



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

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

In Re: 34070519

Date: NOV. 25, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a long-distance runner, 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 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)(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, a long-distance runner, intends to continue her activities in the field of athletics in the United States.

A. Evidentiary Criteria

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). Although the Petitioner claimed to meet the plain language requirements of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3) related to lesser awards (i), memberships (ii), published materials (iii), and original contributions of major significance (v), the Director determined that she satisfied none of them. On appeal, the Petitioner maintains eligibility for these four criteria and asserts that the Director’s decision was erroneous.

Upon de novo review, we agree with the Director’s determination 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).

Documentation of the [noncitizen’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).

To fulfill this criterion, the Petitioner must demonstrate that she received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was “excellence in the field” include but are not limited to the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize

recipients, as well as any limitations on competitors. *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policymanual>.

The Director found that the Petitioner did not satisfy this criterion. However, we find sufficient documentary evidence to establish that the Petitioner received nationally and internationally recognized prizes or awards for excellence in the field of running, and the Director's determination on this issue will be withdrawn. The Petitioner provided evidence of her first-place finishes in the 2012 [redacted] Marathon and the 2013 [redacted] Marathon and her second-place finishes in the 2018 [redacted] Marathon and 2014 [redacted] Marathon, among other events. She provided evidence of race results confirming her top placement among large fields of competitors at these events, as well as media coverage of the events and her victories. In light of the above, the Petitioner has established that she meets 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).

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, *supra*, at F.2(B)(1). 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.*

Here, the Petitioner claims that she meets this criterion because she represented her country in numerous competitions as a member of the [redacted] national team.

We acknowledge that membership on a national team may, depending on the evidence presented in an individual case, be sufficient to satisfy this criterion. While an athletic team is not, strictly speaking, an "association," it is nonetheless equally true that an athlete can earn a place on a major national or an Olympic team only through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's membership on an Olympic team or a major national team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. *See id.* (stating that election to a national all-star or Olympic team might serve as comparable evidence for evidence of membership in 8 C.F.R. § 204.5(h)(3)(ii)). It is the Petitioner's burden, however, to demonstrate that she meets every element of a given criterion. We will not assume that every "national team" is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines. Upon review of the evidence submitted, we conclude that the Petitioner has not established her eligibility under this criterion.

In denying the petition, the Director acknowledged the Petitioner's assertion that she represented [redacted] in numerous competitions, but determined that she had not presented evidence regarding her selection to the national team, the requirements for her selection, or the qualifications of those who selected her to compete. On appeal, the Petitioner submits additional documentation in the form of news articles and abstracts in support of her assertion that she satisfies this criterion.

The Petitioner submits documentation from www.worldathletics.org regarding the “Qualification System and Entry Standards” for the “World Athletic Championships Budapest 23” dated August 2022. While this document outlines the minimum entry requirements for participation in this competition, it does not mention the Petitioner, nor does it pertain to the Petitioner’s claimed membership on the [redacted] national team.

The Petitioner also submitted two news articles in support of her eligibility under this criterion. The first, an article entitled “What is a Good Marathon Time?” published at www.asics.com, generally discusses the world records and elite times for men and women participating in marathons but does not pertain to the membership requirements of the [redacted] national team. The second article, entitled “[redacted] for IAAF World Athletics Championships Doha 2019” from www.worldathletics.org, identifies its selections for that particular team. Although it notes that several selectees are “world leaders” and “world record holders,” the Petitioner is not identified as a member of this 2019 team, nor does it outline the criteria for selection to the [redacted] national team.

Finally, the Petitioner submits a 2012 abstract entitled “[redacted] distance runners: what makes them so good?” published at pubmed.ncbi.nlm.nih.gov. The abstract, however, discusses the links between genotype characteristics and elite running performance, and does not address the Petitioner’s claimed membership on the [redacted] national team or the manner in which such team members are selected.

Here, the Petitioner has not documented her membership on the [redacted] national team. Although the record contains the Petitioner’s race results for various competitions which denote her country as [redacted] there is no documentation establishing that she was in fact a member of the country’s national team at the time she participated in those events. The Petitioner must support her assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76.

Moreover, the Petitioner does not provide supporting evidence showing that membership on this team required outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Although many athletes who are members of a national team may qualify under this criterion, they must submit sufficient evidence of the selection process to establish that outstanding achievements are required (e.g., meeting a certain cutoff time or score, or advancing through qualification rounds). While the submissions on appeal provide general information regarding elite running times and information regarding the eligibility requirements for entry into various events, this documentation provides no insight on the selection process for the [redacted] national team. Although an athlete’s membership on a major national team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process, it is the Petitioner’s burden to demonstrate that she meets every element of a given criterion, including that she is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts.

Here, the Petitioner has not demonstrated her membership in associations requiring outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts. Therefore, this criterion has not been met.

Evidence of the [noncitizen'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), the Petitioner must establish that not only has she 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.

The Petitioner asserted that she satisfied this criterion based on her rankings and performance statistics in long-distance races. She specifically highlights that she broke course records at the [redacted] [redacted] Marathon in China in 2012 and the [redacted] Marathon in 2013 in addition to winning more than 10 prestigious international competitions in long-distance running. The Petitioner also submitted a letter from [redacted] a professional race director, who attests to the Petitioner's skills and abilities.

In denying the petition, the Director determined that the Petitioner had not demonstrated that her contributions were original or of major significance to the field. On appeal, the Petitioner maintains that her multiple course records at major marathons constitute original contributions of major significance.

Upon review, we concur with the Director's determination. Here, the Petitioner has not explained how winning or placing highly in a given race amounts to an original contribution of major significance in the field. Neither the Petitioner nor Mr. [redacted] explain why, for instance, breaking course records at the [redacted] Marathon in China in 2012 and the [redacted] Marathon in 2013 are original athletic contributions of major significance in the field. Winning nationally or internationally significant races satisfies a separate criterion relating to prizes and awards. The existence of two separate criteria (one for prizes, one for contributions) demonstrates that neither implies the other. An athlete may, of course, win a prize or award as a result of an athletic contribution of major significance, but the burden is on the Petitioner to show that is the case. Here, the submitted evidence fails to demonstrate how the Petitioner's competitive results equate to "original" athletic contributions or how her specific achievements were majorly significant in the field of long-distance running.

The letter from Mr. [redacted] recounted the Petitioner's achievements in the field of long-distance running and stated that "an athlete of [the Petitioner's] caliber is quite rare." Although Mr. [redacted] generally praises the Petitioner's running abilities, he does not explain how her achievements in the field are original or how their impact has reached a level of major significance in the field. His letter, therefore, does not demonstrate that the Petitioner's work constitutes contributions of "major significance" in the field. USCIS may, in its discretion, use advisory opinions and statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). USCIS is ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought. *Id.* The submission of reference letters is not presumptive evidence of eligibility; USCIS may, as we have in this case, evaluate the contents of letters as to whether they support the individual's eligibility. *See id.* at 795-96.

The record does not contain evidence demonstrating that the Petitioner's racing wins and course records have impacted the field of running in a way that could be characterized as having major significance. For the reasons discussed above, the Petitioner has not shown that she has made original contributions of major significance to the field.

B. Reserved Issue

Although the Petitioner also claims to satisfy one additional criterion related to published materials, we need not reach that issue. We reserve it as she cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). *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 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).

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.