



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15798898

Date: MAR. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a martial arts athlete, 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 petition, concluding that although the Petitioner established that she meets the initial evidence requirements for this classification, she did not establish, as required, that she has sustained national or international acclaim and is one of that small percentage who have risen to the very top of the field. The Director dismissed the Petitioner's subsequent combined motion to reopen and reconsider on the same grounds. 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 will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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 who competes in the traditional karate discipline and has also served as an instructor in karate and Krav Maga. She indicates that she intends to continue her career as a competitive athlete and martial arts instructor in the United States.

As the Petitioner has neither claimed nor established that she has received a major, internationally recognized award, she must demonstrate that she meets the initial evidence requirements by satisfying at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner provided evidence establishing that she meets three criteria, related to lesser nationally or internationally recognized awards, memberships in organizations that require outstanding achievements of their members, and judging the work of others in her field. See 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iv).¹

Because the Director determined that the Petitioner satisfied the initial evidence requirement, he proceeded to a final merits determination. In a final merits determination, the Director must analyze all of a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also *Kazarian*, 596 F.3d at 1119-20.²

¹ The Director determined that the Petitioner claimed, but did not establish, that she meets the criteria related to display of her work at artistic exhibitions or showcases and performance in a leading or critical role for organizations that have a distinguished reputation at 8 C.F.R. § 204.5(h)(3)(vii) and (viii).

² See also 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 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

On appeal, the Petitioner asserts that the Director's decisions, including both the original denial and the decision dismissing her motion, reflect that he did not consider all the evidence together in its totality in determining whether she is eligible for the benefit sought, and instead narrowly focused on her awards and recent competition record.

We agree with the Petitioner's assertion regarding the insufficiency of the Director's final merits analysis, as both decisions contain few references to the submitted evidence. For example, although the Director determined that the Petitioner satisfied the membership and judging criteria at 8 C.F.R. § 204.5(h)(3)(ii) and (iv), no evidence related to these two criteria is mentioned or weighed in the final merits discussion; the Director simply observes that the criteria have been met. In fact, as noted by the Petitioner, the Director's analysis in the final merits determination in both decisions rested on two factors. First, the Director determined that although the Petitioner satisfied had received nationally or internationally recognized prizes or awards in karate competitions, she had not demonstrated that the level of competition in these tournaments was "elite." Further, the Director emphasized a lack of evidence related to the Petitioner's competition in tournaments between 2014 and the date of filing in 2017 and concluded that, regardless of the reasons for this absence from competition, she could not establish her sustained acclaim in the field.³

An officer must fully explain the reasons for denying a visa petition in order to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. See 8 C.F.R. § 103.3(a)(1)(i); see also Matter of M-P-, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Here, the Director did not adequately explain the reasons for denial of the petition. Accordingly, the Director's decisions denying the petition and dismissing the Petitioner's subsequent motion are withdrawn and the petition will be remanded to the Director for further review and entry of a new decision, consistent with the discussion below.

As noted, the record reflects that the Director determined that the Petitioner satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iv) based on the initial evidence submitted with the petition. The record does not support the Director's conclusion with respect to these criteria. As the matter will be remanded, the Director should review the Petitioner's evidence and, if appropriate, allow her an opportunity to submit additional evidence in support of the following evidentiary criteria.

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)

The Petitioner claims to have received both nationally and internationally recognized prizes or awards in the sport of traditional karate. In support of her claim that she received nationally recognized prizes, she relied on a letter from [redacted], founder and chairman of the [redacted]

³ The Director disregarded evidence related to other martial arts activities in which the Petitioner engaged during this period, such as coaching. However, the record indicates the Petitioner intends to engage in both competitive athletics and karate instruction in the United States. In general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

[redacted] [redacted] s letter includes a list of 26 competitions in which the Petitioner competed in [redacted] between 2003 and 2014 and lists the medals she received in each competition (a total of 46 gold, silver, and bronze medals). The list identifies the competitions as “National” and [redacted] states that the competitions are “nationally or internationally recognized” because they “are regulated by WTKF,” the World Traditional Karate Federation. The record did not include supporting evidence, such as official competition results, award certificates or medals received by the Petitioner in these events, or any information regarding the specific competitions in which she competed, which included [redacted] Cup,” [redacted] Cup,” [redacted] Cup,” [redacted] Cup,” and [redacted] Cup,” among others. The evidence was not sufficient to establish her receipt of these awards or to established that the awards themselves are nationally recognized.

With respect to her receipt of international awards, the Petitioner submitted a letter from WTKF [redacted] who states that she received medals in three different [redacted] [redacted] Championships held in [redacted] and [redacted] (three silver, three bronze, one gold), three medals at a [redacted] Championship” event held in [redacted] and four medals at an “International Championship” event held in [redacted] [redacted] did not provide the year in which the tournaments were held or address their significance, nor was there any supporting evidence regarding these events.

The Petitioner submitted images of 14 “international medals” and certificates from certain tournaments, but there are inconsistencies in this evidence. For example, the Petitioner submitted a certificate from the [redacted] traditional karate federation [redacted] indicating that she participated in the 13th [redacted] Championship in traditional karate in 2003, but it does not list her results. Her medals from 2003 appear to be from the 1st [redacted] Cup, not from the event identified in the certificate. She also submits a total of six medals from a competition she identifies as the 2005 [redacted] Championship, but the medals indicate on their face that they are from a [redacted] [redacted] championship. The information accompanying the images of these medals indicates that she received the gold, silver and bronze medals in the individual kumite event and both a silver and a bronze medal in the team kata event. We note that it is unlikely that one athlete could have received multiple medals in the same event that these results have not been explained.

The Petitioner also submitted images of two medals which she claims are from the 2011 [redacted] Championship held in [redacted] [redacted] referenced this event and indicated that she was awarded bronze in the Kumite category and silver in the Kata category. Although she identifies the medals as [redacted] Championship awards, the medals indicate on their face that they are from the “IV [redacted] Karate Tradicional” or 4th [redacted] Traditional Karate [redacted] Tournament. Further, the medals indicate on their reverse that they were awarded for third and fourth place finishes.

Based on the foregoing discussion, we disagree with the Director’s determination that the Petitioner’s initial evidence was sufficient to demonstrate that she meets this criterion. [redacted] s letter was lacking pertinent information, such as the dates of the competitions in which she competed and information regarding the significance of such competitions. Further, as noted, the supporting evidence she provided was internally inconsistent and does not appear to correspond to [redacted] s statement. The Petitioner must resolve the inconsistencies 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).

On remand, the Director should review the evidence submitted in support of this criterion and may request additional objective evidence to verify the awards the Petitioner received and the national and international recognition associated with those awards. It is not sufficient for the Petitioner to identify the events at which she competed as “national” or “international” as it is not presumed that every karate competition that draws from a national or international field of competitors awards nationally or internationally recognized prizes or awards.

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)

The Petitioner claimed eligibility under this criterion based on her membership in [redacted] WTKF and the World Shotokan Karate Federation (WSKF) and stated that “these associations only grant membership to the top Martial Artists in their respective countries or disciplines.” As noted, the Director determined that she met this criterion based on the initial evidence, which included the above-referenced letters from [redacted] and [redacted], as well as a letter from [redacted] who states that he currently works as an instructor at a WSKF Academy in Ireland, but was formerly a board member of WSKF [redacted]. Upon review of these letters, we conclude that they do not establish the Petitioner’s eligibility under this criterion.

[redacted] states that the Petitioner “has been a martial artist at [redacted] for several years” but does not indicate when she became a member. He indicates that “she was granted membership into our professional team through a highly rigorous process” and lists various requirements but it is unclear whether those requirements apply to [redacted] membership, team membership or both. [redacted] mentions that applicants must be practicing martial artists with a black belt or higher, must be “nationally or internationally recognized,” must have attained gold or silver awards in at least 10 national or international competitions, and must demonstrate their “outstanding ability” to the “members of the Board of Directors.” He does not indicate where the organization’s official membership requirements and review processes can be found, identify the members of the Board of Directors, or indicate whether those members are recognized national or international experts in the field. Further, since the Petitioner did not provide evidence of when she became a member of [redacted] we have no basis to evaluate whether she met the membership requirements as stated by [redacted]

In his letter, Mr. Carrion asserts that the Petitioner has been a member of WTKF since 2004. He states that membership in WTKF requires “that the potential member present herself to a committee of judges who evaluate the martial artist’s career and then run a series of exams on the martial artist” which covers “both theoretical and practical subjects.” He identified five “esteemed martial artists” (WTKF Board Members from several countries) and states that they served on the Petitioner’s evaluation committee. His statement does not demonstrate that membership requires “outstanding achievements” as he does not identify the basis on which the committee evaluates a martial artist’s career. Nor can we determine based on the information provided that passing the practical and theoretical exam is an “outstanding achievement” in and of itself. Further, the Petitioner did not submit

supporting evidence, such as the WTKF's by-laws or other documentation of its membership requirements for individual athletes.⁴

Finally, the Petitioner submitted the referenced letter from [redacted] who states that he was previously a board member of WSKF [redacted] prior to emigrating to Ireland. He asserts that the Petitioner was granted membership in WSKF in 2015 and that he served on the evaluation committee alongside other senior WSKF officials from [redacted] and elsewhere. [redacted] indicates that "WSKF approved the incorporation of [the Petitioner] due to her National and International achievement along her career." His letter does not sufficiently detail the WSKF membership requirements and review procedures for individual members, and, as with the evidence related to the WTKF, there is no supporting documentation that describes these requirements.

Without additional documentation showing that [redacted] WTKF, and WSKF require outstanding achievements of their members as judged by internationally or nationally recognized experts as a condition for membership, the Petitioner has not shown that she meets this criterion. On remand, the Director should review the evidence submitted in support of this criterion and may request additional independent evidence related to the Petitioner's memberships and the organizations' membership requirements.

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)

As noted, the Director determined that the Petitioner satisfied this criterion based solely on the initial evidence submitted with the petition. That evidence was limited to the aforementioned letter from [redacted] of [redacted]. In his letter, [redacted] stated that the Petitioner "performed as a judge for our competitions" and that "[h]er responsibilities as a judge on behalf of [redacted] are at a national level." He lists 23 events held in [redacted] between 2000 and 2014, identifies them as "national events," and indicates that the Petitioner served as a judge at the junior, elite and elite/black belt level. [redacted] states that in order to be a judge for competitions at the national level, an athlete must possess a brown belt or higher and pass a written test. The Petitioner did not submit documentation of her [redacted] judging qualification or her judging credentials from any of the events referenced by [redacted] many of which are also listed as events in which she competed as an athlete. He also indicates that the Petitioner "was selected as a judge for our national competitions . . . because of her internationally recognized track record as a martial artist and the fact that she is a respected figure in karate." However, the Petitioner was only 14 years old in 2000, the year in which [redacted] asserts that she began officiating national level junior competitions. By contrast, he indicates that her earliest award in competition was earned in 2003.

For these reasons, we disagree with the Director's determination that the initial evidence was sufficient to establish that the Petitioner meets this criterion. As the matter will be remanded, the Director should

⁴ We reviewed the official website of the WTKF (www.wtkfederation.org) and note there is no indication that athletes may apply for individual membership to WTKF. The member application procedures provided refer only to national federations wishing to seek membership in WTKF.

review all evidence submitted in support of this criterion⁵ and, if appropriate, allow the Petitioner the opportunity to submit additional evidence.

As discussed above, we agree with the Petitioner's argument that the Director's initial decision and decision on motion did not provide the Petitioner with sufficient explanation of the reasons for denial. However, upon de novo review, we disagree with the Director's conclusion that the Petitioner's initial evidence was sufficient to demonstrate that she met three of the initial evidentiary criteria at 8 C.F.R. 204.5(h)(3)(i)-(x). As the Petitioner was not put on notice of the deficiencies in that evidence, and the Director's ultimate decision was otherwise deficient, will remand the matter in its entirety to the Director for further review and entry of a new decision consistent with the foregoing analysis.

If the Director determines that the Petitioner satisfies at least three of the initial evidentiary criteria, the new decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and whether the record demonstrates that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); see also Kazarian, 596 F.3d at 1119-20.

III. CONCLUSION

The matter will be remanded to the Director for further action in accordance with this decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

⁵ We note that, on appeal, the Petitioner claims for the first time that she is an accredited judge, instructor and examiner of WSKF [redacted] and judged national and international WSKF-sponsored competitions held in [redacted] in 2015 and 2016.