



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

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

In Re: 31284067

Date: JULY 5, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a sports event planner, seeks first preference immigrant 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 record did not establish that the Petitioner qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The matter is now before us on appeal pursuant to 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 international recognition of a beneficiary’s 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 demonstrating that the beneficiary 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). The regulation at 8 C.F.R. § 204.5(h)(4) also allows a petitioner to submit comparable material if 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 demonstrates that the beneficiary 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

The Petitioner claims to be an individual of extraordinary ability based on his skills and experience as an athlete and sports planner. The record indicates that the Petitioner’s initial experiences as an athlete who competed in cycling races segued to other athletic pursuits that entailed simultaneously competing in and organizing sporting events. The Petitioner started his sports event planning career as founder of the [REDACTED] which he used to organize the first cycling race in [REDACTED] in 2012 and through which he helped organize other bicycle races, such as the Open Championship, which was held in 2017 in [REDACTED] the capital of [REDACTED]. Then, after participating in multiple triathlons such as the widely recognized Ironman, the Petitioner began developing the triathlon competition in his home country through the [REDACTED] an organization that the Petitioner helped found and run, serving as the organization’s vice president. Accordingly, the Petitioner states that he intends to use his experience as an athlete to “inform his approach to organizing and planning sporting events.” Because the Petitioner has not indicated or established his receipt of 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). The Petitioner claims that he meets the five regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(ii) – (v) and (viii).¹ Further, pursuant to 8 C.F.R.

¹ The Petitioner originally claimed that in addition to the criteria listed above, he also met the criteria listed at 8 C.F.R. § 204.5(h)(3)(vi) and (ix). Because the Petitioner has not addressed the Director’s adverse findings regarding these two criteria on appeal, both criteria are deemed waived in the adjudication of this petition. *See U.S. v. Pilati*, 627 F.3d 1360, 1365 (11th Cir. 2010) (finding that an issue not raised on appeal to the district court are deemed waived); *see also Rizk v. Holder*, 629 F.3d 1083, 1091 n.3 (9th Cir. 2011) (finding that issues not raised in a brief are deemed waived).

§ 204.5(h)(4), the Petitioner also claims that he has submitted evidence that is comparable to the criteria in 8 C.F.R. § 204.5(h)(3).

The Director concluded that the Petitioner did not establish that he met any of the claimed criteria. On appeal, the Petitioner asserts that he meets at least three criteria and is otherwise eligible for the requested classification. He contends that the Director overlooked or disregarded certain evidence in a way that is not consistent with the regulations or U.S. Citizenship and Immigration Services policy. Upon review, we conclude that the Petitioner has met at least three of the claimed criteria. Namely, the record supports the Petitioner's assertion that he met the criteria listed at 8 C.F.R. § 204.5(h)(3)(iv), (v), and (viii).

First, we will address the criteria listed at 8 C.F.R. § 204.5(h)(3)(iv), which requires evidence demonstrating a petitioner's participation as a judge of the work of others in the same or an allied field. Evidence submitted in support of this criterion includes an online article which discusses the Petitioner's role "as the chief judge" of a duathlon competition held in 2015 in [redacted]. The article also describes the Petitioner as "a famous athlete, enthusiast, organizer of numerous competitions, [and] president of the [redacted] and includes a quote from the Petitioner in which he explained that his role as chief judge involved disqualifying participants in the competition. The Petitioner also provided a letter from [redacted] president of the [redacted] [redacted] who described the Petitioner as "the biggest expert in triathlon in the entire country" and stated that the Petitioner assumed the role of a judge in three international triathlon competitions that took place in 2017, 2018, and 2019. Based on this evidence, the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner also provided documentation to show that he satisfied the requirements of the criteria listed at 8 C.F.R. § 204.5(h)(3)(v), which requires evidence showing that the Petitioner made original contributions of major significance in his field. Documents showing that the Petitioner met this criterion include an article that credits the Petitioner with bringing about change in "the way of life of the [redacted] people" by opening a running school called [redacted] which is described as "the central company" for organizing various athletic events that include running, cycling, and triathlon competitions. Another article lists the Petitioner as "one of the founders of triathlon in [redacted]; a third article refers to the Petitioner's position as vice president of the [redacted] [redacted] and lists the federation as organizer of the first aquathlon to be held in [redacted]. In a letter from the CEO of [redacted] a business located in Russia, the Petitioner was recognized for his "iconic status as an event planner in his home country" of [redacted] where he is credited with "shap[ing] the development of the sport of triathlon and the industry." The Petitioner also provided an [redacted] documenting his methodology in a seven-week training course for distance running. Based on this evidence, the Petitioner has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

Lastly, we will discuss the criteria listed at 8 C.F.R. § 204.5(h)(3)(viii), which requires a showing of the Petitioner's performance in a leading or critical role for distinguished organizations or establishments. Evidence pertaining to this criterion includes the previously mentioned letter from Mr. [redacted] who discussed the Petitioner's "critical role in the development of triathlon in [redacted] as well as in the development of the [redacted] pointing out that this organization is "recognized as an official federation by the National Olympic

Committee and the International Triathlon Union.” Mr. [redacted] highlighted the Petitioner was one of the co-founders of the organization and was deemed to have “the most expertise, training, and knowledge pertinent [sic] triathlon, event organizing, and international standards.” Mr. [redacted] also stated that during the organization’s initial years of existence, the Petitioner, “as our Vice President, undoubtedly carried the main load and did most of the work: organizing events, working on business partnerships, and so on.” The Petitioner also provided letters stating that he was responsible for forging partnerships between his company, [redacted] and various charitable organizations, such as the [redacted] whose head credited the Petitioner with organizing “the largest charitable running event” in [redacted]. The same individual, together with the Director of the State Agency for Environmental Protection of Forestry issued an official letter of appreciation to the Petitioner, thanking him for “holding the first ever international charity race” for the conservation of the [redacted]. In light of the evidence submitted, we find that the Petitioner has demonstrated that he satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

With eligibility under the three criteria discussed above, the Petitioner satisfied part one of the two-step adjudicative process described in *Kazarian* and has overcome the sole basis for the denial of his petition. Accordingly, we will withdraw the Director’s decision. Because the Petitioner has met the initial evidence requirements of at least three criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

However, granting three initial criteria does not suffice to establish eligibility for the classification the Petitioner seeks or establish that the record supports the approval of the petition. As noted above, where a petitioner demonstrates that the beneficiary 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*, 596 F.3d at 1115, section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3).. The Director did not reach a finding on the final merits, and we decline to make the final merits determination in the first instance. We will therefore remand the matter.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.