Similarly, sport.ua published two interviews of the Petitioner, on [redacted] 2008 and [redacted] 2018, and he submitted information about this website from hostinfo.pw and similarweb.com. The former indicated that sport.ua has 53,935 visitors per day, while the latter charted “visits” per month at between 5 million and 10 million. While this information suggests that sport.ua is a more popular website than [redacted] it does not establish that it qualifies as major media when compared to all media in [redacted]

As mentioned above, the record also includes evidence from other media types that published material about the Petitioner and his work as a [redacted] athlete, including the French newspaper *Midi Libre* and the Greek television channel “Novasports.” The information from the newspaper’s website indicates that it is a regional newspaper, and that the entire portfolio of newspapers, magazines and internet sites maintained by the *Journaux du Midi* publishing group enjoys readership of 837,000 per day. This information is not specific to *Midi Libre*, and is insufficient to establish that it qualifies as major media. Nor is the information provided from the website of Novasports, which is marketing material and provides no relevant data to show that it is a major medium in Greece.

The evidence also includes other articles about the Petitioner and his [redacted] career, published on websites such as hot sport.ua, sib sport.info, and [redacted] but he did not submit evidence to establish that these media were one of the qualifying types under this criteria. Therefore, based upon the analysis above, we agree with the Director’s determination that the Petitioner does not meet 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

In his decision the Director concluded, based upon evidence of the Petitioner’s qualification as a referee and his service as an honorary judge at a [redacted] tournament, that he meets this criterion. The evidence submitted in support of this criterion also includes the [redacted]’s regulations

⁴ The Petitioner also submitted an interview of the Petitioner published on this website on [redacted] 2020 in response to the Director’s request for evidence, months after the petition was filed. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. We will therefore not consider this article in our analysis.

regarding [redacted] referees, which describes the qualifications and age limits for referees but does not explain the role or duties of a referee.

As evidence of his participation as a judge of the work of others, an article posted on sports.ua on [redacted] [redacted] 2018 notes that the Petitioner was an honored guest of the [redacted] tournament, and also served as a referee. In addition, a letter from [redacted] president of the [redacted] states that this tournament was “held in compliance with the international rules of [redacted] of the [redacted] and are serviced by the qualified referees.” Although this evidence also does not explain the role of a [redacted] referee, we note that the [redacted] [redacted] with which [redacted] stated the tournament complies indicates that the function of a referee, among other pre-match duties, is to “issue warnings to the teams; to sanction misconduct and delays,” and to decide upon various faults by the players during the match. In other words, it indicates that a [redacted] referee enforces the official [redacted] rules, rather than judging the performance of the players by awarding points or exercising his judgment by determining a winner. As such, the Petitioner’s service as a referee is not sufficient to establish that he participated as a judge of the work of other [redacted] players or coaches, as opposed to ensuring that they followed the official rules.⁶ We disagree with the Director and conclude that the Petitioner does not meet this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

“Contributions of major significance” connotes that a petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

Here, the Petitioner stresses that he has made contributions to the field as a [redacted] athlete and coach. As evidence of his coaching contributions, he refers to a letter from [redacted], dated May 8, 2020, which indicates that he served as an assistant coach of the [redacted] national men’s [redacted] team during the 2016-17 season. While [redacted] indicates that the Petitioner is “a highly trained professional and has earned the great respect of his colleagues,” he does not state that the Petitioner’s performance as an assistant coach resulted in contributions that widely impacted or influenced the team, let alone the field of [redacted]. We further note that this letter is not corroborated by other evidence of the Petitioner’s role as an assistant coach during a period that he was competing as a player for this team, and was not mentioned in [redacted]’s initial correspondence.

Turning to his contributions as a [redacted] athlete, the Petitioner focuses on the previously discussed evidence of his participation on several professional European teams as well as the [redacted] national team, including the statistics showing his performance in individual matches in European tournaments. Although the match statistics show that he played well in those matches and contributed to his teams’ effort, they do not demonstrate that those athletic contributions impacted the overall field of [redacted].

⁵ [https://\[redacted\]](https://[redacted]) accessed on May 11, 2021

⁶ The Petitioner also submitted evidence of his “Provisional Referee Certificate” from USA [redacted] but did not submit evidence that he has performed as a referee in the United States. Further, the evidence does not establish that participating as a [redacted] referee in the United States would satisfy this criterion.

The same can be said of the Petitioners designations as a “best player” and “most valuable player” for games, tournaments, and seasons. In all cases, his acknowledged athletic efforts contributed to the [redacted] team for which he was competing, and have not been shown to have made a broader, significant impact on the sport as a whole. Accordingly, the Petitioner has not established that he 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)

In general, a critical role is one in which an individual has contributed in a way that is of significant importance to the outcome of an organization’s activities.⁷ In his decision, the Director stated that reference letters submitted by the Petitioner did not provide sufficient detail regarding his role for the [redacted] teams that he played for to meet this criterion. He further noted that the evidence was not sufficient to show that his current employer, the [redacted] has a distinguished reputation.

On appeal, the Petitioner focuses on his role as an [redacted] for the numerous [redacted] teams that he played for during his career, claiming that it “is already a critical position in itself.” While he refers to newly submitted evidence, the original submission also included information regarding the [redacted] position. That evidence, from [redacted], states that [redacted] and are “considered to be the most reliable,” but does not indicate that the position is more or less important or critical than any other on a [redacted] team. More importantly, unlike a leading role which may be inherent in a specific position or title, it is a petitioner’s contribution to an organization’s success which determines whether he or she has played a critical role to that organization, not the nature of the role itself. As the Petitioner notes, [redacted] is a team sport, and we do not find the evidence sufficient to show that he meets this criterion based upon his position alone.

The Petitioner next focuses on newly submitted match reports which focus on individual games for three of the teams for which he played, which we will also not consider. We note that he received “Most Valuable Player” awards for individual matches in the 2015 [redacted] Cup while playing for [redacted] as well as for the [redacted]’s Cup Tournament in [redacted] for the [redacted] national team. He also previously submitted evidence showing his ranking in certain [redacted] metrics for specific matches. But these awards and statistics do not establish that the Petitioner played a critical role in any overall success these teams enjoyed over the course of an entire [redacted] season, which is a more relevant gauge of the overall success of the organization.

As noted in our analysis of the criterion relating to lesser awards, the Petitioner also submitted evidence that he was selected as one of the best players for the 2016-17 season in the [redacted] League, one of two [redacted] athletes so named. In addition, a letter from the president of [redacted] states that the Petitioner “contributed greatly to our top-notch sports team and its qualification for the European Cup, a first for the Club for nearly 10 years.” However, this letter does not provide details about the criticality of the Petitioner’s role for [redacted]. Therefore, this evidence does not establish

⁷ 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>.

that the Petitioner played a leading or critical role for the team. Further, although the evidence indicates that the team was somewhat successful in the 2016-17 season, winning second place in the [redacted] league and returning to the European Cup, it does not show that [redacted] had built a distinguished reputation amongst [redacted] teams.

The Petitioner also asserts that he meets this criterion based upon his current role as a master coach with the [redacted]. The Director's decision noted that the reference letters, including that submitted by his current employer, were not sufficiently detailed to show that the Petitioner's role was leading or critical, and also concluded that the evidence did not establish that this organization enjoyed a distinguished reputation. On appeal, the Petitioner refers to a letter dated July 12, 2020, from the [redacted] Executive Director, [redacted] who states that he is one of four coaches employed by the club who is qualified to teach its highest level high school athletes. He goes on to state that the Petitioner coached the club's top team in the previous year, which was cut short by the COVID 19 pandemic, and is scheduled to do so in the following year. This letter primarily indicates that the Petitioner's presence is important to the future recruitment and development of athletes, and does not show that the Petitioner has already played a critical role that has been shown to be of importance to any success enjoyed by the [redacted] organization.

A second letter from [redacted] dated August 8, 2020, states that the Petitioner directed the clubs boys national [redacted] program, and that under his direction the teams qualified for the national tournament, with one earning a silver medal at the tournament. However, although the evidence includes tournament brackets with players' names highlighted by the Petitioner, this evidence includes no reference to the Petition or the [redacted]. We therefore agree with the Director that the evidence does not sufficiently demonstrate that the Petitioner has played a leading or critical role for his current employer.

In addition, we also agree that the record does not include evidence which establishes that the [redacted] [redacted] has a distinguished reputation. The Petitioner asserts on appeal that "it is one of the best [redacted] in Texas, also well known around the U.S." However, he does not refer to specific evidence to support this assertion, either on appeal or in his response to the Director's request for evidence. The evidence of a single third place win in a tournament which is directly tied to the [redacted] [redacted] is insufficient to show that it enjoys a distinguished reputation.

For all of the reasons provided in the above analysis, we conclude that the evidence does not establish that the Petitioner meets this criterion.

B. Final Merits Determination

After our review and partial withdrawal of the Director's decision, we conclude that 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. We therefore need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. However, as the Director conducted a final merits analysis which the Petitioner asserts misapplied USCIS policy and precedent, we will briefly review those assertions and the merits of the Petitioner's claim under this standard.

The Petitioner asserts that the Director erred in his final merits determination by not considering the totality of the evidence, but reviewed each criterion individually. We note that while the Director concluded that the Petitioner met three criteria, his discussion of the evidence related to these and other criteria in the final merits determination applied the elements from these criteria again instead of considering whether, as part of the balance of the record, it established that the Petitioner has sustained national or international acclaim and is one of the small percentage at the very top of his field. 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 record shows that the Petitioner competed as a [redacted] player at the national level in his own country, and went on to compete at the top professional level in other European countries as well. However, 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, although the Petitioner demonstrated that he received a level of national acclaim as an athlete, most notably with [redacted] he did not show that this acclaim was sustained or that his achievements were frequently or widely reported upon in major sports or news media. Further, although he represented [redacted] as a national team member and competed for nationally successful professional teams in [redacted] and Greece, the record does not establish that his participation in these teams’ national success placed him among the small percentage of [redacted] athletes at the top of the field. The evidence does not show that these teams were among those achieving success at the highest levels of [redacted] competition, or that his individual performance elevated him to the same status as athletes successfully competing at the highest international level. The evidence was also insufficient to show that he was compensated at a rate commensurate with that of an elite professional [redacted] athlete.

Regarding his work as a [redacted] coach, which he intends to continue in the United States, the Petitioner states on appeal that the Director failed to consider his recent transition to this new phase of his career, and relies upon our non-precedent decision in *Matter of K-S-Y-* (AAO Mar. 9 2016). This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Although that decision involved a similar transition from coach to athlete as is present here, we found that the petitioner in that case had established sustained acclaim and status near the top of his field through his success as an athlete at the national and international level. Here, we do not conclude that the Petitioner qualifies as an individual of extraordinary ability as a [redacted] athlete, or as a coach. Further, in considering whether his area of expertise includes the coaching of [redacted] athletes, we noted above that [redacted]’s letter concerning his role as an assistant coach for the [redacted] national team is not corroborated by other evidence in the record.

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. 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 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 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.