



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

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

In Re: 21841672

Date: AUG. 31, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, an athlete who competes in rhythmic gymnastics, 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 record did not establish that the Petitioner meets the initial evidentiary requirements for this classification, as it did not demonstrate that she has a qualifying one-time achievement (a major, internationally recognized award) or, in the alternative, that she meets at least three of the ten regulatory criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal.

In visa petition proceedings, the petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 the 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) (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, a rhythmic gymnast, provided evidence that she was an active competitor in her sport from early childhood through the end of 2014. She indicates that she attended [REDACTED] University from 2015 to 2019, where she studied linguistic methods of teaching Russian language.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must demonstrate that she satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to meet three of the ten criteria:

- (i) Lesser nationally or internationally recognized awards or prizes;
- (iii) Published materials in professional or major trade publications or other major media; and
- (v) Original contributions of major significance.

The Director determined that the Petitioner did not establish that she met any of the claimed criterion. On appeal, she maintains that she established by a preponderance of the evidence that she meets all three criteria and is eligible for classification as an individual of extraordinary ability. We have reviewed all the evidence in the record and conclude that it does not demonstrate that the Petitioner satisfies the requirements of any of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Documentation of the individual'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)

To satisfy this criterion, a petitioner must demonstrate that they received prizes or awards, and that the awards are nationally or internationally recognized for excellence in the field of endeavor. Relevant

considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.¹

In a supporting letter, the Petitioner indicated that she “has won numerous medals at major national and international Rhythmic Gymnastics tournaments.” The Petitioner provided a list of nearly 30 rhythmic gymnastics competitions held between 2005 and 2014. She did not indicate that she had achieved a prize or award at all the listed competitions, nor did she provide any supporting evidence relating to the competitions in support of her assertion that her claimed first, second and third place finishes were nationally or internationally recognized awards. The Petitioner submitted copies of certificates or diplomas for the following awards in support of the petition:

- First Place at [redacted] the 3rd Summer Spartakiad of Youth in Rhythmic Gymnastics, awarded by the Ministry of Culture, Sport, and Tourism of [redacted] in May 2014.
- Third Place at the International Tournament [redacted] 2011, awarded by Club Rhythmic Gymnastics [redacted] in July 2011.
- First Place at School Championship in Rhythmic Gymnastics in [redacted] issued by the Specialized Youth Sport School of Olympic Reserve [redacted] (two certificates, awarded to her in 2010 and 2011, respectively)
- First Place at the City Cup Competition in Rhythmic Gymnastics in [redacted] issued by the Department of Physical Culture and Sport of Administration [redacted] (two certificates, awarded to her in March 2009 and February 2010, respectively).
- First Place at the Regional Championship in Rhythmic Gymnastics in [redacted] issued by the Ministry of Sport and Tourism [redacted] (no date provided).

The Petitioner also submitted photographs of what appears to be a gymnastics team medal ceremony, but the photographs do not include any identifying information regarding the medalists or the event and were not accompanied by any additional evidence or explanation.

In a request for evidence (RFE), the Director acknowledged the Petitioner’s evidence that she received the award certificates listed above but advised that the evidence did not demonstrate that any of her awards were nationally or internationally recognized awards. The Director provided a list of suggested evidence, such as evidence of the criteria used to grant the awards, evidence of media coverage relating to the awards, and information regarding the scope of the competitions.

In response to the RFE, the Petitioner stated that she “has performed at many competitive national and international professional level events and has won coveted awards and prizes at various prestigious and acclaimed venues and events around the world.” The Petitioner submitted additional information regarding the following competitions from the organizers of the events:

¹ See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual> (providing guidance on the evaluation of evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

- The [redacted] Russia-wide competition in rhythmic gymnastics held in [redacted] Russia in October 2011.
- The [redacted] All-Russia Rhythmic Gymnastics tournament for all-around and group exercises for the [redacted] Cup held June 2014 in the city of [redacted] Russia.
- The [redacted] Cup for rhythmic gymnastics (all-around program and group exercises) held in October 2014 in [redacted] Russia.

Although the Petitioner indicated in her initial submission that she participated in these competitions, she did not claim that she had achieved awards or prizes at any of them, nor did she provide any documentation indicating her receipt of awards at these specific events. The RFE response did not include any additional evidence related to the awards that the Petitioner documented at the time of filing.

After reviewing the Petitioner's response, the Director concluded that she did not submit evidence that satisfies this criterion. The Director noted that the documented awards in the record were not accompanied by any information regarding the events or awarding entities. Further, the Director observed that they all appeared to be either local or regional competitions, or school competitions limited to competitors who attended a single educational institution. Accordingly, the Director determined that the evidence did not establish that the submitted certificates evidence the Petitioner's receipt of nationally or internationally recognized prizes or awards for excellence in the sport of rhythmic gymnastics.

On appeal, the Petitioner reiterates her claim that she "has performed at many competitive national and international professional level events and has won coveted awards and prizes at various prestigious and acclaimed venues and events around the world." She maintains that her response to the RFE included "extensive evidence to establish that the awards were indeed for excellence" and asserts that the Director disregarded the RFE response and evidence that she has received the "top awards" in her sport.

Upon review, we agree with the Director's determination that the Petitioner did not meet her burden to establish that the awards documented in the record are nationally or internationally recognized awards or prizes in the sport of rhythmic gymnastics. The Petitioner provided evidence that she received awards at two "City Cup" competitions, at two school-based competitions, at one or two regional competitions, and at one "club" tournament. The Petitioner was provided an opportunity to provide additional documentation in support of her claim that these are nationally or internationally recognized prizes in her sport and did not avail herself of this opportunity. The RFE response included no additional evidence or information related to these competitions or the Petitioner's documented awards.

We acknowledge the Petitioner's claim that her response to the RFE included "extensive evidence" in support of this criterion. Although the RFE response included evidence related to three rhythmic gymnastics competitions including an "All-Russia" competition, the record contains no evidence of the Petitioner's receipt of an award or prize at any of these events and therefore we need not address whether those events award prizes that are nationally or internationally recognized.

The Petitioner did not meet her burden to establish that her school-based, local, and regional awards are nationally or internationally recognized prizes for excellence in her field. Accordingly, the Petitioner did not establish that she meets this criterion.

Published material about the individual 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 general, for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.²

At the time of filing, the Petitioner stated she and her work in the sport of rhythmic gymnastics have “been covered by publications in major media.” The Petitioner submitted the following evidence in support of this criterion:

- An article from 2014 titled [redacted] published in an unidentified Russian-language publication.
- An article titled [redacted] published on [redacted] 2018, in an unidentified Russian-language publication.

In the RFE, the Director advised the Petitioner that the evidence did not satisfy the plain language of this criterion, noting, in part, that the articles were not accompanied by evidence that the articles appeared in major trade or professional publications or other major media. The Director also noted that at least one of the articles is not about the Petitioner and requested that she provide additional information regarding the title, date and author of the published material, comparative circulation or distribution data for the publications, and information regarding the intended audiences of the publications.

In response to the RFE, the Petitioner stated that she “has been featured in many trade publications” and that such publications “discuss [her] outstanding results in the field of rhythmic gymnastics.” She requested that the Director review her original submission.

The Director determined that the Petitioner did not demonstrate that she meets this criterion. The Director acknowledged that the Petitioner provided two articles and explained why neither article satisfied all requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner reiterates that “many trade publications” have featured her and her “outstanding achievements” in her sport. She maintains that the Director reached an erroneous conclusion based on the evidence already in the record.

² See 6 USCIS Policy Manual, *supra*, at F.2 appendix (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

The Petitioner has not submitted evidence that satisfies this criterion. The article titled [redacted] [redacted] is about the [redacted] [redacted] in Russia. It discusses the Petitioner as one of [redacted] [redacted]. The article notes that the Petitioner was the youngest person selected, mentions her success in regional and city cup competitions in rhythmic gymnastics, and includes a quote from her. However, the Petitioner did not identify the name or title of the publication where the article appeared or its specific date of publication, and the record does not include any supporting evidence to show that the unidentified publication qualifies as a major trade or professional publication or other major media.

The second article is about the success of a “senior troop of the [redacted] dancing group [redacted] [redacted]. The article does not mention the Petitioner and is not related to her work as a rhythmic gymnast. Further the Petitioner did not identify the title of the publication, the name of the author or provide supporting evidence that would support her claim that the article appeared in a qualifying trade or professional publication or major media.

For all the reasons discussed, the Petitioner has not established that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

B. Summary and Reserved Issue

We conclude that the Petitioner has not established that she meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii). As noted, she must demonstrate that she meets at least three criteria to satisfy the initial evidence requirement for this classification. While the Petitioner claims to meet one additional criterion at 8 C.F.R. § 204.5(h)(3)(v), our determination that she does not the two criteria discussed above is dispositive of the appeal. Accordingly, we reserve and will not address the Director’s separate determination that the Petitioner did not demonstrate that she has made original athletic contributions of major significance in her field, or her appellate claims relating to this criterion.³

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 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 her work is indicative of the required sustained national or

³ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

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 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 her 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.