



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 24 2015**

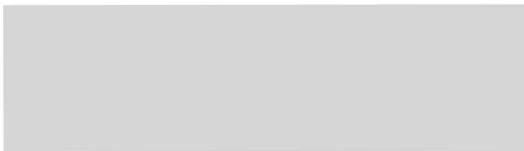
FILE #: [REDACTED]

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner seeks classification as an “alien of extraordinary ability” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes 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 determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a statement. The petitioner’s main assertion is that the director erred in raising concerns in the denial that he did not raise in the request for evidence (RFE).¹ The petitioner does not, however, provide the evidence or assertions she would have offered in rebuttal to the RFE had it included the concerns the director raised in the final decision. We will consider all of the evidence of record below.

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.

¹ Where the initial evidence does not establish eligibility, USCIS may deny the petition without first issuing an RFE. 8 C.F.R § 103.2(b)(8)(iii).

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) sets forth a multi-part analysis. First, a petitioner can demonstrate the petitioner’s sustained acclaim and the recognition of the petitioner’s achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Evidentiary Criteria²

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the petitioner is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event

² We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided several foreign language prize or award certificates, a [REDACTED] finish at American Open [REDACTED] a [REDACTED] finish at the North American Open [REDACTED], and a [REDACTED] the finish at the [REDACTED] International Chess Festival in [REDACTED]. The director determined that the petitioner did not meet the requirements of this criterion. For the reasons outlined below, a review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of this criterion.

The petitioner provided the United States Chess Federation (USCF) national rankings that indicate she attained a national level ranking of [REDACTED], and [REDACTED]. Further, the July 16, 2014 letter from [REDACTED] President of USCF, indicates that a players' national level ranking "is based wholly on a player's performance in tournaments and games." These notable rankings reflect on the nature of the petitioner's finishes at various events such that she has established that her results at these events constitute nationally or internationally recognized awards.

As a result, the petitioner has submitted evidence that meets the plain language requirements of this criterion.

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.

This criterion contains multiple evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner's work in the field under which she seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided multiple articles in a foreign language, and one article from the website, chesspalace.com. The director determined that the petitioner did not meet the requirements of this criterion.

The petitioner provided three foreign language articles, that each appeared in the [REDACTED]. Such evidence must comply with the regulation at 8 C.F.R. § 103.2(b)(3), which states:

Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

The petitioner provided a single document dated November 6, 2013 that certifies the translator is fluent in both the English and Chinese languages, and that he translated the attached documents. However, this certification does not list the translations it is certifying. A blanket certification that does not identify the translations it is certifying, or name the petitioner, is not probative evidence that the certification relates to all of the translations in this record of proceeding. Accordingly, the foreign language documents within the record are not probative. The director notified the petitioner of deficiencies relating to the translations within the RFE, but the petitioner did not provide new, certified translations.

Regardless, the article titled "[REDACTED]" is not about the petitioner and does not discuss her or her work in the field. The article is about a chess competition in the state of California. Although the article titled "[REDACTED]" mentions the petitioner, it is not about her, relating to her work in the field as required by the regulation. The article discusses the petitioner as the coach of a chess club, rather than as a chess competitor.

The published material that is about the petitioner, relating to her work in the field, is titled "[REDACTED]" In reference to this article appearing in a form of major media, the petitioner submitted the "About Us" page from the [REDACTED] website. The website indicates the newspaper "is published in [REDACTED] and [REDACTED] and distributed throughout North America." The petitioner has not established the circulation data of the [REDACTED] to compare with the circulation statistics of other United States newspapers. *See Noroozi v. Napolitano*, 905 F.Supp.2d 535, 545 (S.D.N.Y. 2012). That the website asserts the newspaper is distributed throughout North America is not sufficient to demonstrate this publication has a reach consistent with major media. Additionally, the petitioner has not established this publication is a professional or major trade publication in the alternative.

The petitioner also submitted an article titled, "[REDACTED]" from the website [REDACTED]. The article is about the petitioner and discusses her work as a chess competitor. The petitioner provided the "About Us" page from the website explaining that the site is a "club, store and school." This information does not demonstrate the reach or influence of the website. While Internet sites are accessible nationally and even internationally, we will not presume that every Internet site has significant national or international viewership. The act of posting an article online does not necessarily constitute publication in major media. The materials relating to chesspalace.com address the objectives of the association, and do not indicate that this website routinely attracts national or international attention.

On appeal, the petitioner submits no additional evidence. For the reasons discussed above, we affirm the director's findings. Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien'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.

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that she actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have involved judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The director determined that the petitioner did not meet the requirements of this criterion.

The petitioner provided a translation of a foreign language document titled, [REDACTED] [REDACTED] that is not accompanied by a sufficient certification as required by the regulation at 8 C.F.R. § 103.2(b)(3). Regardless, the petitioner did not submit documentary evidence describing her duties as a first grade referee. If the petitioner simply enforced the rules of a match and sportsmanlike competition, then her participation as a referee cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence that she judged the work of others, such as evidence that she awarded points or exercised her judgment in choosing the ultimate winner, evidence regarding officiating is insufficient to meet this criterion.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. The petitioner has the responsibility to demonstrate that she actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments have a distinguished reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion. The director determined that the petitioner did not meet the requirements of this criterion.

The petitioner's initial filing statement included a brief assertion that she satisfied this criterion. The director's RFE did not request additional evidence for, nor did it address this criterion. In response,

the petitioner noted the director's lack of discussion of this regulatory provision, again indicating that she "has claimed and provided supporting documentation" under this criterion, but did not identify the evidence that relates to that criterion. We will review the evidence of record.

The May 28, 2013, letter from [REDACTED] and member of the [REDACTED], indicates that the petitioner served as the captain for the [REDACTED]. In this role, Mr. [REDACTED] states that the petitioner had strong organizational and management skills and that she led the team in training and competition. However, the record does not contain evidence of the duties the petitioner performed as captain of this team, nor does it demonstrate that Mr. [REDACTED] is authorized to represent the [REDACTED]. *Cf.* 8 C.F.R. § 204.5(g)(1) (evidence of experience shall consist of letters from the employer). Additionally, Mr. [REDACTED] does not explain his firsthand knowledge of the petitioner's role for the [REDACTED].

The record contains an August 25, 2013, letter from [REDACTED] Director of the [REDACTED] who also served as the organizer of the Southern California [REDACTED] in [REDACTED]. Mr. [REDACTED] indicates that the petitioner served as the [REDACTED] tournament director. Mr. [REDACTED] confirms that the petitioner "worked very competently" and that having "a very strong chess player as a tournament director is critical at events as important as [REDACTED]" USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). We will not presume that the petitioner performed in a leading or a critical role for the tournament organizers from her title. Mr. [REDACTED] does not provide information pertaining to where the role of tournament director fits within the overall hierarchy of the organization or list the specific duties of the director. Mr. [REDACTED] also does not explain how the petitioner's role within the tournament was critical to the organization, or what her impact was on the tournament as its director. Mr. [REDACTED] subsequently discusses the petitioner's role performed for the [REDACTED]. However, neither Mr. [REDACTED] nor the petitioner has demonstrated that he is authorized to represent this organization and he does not indicate his firsthand knowledge of this role. *Cf.* 8 C.F.R. § 204.5(g)(1). The record includes a letter from [REDACTED] President of [REDACTED], who does not discuss the role the petitioner performed for the company beyond listing the successful players the petitioner has coached there.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

B. Comparable Evidence

The petitioner requested that her rankings be considered as comparable evidence to the prizes or awards criterion. The regulation at 8 C.F.R § 204.5(h)(4) allows the submission of comparable evidence where the regulatory criteria do not readily apply to the petitioner's occupation. First, the prizes or awards criterion does apply to the petitioner's occupation. Notably, we have concluded above that she meets it. Second, in reaching that conclusion, we considered the petitioner's rankings as indicative of the national or international recognition of the petitioner's prizes or awards.

Accordingly, we will not consider the petitioner's rankings as independently meeting a second criterion.

C. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her 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. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.³

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, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

³ 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).