



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

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

In Re: 4699068

Date: DEC. 10, 2019

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a[n] martial artist, 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 Texas Service Center denied the petition, concluding that the Petitioner had satisfied one of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits a brief and additional evidence and asserts that he meets at least three of the initial evidentiary requirements.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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).

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).

II. ANALYSIS

The Petitioner is a martial artist who at the time of filing was serving as the [] of the [] Regional Federation of Thai Boxing in Ukraine.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to judging. On appeal, the Petitioner asserts that he also meets the following evidentiary criteria: awards at 8 C.F.R. § 204.5(h)(3)(i),(iii), published material at 8 C.F.R. § 204.5(h)(3)(iii), and leading or critical role at 8 C.F.R. § 204.5(h)(3)(i)(viii). After reviewing all of the evidence in the record, we find that the Petitioner has not established that he satisfies at least three of the ten evidentiary requirements, as 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 reflects that the Petitioner has received numerous awards in the field of kickboxing. For example, it establishes that in the [] category, he received first place at the 2013 World Association of Kickboxing Organizations (WAKO) [] Cup, and second place at the 2014 World Kickboxing Federation [] held in [] and the 2016 Amateur/Pro-am [] [] respectively. It further shows that the [] Regional Administration of Sport awarded him first place in the [] category at the Tournament of Thaiboxing [] [] and that he won first place in the [] category at the Ukrainian Cup of Kickboxing.

As it relates to showing that these awards are nationally or internationally recognized for excellence in his field, the Petitioner provides documents and highlights criteria within them for the awards he has received.¹ For example, he provides the “WAKO General Rules Chapter 1,” in which he identifies the section “Art. 4.1 Championship Trophies.” This section lists the awards to be furnished at “World/Continental Championships” and provides that they will be granted as follows: “1st place = 3 pts. 2nd placed = 2 pts. [sic] 3rd place = 1 pt.” In the World Kickboxing Federation Official Amateur Rulebook, the Petitioner flags section “2.3.7. Team Fights” as well as the “Kickboxing Scoring Criteria” and “Thai Boxing Scoring Criteria” which establish how points are awarded and how team wins are determined. While these materials, and the others in the record, provide the general criteria for the awards he has received, they do not demonstrate the national or international significance of the awards won.² The record lacks other evidence establishing that these awards are nationally or internationally recognized for excellence in the field of martial arts as required. The Petitioner, therefore, has not submitted documentation sufficient to establish his eligibility for 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)

On appeal, the Petitioner asserts that he meets this criterion as the record contains published material about him in print and online media sources including the title, date and author, as well as, “whenever available ... information regarding the Alexa Rank, the estimated daily and monthly revenues, and the estimated website value of online sources of publications.”

The Petitioner provides several articles that are about him and relate to his work. For example, he submits one titled [redacted] published in the newspaper *Simya i Dim* which includes the date and author of the materials, as required. He also includes an article titled [redacted] published in *Martial Arts. Keys to Excellence*, in which he answers a series of questions about the sport of [redacted]. In addition, the record includes articles published online at [redacted] and [redacted] as well as in the newspaper *Ljubart Chronicles* that are also about the Petitioner and relate to his work as a martial artist.

The Petitioner also provides print or online circulation statistics for each of the abovementioned publications or websites. However, he does not submit comparative evidence establishing that these statistics are high relative to other circulation statistics, or otherwise show that the newspapers or websites are professional or major trade publications.³ We further note that, with the exception of the previously mentioned *Simya i Dim* article, the materials do not include the name of the author as required by the criterion.

¹ While we only discuss a sampling of the documents here, we have reviewed the record in its entirety.

² 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field.)

³ See USCIS Policy Memorandum PM 602-0005.1, *supra* at 7.

In addition to the abovementioned articles, the record also includes an article [redacted] [redacted] which focuses on the recent success of “two representatives of the Fight Club *Pitbull*” and their win at a recent competition, but only briefly mentions the Petitioner. A second article [redacted] is not about the Petitioner, but rather summarized all of the fights taking place during the amateur [redacted] competition, of which one involved the Petitioner. Articles that are not about the Petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor.) Further, we note that the first article does not include an author, as required. Moreover, while the Petitioner includes online circulation statistics for the websites on which these articles appeared, he does not establish that these sites are major media or professional or major trade publications.

For these reasons, the Petitioner has not demonstrated that he meets 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 specialization for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Director previously determined that the Petitioner submitted sufficient evidence to satisfy this criterion. We disagree and withdraw the Director’s findings on this criterion. Here the Petitioner asserts eligibility through his participation as “a professional referee in [redacted] at regional, national, and international championships. He provides a copy of his credentials for the 2016 [redacted] Edition World [redacted] Championship and photographs of himself at this event. The Petitioner also includes a letter from [redacted], executive vice president of legal and international affairs at the [redacted] (WMF) and a certificate from the WMF identifying him as an “International Referee & Judge C Class” and confirming his completion of the “Referees and Judges Course” during this championship. Finally, he provides his work schedules as a referee for the 2015 “Championship in Kickboxing, WKPA.”⁴

Here the evidence supports the Petitioner’s assertion that he has served as a professional referee at numerous martial arts events. The WMF certificate establishes his qualifications as such and confirms that he completed the “referees and judges course” during the 2016 [redacted] Edition World [redacted] Championship. His credentials for this event clearly identify him as a coach and referee for this event, and the photographs are sufficient to demonstrate that he participated in that role. [redacted]’s letter, provided by the Petitioner as evidence of his qualification as a referee, also confirms that she saw him act in this role,⁵ and his work schedules for the 2015 Kickboxing Championship confirm that he worked as a referee for numerous fights during that event.

However, the Petitioner does not provide a description of his duties as a referee to demonstrate whether they involve evaluating or judging the work or skills of competitors as opposed to enforcing the rules

⁴ The Petitioner does not provide the full name of this organization.

⁵ While [redacted] indicates that she was “pleased to see [the Petitioner] as an International Judge and Referee at this event,” this is discrepant with the Petitioner’s own representation of his role at this event in the initial petition. Moreover, as noted in the brief accompanying the initial petition, the Petitioner provides this letter to demonstrate his certification as a referee.

of a match and ensuring sportsmanlike competition. Further, the record lacks other evidence, such as official competition rules for either event, showing that serving as a referee in this instance equates to participating as a “judge” of the work of others.⁶ Without further documentation, such as evidence that he awarded points or exercised his judgment in choosing the ultimate winner at these events, the evidence regarding serving as a referee at martial arts events is insufficient to meet this criterion.⁷

As discussed above, we find that the Petitioner does not meet the three criteria relating to prizes or awards, published material, and judging. Although the Petitioner also claims to satisfy an additional criterion related to leading or critical role on appeal, we need not reach this issue. We reserve it as he cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

⁶ While the Petitioner provides a document titled [REDACTED], it does not describe the duties of referees and judges participating in [REDACTED] sanctioned events.

⁷ We note that the record includes a copy of the “Official Amateur Rulebook” from the World Kickboxing Federation, which indicates that judges are responsible for scoring matches and referees mainly serve to enforce rules (sections 2.1.14 and 2.1.15.) The record does not include similar evidence regarding the WMF or the WKPA, the associations for which the evidence establishes that the Petitioner served as a referee.

ORDER: The appeal is dismissed.