



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

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

In Re: 28785726

Date: DEC. 21, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a martial arts instructor, 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 had satisfied at least three of ten initial evidentiary criteria, as required. 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

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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. These individuals must 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 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 claims “national and international champion titles” in several styles of Wushu, or Chinese martial arts. The Petitioner has taught martial arts and “Traditional Chinese Health Preservation Techniques” at [redacted] China, since 2007. He “also holds the position of [redacted] [redacted]” The Petitioner asserts that he has trained law enforcement officers, published books about Wushu, and served as a judge at international championship competitions.

The Petitioner claimed to have received a major, internationally recognized award, and to have satisfied six of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x), 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;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance; and
- (vi), Authorship of scholarly articles.

The Director concluded that the Petitioner had met two of the alternate criteria, pertaining to participation as a judge and authorship of scholarly articles, but that the Petitioner had not met the other claimed criteria or established that he had received a major, internationally recognized award. On appeal, the Petitioner asserts that he meets the criteria pertaining to lesser prizes and membership in associations. The Petitioner does not contest the Director’s other conclusions regarding major prizes, published material, and original contributions, and therefore has waived appeal on those issues.¹

We will discuss the two disputed criteria below.

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).

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).

The Petitioner submitted copies of certificates indicating that he won first place at seven competitions:

- 70 kg Men's Group A, [redacted], 2000;
- 70 kg Men's Group, [redacted] 2005;
- Men's Youth Group Traditional Yang Style Tai Chi Quan, 2006 [redacted], [redacted] China;²
- Men's Traditional Yang Style Tai Chi Quan, 2013 [redacted], [redacted] China; and
- Three events for males aged 26-55 at the 2017 [redacted]:
 - Other Chen Style Taiji Quan;
 - Xingyi, Bagua, Baji, Fanzi; and
 - Other Traditional Hand Forms.

In denying the petition, the Director acknowledged that some of the named events drew from national or international pools of competitors, but the Director determined that the Petitioner had not established that his "awards had a substantial level of recognition."

On appeal, the Petitioner asserts that the competitions in China "were held under the auspice[s] of . . . China's official national government agency of all sports." The regulatory language requires that the prizes or awards are nationally or internationally recognized. The reputation of the organization holding a given competition does not necessarily establish that a given prize or award from that competition is nationally or internationally recognized.³ In this respect, it is significant that the Petitioner has submitted background information regarding some of the awarding entities, but he has not submitted evidence about awards from the competitions. For example, he did not show that the media, or even the organizations themselves, reported or announced the results of the competitions in which he participated.⁴ The evidence submitted does not establish recognition of the awards named on the Petitioner's certificates.

The Petitioner has not met his burden of proof with regard to this regulatory 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).

The record contains information about the Petitioner's memberships in various organizations, but on appeal, the Petitioner only discusses his membership on the [redacted]. Therefore, the Petitioner has waived appeal on the Director's determinations regarding the other claimed memberships.

² The Petitioner did not document the age range for the "Youth Group." The Petitioner was 29 years old when the competition took place in 2006.

³ The regulation specifically requires national or international recognition of the prize or award; the reputation of the awarding entity does not suffice. The *USCIS Policy Manual* acknowledges this distinction, indicating that "[c]ertain awards from well-known national institutions" "may" qualify under 8 C.F.R. § 204.5(h)(3)(i). See generally 6 *USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

⁴ National or international media coverage is one possible measure of the national or international recognition of a prize or award. See generally 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

When he filed the petition in December 2021, the Petitioner claimed to be a member of the [redacted] but did not claim to hold any position within that association, nor did he claim to be seeking such a position. A translated membership card from the [redacted] indicates that the Petitioner registered as a member in December 2004. The document does not discuss membership requirements or describe the process by which the Petitioner became a member of the [redacted]

The Director requested additional evidence about the Petitioner's memberships, including governing documents to show membership requirements and establish the admission process.

In response, the Petitioner submitted a translated copy of a Certificate of Appointment, naming him to a four-year term on the [redacted] Advisory Committee beginning December 24, 2021, a week before the petition's filing date. An accompanying "Member Qualification Evaluation Letter" indicates that the Petitioner's "outstanding contributions to Wushu" qualified him for appointment to the Committee.

In denying the petition, the Director cited several reasons why the Certificate of Appointment and accompanying materials lacked probative value. The record does not support all of these grounds. For example, the Director stated that the translated documents lacked a translation certification as required by 8 C.F.R. § 103.2(b)(14), but the required certification is in the record. But one of the Director's key conclusions is on a stronger footing.

A translated web printout identified as including excerpts from the [redacted] constitution indicates that individuals "who have made outstanding contributions to and international influence . . . may apply directly to the [redacted] to become members of the Advisory Committee." The Director correctly observed that the submitted printout does not identify the web address of the document to permit verification of the claimed contents.

On appeal, the Petitioner states that the printout is "from the [redacted] official website: [redacted]." Statements in an appellate brief are not evidence and thus are not entitled to any evidentiary weight. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998). The stated address is for the home page of the [redacted] website, rather than its constitution specifically. The [redacted] web address appears on a separate letter, but not on the printout showing the constitution itself or its translation.

Furthermore, although the translated web printout includes part of a document identified as the [redacted] constitution, the top of the page bears the insignia and the name, in both Chinese and English, of the [redacted]. A banner near the top of the page also identifies the [redacted]. This information indicates that the document appeared on [redacted] website, rather than the [redacted] website. The burden of proof is on the Petitioner, and the Petitioner did not submit sufficient evidence to establish that the constitution appears on the [redacted] website as claimed, or that the printout in the record matches the document on the [redacted] website.

An immigrant petition may be approved after an investigation of the facts in each case, and after a determination that the facts stated in the petition are true. Section 204(b) of the Act, 8 U.S.C. § 1154(b). Evidence submitted without a means of verification hampers the ability to investigate the facts and determine that the facts claimed in the petition are true. Here, the Petitioner did not provide a specific address for the document submitted, and did not establish that the [redacted] constitution appears at the address shown on the separate letter. Therefore, the Petitioner has not established the authenticity and

accuracy of the document presented as part of the [] constitution. Therefore, the evidence submitted does not meet the Petitioner's burden of proof to establish that his membership on the [] Advisory Committee constitutes membership in an association that requires outstanding achievements as required by 8 C.F.R. § 204.5(h)(3)(ii).

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).

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 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). Here, the Petitioner has not shown recognition of his work at a level that indicates the required sustained 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 (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).

Furthermore, we note that the Petitioner seeks to work in the United States not as a competitive athlete but as an instructor. From the limited evidence submitted, the most significant competition documented in the record took place in 2013, more than eight years before the Petitioner filed the petition in late 2021. In such circumstances, we may place greater weight on the non-competitive activities that the individual has pursued. *See generally* 6 *USCIS Policy Manual, supra*, at F.2(A)(2).

The Petitioner has written articles in scholarly journals and published books for a wider audience, but the record does not establish that these publications have had an impact that would show sustained national or international acclaim. Much of the Petitioner's work documented in the record is at the provincial level, and the Petitioner's information about the large population of Shandong Province does not address the statutory requirement for recognition and sustained acclaim at a national or international level.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.