



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

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

In Re: 18356046

Date: SEP. 13, 2021

Appeal of Nebraska 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 Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only two of the initial evidentiary criteria, of which he must meet at least three.

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)(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 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 record reflects that the Petitioner is a martial arts athlete who has competed in the karate discipline, including in [redacted] and the United States.<sup>1</sup> He indicates his intention to continue competing as a karate athlete in the United States. His most recent entry was in 2018 as a F-1 nonimmigrant student, and he is pursuing a doctorate at the University of [redacted] where he plans to continue his karate training.

### 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, lesser nationally or internationally recognized awards at 8 C.F.R. § 204.5(h)(3)(i) and judging at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner asserts that he also meets the following evidentiary criteria: membership in associations at 8 C.F.R. § 204.5(h)(3)(ii) and leading or critical role for organizations or establishments at 8 C.F.R. § 204.5(h)(3)(viii).<sup>2</sup> After reviewing all the evidence in the record, we find that the Petitioner has not established that he satisfies at least three criteria, as required.

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<sup>1</sup> The record indicates that the [redacted] Karate Federation [redacted] is the national governing body of the sport in [redacted] the USA National Karate-do Federation (USANKF) is the national governing body of the sport in the United States, and the World Karate Federation is the international governing body.

<sup>2</sup> We note that the Director determined that the Petitioner claimed, but did not establish, that he meets the criterion related to published material in certain media. *See* 8 C.F.R. § 204.5(h)(3)(iii). On appeal, the Petitioner does not contest the Director's finding that he does not meet this criterion or offer additional arguments. Therefore, we consider this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

*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 Director previously determined that the Petitioner submitted sufficient evidence to satisfy this criterion. We disagree and withdraw the Director's findings on this criterion. The record reflects that the Petitioner has received numerous awards in the field of karate. For example, it establishes that in the [redacted] category he received first place at the 2019 [redacted] Texas State Karate Championship and National Qualifier ([redacted] 2019), in the [redacted] Male Advanced [redacted] category he received second place at the 2019 [redacted] National Karate Championships and Team Trials ([redacted] 2019), and in Male [redacted] Division he received second place at the 2019 [redacted] Karate Championship ([redacted] 2019). It further shows that the International Karatedo [redacted] Association awarded him first place in the Junior Male [redacted] category and second place in the Junior Male [redacted] weight category, respectively, at the [redacted] World Championships ([redacted] 2009).

As it relates to showing that these awards are nationally or internationally recognized for excellence in his field, the Petitioner provides copies of awards certificates, photographs of medals, screenshots from the websites of the event organizers, and a translated article from [redacted] magazine confirming his results in competitions.<sup>3</sup> For example, the article from [redacted] reports that the [redacted] (Karate) Team in the [redacted] Championship held in [redacted] managed to be the champion of this round of games winning 17 gold medals.” The article lists the Petitioner among the names of 14 medalists on the team, and notes that he and two others won a gold medal in the Youth [redacted] division at the competition. This limited evidence of the award's media coverage is insufficient to establish the level of national or international recognition associated with the awards he received at the [redacted] World Championships. While the above materials, and the others in the record, confirm the Petitioner's receipt of these awards, they do not demonstrate the national or international significance of the awards won.<sup>4</sup> 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.

*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 maintains his eligibility for this criterion through his position as a former member of the [redacted] Team of the [redacted].<sup>5</sup> In order to satisfy

<sup>3</sup> While we only discuss a sampling of the documents here, we have reviewed the record in its entirety.

<sup>4</sup> See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2> (providing guidance on the review of evidence submitted to satisfy the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)) (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field.)

<sup>5</sup> The evidence reflects that the [redacted] is a member of the International Karatedo [redacted] Association based in [redacted] Japan, which represents the style of karate practiced by [redacted] and holds world championship competitions every four years.

this criterion, the Petitioner must show 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. In denying the petition, the Director found that the Petitioner did not submit evidence sufficient to establish that the [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts.

On appeal, the Petitioner has not submitted any new evidence related to his membership, asserting that the documentation demonstrates his eligibility under this criterion. The Petitioner refers to several of our non-precedent decisions concerning athletes who petitioned under this classification. These decisions were not published as precedents and therefore do not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. Nevertheless, we have reviewed the decisions although we will not discuss each one separately. The Petitioner emphasizes that the referenced non-precedent decisions demonstrate that we have previously “held that selection to and participation on a national team satisfies the membership requirement at 8 C.F.R. § 204.5(h)(3)(ii).” Similarly, he urges that *Noroozi v. Napolitano*, 905 F.Supp. 2d 535 (S.D.N.Y. 2012), which involved a member of the [redacted] Table Tennis Team who competed at the 2008 Olympic Games, supports his contention that “letters descriptive of a highly selective process to achieve membership on an [redacted] national team are an acceptable form of evidence to satisfy the membership criterion.”

We acknowledge that membership on a national team may, depending on the evidence presented in an individual case, be sufficient to satisfy this criterion. While an athletic team is not, strictly speaking, an “association,” it is nonetheless equally true that an athlete can earn a place on a major national or an Olympic team only through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete’s membership on an Olympic team or a major national team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process.<sup>6</sup> It is the Petitioner’s burden, however, to demonstrate that he meets every element of a given criterion. We will not assume that every “national team” is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines. Upon review of the letters submitted, we conclude that they do not establish the Petitioner’s eligibility under this criterion, as they contain inconsistent and insufficient information regarding the [redacted] Team membership requirements and selection processes.

The Petitioner submitted several letters from [redacted] president of the [redacted] who states that the Petitioner was a member of the [redacted] Team “at the [redacted] [redacted] World Championship (2009 [redacted] and 2013 [redacted]) where he won the Gold [redacted] and Silver medal [redacted]” In an additional letter dated June 2020, [redacted] describes the selection process for the [redacted] Team as follows:

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<sup>6</sup> See 6 USCIS Policy Manual, *supra*, at F.2 appendix (stating that election to a national all-star or Olympic team might serve as comparable evidence for evidence of membership in 8 C.F.R. § 204.5(h)(3)(ii)).

National team selectees are initially required to rank first or second at the provincial championships, which qualifies them for the [redacted] national championships. At the nationals (every year around mid-September), national team [selectees] . . . were again required to finish first or second to establish eligibility for the national team selection competition, the premier national competition for [redacted]

The national team selection competition is presided by the [redacted] Board of Directors and President who constitute the Selection Committee for the [redacted] national team. This committee is comprised of the top karate officials and experts in [redacted] including myself . . .

In assessing the final Ranking of these competitors, the selection committee evaluates national team prospects based upon their technical performance (stances, transitional movements, timing/synchronization, focus, conformance) and athletic performance (strength, speed, balance). Upon completion of the national team selection competition, the athletes with the top-2 scores overall are selected to represent [redacted] on the world stage at competitions, which include the [redacted] World Championships.

[redacted] indicates the forgoing description constitutes the [redacted] “formal national-team selection process despite the unavailability of formal records and/or by-laws confirming the same.”

The Petitioner provided a further letter from [redacted] and letters from other [redacted] board members [redacted], [redacted], and [redacted] all dated June 2020, which describe “the national-team selection process” as follows:

Competitions for our athletes begin at the provincial level where gold and silver medal winners become eligible for our national championships . . . Judges at the national competition evaluate competitors based upon the technical and athlete rules/by-laws of the [redacted]. Therefore, [the Petitioner] . . . was mandated by our national federation to follow this highly selective evaluation rubric and was deemed eligible to represent the [redacted] by the top experts of our sport.

. . . [t]he information herein is a true and accurate statement of the [redacted] national team selection process despite no official recordkeeping or by-laws documenting same.

In comparing the letters from [redacted] [redacted] [redacted], and one of the letters from [redacted] [redacted] they contain large portions of identical or virtually identical language consistent with a common source. If testimonial material lacks specificity, detail, or credibility, there is a greater need for the Petitioner to furnish corroborative items. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In addition, the letters submitted contain inconsistencies related to the membership criteria and selection process for the [redacted] Team. For example, one of [redacted]'s letters describes the selection criteria as involving a three-tier process in which a candidate must achieve first or second place finishes in provincial-level competitions and the national competition, as well as a top-two final ranking in athletic and technical performance at the national team selection competition judged by the

Selection Committee for the [redacted]<sup>7</sup> However, another of [redacted]'s letters and those of [redacted], [redacted] and [redacted] provide alternate criteria for national-team membership, describing a two-step selection process in which gold and silver medal winners at the provincial level become eligible for the national championship in which judges "evaluate competitors based upon the technical and athlete rules/by-laws of the [redacted]". The Petitioner must resolve this inconsistency 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).

Further, none of the above letters identify the Petitioner's competitive results in the provincial, national, or national team selection competition which resulted in the Petitioner's inclusion on the national team in 2009 and 2013, or evidence establishing that his placings at those events qualify as "outstanding achievements" as required by the plain language of this criterion. Moreover, since the Petitioner did not provide evidence of when he became a member of the national team, we have no basis to evaluate whether he met the membership requirements stated in the above letters.

We note that the Director's determination that the letters submitted "do not in any way describe the selection process for membership" on the claimed national team was incorrect, given the contents of the letters from [redacted], [redacted], [redacted], and [redacted], quoted above, and their position within the [redacted]. However, the Petitioner relies solely on the above-referenced letters in support of this criterion; the authors of the letters do not indicate where the organization's official membership requirements and review processes can be found, and there is no supporting independent documentation that describes these requirements. As he has not submitted verifiable and consistent evidence with respect to the [redacted] Team membership requirements or selection processes, the Petitioner has not established that this claimed national team requires outstanding achievement of its members, as judged by recognized national or international experts. For the above reasons, the Petitioner has not shown 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 Judge and Referee" at the 2019 [redacted] Karate Championship, the 2019 [redacted] National Karate Championships and Team Trials, and the 2019 [redacted] Texas State Karate Championship and National Qualifier.

The Petitioner provided several letters in support of this criterion. A letter dated August 2019 from [redacted] of the USANKF states that the Petitioner "has been officiating at the [redacted] National Championships as well as regional tournaments in 2019" and that he is "a great addition to the [redacted] referee corps." A letter from [redacted] President of the [redacted] [redacted] confirms that the Petitioner "participated as an athlete and as a Referee at 2019 Texas State Championship & National Qualifier held in May 2019." The Petitioner also provided a

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<sup>7</sup> We note that the record lacks evidence establishing that the Selection Committee for the [redacted] national team is comprised of nationally or internationally recognized experts in the field, as required by this criterion.

letter of appreciation dated October 2019 from [redacted] tournament director for the 2019 [redacted] Karate Championship, thanking him for “an exemplary job officiating during most of the day.”

Further, the record contains several certificates from USANKF relating to the Petitioner’s officiating qualifications. A certificate dated March 2019 identifies the Petitioner as a “Regional Kumite Judge-B” and states that he has satisfied “the requirements for a license within the [USANKF].” A certificate dated May 2019 indicates he is a “Kumite Regional Judge A” and confirms he has fulfilled the “national requirements of the [redacted] Referee Committee,” apparently during the aforementioned 2019 [redacted] Texas State Karate Championship and National Qualifier. Further, two certificates dated July 2019 identify the Petitioner as a “Regional Kata Judge C” and a “National Kumite Referee D,” respectively, and confirm his fulfillment of the “National Requirements of the [USANKF] Referee Committee,” apparently during the aforementioned 2019 [redacted] National Karate Championships and Team Trials. Moreover, several photographs appear to show the Petitioner officiating at 2019 [redacted] National Karate Championships and Team Trials and posing with other officials at the 2019 [redacted] Karate Championship.

The USANKF certificates establish the Petitioner’s qualifications as a judge and referee. The statements of [redacted] and [redacted] confirm that the Petitioner has been officiating at the [redacted] [redacted] National Championships as well as regional tournaments in 2019. [redacted] indicates that the Petitioner participated as a referee at 2019 Texas State Championship & National Qualifier. However, the Petitioner does not provide a description of his duties at any of the above competitions to demonstrate whether they involve evaluating or judging the work or skills of competitors as opposed to enforcing the rules of a match and ensuring sportsmanlike competition. Further, the record lacks other evidence, such as the Petitioner’s credentials for the events at which he officiated to identify his role and official competition rules for the events, showing that the role in which he served equates to participating as a “judge” of the work of others. 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 an “official” or a “referee” at martial arts events is insufficient to meet this criterion.

As discussed above, we find that the Petitioner does not meet the three criteria relating to prizes or awards, membership, 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.

**ORDER:** The appeal is dismissed.