



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

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

In Re: 19499714

Date: MAR. 2, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a competitive swimmer, 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 (1) had satisfied at least three of ten initial evidentiary criteria, as required, and (2) had established that she seeks to enter the United States in order to continue work in the field of claimed extraordinary ability. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to individuals 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).

A one-time achievement or satisfaction of at least three lesser criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Where a petitioner meets these initial evidence requirements, either a one-time achievement, or at least three criteria, 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. *Id.* (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 won gold, silver, and bronze medals for the [redacted] at national swimming competitions in [redacted] between 2014 and 2017, at age 14-17. She also competed, but did not medal, at international competitions such as the 2015 [redacted] Games in [redacted]. When she filed the petition in October 2019, the Petitioner was in the United States as an F-1 nonimmigrant student at the University [redacted] in [redacted] Kentucky, studying for a bachelor's degree in criminal justice and law enforcement administration.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she 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 Petitioner initially claimed to have satisfied five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met the first two criteria. Specifically, the Director determined that the Petitioner's national titles constituted qualifying prizes or awards, and that her membership in the [redacted] National Swimming Team is a qualifying membership.

On appeal, the Petitioner asserts that she also meets two other criteria, relating to media coverage and leading or critical roles. The Petitioner does not contest the Director's conclusions regarding authorship of scholarly articles, and therefore we consider that issue to be abandoned.¹

Upon review of the record, we agree with the Director that the Petitioner has satisfied the criteria relating to prizes and memberships. We will discuss the other claimed criteria below.

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).

The Petitioner is the subject of two articles published in [redacted] in 2019. A ten-question interview appeared in the print and online editions of [redacted]. A translated online article in [redacted] states that the Petitioner, then 18 years old, secured a copyright for a [redacted] training program.

The articles are about the Petitioner, relating to her work, but she must also show that the articles appeared in professional or major trade publications or other major media. Regarding those publications, the Petitioner submits a printout from www.mondotimes.com indicating that [redacted] "has a circulation of nearly one million," and a printout from www.pressreference.com lists [redacted] among [redacted] "most influential national newspapers." The Petitioner also submits printouts from SimilarWeb, indicating that the online version of [redacted] has a Country Rank of 259, and a Category Rank of 1681 among "News and Media" sites. [redacted]'s website has a Country Rank of 1029 and a News and Media Category Rank of 4621.

The Petitioner must establish that the circulation (online or in print) is high compared to other circulation statistics.² Raw numbers do not provide the basis for comparison, and the submitted web printouts do not cite sources for [redacted] claimed circulation or provide context to support the assertion that [redacted] is highly influential. SimilarWeb appears to provide some further context. However, based on the submitted evidence, the Petitioner has not established that the newspapers qualify as major media. (The Petitioner does not claim that they are professional or trade publications.) It is possible that the publications *are* major media; we make no conclusive finding to the contrary. But we make no presumption to that effect, and the submitted materials do not meet the Petitioner's burden to show that the publications qualify as major media. The Petitioner does not establish that the rankings of [redacted] and [redacted] are consistent with major media.

In terms of trade publications, the Petitioner submits printouts from the online publications *SwimSwam* and *Swimming World*. Some of these articles are rosters for then-upcoming meets; others show competition results. Each of these articles identifies dozens of swimmers, sometimes with a sentence or two identifying the winning or high-placing swimmers. We acknowledge the Petitioner's observation,

¹ See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

² See 6 *USCIS Policy Manual* F.2(B)(2) appendix, <https://www.uscis.gov/policymanual>.

on appeal, that the Petitioner won some of these events, but nevertheless the articles are brief, overall descriptions of swim meets. Those that identify the Petitioner as the winner of a given competition do so in a single sentence, within the context of reporting the results of several other events in the same article.

Because the articles from *SwimSwam* and *Swimming World* would not be considered published materials about the Petitioner, we need not consider the separate question of whether those publications are qualifying media.³

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).

The Petitioner's initial claim is that she performed in a leading or critical role for the [] Swimming and Diving Team. The Petitioner further claims, in turn, that the team has a distinguished reputation because it "[r]anked first in its Conference and fourth in the National Association of Intercollegiate Athletics" (NAIA), and was "[f]eatured in *SwimSwam*, the leading trade publication for the sport of swimming."

The Petitioner asserts that she "played a critical role" for the team by winning several meets, for example "leading the team to its first relay national title." An athlete who routinely outperforms her teammates can be said to have a disproportionate influence on the team's standing. But the question of the Petitioner's role merits further discussion only if the Petitioner meets the other prong of the regulatory criterion by showing that the [] Swimming and Diving Team has a distinguished reputation. For the reasons discussed below, we conclude that the team does not have such a reputation.

Merriam-Webster's online dictionary defines "distinguished" as "marked by eminence, distinction, or excellence."⁴ Within this required context, the Petitioner has not established that [] Swimming has a distinguished reputation. The program ranks highly within the confines of the NAIA, but collegiate swimming in the United States is not limited to NAIA member schools, and the record does not show how NAIA athletes rank in relation to athletes in other collegiate associations.

A printout from *College Swimming* indicates that [] team had [] points as of the 2018-2019 season, but it provides no broader context for that figure. The printout does not identify the school with the most points, or the association to which that school belongs. Likewise, it does not show how [] ranks among all collegiate swimming programs nationally. The submitted evidence does not address U.S. collegiate swimming programs outside the NAIA, and is, therefore, insufficient to establish that [] Swimming has a distinguished reputation among collegiate swimming programs in the United States.

Because the Petitioner has not established the distinguished reputation of [] Swimming and Diving Team, further analysis of the precise nature of her role in that team would not affect the outcome of our decision. We therefore reserve this issue.

In response to a request for evidence, the Petitioner has added a second claim, asserting that she also performed in a leading or critical role for the [] National Swimming Team. In a letter, the

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); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

⁴ See <https://www.merriam-webster.com/dictionary/distinguished>.

President of the [redacted] Swimming Federation states that the Petitioner was a member of that team when she competed at “international youth games” in [redacted] Israel in 2015; [redacted] Bulgaria in 2016; and [redacted] Czech Republic in 2017. The Federation’s president states that the Petitioner “played an important role within our Federation” and “helped us maintain our international standing,” but he does not elaborate. For instance, the official does not say, and the record does not show, that the Petitioner won or placed highly at those competitions. In the absence of such results, the official has not explained how the Petitioner’s role was critical in maintaining the Federation’s international standing. In the letter, dated June 2019, the official states that the Petitioner “is a prime candidate for our 2020 Olympic Squad,” but the record does not indicate that the Petitioner subsequently earned a place on that team.

The Petitioner has not established that, or explained how, her role in the [redacted] National Swimming Team was either leading or critical. Membership and participation alone are not leading or critical roles. Because the Petitioner has not established that she performed in a leading or critical role for the team, we reserve the related but separate issue of whether the team has a distinguished reputation.

The Petitioner has not met the requirements of this criterion.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the separate issue of the Petitioner’s intention to continue working in her area of claimed extraordinary ability cannot change the outcome of this appeal. Therefore, we reserve this issue.

In a final merits determination, we analyze a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.⁵ In this matter, although the Petitioner has not satisfied three of the threshold criteria, we will nevertheless briefly address the issue of sustained national or international acclaim. We do so, in part, to establish that our conclusions are not simply the result of ambiguity from insufficient threshold evidence (relating, for instance, to the Petitioner’s media coverage in [redacted]).

As noted above, some of the Petitioner’s documented media coverage consists of lists of competitors and are not about the Petitioner specifically. The record does not indicate that the Petitioner received any media coverage in her native [redacted] while she was in that country, or any individual coverage (as distinct from team rosters and meet results) from United States media while she was in the United States. This apparent absence of domestic coverage does not readily indicate sustained national or international acclaim. We note that the record includes cover images from several issues of *Swimming World* magazine. Most of these cover images show one identified swimmer (for example, Michael Phelps). The Petitioner does not claim prominent, individual coverage of this kind in American swimming publications. Because the Petitioner competed in the United States from 2017 to 2021, against U.S. athletes, it is appropriate to view the Petitioner’s performance and recognition in the context of U.S. swimming during those years.

⁵ *See also 6 USCIS Policy Manual F.2(B)(2)* (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

The two submitted articles about the Petitioner were published by [] media while she was studying in the United States. One of those articles focuses on her background, training regimen, and experiences in the United States. The other article suggests that it is unusual for a training program to secure a copyright. In that second article, the Petitioner asserts that her program compares favorably to other methods, but she provides little information about her program, and the record does not include any evidence that the Petitioner's training program has actually been implemented in [] or elsewhere, and has resulted in sustained national or international acclaim.

The Petitioner won several national titles in her teenage years, but the record does not show that she has sustained that level of performance, and, therefore, acclaim as required by the statute, since 2017. She won, or placed highly, in a number of NAIA events while at [] but, as noted above, NAIA swimming programs represent a fraction of the overall collegiate swimming community. The Petitioner has not shown that she was among the highest-ranked college swimmers in the United States, or that her times at individual events rivaled those of the highest-ranked college swimmers in the nation, across associations. This is a key distinction because the acclaim must be national or international, rather than within one particular collegiate association (or one regional conference within that association).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that she meets at least three of the ten lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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). The Petitioner must also sustain that acclaim, rather than simply establish a career peak at some point in the past. Here, the Petitioner has not shown continued recognition of her work indicative of the required sustained national or international acclaim or which demonstrates 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).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.