



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

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

In Re: 28580526

Date: NOV. 30, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a swimmer and multisport athlete, 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met three of the ten initial evidentiary criteria required for eligibility. 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.

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 evidentiary 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).

The sole issue on appeal is whether the Petitioner meets at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).¹ In the underlying case, the Petitioner stated that he meets the following criteria:

- (i) Receipt of lesser nationally or internationally recognized prizes or awards;
- (ii) Membership in associations requiring outstanding achievements of their members;
- (iii) Published material about the noncitizen in professional or major trade publications or other major media; and
- (v) Original contributions of major significance in the field.

The Director concluded that the Petitioner meets the criteria for lesser awards and published material,² but not those for membership in associations or original contributions. Since the Petitioner only met two of the required three initial evidentiary criteria, the Director denied the petition.

On appeal, the Petitioner submits a letter³ stating that his Master of Sports of Ukraine certificate was incorrectly considered by the Director as a prize or award under 8 C.F.R. § 204.5(h)(3)(i) rather than as proof of his membership in associations requiring outstanding achievements of their members under 8 C.F.R. § 204.5(h)(3)(ii).⁴ According to the appeal statement, this certificate “serves as a document showing the proof of association with the Ukrainian Swimming Federation (USF), National Olympic Committee of Ukraine (NOC), and Ministry of Youth and Sports of Ukraine . . .” and as “proof of outstanding achievements as a member of the association in the field for which classification is sought.”

The criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires a showing that the Petitioner is a member of an association, that this association is in his field of expertise, that the association requires outstanding achievements of its members, and that these achievements are judged by recognized national or international experts in their disciplines or fields. Contrary to the Petitioner’s statement on appeal, the

¹ The Petitioner does not claim, and the evidence does not indicate, that he has a one-time achievement under 8 C.F.R. § 204.5(h)(3).

² The record supports a finding that the Petitioner meets these two criteria.

³ The Petitioner stated on Form I-129B, Notice of Appeal or Motion, that he would submit a brief and/or additional evidence to the AAO within 30 calendar days of filing his appeal. To date, we have not received a brief or additional evidence, and so will base our decision on the provided appeal statement and the underlying record of proceedings.

⁴ On appeal, the Petitioner does not contest the Director’s finding regarding the criterion at 8 C.F.R. § 204.5(h)(3)(v) for original contributions of major significance to his field. As such, we consider the issue to be waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (finding that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived)).

regulation does not require him to have outstanding achievements while being a member of an association in his field. Instead, it requires documentation showing that the association in question required outstanding achievements for him to become a member of it in the first place. The Petitioner has not made such a showing in this case.

The record includes extensive documentation regarding the Ukrainian Unified Sports Classification system, which awards various titles and degrees based on differing levels of athletic achievement. For Olympic sports such as swimming, the highest-ranked titles in this system are, in descending order, Honored Master of Sports, which “is awarded to athletes of the highest category,” Master of Sports International Class, and Master of Sports of Ukraine, which is the Petitioner’s title. The latter two titles are awarded to athletes “for their compliance with qualifying norms,” which vary by sport. In the sport of swimming, the Master of Sports International Class is awarded for placing highly in international competitions such as the Olympics and world championships, while the Master of Sports of Ukraine is awarded for placing highly in Ukrainian national competitions at the junior or senior level. Such competitions must be adjudicated by judges “of no lower than the first category.”

As noted by the Director, there is no indication in the record that the title of Master of Sports of Ukraine constitutes membership in an association. While the Ministry of Youth and Sports awards this title, the documentation provided does not state that this title grants athletes membership in the ministry. Similarly, the documentation does not state that a Master of Sports of Ukraine title constitutes membership in the Ukrainian NOC or USF. Instead, it states that this is an honorary title awarded by the Ukrainian government for certain levels of athletic achievement.

Furthermore, even if the Master of Sports of Ukraine title grants membership in these organizations, which the record does not support, the Petitioner still has not established eligibility for this criterion. Because the record does not include documentation of the membership requirements of the relevant organizations, it does not establish that outstanding achievements in the field of swimming are a prerequisite for entry. For the above reasons, the Petitioner has not established that he qualifies for the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

Because 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 at 8 C.F.R. § 204.5(h)(3)(i)-(x), we need not provide the type of final merits determination described in *Kazarian*, 596 F.3d at 1119-20. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make “purely advisory findings” on issues that are unnecessary to the ultimate decision). Nevertheless, we advise that we have reviewed the record in the aggregate, determining 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 are at the very top of their respective fields. 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. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has submitted documentation of his success in Ukrainian national swimming competitions, much of it at the junior level, approximately ten years prior to when the visa petition was filed. Since then, the Petitioner has competed at the collegiate level in the United States, qualifying for the 2014 National Collegiate Athletic Association (NCAA) Division II championships and earning NCAA All-American honors in

2014 by finishing in 15th place in the [redacted] individual medley. He also qualified for the 2017 [redacted] Championship,⁵ where he took 12th place. However, the vast majority of his press coverage concerns his long-distance swim in the [redacted] in 2011, and he has not otherwise established that his achievements have translated to a level of recognition that constitutes sustained national or international acclaim or demonstrates a “career of acclaimed work in the field” as contemplated by Congress for this visa classification. H.R. Rep. No. 101-723, pt. 1, at 59 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 6739; 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 have risen to the very top of his field of endeavor. Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

The Petitioner has not established his eligibility as an individual of extraordinary ability. The petition will remain denied.

ORDER: The appeal is dismissed.

⁵ Aquathlon is a multisport competition consisting of swimming and running segments. World Triathlon, *Aquathlon*, <https://www.triathlon.org/multisports/aquathlon>.