



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

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

In Re: 19272434

Date: MAR. 23, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a [redacted] athlete and 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 the record did not establish that the Petitioner met the initial evidence requirements for this classification through evidence of a major, internationally recognized award or by meeting three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). He also concluded that the Petitioner had not established that his entry into the United States would provide a substantial prospective benefit.

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 in [redacted] events for many years, and has placed in competitions at the regional, national, and international level. He has also acted as a [redacted] trainer, primarily for local police departments. He states that he intends to continue to compete in [redacted] sports events in the United States, as well as open a [redacted] academy to train others in the sport.

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 did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the same five evidentiary criteria he claimed in his original filing and in response to the Director's request for evidence (RFE). After reviewing all of the evidence in the record, we find that he does not meet three of the criteria, and therefore does not satisfy the initial evidence requirement for the requested classification.

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 evidence includes scoring results from several [redacted] competitions sourced from the websites of the [redacted], the [redacted], and the [redacted]. These show that the Petitioner placed at several tournaments, however several of these documents do not show the name, place, or date of the competition. For example, exhibit 27 of the original submission consists of pages of charts with results which show that the Petitioner finished third in the [redacted] "master" division, but there is no identification of the competition in which these results were earned. Other documents include only partial information, such as the date on which the results were achieved. The match results from the World [redacted] (2011) and World [redacted] (2014)

are sufficient to show that he placed fourth and third, respectively, in the “standard junior” division at those competitions. We note that the record does not include evidence that the Petitioner received a prize or award for placing fourth in 2011, but does include a photograph of a trophy for his third place finish in 2014.

Also included in the record is information about the [redacted] from the organization’s website, including a list of past continental and world championships, in some of which the Petitioner has demonstrated that he participated. This evidence states that competitions such as the World [redacted] are considered to be the top level of those held or sponsored by [redacted] while continental championships such as the Pan American and Latin American [redacted] Championships in which the Petitioner also placed are at the next lower level of competition. As the Petitioner has demonstrated that he has received at least one award at the top level of competition in [redacted] we conclude that he 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)

To demonstrate satisfaction of this criterion, a noncitizen must show that they are a member of an association in their field, that that association requires outstanding achievements as a condition of membership, that those achievements are judged by national or international experts in that field.

The Petitioner bases his claim to meeting this criterion on membership in the [redacted] as well as the United States [redacted] Association [redacted]. While he asserts that the Director concluded that he had not established his membership in [redacted] this is incorrect, as the decision refers to the letter from [redacted] President of the organization, as providing evidence of his membership. We agree that the Petitioner has established that he is a member of [redacted] and that this is an association in his field of [redacted].

Regarding the next element, whether [redacted] requires outstanding achievements of its members, the Petitioner initially referred to Article 10 of the [redacted] bylaws, which states the following:

Art. 10. It is the prerogative of [redacted] and, only by express delegation, to certify, when necessary, the aptitude of sportsmen in the [redacted] especially those considered by specific legislation on [redacted] and, consequently, declare them fit to participate in [redacted].

However, article 10 is in Chapter III of the bylaws, which is titled “Definition and Composition of [redacted] Tournaments.” This context, and the plain language of article 10, reveal that it refers not to membership in the organization, but certification to participate in tournaments. More importantly, neither the Petitioner nor the Director make reference to the sections of the bylaws which do pertain to membership in the organization. An entire section of the bylaws, “Title III – Members,” is devoted to this subject, and article 48 in that section indicates that there are several types of members, one of which is “athletes.” Article 57, which is italicized in the English translation but not in the Portuguese original document, states the following:

The application for membership by athletes directly affiliated with the CONFEDERATION must be signed by the applicant and contain a direct statement that he or she fulfills the requirements for the issuance of the Certificate of Registration with the [] and agrees to comply with the [] Bylaws and regulations.

Therefore, per article 57 in the [] bylaws, an athlete need only submit a statement in order to apply for membership in the organization. As there is no evidence that this task requires outstanding achievement, the Petitioner has not established that outstanding achievement is a requirement for membership in []

On appeal, the Petitioner makes two conflicting arguments. First, he states that in order to become a member in [] “one must compete for a position on the [] team and be given the opportunity to compete nationally and internationally.” This statement appears to be based upon the letter from [] in which he states that “I am able to decide if the athlete will be compatible to join the confederation, that means that the athlete needs to be constantly [] competitions, with a minimum expertise and awards.” However, it is membership in [] which the Petitioner claims as qualifying, not membership on any particular team. Despite []’s letter, there is no provision in the bylaws concerning membership which requires that athletes compete at the national or international level.

Second, the Petitioner states that to become a member, an athlete must present a list of documents, including several statements, proof of address, judicial permit, and identity documents. While this list may include documentation not specifically covered in article 57, he makes no reference to evidence of the source of this list. More importantly, the Petitioner does not suggest that the production of these documents is an outstanding achievement in the field of []

Turning to his claim as a member of [], the Petitioner refers to exhibits 48 to 50 of the RFE response on appeal. While the RFE exhibits number only 43, the original submission included evidence that the organization had certified him as a [] from October 30, 2017. This evidence does not establish that he is a member of []. In addition, the Petitioner submitted pages from the [] website which describe the association and its history, but do not address its membership requirements. Therefore, the Petitioner has not established that he meets this criterion through membership in either the [] or []

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 noted that the [] website is not considered one of the qualifying types of media under this criterion, but did not provide an analysis or reasons for making this conclusion. However, we will initially address the first element of this criterion, whether the Petitioner has established that any of the material published on that website was about him. This evidence consists of three documents, submitted at exhibits 57, 58, and 59 of the original submission. The first article is about the 2012 Pan-American [] Championship, and indicates that several of the association’s younger athletes, including the Petitioner, achieved titles. It goes on to report the results

of other matches in the tournament, naming dozens of individuals. While the article gives a few words for each competitor (“demonstrating a huge maturing [the Petitioner]”), it is not about any of them individually but the [redacted] members’ performance overall.

The second and third articles posted to the website simply list the Petitioner’s name in a group of athletes, and provide no comment at all regarding his background or performance as an athlete. As such, they are not about him but about the events in which the group of athletes participated.

Other materials submitted by the Petitioner in support of this criterion include two screenshots from separate videos in which the Petitioner is pictured and identified. The first was published on the website of a Brazilian television channel called RecordTV, and the second was posted to what appears to be a personal YouTube channel. Although the Petitioner claims that he was interviewed as a [redacted] expert in the first video, which appears to relate to a news story involving [redacted] and the title of the second concerns an [redacted] tournament in [redacted] Brazil, neither is accompanied by written transcripts. The Petitioner’s and his representative’s descriptions of the content of these materials is not supported by documentary evidence in the record, and we are therefore unable to determine that the material published on these media is about the Petitioner.

As the Petitioner has not shown that any of the published material in the record is about him, he has not established that he meets 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)

We agree with the Petitioner’s statement on appeal that in order to meet this criterion, a noncitizen must show that their contributions are both original and of major significance, as shown by impact or influence on the field. After review of the evidence submitted in support of his claim to this criterion, we conclude that he has not demonstrated his impact or influence upon the field of [redacted]

The Petitioner asserts that he made an original contribution by starting his own [redacted] club and team [redacted], with his father. A letter from his father and business registration documents show that he served as this organization’s Technical Director or Sports Director from its inception in late 2012 until January 2017. His father indicates that in this role he “helped organize” events, tournaments, training, and financial and legal administration. He also served as [redacted] instructor, training several police agencies as well as athletes, and represented the club as an athlete. The Petitioner’s role in providing [redacted] training to law enforcement agencies is supported by letters from two of those agencies.

As stated by the Director in his decision, the evidence does not show that the Petitioner is or was a founder of [redacted] only that he served as one of its officers and as [redacted] instructor. In addition, his father does not state in his letter that he created the [redacted] team that represented the club, only that he trained athletes and represented the club as an athlete himself. The Petitioner has therefore not shown that he made an original contribution to [redacted]

Further, even if the Petitioner had been able to establish that he was a founder of [redacted] he has not shown that the creation of this organization was of major significance to the overall field of

[redacted] While the evidence establishes that [redacted] trained at least two law enforcement agencies in Brazil and trained athletes, and thus had some impact on the field in that country, the evidence does not show, for instance, that its training methods were adopted by other [redacted] trainers in Brazil or elsewhere, or that the Petitioner otherwise influenced the field as a whole. In addition, while the Petitioner may have trained [redacted] athletes and law enforcement officers, the record does not establish that they were unusually successful in their respective roles or constituted a significant portion of those active in those roles, or that their collective training somehow impacted the field.

The Petitioner also asserts that he made contributions as a [redacted] athlete, noting that he represented Brazil at international [redacted] competitions. However, he does not explain how winning awards at international competitions contributed to the field or influenced or impacted it in a significant way. [redacted]'s letter states that the Petitioner has "been doing a lot of things to help our sport to keep growing," but he does not provide details about how or how much the Petitioner has helped to grow the sport, and the record lacks evidence to support this statement.

Based upon the foregoing analysis of the Petitioner's contributions as both an athlete and a trainer, we conclude that he has not established that he meets this criterion.

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. Although he claims eligibility for an additional criterion on appeal, relating to his leading or critical for organizations having a distinguished reputation at 8 C.F.R. § 204.5(h)(3)(viii), we need not reach that additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.¹ Therefore, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20.² 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 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 that 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).

¹ *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).

² We also reserve the issue of whether the Petitioner's entry into the United States would provide a substantial prospective benefit. *Id.*

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.