



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

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

MATTER OF M-H-P-

DATE: NOV. 27, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a beach volleyball player, seeks classification as an individual of extraordinary ability in athletics. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had not met any of the ten initial evidentiary criteria, of which she must meet at least three, and that she had not provided sufficient evidence of her plan to work in the United States.

On appeal, the Petitioner submits additional evidence and contends that she meets three criteria.

Upon *de novo* review, we will dismiss 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether 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. *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). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

A. Continuous Work in the Area of Extraordinary Ability

As an initial matter, the Director held that the Petitioner had not established that she had the financial means and plans to work as a self-employed volleyball player to substantially benefit prospectively the United States. On appeal, she cites section 203(b)(1)(A) of the Act which states that the petitioner must show that she seeks to enter the United States "to continue work in the area of extraordinary ability." She then highlights her statement in the record which indicates that she intends to play volleyball in the U.S. domestic tour and to coach and work at youth volleyball clinics and workshops "to continue to promote and popularize the sport at all levels of amateur competition." We find that this statement sufficiently meets the requirements of 8 C.F.R. § 204.5(h)(5) which allows the petitioner to submit a statement "detailing plans on how he or she intends to continue his or her work in the United States." Therefore, we withdraw the Director's finding in this regard and conclude that the Petitioner has met this requirement.

B. Major International Award

The Petitioner asserts that she has received a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3) in that she was awarded the [REDACTED] Top Rookie award in 2015¹ and the [REDACTED] Most Improved Player award in 2017.² The

¹ The [REDACTED] documentation in the record demonstrates that the Petitioner received the Top Rookie award for 2014.

² We note that the Petitioner originally claimed that a number of her medals and competitive victories also constituted

Director failed to address the Petitioner's claims, indicating only that the evidence failed to establish receipt of a major international award. On appeal, the Petitioner contends the Director's error necessitates a remand. However, we exercise *de novo* review of all issues of fact, law, policy, and discretion. See *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016). This means that we look at the record anew and are not required to defer to findings made in the initial decision. Furthermore, our decision may address new issues that were not raised or resolved in the prior decision. Thus, we may address the Petitioner's claims on the instant appeal.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the field as one of the top awards.

Here, the Petitioner states that the [REDACTED] consists of 221 member federations and that every year it grants most valuable player and individual awards in seven categories. Although the record contains some general information about the [REDACTED] it lacks details about the specific awards the Petitioner received. While the [REDACTED] appears to be an international organization, the record does not establish that its awards receive international recognition. The articles in the record, which appear to be only from Canadian sources, do not indicate international coverage of the Petitioner's receipt of the awards. She did not present evidence, for example, establishing that the competitions or awards are widely reported by international media, are recognized by the general public, or garner attention comparable to other major, globally recognized awards such as Olympic medal winners. Accordingly, the Petitioner has not demonstrated that he meets the requirements of a one-time achievement.

Additionally, the Petitioner indicates that the [REDACTED] maintains its own database and ranking system just as international sports organizations or major leagues do, noting that she is ranked second. While we note the value of rankings in the context of athletic competitions, the record does not establish that a ranking constitutes a major, internationally recognized award.

major, international awards. As she does not raise those claims on appeal, we will not consider them.

C. Evidentiary Criteria

As an alternative to demonstrating that the Petitioner has received a major, internationally recognized award, she must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that she had not met any of these criteria. On appeal, the Petitioner asserts that she meets the following criteria: awards, membership, published material, original contributions of major significance and leading or critical role under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), and (viii). Upon review, we conclude that the evidence in the record does not support a finding that the Petitioner meets the requirements of at least three 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 indicating that in 2017 she won a gold and bronze medal at two [REDACTED] competitions. The record also contains a list of her statistics from the Beach Volleyball Database indicating that from 2009 through 2017 she has won three silver medals as well as two other bronze medals at [REDACTED] events. The record contains articles from CBC Sports and the Toronto Star about the Petitioner and her receipt of the gold and bronze medals at the [REDACTED] events in 2017. One of these articles references the gold medal she and her partner won in 2017 and states, "The gold is Canada's fourth overall on the international circuit since the formation of the women's [REDACTED] in 1992." Together with the other media coverage in the record, the Petitioner has established that these awards are nationally recognized. Accordingly, the record establishes that she meets this criterion.

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 she meets this criterion due to being a competitor in the [REDACTED]. In a letter from [REDACTED] the beach high performance director for [REDACTED] he indicates that the Petitioner "has represented [REDACTED] in the [REDACTED] in 38 different tournaments since 2011." He states that [REDACTED] nominates athletes to compete on the [REDACTED] based on their ability as a beach volleyball player." However, the record does not contain information about [REDACTED] and the selection criteria it uses to determine which players it nominates to compete or the qualifications of those judging the athletes. Therefore, the Petitioner has not established that this association requires outstanding achievements of its members for membership as judged by recognized national or international experts in the field.

The Petitioner also claims that she meets this criterion due to her membership in the [REDACTED]. The Director held that she had not established this, noting that the [REDACTED] regulations do not indicate that membership is based on the judging of members' outstanding achievements by recognized national or international experts. On appeal, the Petitioner states that "the [REDACTED] is comprised of the top

professional players in the field that have World Championship ranking.” She references the [REDACTED] regulations in the record and asserts that only members of a state federation’s national team are eligible to play in [REDACTED] events.

The record contains the regulations for the [REDACTED] which contradict the Petitioner’s claim. The regulations state the following:

Any player who fulfils the requirements of the rules on nationality, age, gender and other criteria established by [REDACTED] (and/or IOC, where applicable), is eligible for participation in [REDACTED] competitions, including the [REDACTED] and qualifying tournaments, on the condition that he complies with the principles of affiliation established by the respective [REDACTED] and fulfils the conditions set out in these regulations.

We note that this regulation does not state that it requires outstanding achievements of its members. Instead, it indicates that one of the eligibility rules is that the individual must comply with the principles established by the [REDACTED]. The record does not contain the rules of the Canadian national team, the [REDACTED] in this case. Therefore, the Petitioner has not established that membership in the [REDACTED] or the national team requires outstanding achievements of its members as judged by nationally or internationally recognized judges. The Petitioner has not established that she meets 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 record contains articles about the Petitioner relating to her work in the field published by CBC Sports, the National Post, and the Toronto Star with sufficient evidence demonstrating that these publications constitute major media. Therefore, the Petitioner has established that she meets this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

Under this regulatory criterion, the Petitioner must demonstrate that her contributions are original and scientific, scholarly, artistic, athletic, or business-related in nature. She must also establish that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase “major significance” is not superfluous and thus has meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3d Cir. 1995), *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). “Contributions of major significance” connotes that the petitioner’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134.

The Petitioner states that she meets this criterion due to her contributions to the field of volleyball that have been honored nationally in Canada and internationally by the [REDACTED]. The Director held that she had not established that her work is original and that it has greatly influenced the field of beach volleyball. The Petitioner asserts that such reasoning “would eliminate from consideration any top level professional athlete from qualifying for [extraordinary ability classification].” We note that this is one of the ten criteria where a petitioner must meet at least three. While not all professional athletes may be able to establish that they have original, athletic contributions that are of major significance in the field, this does not preclude them from qualifying for this classification through the other criteria. Here, the regulation requires that the Petitioner has made original, athletic contributions, which are shown through the impact their contributions have in the field. This is more than showing a petitioner’s recognition in the field or the contributions to their team as indicated by the Petitioner. As stated above, the Petitioner must show that she has made original contributions that are at the level of major significance in the field.

The Petitioner claims that the record establishes her second place [REDACTED] ranking, her Top Rookie and Most Improved Player awards, and that she is “considered universally to be one of the few star beach volleyball players ever produced by the High Performance (professional) program of the Canadian national federation.” She states that the evidence of her awards, the media articles, and her ranking demonstrate that her work is “exceptional and important.” The Petitioner also relies on two letters from coaches familiar with her playing. While these letters discuss her awards and her abilities as a player, they do not identify any original contribution made by the Petitioner or discuss what impact her accomplishments have had on the field. We find that the evidence of the Petitioner’s awards and media coverage reflect honors that she has received, but they do not equate to original contributions in the field because they do not reflect what aspects of her work amount to original contributions or reflect the influence or impact she has had on others in the field. Therefore, the record does not establish that she 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).

For a leading role, the evidence must establish that the petitioner is or was a leader.³ If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. A supporting role may be considered “critical” if the petitioner’s performance in the role is or was important in that way. It is not the title of the petitioner’s role, but rather her performance in the role that determines whether the role is or was critical.⁴

³ See USCIS Policy Memorandum PM-602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 10* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/i-140-evidence-pm-6002-005-1.pdf>.

⁴ *Id.* at 10.

The Petitioner initially claimed that the Petitioner performed in a leading or critical role for [REDACTED] as a competitor on the [REDACTED] and as an alternative athlete to represent Canada at the 2016 [REDACTED]. The Director noted that the Petitioner's role as a player for the Canadian high performance beach volleyball program and the Canadian professional beach team represent transitory roles that do not correlate with a leading or critical role to an organization. Furthermore, the Director found that the letters in the record did not demonstrate how her roles differentiated her from other team members.

On appeal, the Petitioner does not clearly identify what her role she performed for any organization. Rather, she states that she "has risen to the top of the ranks of professional volleyball players," that she "has played in 50 World Tour events and has placed in the top 9 spots 34 times." Much of the evidence the Petitioner refers to in her brief relates to her competitive successes, but the record does not establish how her role was leading or critical. For example, she claims that she and her partner "are Canada's best beach volleyball players currently in the game," and that they are preparing for the 2020 [REDACTED]. However, the letter from her coach, [REDACTED] does not explain her role or impact on the team beyond stating that "her ability to adjust and refine her already impressive skill sets, is a big reason why our team was able to reach the semi-finals in seven out of the eight events we competed in; winning one event and earning a medal in 4 of the total events played..." While we recognize the successes the Petitioner has had, she has not demonstrated that the Canadian high performance beach volleyball program and the Canadian professional beach team possess a distinguished reputation. Further, she has not shown that her role on these teams constituted positions as a leader or that her role was of significant importance to the outcome of the organization's activities to correlate with a critical role. Therefore, the record has not established that she meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because he has not submitted the required initial evidence of either a qualifying one-time achievement, or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20.

ORDER: The appeal is dismissed.

Cite as *Matter of M-H-P-*, ID# 1740180 (AAO Nov. 27, 2018)