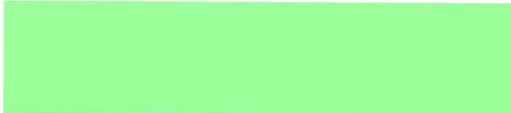


(b)(6)

U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



Date: **DEC 12 2013**

Office: TEXAS SERVICE CENTER FILE: 

IN RE:

Petitioner:
Beneficiary:



APPLICATION: 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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the petition will be approved.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, as a professional wrestler, 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. See section 203(b)(1)(A)(i) of the Act and 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) through (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 asserts that the director erred by failing to consider all evidence submitted in support of the petition and therefore, the record should be remanded for further consideration. Specifically, counsel asserts that the director failed to consider the supplemental evidence submitted in response to the director’s Request for Evidence (RFE) relating to the petitioner’s salary. Counsel also notes that the director’s final decision did not consider the submitted evidence relating to lesser nationally or internationally recognized awards.

I. 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. *Id.*; 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, international 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 (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 evidence submitted to meet a given evidentiary criterion.¹ 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.” *Id.* 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).” *Id.* 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 matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ 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 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria

The director concluded that the petitioner submitted evidence of published material and leading or critical roles pursuant to 8 C.F.R. §§ 204.5(h)(3)(iii), (viii). The record supports these determinations. Thus, if the petitioner satisfies a third criterion, a final merits determination is required.

Documentation of the alien'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).

The record reveals that the petitioner submitted evidence relating to this criterion in response to the director's RFE. Specifically, counsel discussed this criterion on pages 7 through 10 of the RFE response and the petitioner submitted 10 exhibits relating to this criterion. The director, however, did not address this criterion or acknowledge the exhibits the petitioner submitted. Consequently, on appeal, petitioner requests that the record be remanded to enable the director to make a determination on the evidence of record. In light of the AAO's *de novo* review, the AAO shall consider the evidence of prizes and awards the petitioner submitted along with the RFE response. *See Dor v. INS*, 891 F.2d 997, 1002 n.9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petitioner submitted documents related to the following as evidence of lesser nationally or internationally recognized prizes or awards: the [REDACTED] in the [REDACTED] the [REDACTED] the [REDACTED] in [REDACTED]; and various other titles and championships. The evidence of record indicates that the [REDACTED] and the [REDACTED] are lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Biographical articles and general interest articles about the petitioner's wrestling persona, [REDACTED] associate both titles with him. Published material in major media frequently refers to [REDACTED] as the [REDACTED]. In addition, the letter of support that [REDACTED] President of the [REDACTED] writes on behalf of the petitioner specifically observes that the petitioner's rise to prominence occurred in 1997 when he won the [REDACTED]. The record establishes that at least two of the awards that the petitioner requested the director to consider under this criterion are nationally recognized prizes of awards in the field of professional wrestling.

Consequently, the petitioner satisfies the plain language requirements under 8 C.F.R. § 204.5(h)(3)(i).

B. Final Merits Determination

The petitioner has submitted relevant, probative evidence to satisfy the regulatory requirement of three types of evidence. Because the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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 the individual is one of that small percentage who

have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20.

The petitioner is a professional wrestler who is a well-known figure in the [REDACTED] system, a fixture in Mexican culture. While the petitioner won one of his qualifying titles at a “junior” level competition, he went on to win a nationally recognized title above that level. The petitioner’s prominence in the [REDACTED] circuit is well-documented by major sporting and print media. The petitioner’s wrestling persona, [REDACTED], has made appearances on television, multiple movies, as a cartoon character on a cartoon show, and in graphic novels. The [REDACTED] wrestling persona is the spokesperson for multiple products and the [REDACTED] specifically developed a [REDACTED] bearing the [REDACTED] on its packaging. The [REDACTED] persona also has headlined multiple fights in a number of countries including Mexico, Canada, and the United States.

While not all of the petitioner’s evidence carries the weight imputed to it by counsel, consistent with *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm’r. 1994), the AAO finds the evidence of record sufficient to establish that the petitioner has demonstrated his eligibility for the classification sought. Specifically, upon careful review of the record, it is concluded that the petitioner has demonstrated by a preponderance of the evidence that he is within the small percentage of individuals who have risen to the very top of the field of fashion. The evidence submitted indicates that the petitioner has sustained national or international acclaim and that his achievements have been recognized by the wrestling industry. As a result, the petitioner qualifies as an alien of extraordinary ability.

III. CONCLUSION

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

The petitioner has established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may be approved.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has sustained that burden.

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