



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

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

In Re: 23133628

Date: JAN. 19, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a bodybuilder, 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 Texas Service Center denied the petition, concluding that the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which she must meet at least three. The matter is now before us on appeal.

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 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 sustained acclaim and the recognition of their 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 they must provide sufficient qualifying 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).

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

Because the Petitioner has not indicated or established that she has 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). In denying the petition, the Director determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner maintains that she meets five evidentiary criteria.

A. Evidentiary Criteria

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 Petitioner claims eligibility for this criterion based on International Federation of Bodybuilding Fitness Professional League (IFBB Pro League) membership. On appeal, the Petitioner references a letter from J-B-M-, president of IFBB Pro League, who indicated:

Before becoming an IFBB Pro, a bodybuilder must earn their IFBB Pro Card. Any bodybuilder wishing to obtain an IFBB Pro Card must first join the NPC (National Physique Committee), which is the largest amateur bodybuilding organization in the United States and awards IFBB Pro Cards to the winners of their best competitors. Amateur bodybuilding athletes compete in regional competitions sanctioned by the NPC, the only amateur organization recognized by the IFBB Pro League.

When a bodybuilder earns or has a high ranking, he or she receives an invitation to compete in their country’s national professional qualification championship that year.

Athletes winning each category in the National Pro Qualifier Championships receives the right to apply for the IFBB Pro Card and become a member of the IFBB PRO LEAGUE to compete in professional championships.

In addition, the Petitioner cites to an expert opinion letter from J-A-, program director at Community College, who stated:

In order to become an IFBB Pro, a bodybuilder must first earn his or her IFBB Pro Card. A bodybuilder looking to do this must first win a regional contest weight class. When a bodybuilder wins or places highly, he or she earns an invite to compete at his or her country's National Championships contest for that year.

In order to satisfy this criterion, a petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.¹ According to the letters discussed above, “[a]hletes winning each category in the National Pro Qualifier Championships receives the right to apply for the IFBB Pro Card and become a member of the IFBB PRO LEAGUE to compete in professional championships,” and “[w]hen a bodybuilder wins or places highly, he or she earns an invite to compete at his or her country's National Championships contest for that year.”² Here, recognized national or international experts do not judge outstanding achievements for membership with IFBB Pro League. Rather, bodybuilders receive an invite when they receive or have a high ranking or win or place highly; national or international experts do not judge a bodybuilder's achievements to determine their outstanding nature, nor does the IFBB Pro League requires outstanding achievements as a requisite for membership. Furthermore, the Petitioner did not show how winning a regional contest weight class is tantamount to an outstanding achievement.

Accordingly, the Petitioner did not establish that she satisfies this criterion.

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 claims eligibility for this criterion based on 17 internet items and two interviews. In order to fulfill this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.³ In our evaluation, we will first determine whether the evidence reflects published material about the Petitioner relating to her work in the field, which contains the required title, date,

¹ See also 6 USCIS Policy Manual F.2(B)(2), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a foreign associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

² Although the Petitioner provided IFBB's constitution and bylaws, they do not mention the IFBB Pro League, nor do they support the letters' claims.

³ See also 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

and author. If the record supports those regulatory requirements, we will then decide whether professional or major trade publications or other major media published those materials.

As it relates to the internet material, the Petitioner did not include the dates for 4 of the items and the authors for 14 of them. Furthermore, only 6 of the items reflect published material about the Petitioner relating to her work. In fact, the majority of the items either make no mention of the Petitioner, contain only photographs without any written material, or simply list the Petitioner as a competitor or finisher without any published material about her. Moreover, the items reflect press coverage of bodybuilding events and competitions rather than about the Petitioner. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

Thus, the record shows that the Petitioner provided two items reflecting published material about her relating her work, as well as containing the regulatory requirement of the titles, dates, and authors of the material – [redacted]tv and [redacted]blog. Regarding [redacted]tv, the Petitioner did not attach any information establishing that the website qualifies as a professional or major trade publication or other major medium.⁴ As it pertains to [redacted]blog, the Petitioner submitted data from SimilarWeb for [redacted]. However, the Petitioner did not submit information relating to [redacted]blog, the actual website that posted the article. Notwithstanding, the Petitioner did not demonstrate the significance of the SimilarWeb figures (i.e., global ranking of 11,543, country ranking of 440, and industry ranking of 1,515), showing that the website represents a professional or major trade publication or other major medium.

Regarding the two interviews, the Petitioner provided a transcript of a television interview from [redacted] News Online posted on YouTube and a transcript of a radio interview from [redacted] Podcast posted on [redacted]. The Petitioner, however, did not include the regulatory required titles, dates, and authors of the material. Furthermore, the Petitioner did not demonstrate that the specific YouTube and [redacted] channels (youtube.com/watch/[redacted] and [redacted].com/user-[redacted]) enjoy standing as professional or major trade publications or other major media, nor did the Petitioner offer evidence relating to [redacted] News Online or [redacted] Podcast.

Finally, the Petitioner claims that “[a]ll her publications are professional publications because they are aimed to a specialized audience (bodybuilding athletes and fans).” However, the Petitioner does not reference any evidence to support her assertion. Moreover, the term “profession” shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. *See* section 101(a)(32) of the Act. Moreover, “profession” means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation. *See* 8 C.F.R. § 204.5(k)(2). Here, the Petitioner did not demonstrate that her occupation as a bodybuilder falls within the definition of “profession” as defined

⁴ *See* 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (providing that evidence of published material in professional or major trade publications or in other major media publications about the person should establish that the circulation (online or in print) or viewership is high compared to other statistics and show who the intended audience is, as well as the title, date, and author of the material).

in the law and regulations. Accordingly, the Petitioner did not establish that the internet sites and interview venues qualify as professional publications.

For the reasons discussed above, the Petitioner did not show that she meets this criterion.

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 claims eligibility for this criterion based on a critical role for [redacted]. On appeal, the Petitioner references a letter from W-A-, marketing director and co-founder of [redacted] and the previously discussed letter from J-A-. According to W-A-:

Since February 2020, [the Petitioner] joined our [redacted] team of sponsored athletes. She has produced relevant and valuable content for the company's social media. [The Petitioner's] outstanding career and recognition in the bodybuilding field has helped our organization to increase tremendously the number of our social media followers, which has exponentially helped our organization to gain new customers and to skyrocket our sales.

....

... [The Petitioner] has performed a critical role for our organization, specifically in the promotion of our product "[redacted]"

....

She showed our social media followers and customers that [redacted] not only enhances recovery but also contribute to increase energy and protein synthesis because it contains Peak O2, scientifically developed to increase performance and power with a proven blend of six natural adaptogens. [The Petitioner] also explained our social media followers that [redacted] contains a Hydration Blend to prevent muscle breakdown and maintain people's health on check.

Moreover, [the Petitioner] has played a critical role for [redacted] by helping our company to increase the sales of the products "[redacted]" and "[redacted]" She explained via Instagram posts that [redacted] provides a high energy thermogenic that not only keeps people energized and focused during times of dieting but works to increase calorie expenditure (burning), making our customers efforts even more effective.

[The Petitioner] successfully participated in the marketing campaign of our product "[redacted]" explaining that it works to remove excess water, further enhance calorie burn and accelerate results as the finishing touch before a competition, photoshoot, pool party, or any other specific event.

Additionally, [the Petitioner] played a critical role for [redacted] in the promotion of our product [redacted]. She explained our social media followers and customers that [redacted] is an all-natural, non-hormonal anabolic formula that aids in gaining lean muscle, increasing recovery rate, and increasing nutrient utilization.

For a critical role, individuals must establish that they have contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment.⁵ W-A-'s letter, however, does not provide specific, detailed information explaining how the Petitioner's contributions to [redacted] resulted in successful outcomes for the business. Instead, the letter describes the Petitioner's promotional efforts without showing how those promotions impacted [redacted]. While the letter makes the broad claim that the Petitioner "helped [redacted] to rapidly increase our client portfolio, which profoundly and positively impacted our sales in the United States," J-A- did not further elaborate and articulate how the Petitioner's specific promotional efforts led to the claim of increased client portfolios or sales. J-A- did not, for instance, indicate [redacted] sales prior to and after the Petitioner's social media promotions to reflect the Petitioner's essential performance on [redacted] [redacted] revenue. Without further, thorough information, the general claims in J-A-'s letter is insufficient to demonstrate the critical role that the Petitioner's performed for [redacted].⁶

Regarding J-A-'s letter, he simply summarizes and repeats the statements from W-A-'s letter. J-A-'s letter does not offer any new or different information from W-A-'s letter, nor does he establish the Petitioner's critical role for [redacted]. Moreover, although J-A-'s letter continually asserts that the Petitioner performed in a "critical role," the letter does not contain specific, detailed information to corroborate its assertions. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Notwithstanding the above, this regulatory criterion also requires the leading or critical role be for organizations or establishments that have a distinguished reputation.⁷ Although she claims that "[redacted] has [a] distinguished reputation," the Petitioner does not cite or reference to any evidence to support her assertion. Further, while W-A-'s letter provides a brief description and history of the company, the letter does not contain any information relating the business' reputation. Nor does the record reflect [redacted] enjoys a distinguished reputation.

Therefore, the Petitioner did not demonstrate that she fulfills this criterion.

⁵ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2).

⁶ *Id.* (providing that this is one criterion where letters from persons with personal knowledge of the significance of the person's leading or critical role can be particularly helpful to officers in making this determination, so long as the letters contained detailed and probative information that specifically addresses how the person's role for the organization, establishment, division, or department was leading or critical).

⁷ See 6 USCIS Policy Manual, *supra*, at F.2(B)(2) (referencing Merriam-Webster's online dictionary and defining "distinguished" as marked by eminence, distinction, or excellence or befitting an eminent person).

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).⁸

III. CONCLUSION

The Petitioner did not establish that she satisfies the criteria relating to membership, published material, and leading or critical role. Although the Petitioner claims eligibility for two additional criteria on appeal, awards at 8 C.F.R. § 204.5(h)(3)(i) and display at 8 C.F.R. § 204.5(h)(3)(vii), we need not reach these additional grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.⁹

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 those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of “extraordinary ability,”); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is “extremely restrictive by design,”); *Hamal v. Dep’t of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are “reserved for a very small percentage of prospective immigrants”). *See also Hamal v. Dep’t of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that “[c]ourts have found that even highly accomplished individuals fail to win this designation”)); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that “arguably one of the most famous baseball players in Korean history” did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that

⁸ *See also* 6 USCIS Policy Manual, *supra*, at F.2(B)(3).

⁹ *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).

the significance of her 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 she 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 record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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