



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **AUG 26 2014** Office: NEBRASKA 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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition on February 4, 2014. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on March 4, 2014. The appeal will be dismissed.

According to the petition and the initial filing, the petitioner seeks classification as an alien of extraordinary ability in athletics, as a chess player, 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 did not establish 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; 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien, as initial evidence, can present 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, the petitioner files a brief and additional supporting documents. The petitioner asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii) and (viii). For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. See 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

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.

United States 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 under the regulations 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 our decision to deny the petition, the court took issue with our evaluation of the 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." *Kazarian*, 596 F.3d at 1121-22.

The court stated that our 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 evidence in the record supports the director's finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the

¹ Specifically, the court stated that we 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).

very top in the field of endeavor, or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), as initial evidence, the petitioner may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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 director concluded that the petitioner meets this criterion. The evidence shows that in 2008, the petitioner won the [REDACTED]. The evidence also shows that in 2012, the petitioner won [REDACTED] a tournament organized by the [REDACTED]. The evidence in the record, including the petitioner's [REDACTED] and his national, regional and world rankings, supports the director's conclusion that the petitioner's awards at various competitions are qualifying. Accordingly, the petitioner has submitted documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(i).

Documentation of the alien'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 asserts that he meets this criterion because he is a [REDACTED]. The petitioner's attainment of this title has probative value in this proceeding, and we have considered his title above as evidence relating to the qualifying nature of the petitioner's awards. At issue, however, is whether it also constitutes qualifying evidence under this criterion.

The petitioner asserts that he received the [REDACTED] 'after submitting a title application based on norms with a sufficient number of games per [REDACTED]' and that '[REDACTED]' states that [REDACTED] can [] be gained by achieving norms in internationally rated tournaments played according to [REDACTED]'. He further asserts that his title application was approved by "members on the Qualifications Committee

² The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

and the Chairperson,” who are of “national and international reputation.” The petitioner has not shown he meets this criterion.

First, as supporting evidence the petitioner submits an online copy of the [REDACTED] Effective from 1 July 2013.” As the petitioner became [REDACTED], the petitioner has not shown that the submitted Regulations applied to his title application. Indeed, the submitted Regulations indicate that there have been amendments between 1984 and 2012. Regardless, the 2013 Regulations provide that the [REDACTED] could be awarded either through “Title norm,” which is “a title performance fulfilling [certain] requirements,” or “Direct title (automatic title),” which is “a title gained by achieving a certain place or results in a tournament.” The regulations further provide that for the [REDACTED] “to achieve a norm, a player must perform at a . . . Minimum level prior to rounding [REDACTED]

[REDACTED] The petitioner has not shown that these requirements, which amount to a player’s competitive results, constitute “outstanding achievements . . . as judged by recognized national or international experts.”

The 2013 Regulations also provide that “[t]hese titles *shall* be awarded by the General Assembly on recommendation by the QC [Qualification Commission] that the candidate meets the requirements. The Presidential Board or Executive Board may award titles in clear cases only, after consultation with the QC.” (Emphasis added.) This information is insufficient to show that “recognized national or international experts” have *judged* a [REDACTED] applicant’s achievements. Rather, this indicates that the QC, and the Presidential Board or Executive Board, which may include chess experts, must confirm the applicant’s competition results before granting him the [REDACTED] Confirmation of one’s competition results is not judging the applicant’s achievements.

Second, the petitioner has not provided sufficient evidence showing that the [REDACTED] is a membership in an association, especially as [REDACTED] is an association that admits members. The [REDACTED] includes a chapter on how an individual becomes a [REDACTED] member and it does not suggest that someone with a [REDACTED] is also considered a [REDACTED] member. According to the Handbook, individual [REDACTED] members are:

- a. Honorary members and Honorary Presidents of [REDACTED] who are nominated as such because of their special contribution to world-wide chess.
- b. Life members and Friends of [REDACTED] are persons who have made a financial contribution to [REDACTED] as then decided by the General Assembly.

The General Assembly decides on individual members. Individual members have a right to attend the Annual Congress as observers but with no voting rights.

Only former Presidents of [REDACTED] can be nominated as Honorary Presidents. Only one Honorary President may serve on the Presidential Board at any time. When a new

Honorary President is named by the General Assembly, the previous holder will retain the title but no longer serve on the Presidential Board.³

Third, even if the petitioner had demonstrated that he is a [REDACTED] member or that his [REDACTED] is a qualifying membership, and he has not, he has not shown that he is a member of a second qualifying association. The plain language of the criterion requires evidence of membership in associations, in the plural, which require outstanding achievements of their members. See 8 C.F.R. § 204.5(h)(3)(ii). This is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. The record lacks evidence that the petitioner is a member of a second qualifying association.

Finally, although the petitioner has presented evidence of his involvement with other chess organizations, on appeal, he has not specifically asserted that his involvement meets this criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States Att’y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal).

Accordingly, the petitioner has not submitted documentation of his 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. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner asserts that he meets this criterion based on articles published in [REDACTED], an official publication of [REDACTED] and on [REDACTED]’s website. The evidence in the record does not establish that the petitioner meets this criterion.

First, while the petitioner submitted evidence that [REDACTED] is the highest circulation chess magazine in the world, the articles in that publication are not about the petitioner. While the petitioner asserts on appeal that the articles relate to the petitioner’s work, the regulation requires that the material be “about the alien . . . relating to the alien’s work,” and not simply that the material relate to his work. The article “[REDACTED]” references the petitioner and includes the petitioner’s team coach [REDACTED]’s annotation of the petitioner’s

³ [REDACTED] Handbook,” Chapter 2 - Membership, Section B - Organisations and Individuals, Subsection 2.9, available at [http://www.\[REDACTED\]](http://www.[REDACTED]), accessed on August 12, 2014 and incorporated into the record of proceeding.

game against another chess player. The article also references other chess players and discusses their participation in the [REDACTED] competition. The petitioner has not shown that the article is about him, as required by the plain language of the criterion. Rather, as its title suggests, this article is about the [REDACTED] competition, in which the petitioner participated. *See generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Second, the petitioner has provided an online printout listing [REDACTED] articles, published on [REDACTED] website, that mention the petitioner's name. The petitioner has not shown that by referencing his name, these articles are about him. Rather, as most of their titles suggest, the articles are about competitions in which the petitioner participated. Indeed, [REDACTED] mentions the petitioner's name once, stating that he will lead a team from [REDACTED] competition. [REDACTED] mentions the petitioner's name once, stating that he won the [REDACTED] [REDACTED] mentions the petitioner's name twice, stating that he finished the competition in fifth place. [REDACTED] published a photograph of the petitioner under its section [REDACTED]. The petitioner and a fellow chess player provided annotation of a chess game at the [REDACTED]. The petitioner has not shown that [REDACTED] has published any article about him. Rather, it has published articles about competitions that the petitioner has entered and references the petitioner as one of the competitors.

Third, the petitioner has not established that material published on [REDACTED] website constitutes material published in a professional or major trade publication or other major media. On appeal, the petitioner asserts that "the [REDACTED] online website is a major trade publication of media in the field of Chess." Unlike [REDACTED] the petitioner has not submitted any information relating to [REDACTED] having an official publication. The petitioner has not shown that a website for an organization constitutes a major trade publication. In addition, the petitioner has not shown that the published material is about him as relating to his work. [REDACTED], published on [REDACTED], provides details about the competition and mentions the petitioner's name once, stating that he won the competition. The petitioner has not shown that the published material is about him. Rather, it is about a competition in which the petitioner came in first place. Moreover, although the petitioner has submitted a list of published material on [REDACTED] that mentions the petitioner's name, the petitioner has not submitted the actual published material. As such, the petitioner has not submitted the required primary evidence of these articles pursuant to the regulation at 8 C.F.R. § 103.2(b)(2) and established that the published material is about the petitioner as relating to his work in the field, as required by the plain language of the criterion.

Finally, the record includes articles published online, including those published on [REDACTED]. On appeal, the petitioner has not specifically asserted that these online materials meet this criterion. As such, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the petitioner has not presented published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

The petitioner asserts that he meets this criterion through “his leading and critical role as a member of the [redacted].” The evidence shows that the team coach Ms. [redacted] of the [redacted] recruited the petitioner to join her chess team, which was located at [redacted] at the time. The [redacted] team won the [redacted]

and the [redacted]. According to the letter from Ms. [redacted] she relocated [redacted] and the petitioner “decided to move with us.” In her letter, Ms. [redacted] confirms that the petitioner was a member of a single chess team, which moved with her from [redacted].

The April 3, 2012 article ‘ [redacted] posted on [redacted] website and which the petitioner submitted, confirms that Ms. [redacted] moved [redacted] from [redacted] to [redacted].⁴ The [redacted] team went on to win the [redacted]

The evidence shows that the petitioner has performed a critical role for the team that has won the [redacted]. According to the article ‘ [redacted] published on [redacted] at the [redacted] competition, the petitioner “[f]ought it out” even though his position was not favorable, because he knew that the chess team could only defend its title as the [redacted] if his game resulted in a win or draw. According to Ms. [redacted] March 12, 2013 letter, the petitioner’s “strong performance helped [the team] win the [redacted] and the [redacted].” Similarly, [redacted] President of [redacted] states in her April 12, 2013 letter that the petitioner’s victory at the [redacted] led to the team’s qualification for the [redacted] competition and the team winning the [redacted]

Although the petitioner’s involvement with the number one collegiate chess team constitutes his performance of a critical role for an organization or establishment that has a distinguished reputation, the evidence does not show that the petitioner has performed either a leading or a critical

⁴ See also [redacted] April 5, 2012, available at [http://\[redacted\]](http://[redacted]) accessed on August 12, 2014, and incorporated into the record of proceeding; [redacted] February 14, 2013, available [redacted] accessed on August 12, 2014, and incorporated into the record of proceeding.

role for a second qualifying organization or establishment. The plain language of the criterion requires evidence of the petitioner performing a leading or critical role for organizations and establishments, in the plural, that have a distinguished reputation. This is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. While the petitioner's involvement in the number one collegiate chess team constitutes an example of his critical role for a qualifying organization, the record lacks evidence of him performing a similar role in a second qualifying organization or establishment.

The petitioner has not provided sufficient evidence showing that he has performed a leading or critical role for either the [REDACTED]. Rather, the evidence shows that he was involved in a collegiate chess team, coached by Ms. [REDACTED] and associated with [REDACTED] which relocated from [REDACTED]. Indeed, the appellate brief states that the petitioner "has been a member of the number one [REDACTED]. The evidence, thus, is insufficient to show he has performed either a leading or critical role for at least two qualifying organizations or establishments.

Accordingly, the petitioner has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

B. Summary

The petitioner has failed to submit sufficient relevant, probative evidence to satisfy the regulatory requirement of three types of evidence.

Moreover, the petitioner's acquisition of [REDACTED] is akin to an athlete performing at the major league level, which USCIS has long held does not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (citing 56 Fed. Reg. at 60899). In *Racine v. INS*, No. 94 C 2548, 1995 WL 153319 at *1, *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[I]t is true that there are probably hundreds of thousands of hockey players in various levels of play at the amateur, collegiate, and professional level of play throughout the world, there are only 24 teams in the National Hockey League [NHL]. Each team maintains a regular season roster of 24 players for a total of 576 hockey players in the NHL. [The petitioner] contends that this factor alone demonstrates that he has risen to that small percentage at the very top of his field. Certainly, if one were to look at the number of players in the NHL in comparison with the number of players at various lower levels of play, it is reasonable to assert that the mere fact of being chosen to play in the NHL is sufficient to separate an NHL hockey player from the myriad of other players in the sport internationally. Yet, the plain reading of the statute suggests that the appropriate field of comparison is not a comparison of [the

petitioner's] ability with that of all of the hockey players at all levels of play; but rather, [the petitioner's] ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354 (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

The court's reasoning supports our conclusion that the petitioner's grandmaster title is insufficient to show he is an alien of extraordinary ability in chess.

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 the field of endeavor.

Had 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 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. We conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim. *Compare Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994) (affirming the approval of golfer with an all-around ranking of 10th on the PGA Tour and rankings of 26th and 7th in earnings for two PGA Tours in which over 600 professionals competed). *See also Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012) (upholding a final merits determination that a table tennis player with a world rank of 284 was not within the small percentage at the very top of the field).⁵ Nevertheless, we need not further explain that conclusion in a final merits determination.⁶ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

⁵ According to [REDACTED], the petitioner submitted on appeal, the petitioner's world rank among active chess players is [REDACTED].

⁶ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

(b)(6)

NON-PRECEDENT DECISION

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The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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, that burden has not been met.

ORDER: The appeal is dismissed.