



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

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

MATTER OF F-F-D-S-

DATE: FEB. 27, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a jiu-jitsu coach, seeks classification as an individual 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only 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 ten criteria.

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). If that petitioner does not submit this evidence, then he or she

must provide 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

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

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). In denying the petition, the Director found that the Petitioner met only one of the initial evidentiary criteria.

On appeal, the Petitioner maintains that he satisfies six of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) directly “or with comparable evidence now introduced.” For the reasons discussed below, we find that he has not satisfied the initial evidentiary requirements.

A. Regulatory Criteria

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).

As evidence that he meets this criterion, the Petitioner refers to a statement from [REDACTED], president of the [REDACTED], an article from Wikipedia titled [REDACTED] and a letter from [REDACTED], a sports business executive and Brazilian Jiu-Jitsu Black Belt.¹

¹ The Petitioner alternately indicates that the submitted documentation constitutes “comparable” evidence relating to this

In order to satisfy this criterion, the Petitioner must show that he is a member of an association, and that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.² Although the materials demonstrate the Petitioner's affiliation with [REDACTED] the record lacks evidence demonstrating membership requirements for this association to show that it requires outstanding achievements, as judged by recognized national or international experts. While we also note that the Petitioner received a black belt from [REDACTED] he has not established that this constitutes a membership in an association and provides no additional evidence demonstrating the process or requirements for selection as a black belt. For these reasons the Petitioner has not shown he 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).

Although the Director determined that the Petitioner fulfilled this criterion, we disagree and will withdraw that finding. The record does not contain published material about the Petitioner in professional or major trade publications or other major media, including the title, date, and author.³ It contains a [REDACTED] 2010 article entitled [REDACTED] in *Veja*, a Portuguese language magazine, but the article was not accompanied by a full English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Because the Petitioner did not submit a properly certified English language translation of the article, we cannot meaningfully determine whether it meets the requirements of this criterion. Regardless, the article does not appear to be about the Petitioner relating to his work as a jiu-jitsu instructor, nor did he provide evidence demonstrating that *Veja* is a professional or major trade publication or other form of major media.

The record also includes an article titled [REDACTED] from tmzsports.com. This article is not about the Petitioner nor does it mention him, but it instead discusses a [REDACTED] altercation with an alleged robber at [REDACTED] home.⁴ Articles that are not about a petitioner do not fulfill 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). We also note that the article in the record does not identify the author of the material, as required by the criterion. Furthermore, the Petitioner did not provide

criterion. We discuss the Petitioner's comparable evidence claim below.

² See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

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

⁴ The record contains a notarized statement by [REDACTED] indicating that the Petitioner has trained him in Brazilian jiu-jitsu since December 2014.

documentation demonstrating that tmzsports.com is a professional or major trade publication or other major medium.

Finally, the record contains two articles from abc-7.com titled [REDACTED]

and [REDACTED]

Both of these articles are about the Petitioner in his capacity as a jiu-jitsu coach. However, the record lacks evidence demonstrating that abc-7.com is a professional or major trade publication or other major medium. For these reasons the Petitioner did not show that he satisfies 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).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made original contributions but that they have been of major significance in the field. The Petitioner asserts on appeal that he meets this criterion, but does not identify specific evidence for us to consider. The Petitioner initially provided a letter and other documentation relating to this criterion. In one letter, [REDACTED] a sports business executive and Brazilian Jiu-Jitsu Black Belt, states that the Petitioner has made a positive “impact in [Brazilian Jiu-Jitsu] history, spreading the fundamentals [*sic*] of the martial art to thousands of people that were once his student, supporting people to overcome personal, social and health problems, and becoming better elements for society overall.” The record also contains a statement from [REDACTED] naming the Petitioner as the international representative of [REDACTED] for “his singular work in the field of this martial art, national and international contribution to the expansion and preservation of traditional [REDACTED]...” In addition, [REDACTED] of the [REDACTED] noted that the Petitioner “provides realistic and practical [REDACTED] Jiu-Jitsu training tailored to law enforcement/correctional officers.” He commends the Petitioner for “his continued dedication to [REDACTED] and the citizens of [REDACTED] it is a testament of his abilities, character, and generosity.”

The above letters do not provide sufficient information, nor does the record include adequate corroborating documentation, to demonstrate how the Petitioner’s work as a jiu-jitsu coach has been a contribution of major significance to the field. Letters that specifically articulate how the alien’s contributions are of major significance to the field and its impact on subsequent work add value. Letters that lack specifics and make broad, unsupported assertions do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁵

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 Director found that the Petitioner had not demonstrated he performed a leading or critical role for an organization with a distinguished reputation, and referenced a letter in the record from [REDACTED]

⁵ USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9.

On appeal, the Petitioner argues that the Director did not analyze the correct evidence, and instead identifies two pieces of documentation from the [REDACTED] that he asserts establish his performance in a critical role for that office.

Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.⁶ The Petitioner argues that the memo from [REDACTED] to the Petitioner, serves as "a specific professional request to operate a CRITICAL ROLE." (Emphasis in original.) [REDACTED] states in this memo that [REDACTED] trainers are certified to train law enforcement and corrections staff in [REDACTED] but that "they needed to expand their knowledge and abilities to provide a well-rounded product for our deputies." He notes that "... several of [REDACTED] trainers have trained with [the Petitioner] several times a week. The skills and techniques that our trainers are learning during these sessions continues to expand their confidence and abilities to train the techniques to our deputies." Here [REDACTED] does not provide detailed and probative information addressing how the Petitioner's role as a jiu-jitsu coach has contributed in a way that is of significant importance to the outcome of [REDACTED] activities.

Moreover, in this memo [REDACTED] recommends that [REDACTED] "formally contract with [the Petitioner] to provide advisory and technical defense tactics" including "tactic specific instructions [sic] and practical application of skills on a bi-monthly basis as needed" for the [REDACTED]. In the second document, a contract between the Petitioner and [REDACTED] indicates that the Petitioner "shall conduct [REDACTED] course for [REDACTED] personnel at the [REDACTED] upon reasonable notice."⁷ As described in this part of the memo and in the contract, the Petitioner's contributions are prospective, rather than demonstrating that he is performing or has already performed a critical role for [REDACTED] as required. Without information and evidence documenting the impact and importance of any work the Petitioner has conducted for [REDACTED] the record does not demonstrate the critical nature of his role for this organization.

The Petitioner also argues on appeal that [REDACTED] qualifies as an organization with a distinguished reputation, saying that [REDACTED] reputation is unquestionable as it is a government agency. In support of this assertion, the Petitioner provides a printout of a Wikipedia article titled [REDACTED]"⁸ This article provides a general description of the office of county sheriff in Florida, as well as a list of the sheriff's duties as provided for in the Florida statutes. However, this article lacks information on the [REDACTED] or its reputation, nor does the record include other evidence on this issue.

⁶ *Id.*

⁷ We note that this contract was executed in March 2018, after the instant petition had been filed. Even were this document to establish that the Petitioner met the criterion, he must do so at the time of filing. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

⁸ Wikipedia is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. See *General Disclaimer*, Wikipedia (Feb. 11, 2019), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

For the reasons discussed above, the Petitioner has not established that he meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

In order to satisfy this criterion, a petitioner must demonstrate that he commands a high salary or other significantly high remuneration for services in relation to others in his field.⁹ The record contains uncertified copies of the Petitioner's 2016 and 2017 tax returns. These tax returns show that the Petitioner earned a salary of \$6,660 in 2016 and \$8,090 in 2017.¹⁰ The returns further show that the Petitioner additionally received business income in the amounts of \$39,072 in 2016 and \$77,911 in 2017. We note that other documentation in the record indicates that the Petitioner is the proprietor of [REDACTED] which does business as [REDACTED]. While the tax returns indicate that the Petitioner's principal business or profession is "Jiu Jitsu Instructor," the record lacks evidence demonstrating that this business income equates to his salary or income as an instructor.

The record also includes screenshots from paysa.com and simplyhired.com which list salaries for the top 10% of martial arts instructors as \$33,517 and \$72,674, respectively.¹¹ However, the Petitioner has not demonstrated that salaries of martial arts instructors represent an accurate basis of comparison for his earnings. As noted above, the record lacks sufficient documentation to establish his salary as a jiu-jitsu instructor in either 2016 or 2017. In addition, we note that previously submitted screenshots from indeed.com, which reflected average salaries in locales within Florida, indicated that jiu jitsu coaches earn significantly more than "martial arts" instructors.¹²

B. Comparable Evidence

On appeal, the Petitioner indicates that comparable evidence has been submitted relating to three criteria: membership at 8 C.F.R. § 204.5(h)(3)(ii), leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii), and commercial success at 8 C.F.R. § 204.5(h)(3)(x). The regulation at 8 C.F.R. § 204.5(h)(4) allows for comparable evidence if the listed criteria do not readily apply to his occupation.¹³ A petitioner should explain why he has not submitted evidence that would satisfy at least three of the criteria set forth in 8 C.F.R. § 204.5(h)(3) as well as why the evidence he has included is "comparable" to that required under 8 C.F.R. § 204.5(h)(3).¹⁴ Here, the Petitioner has not shown why he cannot offer evidence that meets at least three of the criteria. General assertions

⁹ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 11.

¹⁰ Neither tax return indicates the payer of these salaries, and the tax returns do not include W-2s.

¹¹ We note that these screenshots do not identify the geographic area from which this data was collected.

¹² The screenshots indicate that, in North Fort Myers and Naples respectively, jiu jitsu coaches earn an average of \$67,000 and \$66,000, while martial arts instructors earn \$39,000 and \$38,000.

¹³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 12.

¹⁴ *Id.*

that any of the ten objective criteria do not readily apply to an occupation are not probative and should be discounted.¹⁵ The fact that the Petitioner did not submit documentation that fulfills at least three is not evidence that a jiu-jitsu coach could not do so. For these reasons, the Petitioner did not show that he is eligible to meet the initial evidentiary requirements through the submission of comparable evidence. Furthermore, the Petitioner has not explained or established how the documentation he has provided is comparable to the listed criteria at 8 C.F.R. § 204.5(h)(3).

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.

ORDER: The appeal is dismissed.

Cite as *Matter of F-F-D-S-*, ID# 2118436 (AAO Feb. 27, 2019)

¹⁵ *Id.*