



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

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

In Re: 21404197

Date: AUG. 24, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a competitor and coach, seeks classification as an individual 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 two of the ten initial evidentiary criteria, of which he must meet at least three. On appeal, the Petitioner asserts that the Director's decision was erroneous and that he has established eligibility for the requested classification.

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 is a [redacted] competitor and coach who has competed in numerous national and international competitions. He intends to enter the United States to work as a [redacted] coach.

Because the Director found that the Petitioner did not establish that he received a major, internationally recognized award under the regulation at 8 C.F.R. § 204.5(h)(3), 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 two of the initial evidentiary criteria; namely, awards at 8 C.F.R. § 204.5(h)(3)(i) and judging at 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner received lesser nationally and internationally recognized awards for excellence and judged the work of others in his field. Accordingly, we agree with the Director that the Petitioner met these two criteria.

On appeal, the Petitioner asserts that he meets five additional criteria, either directly or through comparable evidence. After reviewing all of the evidence in the record, we conclude that he has not demonstrated that he satisfies the requirements of at least three criteria.

A. Evidentiary Criteria

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 asserts eligibility for this criterion based on membership with the [redacted] [redacted] as a second degree black belt. In order to satisfy this criterion, the 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.¹

¹ See 6 USCIS Policy Manual F.2(B)(2) appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

The Petitioner submitted a copy of a certificate from the [redacted] indicating that he earned the rank of second degree black belt. He also submitted a copy of his [redacted] identification card and a copy of [redacted] "General System of Graduation," which describes the process for obtaining the black belt certificate and degrees. In addition, he submitted screenshots from [redacted].com and [redacted].com discussing the nature of [redacted] as well as dictionary excerpts defining the words "association" and "organization."

The Director issued a request for evidence (RFE) after determining that the submitted evidence was insufficient to establish that the Petitioner satisfied the membership criterion. Specifically, the Director noted that the Petitioner had not shown that he satisfied the plain language of this criterion because the submitted evidence did not demonstrate that membership in the [redacted] is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought. In response, the Petitioner submitted an excerpt from the [redacted] [redacted] about the Petitioner's sensei, [redacted] and argued that the biographical article demonstrated that [redacted] who awarded the Petitioner his second degree black belt, was a national expert in the field of [redacted]

In denying the petition, the Director determined that the Petitioner has not satisfied this criterion, and we agree with that determination. The documentation submitted by the Petitioner does not provide the bylaws or eligibility requirements for induction into the [redacted]. Although he presented screenshots from [redacted] website, ranging on various topics such as tournaments, news, and rankings, these screenshots do not show the requirements for the [redacted]. Although he submitted the "General System of Graduation," which describes the process of obtaining a black belt, the Petitioner did not offer any further information regarding the [redacted] membership requirements, nor did he reference or cite to any bylaws, governing regulations, or any other authoritative requirements for the [redacted]. Moreover, although the record demonstrates that the Petitioner attained a second degree black belt from the [redacted] [redacted] the significance of this achievement as it relates to membership with the [redacted] and the relationship, if any, between [redacted] and the [redacted] is unclear. Although the materials submitted demonstrate the Petitioner's affiliation with [redacted] the record lacks evidence demonstrating membership requirements for this association to show that it requires outstanding achievements, as judged by recognized national or international experts. For these reasons the Petitioner has not shown he 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 fulfill this criterion, the Petitioner must demonstrate published material about him in professional or major trade publications or other major media, as well as the title, date, and author of the material.² In our evaluation, we will first determine whether his evidence reflects published material about him relating to his work in the field, which contains the required title, date, and author.

(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).

² See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix.

If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.

The Director determined that the Petitioner had not submitted sufficient evidence to satisfy this criterion. In addition to determining that some material was not primarily about the Petitioner, the Director also noted that several articles lacked the name of the publication and the publication date, and were not supported by citation statistics or information about the publications. Accordingly, the Director requested additional evidence to overcome these evidentiary deficiencies.

In response, the Petitioner resubmitted most of the initially submitted articles, along with information from www.facebook.com about the publications [redacted] and [redacted] [redacted] and again asserted the submitted documentation satisfies this criterion. The Director was not persuaded and found the submitted evidence insufficient to establish that the Petitioner met the requirements of this criterion. Upon review of the record, we concur with the Director's determination.

For example, although the Petitioner submitted several articles regarding various [redacted] competitions and events, not all of the articles are specifically about the Petitioner and his work in the field.³ Although these articles mention the Petitioner and other competitors and their placements, the plain language of this criterion requires published material to contain a title, date, and an author; to be about the Petitioner and his work in the field; and to be printed in professional or major trade publications or other major media. U.S. Citizenship and Immigration Services (USCIS) does not consider articles which mention the Petitioner's name in passing to be about him and his work in the field.

We acknowledge that one article, [redacted] discusses the Petitioner in greater depth, but the Petitioner has not shown that this coverage appeared in media that qualifies as a professional or major trade publication or other major media. As noted by the Director, the article appears to be clipped from a newspaper and omits the original publication source and date of publication. Although a separately cut date is appended to the article, the name of the source material is not provided or pictured. Therefore, while the article reflects published material about the Petitioner and contains the required title and author, the date of publication is questionable based on the original source modification, and the name of the publication itself is not included.⁴ Therefore, we are precluded from determining whether professional or major trade publications or other major media published this article.⁵

Finally, we note that even if the Petitioner had demonstrated published material primarily about him, the record does not demonstrate that the publications in which the submitted articles appeared are professional or major trade publications or other major media. Although the Petitioner provided excerpts from the Facebook pages of both [redacted] and [redacted] describing the nature of their publications, USCIS need not rely on the self-promotional material of the publisher. See *Braga v. Poulos*, No. CV 06-5105 SJO FMOX, 2007 WL 9229758, at *7 (C.D.

³ While we only discuss a sampling of the published material here, we have reviewed the record in its entirety.

⁴ We observe that several other articles submitted by the Petitioner also omit the name of the publication and append a publication date that appears to have been cut and pasted from a separate page or source.

⁵ The Petitioner's counsel repeatedly asserts that this article was published by [redacted] however, there is no documentary evidence supporting this assertion. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on a company's self-serving assertions on the cover of a magazine as to the magazine's status as major media). Moreover, the Petitioner did not submit any material establishing the circulation statistics for these publications, nor did he provide other circulation statistics in which to compare with these publications.

Despite the deficiencies noted above, we further observe that the documentary evidence reflects published material about the Petitioner relating to his work as an athlete/competitor. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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 [emphasis added].” As noted by the Director, the Petitioner intends to enter the United States as a [redacted] coach. Therefore, any published material as a competitor is not within the Petitioner’s field of endeavor as a coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, the Petitioner does not claim, nor does the record of proceeding reflect, that the Petitioner has had any published material about him as a coach consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established that he meets this criterion.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

Various forms of artistic display may satisfy this criterion’s requirements. As a result, we evaluate the nature of the display. According to the plain language of this criterion, the exhibition or showcase must be artistic in nature. The arts may include visual art, the performing arts, music, graphic art, and other examples of the fine arts. And, just as the event must be artistic, the evidence must also demonstrate the artistic nature of a petitioner’s work displayed at the event. It is not necessary for a petitioner to show that their work was specifically highlighted in any promotional materials or credits; only that his work was on display, and that both the work and the event were artistic in nature.

The Petitioner maintains that his participation in the 2013 [redacted] organized by [redacted] [redacted] demonstrates that his work has been displayed as contemplated by this criterion. The Petitioner argues that [redacted] events such as the one he participated in use LED screens, a 32-foot catwalk for fighters, and an elevated mat to improve audience experience, and therefore concludes that his participation in this event constitutes artistic display.

In support of his assertion, the Petitioner submitted four photographs of him competing, marked with the words [redacted] on the bottom right corner. The Petitioner also submitted numerous documents pertaining to the general nature of [redacted] events, indicating that such events host [redacted] competitions on various levels, as well as articles discussing the history of martial arts and their perceived connection to performing arts. The Petitioner also provided additional materials regarding [redacted] events on appeal. However, the record lacks specific information regarding the nature of the 2013 [redacted] and the manner and extent to which the Petitioner participated in this event. The Petitioner submitted evidence that he placed first in the [redacted]

at this event, suggesting that the 2013 [redacted] was an athletic competition. The Petitioner has not established that his participation in this event was of an artistic nature, or that the event itself constituted an artistic venue. The record does not demonstrate that the Petitioner's work was displayed at "artistic exhibitions or showcases," and therefore the Petitioner has not demonstrated that he meets the plain language of 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 meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role has been for an organization or establishment (or a division or department of an organization or establishment) having a distinguished reputation. If a leading role, the evidence must establish that the petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.

The Petitioner maintains that he meets this criterion because he worked as the head [redacted] coach for [redacted] an affiliate of [redacted] a [redacted] academy and martial arts team. The Director found that the Petitioner had not demonstrated he performed a leading or critical role for an organization with a distinguished reputation, and referenced a letter in the record from [redacted] team co-founder [redacted] [redacted] indicated that as head coach of one of its affiliate academies, the Petitioner "produced countless athletic champions, imparting his knowledge on other team members." Regarding his contributions as an athlete/competitor, [redacted] claimed that the Petitioner's achievements, earned on [redacted] behalf, "expanded prestige, media attention and sponsorship" for the team, which ultimately expanded [redacted] reputation.

The record, however, is insufficient to demonstrate that the Petitioner held any leadership position within the organization, or was responsible for duties that make him a leader of [redacted]. Again, the Petitioner and [redacted] assert that his position of head coach for [redacted] greatly impacted [redacted] however, there is no additional evidence outlining the Petitioner's role with [redacted] and his actual duties, and how his coaching of athletes at this affiliate academy impacted [redacted] as a whole, as opposed to [redacted] individually. Generally, the leading or the critical role must be performed on behalf of the organization as a whole rather than for a smaller segment. *See Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012).

[redacted] has not stated, nor has he described the Petitioner's duties or his performance in such a manner that the Petitioner can be said to have led the organization. The Petitioner's role within the organization was as a coach. It is expected that he will perform the routine duties of a coach and that his students will learn and some of their performances will improve. However, merely coaching, even if the performance of some students is considered noteworthy, does not equate to the Petitioner performing in a leading role.

[redacted] letter does not describe the duties the Petitioner performed for the organization in his role as a coach. The letter falls short of specifying how the Petitioner contributed to the organization in a way that is significant to the organization's outcome or what role he played in the organization's activities. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, at 135 (D.D.C. Dec. 16, 2013). Moreover, although the Petitioner also submitted testimonial letters from athletes he coached, he does not provide

detailed and probative information addressing how his role as a [redacted] coach for [redacted] an affiliate academy, has contributed in a way that is of significant importance to the outcome of [redacted] activities.

Additionally, the record does not confirm that the Petitioner has contributed in a way that is of significant importance to the outcome or standing of the [redacted]. While most individuals involved with an organization can have some impact on the entity, to establish a critical role, a petitioner must document that their work is crucial to the success of the entity. Although [redacted] indicates that the Petitioner won numerous awards as a competitor for [redacted] [redacted] team, the Petitioner's evidence does not demonstrate how his role differentiated him from the numerous team members that also competed and won awards on behalf of the team. We accept that performing as part of any team necessarily means each individual, to some degree, plays a critical role. The evidentiary criteria listed are meant to indicate an individual's extraordinary ability. The interpretation urged by the Petitioner, where participation is sufficient to demonstrate a critical role, would not further the purpose of determining whether an individual possesses extraordinary ability. For this reason, the Petitioner has not satisfied this criterion.

Furthermore, the Petitioner has not demonstrated that [redacted] or [redacted] are organizations or establishments that have a distinguished reputation, as required under 8 C.F.R. § 204.5(h)(3)(viii). The evidence indicates that the academy serves as a training facility for professional [redacted] and [redacted] fighters. Online printouts from various websites discuss [redacted] reputation, noting that it is "one of [redacted] top [redacted] teams" and report on various championships won by the team over the years. While the evidence shows that [redacted] is a successful organization that serves professional athletes, it is insufficient to demonstrate that the academy has a distinguished reputation.

For example, the record does not establish that the establishment has received media coverage at a level that shows its eminence, distinction, or excellence, which might confirm its distinguished reputation.⁶ Although the Petitioner has offered documentation relating to [redacted] athletic accomplishments, this evidence is insufficient to confirm that this academy has a distinguished reputation.

For the reasons discussed above, the Petitioner has not established that he meets this criterion.

B. Comparable Evidence

On appeal, the Petitioner indicates that comparable evidence has been submitted relating to the authorship of scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" if the ten categories of evidence "do not readily apply to the [petitioner's] occupation."

In response to the RFE, the Petitioner submitted a flyer from an unidentified source advertising a [redacted] Seminar with the Petitioner at [redacted] on July 16, 2016. According to the

⁶ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) appendix (noting that Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence or befitting an eminent person.").

Petitioner, his seminar presentation is equivalent to authorship of scholarly articles, and claims that he therefore meets this criterion through comparable evidence.

The regulation at 8 C.F.R. § 204.5(h)(4) is meant to provide an alternate means for those whose achievements within their occupation may not be commensurate with the achievements outlined in the enumerated criteria. Therefore, if a petitioner is unable to submit evidence that satisfies at least three criteria, due to an unusual occupation, he may submit comparable evidence. It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation as a [redacted] coach cannot be established by at least three of the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the Petitioner mentioned evidence at the time of the initial petition filing and in his appellate brief that specifically addressed six of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an individual is simply unable to meet or submit sufficient documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As such, the Petitioner has not demonstrated that he may rely on comparable evidence. Furthermore, the Petitioner has not explained or established how the documentation he has provided is comparable to the listed criteria at 8 C.F.R. § 204.5(h)(3).⁷

C. Cited Authorities

Throughout the record, the Petitioner references several of our non-precedent decisions and asserts that we made affirmative determinations therein regarding the extraordinary ability of other individuals based upon similar evidence. Here, the Petitioner has not furnished evidence sufficient to establish that the facts of the instant petition are analogous to those in the unpublished decisions. The decisions upon which he relies were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Nevertheless, we have reviewed the decisions although we will not discuss each one separately. While we have considered each non-precedent decision referenced by the Petitioner in our analysis, we emphasize that we have thoroughly reviewed all of the evidence submitted in support of each individual criterion and find it insufficient to establish eligibility for the reasons outlined above. We further note that 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.

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

⁷ Nevertheless, the evidence submitted by the Petitioner in support of this criterion is not comparable. The Petitioner has not claimed or demonstrated that there are no scholarly publications relating to [redacted]. Moreover, aside from a photocopy of a flyer advertising a [redacted] seminar hosted by the Petitioner, the record contains no information regarding the nature and duration of this seminar or the subject matter presented, such that it could be considered comparable to a scholarly article in a professional or major trade publication or other major media.

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. 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).

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.