



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

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

In Re: 24527997

Date: FEB. 1, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an athlete, 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers (petition), concluding that the Petitioner did not establish that he had a major, internationally recognized award, nor did he demonstrate that he met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (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.

The Petitioner is pursuing a career in mixed martial arts. Although the Petitioner signed a contract with regional organizations in the New Jersey and New York area, the record does not reflect that he competes at a professional level. He states his goal is to participate in the 2028 Summer Olympics.

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). Before the Director, the Petitioner did not clearly indicate under which regulatory criteria he was applying. The Director decided which criteria it appeared the Petitioner was applying under, and issued a request for evidence (RFE) relating to those categories of evidence, then ultimately determined he did not satisfy the following criteria in the final decision: prizes or awards; membership; and leading or critical role.

On appeal, the Petitioner maintains they meet the regulation's requirements relating to each of the criteria the Director denied, but he also alludes to his eligibility under judging, original contributions, and commercial success in the performing arts. Within the Director's RFE, they discussed the Petitioner's claims and in response, he did not address any of the new criteria he claims on appeal. Within the appellate brief is the first instance that the Petitioner articulated his eligibility under these

criteria. As the Director could not have committed an error in law or an error in fact as it relates to these additional criteria, we will not consider those claims for the first time on appeal. *See Matter of Izaguirre*, 27 I&N Dec. 67, 71 (BIA 2017) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)). Nevertheless, the Petitioner may pursue these claims within a new petition filing.

After reviewing all the evidence in the record, we agree with the Director's ultimate determination.

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).

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that he is a member of an association in his field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

The Petitioner's sole claimed membership is on the [redacted] national team. The Director determined that the Petitioner did not meet the requirements of this criterion. On appeal, the Petitioner claims the Director ignored information within his evidence from "[redacted]" which is the official website of International [redacted]. We note the Director discussed this entity within the denial decision and the Petitioner does not explain what aspect of this material the Director failed to consider. Relating to the Petitioner's overall claims under this criterion, he states the [redacted] team is ranked high among its world competitors, he notes some of the evidence he provided about the team originated from leading websites in the country of [redacted] and in both his RFE response and on appeal he indicates the team has no written requirements nor code for membership.

Although many athletes who are members of a national team may qualify under this criterion, they must submit sufficient evidence of the selection process to establish that outstanding achievements are required (e.g., meeting a certain cutoff time or score, or advancing through qualification rounds). However, the record provides no insight on the selection process for this national team. While this type of membership may, depending on the evidence presented in an individual case, meet the requirements of this criterion, it is a petitioner's burden to demonstrate that he meets every element of a given regulatory provision. We will not assume that every "national team" is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines. Because this Petitioner has not done so here, we conclude that he has not met this regulatory requirement.

We conclude that although the Petitioner claims he meets three criteria, because his arguments fail on any single criterion, that means he cannot numerically meet the required number of criteria and it is unnecessary for us to reach a decision on his other claimed elements. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve our evaluation of those requirements. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (finding it unnecessary to analyze additional grounds when another independent issue is dispositive of the

appeal); *see also* *Matter of D-L-S-*, 28 I&N Dec. 568, 576–77 n.10 (BIA 2022) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 do not need to 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 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 that goal. 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 that the significance of their 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). Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and they are one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated their 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.