



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

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

In Re: 24443183

Date: APR. 11, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a swimmer, seeks classification as an individual of extraordinary ability in athletics. 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 has sustained national or international acclaim or that she has risen to the very top of her field. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner

to submit comparable material if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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 is an internationally competitive swimmer who intends to continue this activity in the United States. In the present case, the Director decided that the Petitioner had submitted sufficient documentation to meet the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i), lesser nationally or internationally recognized prizes or awards; 8 C.F.R. § 204.5(h)(3)(ii), membership in associations which require outstanding achievements of their members, and 8 C.F.R. § 204.5(h)(3)(iii), published material about the Petitioner in professional or other major media.<sup>1</sup> Since the Petitioner met three of the ten initial criteria, the Director made a final merits determination and found that the record did not establish the Petitioner's sustained national or international acclaim or that she is one of the small percentage at the very top of the field of swimming.

On appeal, the Petitioner contends that the Director's decision applied incorrect standards and did not analyze all of the evidence provided. The sole issue on appeal is therefore whether the overall record shows that the Petitioner has sustained a national or international level of acclaim, that her achievements have been recognized in the field through extensive documentation, and that she is among the small percentage at the very top of her field of endeavor. Section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2); *see also Kazarian v. USCIS*, 596 F.3d at 1119-1120. Upon review, we find that the Petitioner has not established her eligibility.

The Petitioner states that the Director applied overly strict standards to her petition. The Director's decision included a list of twelve swimmers who appeared in their internet search results for "ranking best women's swimmers in the world" and found that because the Beneficiary did not appear in this list, she was not one of the small percentage who have risen to the very top of her field of endeavor. The Petitioner correctly notes on appeal that this analysis overlooks the fact that swimming is divided into different events by stroke and distance and a swimmer may be at the top of their field by being one of the best at their event. *See, e.g., Muni v. INS*, 891 F.Supp. 440 (N.D. Ill. 1995) (finding that a hockey defenseman should be compared to other defenseman rather than to all professional hockey players). However, this oversight does not affect the ultimate outcome of the appeal, as the Petitioner has not established that she has reached the very top of her field within her swimming disciplines.

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<sup>1</sup> The Director also found that the Petitioner did not meet the criterion at 8 C.F.R. § 204.5(h)(2)(viii), performing in a lead or critical role for organizations with distinguished reputations.

The Petitioner specializes in the 50-meter backstroke, 100-meter backstroke, and 100-meter freestyle events. According to the website of World Aquatics,<sup>2</sup> the governing body of international competitive swimming, the Petitioner’s personal best times in the 50-meter backstroke and 100-meter backstroke events event occurred in 2015.<sup>3</sup> In that year, 151 other swimmers had faster finishes in the 50-meter backstroke and 120 other swimmers had faster finishes in the 100-meter backstroke, sometimes on more than one occasion.<sup>4</sup> Similarly, at least 200 other swimmers had faster finishes than the Petitioner in the 100-meter freestyle in 2020, the year she had her personal best time in that discipline.<sup>5</sup> This does not establish that the Petitioner is one of the small percentage at the top of her field in any of the swimming events in which she specializes.

The Petitioner also cites *Muni* for the proposition that an athlete need only be “very good” in their field in order to establish eligibility. First, it is noted that we are not bound to follow the published decision of a United States district court, even in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715, 718-720 (BIA 1993). The reasoning underlying such a decision will be given due consideration when it is properly before us; however, the analysis does not have to be followed as a matter of law. *Id.* Furthermore, even taking this case into consideration, the self-petitioner in *Muni* provided evidence that he was considered one of the best defensemen in the National Hockey League and was a highly impactful player on championship teams. *Muni v. INS*, 891 F.Supp. at 444-445. As noted above, the Petitioner in this case has not similarly established that she is considered one of the small percentage at the top of her field.

The Petitioner’s brief also contends that the Director did not adequately weigh, among other factors, her record in National Collegiate Athletic Association (NCAA) Division I competition, her “top awards at . . . distinguished competitions beyond her country’s borders,” and her “medals at competitions sanctioned by the United States governing body for the sport,” stating that these are evidence of her national and international acclaim. First, NCAA Division I competition is restricted to students at specific United States colleges and universities, which does not indicate that success in such competitions constitutes a form of national or international acclaim in the field of competitive swimming. *See generally 6 USCIS Policy Manual* F.2, Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, <https://www.uscis.gov/policy-manual> (noting that limitations on who may compete may indicate that a prize or award is not nationally or internationally significant).

Similarly, the record indicates that the sanctioned U.S. competition specified by the Petitioner’s brief, the Speedo Championships, was a sectional competition for swimmers from Texas and Louisiana, and which only allowed a limited number of swimmers from outside that geographic area. This does not establish that the Petitioner’s success in that competition is a form of national or international acclaim. *Id.* Finally, the fact that the Petitioner has won medals in international competitions outside of

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<sup>2</sup> World Aquatics was formerly known as Fédération Internationale de Natation (FINA). Overview, <https://www.worldaquatics.com/about>.

<sup>3</sup> [redacted] Results – AQUA Official, [https://www.worldaquatics.com/athletes/\[redacted\]](https://www.worldaquatics.com/athletes/[redacted]) (referring to the Petitioner’s competition results in 50-meter pools) (last visited Apr. 11, 2023).

<sup>4</sup> Rankings, <https://www.worldaquatics.com/swimming/rankings> (filter by gender and event type; expand advanced filters to filter events by year; under “Times Mode”, use the “All Times” filter to see the year’s top finishes in an event or the “Best Times” filter to see a ranking of each individual swimmer’s best time in the event that year) (last visited Apr. 11, 2023).

<sup>5</sup> *Id.*

Uzbekistan and the United States does not establish that those medals are a form of international acclaim. The evidence provided to establish the prestige of the Bulgarian and Hungarian Open Championships consists of country profiles indicating that the competitions' host nations regularly send a number of swimmers to the Olympics. This does not establish what level of acclaim these competitions grant their medalists in the field of competitive swimming.

The Petitioner contends that her membership in Uzbekistan's National Swimming Federation and National Olympic committee and her level of national success in swimming, including holding several national records, establishes her sustained national acclaim in her field.<sup>6</sup> We acknowledge that the Petitioner holds many Uzbek national records in swimming, has qualified for the Olympics twice, and competed at the London Olympics in 2012. However, the statutory requirement for the extraordinary ability classification is not only success, but being one of the small percentage in the top of one's field and having one's achievements recognized in the field through extensive documentation.

While the record indicates that the Petitioner has been one of the top female swimmers in Uzbekistan for over ten years, it does not contain extensive documentation of a level of recognition signifying that she is one of the small percentage at the top of her field. The media coverage of the Petitioner's career is largely from campus and local publications and a swimming news website writing about her collegiate competition career, and her recommendation letters are largely from her coaches and Uzbek sporting officials. Of the Russian and Uzbek news articles submitted, only one 2014 article is about the Petitioner, and the rest mention her as one member of various Uzbek sporting teams. This does not suffice to show that the Petitioner's achievements have been nationally or internationally acclaimed or that they have been recognized in her field through extensive documentation.

### III. CONCLUSION

The totality of the record does not establish that the Petitioner's achievements have translated into a sustained level of recognition that constitutes national or international acclaim or demonstrates a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sep. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Furthermore, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of her field of endeavor. Section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The petition will remain denied.

**ORDER:** The appeal is dismissed.

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<sup>6</sup> In this as well as other instances in her brief, the Petitioner emphasizes that she meets several of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and that this should establish her national or international acclaim. However, these criteria only describe the initial evidence that must be provided, at a minimum, in order to establish eligibility. The fact that a petitioner meets these minimum requirements does not, in and of itself, establish that they are eligible for the extraordinary ability immigrant visa. *See generally* 6 *USCIS Policy Manual, supra* at F.2(B)(2).