



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

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

In Re: 28154174

Date: SEP. 27, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner seeks classification as an individual of extraordinary ability. 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 the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which she must meet at least three. 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) 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 the petitioner’s sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation that the petitioner 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 the petitioner’s 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner started surfing at the age of 11 and entered the competitive surfing arena at the age of 16. During her career she has participated in various surfing events, including those sponsored by the International Surfing Association (ISA) – at the world junior surf competition, the Brazilian Association of Professional Surfing (ABRASP), and the Professional Junior (PRO JR) and World Qualifying Series (WQS). Additionally, she has participated in “free surfing” events which “entails [a group of surfers] traveling to unexplored locations, places rarely visited by tourists” in order to surf there, which were documented by social media and movie production firms. The Petitioner states that she will continue to surf competitively and will accept an employment offer from a private firm who “specialize[s] in facilitating the creation of commercial relationships between professional surf athletes, media companies, and surf brands operating in the surf industry.”

Because the Petitioner has not claimed 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). The Director determined that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(iii), (vii) - relating to published material and display of her work, which is supported by the record.

On appeal, the Petitioner asserts that she meets three other regulatory criteria relating to awards, membership, and leading or critical role at 8 C.F.R. § 204.5(h)(3)(i), (ii), and (viii). She does not assert eligibility under the judging (iv), original contributions (v), authorship (vi), high salary (ix), or commercial success (x) criteria. Therefore, we deem these issues to be waived and will not address these criteria in our decision. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). We

have reviewed all the evidence in the record and conclude that the Petitioner has not established that she meets the requirements of at least three criteria. While we may not discuss every document in the record, we have reviewed and considered each one.

Documentation of the individual'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).

This criterion contains several evidentiary elements the Petitioner must satisfy. According to the plain language of this regulation, the evidence must establish that the Petitioner is the recipient of prizes or awards, that the awards are nationally or internationally recognized, and that each prize or award is one for excellence in the field of endeavor. *See also 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>*, (which provides a non-exhaustive list of relevant considerations in determining if the award or prize meets this criterion).

The Director reviewed the initial evidence, then issued a request for evidence (RFE), advising the Petitioner that she had not demonstrated that the claimed awards were nationally or internationally recognized and requested additional documentary evidence in support of her eligibility under this criterion. The Director stated that such evidence should demonstrate the criteria used to grant the awards, their significance (including the national or international recognition associated with the awards), the reputation of the organization or panel granting the awards, the geographic scope of the awards and any limitations on competitors, the number of awards or prizes granted, evidence related to previous award winners, and public announcements of the awards.

As evidence of her lesser national or international awards, the Petitioner offered evidence initially and in the RFE response, such as background material about the competitive surfing sport, the organizations that oversee the competitive surfing sports and the entities that have sponsored the surfing events that she has competed in. She also provided evidence of her participation in surfing events and her competitive ranking relative to other participants based on her surfing performance therein. The Director denied the petition, in part, concluding that the evidence submitted was insufficient to meet the plain language requirements of this criterion.

On appeal, the Petitioner first points to her participation on “Team Brazil” at the 2006 ISA [redacted] [redacted] asserting that she won a bronze medal at this junior-level event as a member of the team, and that the Director erred in determining that her competitive placement in this event did not meet the plain language of this criterion. The Petitioner provided a May 2006 media article about this event, [redacted] which indicates that she and another Brazilian teammate were “eliminated by Australian [K-T-] and New Zealander [A-M-] in the first women’s event.” It is not apparent from the evidence provided that any award or medal garnered by Team Brazil at this event can be directly attributed to the Petitioner as an award or prize that meets the plain language of this criterion.

Moreover, ISA’s online ranking data for this “under the age of 18 (U18)” event, reflects that Brazilian surfer D-S- was credited with 3rd place ranking for U18 women competitors, not the Petitioner. *See generally* <https://isasurf.org> [redacted] While the Petitioner provides a picture of herself with an award and maintains that she won a bronze medal at this event, other evidence submitted with

the petition and from ISA's website suggests otherwise. The Petitioner must resolve this inconsistency and ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without more, we agree with the Director that the Petitioner's participation at this event does not meet the plain language requirements of this criterion.

On appeal, the Petitioner also contests the Director's determination that her 9th place showing in two WQS surfing competitions, [REDACTED] were not equivalent to actually receiving an award. The Director observed that the record did not reflect, for example, that publications or news outlets with a national or international audience reported on her 9th place finishes, nor did the Petitioner provide other evidence sufficient to show that a 9th place finish in these competitions is accepted in the field of competitive surfing as national or international recognition for excellence.

The Petitioner emphasizes that WQS is "pro surfing's minor league," that its events are difficult, and that "[anyone] who wants to get to world championship level has to compete in WQS tour events and gain enough points to be ranked in the WQS top 16 at the end of the year." On appeal, she provides general evidence about WQS and WQS events, and information specific to the events she participated in. She also notes that other competitive surfers who currently rank toward the top level in the World Surf League (WSL) competed against her at these events. But she does not adequately address the Director's concern that the record does not reflect that her own 9th place showing at these events constitutes her receipt of nationally or internationally recognized awards or prizes for excellence in the field of professional surfing. For these reasons, this criterion has not been met.

Documentation of the individual'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).

To satisfy this criterion, a petitioner must provide evidence of their membership in an association and demonstrate that such membership is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought, which in this case is professional surfing. *See 6 USCIS Policy Manual, supra*, at F.2.

The Petitioner maintains that she met this criterion based on her membership in several organizations, including WSL, ABRASP, and the Confederacao Brasileira de Surf (CBS). The Director determined that the initial evidence did not provide sufficient evidence about the Petitioner's membership in these organizations or their membership requirements to establish that this criterion had been met. In the RFE, the Director advised the Petitioner that the evidence she submitted did not establish that she is a member of an association in which membership is conditioned on outstanding achievements in the field of endeavor as judged by recognized national or international experts in the field. He requested evidence to establish her membership in these organizations and information about the organizations' membership offerings, such as the sections of their bylaws or similar evidence which discuss the criteria for membership and the qualifications required of those who review membership applications.

In response to the Director's RFE, the Petitioner did not sufficiently address this aspect. Turning to her WSL membership, the Petitioner provided a letter from P-, the president of the Brazilian surfing confederation who indicates that she holds membership in the WSL. In his letter he notes that the Petitioner was selected to participate in the WQS professional surfing events based on her ranking among women surfers under the age of 18, and through this process she gained membership in WSL. However, the Petitioner did not provide the requested information from WSL to illustrate their varying levels of membership, if any, nor did she provide WSL's bylaws or similar documentation which discuss their criteria for membership and identifies the qualifications of the individuals who review its membership applications.

Similarly, the Petitioner provided letters from other individuals that discuss the Petitioner's membership in other surfing-related organizations, which suggest that she gained membership based on her competitive surfing record, but she did not provide specific membership-related evidence from these organizations. The Petitioner denied the petition, in part, concluding that the Petitioner did not provide sufficient evidence from the organizations in which she claims to hold membership that describing their membership requirements and how members are selected. "Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the [petition]." 8 C.F.R. § 103.2(b)(14).

On appeal, the Petitioner contends that the Director erred in his determination that the evidence provided was insufficient to meet the plain language requirements of this criterion. In her appeal brief, she incorporates the same narrative that she submitted in response to the Director's RFE, including the same excerpts of the letters that we mention above which were considered by the Director in denying the petition. She references a copy of the "CBS Rule Book detailing [its membership] selection process" that she previously submitted and asserts that the Director ignored the evidence she offered about CBS. However, we conclude that the Petitioner's reliance on this material to establish eligibility under this criterion is misplaced. The submitted "CBS Rule Book" comprises the first three pages of a ten-page internet document which discusses CBS' history and identifies the various categories under which a surfer can compete, such as the "U18: For male and female surfers who are not 19 during the year" category and provides a chart listing how it will rank competitors during its surfing events. This material does not identify the types of memberships that CBS offers, its criteria for membership, and how individuals are selected for membership.

Considering the Petitioner's statements and the reference letters, as well as the evidence provided from the WSL, ABRASP, and CBS organizations' websites – which based on our review do not appear to address their membership requirements – we determine the record does not contain sufficient documentary evidence to demonstrate the organizations' membership eligibility requirements, how members are selected, and that the Petitioner's own asserted membership in these organizations was based on being judged by recognized national or international experts as having outstanding achievements in the field of professional surfing. Therefore, this criterion has not been met.

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).

In general, a leading role may be evidenced from the role itself, and a critical role is one in which an individual is responsible for the success or standing of the organization or establishment. In the

evidence before the Director the Petitioner stated that she qualifies for this criterion based on her competitive surfing record, and in other activities that she has engaged in to promote the sport, including the surfing documentaries, marketing campaigns, and the film festivals where some of this material has been shown.

The Director denied the petition in part, noting that the record did not substantiate the Petitioner's claim of having performed in a leading or critical role for organizations, such as the WSL, [REDACTED] (J-) magazine, and a film company, [REDACTED] (C-). With regard to WSL, the Petitioner references the letter from P- who suggests that the Petitioner's surfing record as a member of the junior-level TEAM Brazil in 2006, and later as a surfing competitor in the WQS minor league rises to the level of performing in a leading or critical role for the WSL organization. P- does not indicate whether the Petitioner has ever been employed by WSL or explain how her leadership and critical role contributions to WSL compares to others who are holding positions of authority and responsibility within the organization. P- also mentions the media outlets and documentary film productions that the Petitioner has been involved with, noting that "her trajectory and skills in surfing have granted broad recognition in the surf community and have enabled her to be featured in multiple publications and documentaries," which plays an important role in the promotion of the sport."

While we acknowledge that the WSL may enjoy a distinguished reputation in the surfing world, without more, the evidence falls short in establishing how the Petitioner's involvement in WQS events and media activities which generally promote the sport of surfing translates into her performing a leading or critical role for the WSL organization, itself.

Turning to her activities for J- magazine, the owner of the magazine provided a letter, stating "[b]y featuring [the Petitioner] on social media posts, working with her on photo shoots, and launching a series of stories from her global travels, the strategy is already exceeding my expectation as Brazil is now our second largest audience. I owe this almost entirely to [the Petitioner]." As noted by the Director in the denial, J- made the editorial decision to feature the Petitioner's images in their publication, but the evidence does not suggest that she held any actual role in the company itself. Additionally, we note that the Director requested evidence to show that J- has a distinguished reputation, but the Petitioner has not addressed this issue other than stating in the RFE response that J- "has been the online destination for women surfers and girl surfers looking for the best surf photos video clips, and surfing stories. It is a leading organization in the important role of empowering women in a sport that has been historically dominated by men." Notably, she did not substantiate her assertions regarding J-'s reputation with supporting documentary evidence, as requested by the Director.

Similarly, the Petitioner looks to her involvement in a film project, which was directed by the C- film company, for the proposition that she performed a leading or critical role for this organization. The record contains a letter from the director and executive producer of this film project, in which he describes the success of the project and the Petitioner's involvement therein:

In recent years we have produced an average of seven original series per year for our main client [] and in 2019 we received a world medal at New York Festivals for a series shot between Alaska and Russia, named []. The success of [this series], besides its multi-layered production design and technical challenges, lies in the talent that took

part in it. [The Petitioner] was a joy to work with and it was a wonderful surprise to learn that her talent goes well beyond the world of sports. [She] is a committed professional and a pivotal part of the team that handled with perseverance, wit and unlimited dedication the complexities of such a production. We strongly recommend [her] to any future venture and are totally available for further inputs about how important it was to have her on board with us on this award-winning project.

The Director discussed this evidence and noted that C- featured the Petitioner in a film project but the evidence did not show that she held a role within C-. Additionally, though the Petitioner emphasized that C- won a film award for her project, she did not provide evidence sufficient to establish that C- is an organization that enjoys a distinguished reputation.

On appeal, the Petitioner acknowledges that she did not hold any actual role within these media companies and asserts “her involvement as a woman surfer demonstrates a level of recognition and interest in her skills and abilities within the industry.” To meet this criterion the Petitioner must demonstrate that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, not that she enjoys a level of recognition and interest within her industry. For the foregoing reasons, this criterion has not been met.

III. CONCLUSION

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), we need not provide the type of final merits determination described in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve this issue. *See INS v. Bagamasbad*, 429 U.S. at 25-26 (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also L-A-C-*, 26 I&N Dec. at 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 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 submitted documentation of her professional achievements but has not demonstrated that these achievements have translated into 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. H.R. Rep. No. 101-723, 59 (Sept. 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 of individuals who have risen to the very top of the field of endeavor. Section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

ORDER: The appeal is dismissed.