



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

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

In Re: 30728339

Date: MAY 13, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a mountain climber, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had not satisfied the initial evidentiary criteria, of which he must meet at least three. In addition, the Director determined that the Petitioner had not established that his entry into the United States will substantially benefit prospectively the United States. 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)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen'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 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 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).

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

The Petitioner is a scout and experienced mountain climber. He intends to continue his scouting activities in the United States, and also intends to serve as an instructor and promoter of the sport of mountain climbing.

### A. Evidentiary Criteria

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). The Director determined that the Petitioner only met the plain language requirements of two evidentiary criteria relating to published materials at 8 C.F.R. § 204.5(h)(3)(iii) and judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains that he also meets the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to lesser awards (i), memberships (ii), and original contributions of major significance (v).

Although we agree with the Director that the Petitioner has satisfied the published materials criterion, we do not concur with the Director’s finding relating to the judging criterion, which we discuss below. We further conclude, upon de novo review, that the Petitioner has not satisfied the initial evidence requirements by meeting at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

*Evidence of the [noncitizen’s] participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

As discussed above, the Director found that the Petitioner satisfied this criterion. This regulatory criterion requires a petitioner to show that he has acted as a judge of the work of others in the same or

an allied field of specialization. For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that he meets this criterion, and the Director's determination on this issue will be withdrawn.

Preliminarily, we note that the Petitioner does not specifically claim that he has judged the work of others. In a request for evidence (RFE) that identified evidentiary deficiencies regarding other criteria, the Director concluded, without analysis or explanation, that the judging criterion had been met.

The record contains published materials about the Petitioner's accomplishments, as well as evidence of awards he has received and his memberships in various associations. The record also contains recommendation and testimonial letters that praise the Petitioner's accomplishments in the field of mountain climbing and confirm his voluntary participation in various instructor roles for organizations in the field.

In order to meet this criterion, a petitioner must show that he has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization. Here, the evidence submitted in support of the petition does not demonstrate that the Petitioner was invited to judge the work of others in the same or an allied field of specialization, and actually completed judging activities, as contemplated by the plain language of this criterion. Moreover, the Petitioner does not specifically claim eligibility for this criterion, and the Director did not articulate what evidence was relied upon in making a favorable determination under this criterion. The record as constituted does not establish that the Petitioner participated as a judge of the work of others consistent with this regulatory criterion. Accordingly, we withdraw the decision of the Director for this criterion.

*Documentation of the [noncitizen'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 contends eligibility for this criterion based on his membership with the Boy Scouts of America, the Nepal Mountaineering Association (NMA), and the Nepal National Mountain Guide Association (NNMGA). U.S. Citizenship and Immigration Services (USCIS) determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field. *See generally 6 USCIS Policy Manual F.2(B)(1)*, <https://www.uscis.gov/policymanual>. The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts. *Id.*

The Petitioner submitted documentation demonstrating he is a Merit Badge Counselor with the Boy Scouts of America, as well as a document entitled "Instructions for Merit Badge Counselors" indicating that merit badge counselors are expected to be teachers and mentors to scouts. The Petitioner also asserts that this membership has "specific requirements, which include being approved by a special committee and requires skills and education in climbing." The Petitioner also submitted a "Mountain Guide Certificate" issued through the NNMGA and the NMA, as well as information on how to become an NNMGA guide.

The Petitioner, however, did not submit evidence of the membership requirements for these associations. We will not presume exclusive membership requirements from the general reputation of a given association, as the association's reputation may derive from its size, the number of symposiums it hosts or other factors independent of the exclusive nature of its membership. As the record does not contain the bylaws or other official documentation of the membership criteria for these associations, we cannot evaluate whether the Petitioner's memberships are qualifying.

The Petitioner also claims eligibility under this criterion based on his honorary membership in the Leo Club of Anarmani, the youth organization of the Lions Club of Nepal. The Petitioner submitted documentation regarding the membership requirements and membership tiers of the Lions Club; however, we note that such documentation expressly states that honorary members, unlike regular members, are not actual members of the Lions Club. Moreover, regular membership requires payment of an entrance fee and is open to any person desiring to be a member who pays the prescribed fee. Therefore, outstanding achievements, as judged by recognized national or international experts, are not requirements for membership with the Lions Club.

For the first time on appeal, the Petitioner asserts that his membership as a climbing instructor with [redacted] and his life membership with US Nepal Climbers Association, Inc. satisfies this criterion. While a letter from [redacted] states that membership requires certain achievements, such as technical proficiency in climbing as well as evidence of recent climbs, the letter does not provide sufficient information regarding its membership criteria, nor does it demonstrate that such requirements are comparable to the regulatory requirement of outstanding achievements. The Petitioner also failed to provide evidence that admittance to this organization as a climbing instructor is determined by nationally or internationally recognized experts in the field.

Similarly, a letter from the president and general secretary of US Nepal Climbers Association, Inc. indicates that life membership in the organization is awarded to candidates who have ascended Mount Everest and have at least seven years of mountain guide experience, among other criteria. While we acknowledge that the Petitioner was granted life membership in this association based on his personal accomplishments in the field of mountain climbing, he did not provide any evidence of the membership requirements of this association, and whether membership is judged by recognized national or international experts in their disciplines or fields pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

The record does not contain sufficient documentary evidence to demonstrate the membership eligibility requirements for the claimed organizations, how members are selected, and that the Petitioner's membership in these organizations was based on being judged by recognized national or international experts as having outstanding achievements in the field of mountain climbing. Therefore, this criterion has not been met.

*Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1). For example, a petitioner may show that the

contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance.

While the Director acknowledged the Petitioner's documentation in support of eligibility under this criterion, including testimonial letters and supplemental evidence consisting of certificates of completion and awards/acknowledgements of various personal achievements, the Director concluded that the Petitioner had not provided evidence demonstrating that he had made original contributions of major significance relevant to mountain climbing. On appeal, the Petitioner emphasizes that his "involvement in scouting communities and other associations inspires the youth in mountaineering and can greatly benefit the United States." He points to his accomplishments in the field as represented by various awards and recognition he received, as well as various letters of support from others in the industry as evidence of the impact of his contributions. He submits new evidence in support of this assertion, including additional documentation pertaining to awards received as well as additional letters in support of this criterion, such as a letter of appreciation from [redacted]

The letters submitted in support of this criterion praise the Petitioner for his talents and experience.<sup>1</sup> For example, a letter from [redacted] marketing director of [redacted] verifies the Petitioner's service as keynote speaker for the organization's [redacted] fundraiser. A letter from the secretariat/rover leader of [redacted] praises the Petitioner's commitment to safety and technical proficiency in the field, whereas an additional letter from a rover leader of [redacted] similarly expresses gratitude for the Petitioner's exceptional service. Although the letters praise the Petitioner for his skills, they do not explain what specific contributions the Petitioner has made, or how they are "of major significance in the field." The letters primarily contain attestations of the Petitioner's status in the field without providing specific examples of contributions that rise to a level consistent with major significance. Letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff'd in part*, 596 F.3d at 1115. The letters also describe specific events and accomplishments from the Petitioner's experience, but do not establish that the Petitioner's personal accomplishments and experiences have risen to a level of constituting original contributions of major significance to the overall field. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in her field as a whole).

The testimonial evidence in the record, as well as his awards and published materials about him, demonstrate that the Petitioner received recognition for his accomplishments in mountain climbing. However, this evidence does not contain specific, detailed information explaining how his contributions have been both original and of major significance in the field. While we recognize the personal accomplishments he has achieved in ascending Mt. Everest and other peaks, the Petitioner has not demonstrated that his contributions rise to a level of major significance in the overall field. Having a diverse skill set is not a contribution of major significance in-and-of-itself. Rather, the record must be supported by evidence that the Petitioner has already used those unique skills to impact the field at a significant level.

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<sup>1</sup> Although we discuss a sampling of letters, we have reviewed and considered each one.

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance to the field.

#### B. Summary and Reserved Issues

The record does not establish that the Petitioner meets the three evidentiary criteria discussed above. As such, the Petitioner has not met the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the one remaining criteria at 8 C.F.R. § 204.5(h)(3)(i) cannot change the outcome of the appeal.

Moreover, since the identified basis for denial is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's arguments regarding how his entry into the United States will substantially benefit prospectively the United States. Therefore, we reserve and will not address this remaining issues. *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *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).

### 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. 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. USCIS 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 his 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.