



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

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

MATTER OF A-C-S-T-

DATE: MAY 31, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a tennis athlete and coach, seeks classification as an alien 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 record did not establish, as required, that the Petitioner has a major, internationally recognized award or met at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

On appeal, the Petitioner submits additional evidence and asserts that he satisfies four of the evidentiary criteria.

Upon *de novo* review, we will deny the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability 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.

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

sustained acclaim and the recognition of his or her 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 he or she must provide sufficient qualifying documentation that meets at least three of the ten categories 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).

Satisfaction of 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 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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (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”). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of 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.

II. ANALYSIS

The Petitioner is a tennis athlete and a coach. Since the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten evidentiary criteria under this classification. In his decision, the Director found that the Petitioner did not meet the requirements of the lesser awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the published material about the individual criterion at 8 C.F.R. § 204.5(h)(3)(iii), and the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner asserts that he satisfies all four of these criteria. For the reasons discussed below, the Petitioner has not established that he has met the requirements of at least three of the criteria.

A. Evidentiary Criteria

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 Petitioner submitted evidence that he was a member of the [REDACTED] men's tennis team, which won the [REDACTED] championship in 2011 and was the runner-up in 2012. In his decision, the Director determined that these team awards could not be considered to have been received by the Petitioner. Upon review, we find that, as a member of the six-person team which represented [REDACTED] in singles and doubles play

during both seasons and at the championship matches, these awards can be considered to have been received by the Petitioner. See *Muni v. INS*, 891 F.Supp. 440 (N.D. Ill. 1995).¹

The Director also found that the record did not include evidence of the national or international recognition of the awards he claimed to receive. On appeal, the Petitioner did not address this aspect of the criterion or submit additional evidence to support the national or international recognition of the [REDACTED] tennis championship. While the evidence establishes that the championship is a national-level event where teams from affiliated schools throughout the United States compete, it does not establish that the championship receives national or international recognition for tennis excellence. Evidence of recognition can take many forms, including media coverage at the national or international level. The record, which consists of photographs of the team and award plaques, a letter from [REDACTED] Director of Athletics, and an article dated [REDACTED] 2011, posted on [REDACTED] website, does not demonstrate that recognition of these awards went beyond the [REDACTED] to the broader field of tennis.

The Petitioner also bases his claim under this criterion on the awards won by tennis athletes that he has coached. The evidence includes two letters from the parents of tennis players he coached at the junior level, and one letter from a player currently competing at the collegiate level. All of these letters state that they trained with the Petitioner for a period of time, and that he helped them to improve certain aspects of their tennis play. The record also includes evidence that one of the tennis players trained by the Petitioner, [REDACTED] won the girls doubles titles at the 2017 [REDACTED] and [REDACTED]. However, the plain language of this regulatory criterion calls for the individual's receipt of nationally or internationally recognized prizes or awards, and unlike the team awards discussed above, awards received by the Petitioner's trainees as tennis players cannot be directly linked to the Petitioner's performance. The record does not include evidence of awards received by the Petitioner as a coach. Therefore, the evidence does not establish the Petitioner's qualification under this criterion.

Documentation of the aliens 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 record indicates that the Petitioner is a member of the [REDACTED] with an [REDACTED] certification, and received and maintained (through 2017) a tennis coaching certification from the [REDACTED]. Other tennis coaching certifications from the [REDACTED] and the [REDACTED] all reference the [REDACTED] certificate as their basis. The Director noted the membership requirements of these organizations in

¹ The Petitioner makes reference in his brief to Chapter 22.2 of the Adjudicator's Field Manual, but the language he refers to is no longer included in section (i)(1)(A).

the submitted evidence, and determined that none of them require outstanding achievements as judged by national or international tennis experts.

He also questioned the validity of the certificates, noting that they stated that they were valid in 2017. While the Petitioner correctly states that all of these certifications were valid at the time of filing, he does not directly address their membership requirements on appeal. The Petitioner references letters from [REDACTED] and [REDACTED] and asserts that they show that he is one of the “top professionals in the field of Tennis [*sic*]”, but does not point to specific membership requirements of these organizations which can be considered as outstanding achievements. Despite the Petitioner’s assertion, neither the number of certifications he holds nor the reference letters he has submitted support his qualification under 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. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submitted an article published in [REDACTED] which the record shows is a daily newspaper serving the Spanish city and province of [REDACTED]. In responding to the Director’s request for evidence, the Petitioner submitted a Wikipedia page about the city of [REDACTED] and information from a different website [REDACTED] showing that the newspaper’s website had between 1.5 million to 2 million visits per month. Although the Director determined that this article is not about the Petitioner and his work as a tennis coach, upon review we disagree. The article, titled [REDACTED] focuses on his career as a tennis player and his transition to coaching, and is accompanied by a photograph of the Petitioner and [REDACTED] appearing to observe tennis players.

However, the Director also determined that the evidence did not establish that [REDACTED] can be considered to be a professional or major trade publication or major media. On appeal, the Petitioner submits an email and attachment from the newspaper, showing [REDACTED] Analytics data of a similar type to that submitted in response to the Director’s RFE. The Petitioner also submitted data on the population of Spanish provinces, which is only partially translated and partially legible. Neither set of data provides sufficient information for us to determine that this newspaper can be considered to be major media. Without a basis for comparison to similar media, including newspapers serving the entire country of Spain, we cannot find that the Petitioner meets this criterion.

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)

² The Petitioner also submitted reports on tournaments, published on websites, that briefly mention him, but did not reference those articles in responding to the Director’s request or on appeal. They will therefore not be considered under this criterion.

In his decision, the Director stated that the [REDACTED] men's tennis team might qualify as an organization having a distinguished reputation. The record includes evidence that during the Petitioner's time on the team, it won one [REDACTED] championship and was the runner-up in the previous season, and had also competed in the championship in recent years.³ This evidence establishes that at the time, the team enjoyed a distinguished reputation.

However, the Director noted that the evidence verifying the Petitioner's status as an athlete on [REDACTED] mens' tennis team did not provide sufficient detail beyond stating that he played a crucial role and was a key contributor over the three seasons he was a member of the team. On appeal, the Petitioner again refers to the letter from [REDACTED] Director of Athletics, and asserts that this evidence alone satisfies this criterion. He also cites from a district court decision, *Noroozi v. Napolitano*, 905 F.Supp. 2d 535, 544 (S.D.N.Y. 2012) for its explanations of the terms "leading" and "critical." We agree with the definitions cited by the Petitioner, but that decision also found that in order to meet the requirements of this criterion, the evidence must include a sufficient amount of detail to allow us to conclude that an individual performed in a leading or critical role. *Id.* Regarding a leadership role with the team, [REDACTED] letter states only that the Petitioner "led the program to a national Top 25 ranking," without providing details as to any leadership position the Petitioner held with the team or an explanation of how he made leadership contributions in relation to his teammates. Similarly, [REDACTED] statement that the Petitioner played "a crucial role" on the 2011 [REDACTED] championship team does not provide information as to how he contributed in a way that was of significant importance to the team's securing the championship in comparison to the other members of the team. Repetition of the terms of the regulations without supporting evidence is insufficient to establish that the Petitioner played a leading or critical role for [REDACTED] men's tennis team.

Accordingly, we find that the Petitioner does not satisfy the requirements of this criterion.

III. CONCLUSION

The evidence does not establish that the Petitioner received a major, internationally recognized award or meets three of the ten evidentiary criteria. As a result, we need not provide the type of final merits analysis determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in its entirety, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. For these reasons, the Petitioner has not shown that he qualifies for classification as an individual of extraordinary ability.

³ [REDACTED] website indicates that the men's tennis team was suspended for the 2014-15 and 2015-16 due to [REDACTED] violations, and the school has not had a men's tennis team since. See [http://www.\[REDACTED\]](http://www.[REDACTED])

Matter of A-C-S-T-

ORDER: The appeal is dismissed.

Cite as *Matter of A-C-S-T-*, ID# 1246709 (AAO May 31, 2018)