



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

(b)(6)

DATE: APR 30 2013

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

PETITIONER: [REDACTED]  
BENEFICIARY: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition on December 6, 2012. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on January 7, 2013. The appeal will be sustained and the petition will be approved.

According to parts 2 and 5 of the petition, filed on May 24, 2012, the petitioner seeks classification as an alien of extraordinary ability in athletics, as a professional water skier, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability in athletics. The AAO disagrees.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the beneficiary's "sustained national or international acclaim" and present "extensive documentation" of the beneficiary's achievements. See section § 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel files a 17-page brief, dated January 2, 2013, and additional supporting documents. Counsel asserts that the petitioner meets the nationally or internationally recognized prizes or awards criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), the membership in associations that require outstanding achievements criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the participation as a judge of the work of others criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the leading or critical role for organizations or establishments criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

For the reasons discussed below, the petitioner has established her eligibility for the exclusive classification sought.

## I. THE LAW

Section 203(b) of the Act states, in pertinent part, that:

1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. – An alien is described in this subparagraph 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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, internationally recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of the evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Kazarian*, 596 F.3d at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the petitioner has met at least three of the

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and (vi).

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ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), and in the final merits determination, the petitioner has shown that she is one of a small percentage who have risen to the very top of the field and that she has sustained national or international acclaim. See Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

## II. ANALYSIS

### A. Evidentiary Criteria

Based on the evidence in the record, the AAO affirms the director's findings that the petitioner meets the nationally or internationally recognized prizes or awards criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), and the participation as a judge of the work of others criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

In addition, the petitioner has shown that she meets the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Specifically, the record contains: (1) a March 2012 article in [REDACTED] entitled "[REDACTED]" in which the petitioner discussed her participation in waterskiing; (2) an October 6, 2008 article in [REDACTED] entitled "[The Petitioner] [REDACTED]" which discusses the petitioner's injuries and competition results; and (3) a July 28, 2009 article in [REDACTED] entitled "[The Petitioner] [REDACTED]" which discusses the petitioner's competition accomplishments in the [REDACTED]. On appeal, counsel has submitted evidence showing that [REDACTED] constitutes a professional publication. [REDACTED] and [REDACTED] constitute [REDACTED] national newspapers and major media in [REDACTED]. Accordingly, the petitioner has met this criterion.

### B. Final Merits Determination

Based on the evidence in the record, the petitioner has submitted the requisite evidence under at least three evidentiary categories. See 8 C.F.R. § 204.5(h)(3)(i)-(x). In accordance with the *Kazarian* opinion, the AAO will conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that [she] is one of [a] small percentage who have risen to the very top of the field of endeavor," and (2) that she "has sustained national or international acclaim and that [ ] her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. §§ 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.

Based on the evidence in the record and consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), the petitioner has made the requisite showing. Specifically, [REDACTED] President of the [REDACTED], stated in his December 20, 2012 letter, "[i]n the sport of waterski, one[']s biggest achievement is the breaking of records. Just like a sprinter who breaks a record by setting a new time; a water skier sets records by running more buoys in slalom, or tricking more points than ever before in tricks, or jumping a further distance than ever before in jump. [The petitioner] has set all of these records in her nation. She has broken every Open (no age

category) record in [REDACTED] and has had enormous impact on the water skiing community by doing so.” [REDACTED] Executive Director of [REDACTED] stated in his December 21, 2011 letter, the petitioner “is recognized as the National Champion of [REDACTED] in the sport of classical water skiing. She is ranked within the top [REDACTED] and ranked within the top [REDACTED]. The evidence further shows that the petitioner was the overall winner of three water skiing events at the [REDACTED] held in [REDACTED]. According to [REDACTED], President of [REDACTED] the “[REDACTED] are nearly as important as [the] Olympic Games.” [REDACTED] and [REDACTED] confirms not only that the petitioner has performed as a judge of the work of others, but that she is one of [REDACTED] judges out of [REDACTED] countries who “is entitled to judge at the very highest level, including all [REDACTED].”

Accordingly, the petitioner has shown that she is one of the small percentage who are at the very top of the field and has demonstrated her sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of his or her field of endeavor.

In review, while not all of the petitioner’s evidence carries the weight imputed to it by counsel, the petitioner has submitted evidence qualifying under three of the evidentiary criteria and established a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor” and “sustained national or international acclaim.” The petitioner’s achievements have been recognized in her field of expertise. The petitioner has established that she seeks to continue working in the same field in the United States. The petitioner has established that her entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has established eligibility for the benefit sought under section 203 of the Act.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act; 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The decision of the director is withdrawn. The appeal is sustained and the petition is approved.