



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

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

In Re: 13904736

Date: MAR. 4, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a martial arts athlete and instructor, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not establish, as required, that he satisfies at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

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 conclude that the Petitioner has not met this burden. Accordingly, 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 international 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 criteria 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 arts athlete and instructor in the disciplines of wushu and tai chi. The record reflects that he intends to work as a martial arts instructor in the United States.

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 Petitioner claims that he meets three of the ten criteria, summarized below:

- (i), Lesser nationally or internationally recognized awards or prizes for excellence;
- (ii), Membership in associations that require outstanding achievements; and
- (iv), Participation as a judge of the work of others in the field.

The Director concluded that the Petitioner met one of the three claimed criteria, relating to judging the work of others. The record supports that conclusion, as it contains evidence of the Petitioner's judging credentials as well as documentation of his participation as a judge at martial arts events in the United States and China.

On appeal, the Petitioner asserts that the Director overlooked or mischaracterized certain evidence and erroneously determined that he does not meet the criteria relating to nationally or internationally recognized awards and membership in associations that require outstanding achievements of their members. After reviewing all of the evidence in the record, we conclude that the Petitioner has not established that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and therefore, he does not satisfy the initial evidence requirements for this classification.

Documentation of the individual'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)

In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.¹

The Petitioner submitted more than award 20 certificates that he received in the following martial arts competitions:

- 1995 - [redacted] National Wushu Competition [redacted] Team Competition); [redacted] Award
- 1997 - National [redacted] Competition; First Place [redacted]
- 1998 - [redacted] Cup [redacted] Province [redacted] Wushu Combat Competition; [redacted] Award
- 2004 - The [redacted] Wushu Championships; First place, [redacted] Group [redacted]
- 2005 – National Wushu & Tai Chi [redacted] Championships; First place [redacted]
- 2007 – [redacted] Cup National Wushu Communication Competition; First place [redacted] both [redacted]
- 2008 - [redacted] International Kung Fu Festival [redacted] Event; (certificate does not identify the award received)
- 2008 – [redacted] Traditional Wushu Competition; Second place, [redacted] Group [redacted]
- 2010 – International Tai Chi [redacted] Communication Contest [redacted]; First Place, [redacted] Group [redacted] and First Place [redacted], Group [redacted]
- 2010 – China International Wushu Communication Conference [redacted]; First place in [redacted]
- 2011 - [redacted] Cup Competition; First place in [redacted]
- 2011 – [redacted] Cup [redacted] Province First Wushu Competition; First place in [redacted] (Male, group [redacted])
- 2012 – [redacted] Cup [redacted] International Wushu Competition; Gold Award, Male [redacted] Group [redacted] and Male [redacted] Group [redacted]
- 2012 – [redacted] Sports Competition; First place, [redacted]
- 2013 – [redacted] Wushu Competition; First place, [redacted] Male Group [redacted]

In addition to the award certificates, the Petitioner submitted several recommendation letters, some of which include statements about the significance of specific awards he received. For example, a letter from [redacted] USA Wushu-Kungfu Federation, Inc. (USAWKF), refers to the

¹ 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>.

Petitioner's 1995 [redacted] Award in National Wushu Championships."² He states that this award "is the highest level martial arts competition in China" and "one of the most prestigious honors in the field of martial arts." He also describes the 2010 CHINA International Wushu Communication Conference as "one of the most influential Wushu events in the world," and "one of the largest and most influential sports events in the world of martial arts." However, his statements about the significance of these awards are general and not sufficient to establish that they are nationally or internationally recognized awards or prizes in the sport, especially given that the record contains no additional background information or evidence related to these two competitions.

In addition, [redacted] notes that the Petitioner's first place award in the [redacted] Wushu Championships in 2004 "clearly demonstrates that he has reached the highest level in the field of martial arts." He indicates that, as a result of this achievement, the Petitioner "became a first Class Athlete" a title granted by the National Sports Central Agency of China pursuant to China's "National Athlete System." We note that while the record contains a "Certificate of National First Class Athlete" issued by the General Administration of Sports of China, the certificate was issued in 1983 when the Petitioner was nine years old, and states that it was granted on the basis of a first place award in "National Wushu Trial" held in October 1982 when he was eight years old. As noted above, the Petitioner's evidence submitted in support of this criterion dated back to 1995; he has not documented any events in which he competed in the 1980s. The Petitioner must resolve this ambiguity in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). If the Petitioner was in fact granted this "Certificate of National First Class Athlete" as a child in 1983, it was not as a result of his first place finish in the 2004 [redacted] [redacted] Wushu Championships as stated by [redacted]

In addition to the award certificates and recommendation letters,³ the Petitioner provided background information regarding a few of the events in which he competed. This evidence included: a screenshot from the website of the Chinese Wushu Association announcing the [redacted] Wushu Championships; a screenshot from the website www.samlau-wingchun.com which includes photographs from "International Kung Fu Festival," which may refer to the 2008 [redacted] International Kung Fu Festival [redacted] event; and screenshots from the website of the International Combat Association (ICA), which was the organizer or sponsor of the 2010 CHINA International Wushu Communication Conference.

In a request for evidence (RFE), the Director advised the Petitioner that the initial evidence was insufficient to establish that the awards he received are nationally or internationally recognized prizes or awards in his sport. The Director requested that the Petitioner submit evidence such as national or international media coverage of the prizes or awards, information regarding other prize winners, the criteria used to grant the prizes or awards, the number of prizes granted each year, and the geographic scope of the competitions.

In response to the RFE, the Petitioner re-submitted some of the initial evidence relating to this criterion. In his cover letter, he emphasized his first-place award in Men's [redacted] at the [redacted]

[redacted] refers to this 1995 competition as "the National Wushu Championships" organized by "the National Sports Commission," but the award certificate refers to it as [redacted] National Wushu Competition," organized by "National Sports Competition [redacted] Division."

³ While we do not address all of the recommendation letters, we have reviewed and considered each one.

[redacted] Wushu Championships in 2004 and his title of “National First Class Athlete.” The Petitioner referenced a letter from [redacted] and quoted him as stating that “[t]he [redacted] Wushu Championships is . . . reputed and famed as the Olympic Games of Martial Arts.” The record contains only one letter from [redacted] (dated September 7, 2019) and the quoted statement does not appear in that letter.

The Petitioner also emphasized [redacted]’s statement regarding his “First Class Athlete Certificate,” noting that “the National Athlete system is an officially hierarchical system formulated to evaluate the professional level of athlete,” with the first class being the highest level. As discussed above, the certificate the Petitioner submitted was issued when he was eight or nine years old. There is insufficient evidence to corroborate that he was competing as a professional athlete at that age or that the certificate itself is a nationally recognized prize for excellence.

In denying the petition, the Director concluded that the Petitioner did not provide sufficient evidence to establish that the awards he received are nationally or internationally recognized in his sport. The Director acknowledged that the Petitioner submitted some online media coverage regarding the [redacted] [redacted] Wushu World Championship and the International Kung Fu Festival, but noted that the Petitioner but did not establish that the events received major media coverage.

On appeal, the Petitioner emphasizes that the media coverage he submitted of these events was intended to convey “a better understanding about the background and influence of the competition of the event itself,” and not intended to satisfy one of the evidentiary criteria that requires published materials in major trade publications or other major media, such as 8 C.F.R. § 204.5(h)(3)(iii) or (vi). He lists the awards he received between 1995 and 2013 and asserts that he met his burden to show that he received lesser nationally or internationally recognized awards or prizes in his field.

Upon review of the evidence, we observe that while many of the submitted certificates include the words “national” or “international” in the title of the competition, the fact that a competition was open to athletes from throughout a particular country or countries does not automatically establish that a prize or award from that competition is nationally or internationally recognized. The Director placed particular emphasis on media coverage as one form of evidence that may establish whether a given prize or award enjoys national or international recognition in the field, but we note that other evidence may suffice to establish the required level of recognition. Here, however, the background information and objective evidence regarding the competitions in which the Petitioner competed was very limited and was not sufficient to establish how the prizes he received qualify as nationally or internationally recognized awards. Accordingly, we conclude that this criterion has not been met.

Documentation of the individual’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)

In order to satisfy this criterion, the Petitioner must show that he is a member of an association in his field, 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. Membership requirements based on employment or activity in a given field, minimum education or

experience, or payment of dues or fees do not satisfy this criterion as such requirements do not constitute outstanding achievements.⁴ Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The Petitioner provided evidence of his membership in seven associations including the Chinese Wushu Association (CWA), the China Changan International Taijiquan Association, the Beijing Wushu Association, the International Wushu Kung Fu Association, the Wushu Research Institute of the Sports General Administration of China, the Asia-Pacific Wushu Association, and the International Wushu San Shou Dao Association (IWSD). Although he submitted copies of his membership certificates for all seven associations, he provided supporting evidence addressing the membership requirements for only two of them – the CWA and the IWSD Association.

With respect to the CWA, the Petitioner provided: a copy of his membership certificate; a letter from CWA [redacted] a screenshot from ChinaCulture.com providing background information regarding the CWA; and “Chinese Wushu Association Management Measures” describing the CWA membership requirements, printed from the CWA’s website (wushu.china.cn). In his letter, [redacted] identifies the Petitioner as a “senior member” of the CWA and states that according to the CWA’s Management Measures, “only the people who are ‘Chinese Wushu Association committee members or winners of martial high spots, or martial arts professional and technical personnel with senior titles, or international level or national level martial arts referees’ are qualified to apply to become a senior member.” While this language is repeated in the CWA Management Measures, it is unclear how the listed conditions of senior membership equate to “outstanding achievements” in the field. The phrases “winners of martial high spots” and “professional and technical personnel with senior titles” are not adequately defined.

In addition, the Petitioner must establish that nationally or internationally recognized experts are charged with judging whether a given prospective senior member has outstanding achievements in the field. In his letter, [redacted] states that “requests for senior members must be presented directly to the CWA and be reviewed by the CWA only,” noting that the association “follows a rigorous standard for reconsideration; all senior members are highly selected professional martial artists who have established significant contributions to the martial arts community and enjoy high reputation.” The submitted CWA Management Measures reflect that prospective senior members must submit their membership enrollment applications directly to the CWA for approval, while ordinary and junior members also have the option of submitting their applications “through unit members at all levels” of the CWA or directly to the CWA. The CWA Management Measures do not describe the review and approval procedures or standards that apply to individual member enrollment applications, nor do they identify who within CWA makes final decisions on applications for senior membership.

⁴ 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 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).

With respect to the IWSD Association, the Petitioner submitted his membership certificate issued in 2016 and a certificate from the association awarding him a 6th Degree Black Belt in 2017. The Petitioner also submitted an overview of the IWSD Association's ranking methodology for black belts from its website, but this evidence does not discuss the association's membership requirements, indicate whether "outstanding achievements" are a condition of membership, or state whether the process for admission of members involves judging by recognized national or international experts. The information provided indicates that "[o]nly the well-rounded practitioners with exceptional knowledge and skills are granted black belt status," but it is unclear whether "membership" and "black belt status" are evaluated based on the same criteria. The Petitioner's membership certificate does not mention his belt ranking or the type of membership he was granted. A letter from IWSD Association [redacted] states that the Petitioner "was awarded the 6th Level Black Belt because he is an outstanding and prominent practitioner in the martial arts community with remarkable contributions to the promotion of martial art around the world." However, he was granted membership in IWSD Association prior to achieving this level and the association's specific membership requirements and its review processes and procedures have not been documented in the record.

The Director determined that the evidence the Petitioner submitted at the time of filing and in response to the RFE "does not provide any information to establish that the individuals who review prospective members' applications are recognized as national or international experts in their disciplines or fields and the section of the associations' constitution or bylaws which discuss the qualifications required by the review panel of the association." With respect to the CWA, the Director also observed that "membership dues are a requirement for membership."

On appeal, the Petitioner argues that his membership in CWA satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ii); he does not address IWSD or the other associations in which he is a member. The Petitioner asserts that the Director determined that he did not meet this criterion because the CWA requires payment of membership dues and argues that the Director's decision was incorrect. He emphasizes that, while all members must pay dues, this is not the only condition for membership as implied by the Director's statement. He refers to the previously submitted CWA Management Measures in support of his assertion that "[t]he CWA requires outstanding achievement in an area of martial arts as an essential condition for admission to membership" and states that "only the top candidates, at the discretion of the CWA are actually invited and selected for membership."

While the Petitioner is correct in his assertion that an association that requires payment of membership dues may also require outstanding achievements as a condition of membership, he has not met his burden to establish that his membership in CWA meets all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(ii). As already discussed, the CWA Management Measures only vaguely describe the requirements for senior membership and do not sufficiently support the Petitioner's claim that outstanding achievements in martial arts are an essential requirement for membership. Moreover, the Director also emphasized that the evidence submitted regarding CWA and other associations in which the Petitioner is a member does not demonstrate that the persons judging or reviewing membership applications are recognized national or international experts in the field. With respect to the CWA, the evidence simply indicates that applications for membership are submitted to "the CWA" for approval. While the Petitioner indicates that it is a discretionary decision, and thus implies a level of judging, the record does not establish who performs this judging, what their qualifications are, or

whether those who review membership applications are national or international experts. Accordingly, the Petitioner has not established that he meets this criterion.

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.

ORDER: The appeal is dismissed.