



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

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

In Re: 22046723

Date: SEP. 09, 2022

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 alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidentiary requirements of this classification through evidence of either a major, internationally recognized award or meeting three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3). The Petitioner now appeals that decision.

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

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation

at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate 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 has successfully competed in martial arts tournaments at the national and international level in the past. He submitted letters from two martial arts training schools indicating that he is training and competing at local competitions in preparation for competition in [REDACTED]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award,¹ he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets four of the evidentiary criteria. After reviewing all of the evidence in the record, we find that he has not met the initial evidence requirement for this classification, and is not eligible as an individual of extraordinary ability.

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)

In order to meet this criterion, a petitioner must submit evidence of their receipt of awards, that they were granted on the basis of excellence in their field of expertise, and that the awards are nationally or internationally recognized in that field. Here, the Petitioner lists several awards he claims to have received in [REDACTED] competitions from 2005 to 2016, but provides evidence relating to only a few of them. The most recent of these is evidenced by a certificate issued by the [REDACTED] [REDACTED], indicating that he received a gold medal in the [REDACTED] division, [REDACTED]

¹ In his response to the Director's request for evidence, the Petitioner indicated that he had received a major, internationally recognized award, but did not identify which of his awards met this standard or provide additional evidence to support this claim. He does not repeat this claim on appeal.

male, and [redacted] weight class at the 2016 [redacted] Championship in [redacted] Thailand. In addition, the Petitioner also submitted evidence concerning his receipt of the following awards at [redacted] sanctioned events:

- Gold Medal, 2015 Asian [redacted] Championship, [redacted] Male, [redacted]
- Silver Medal, 2011 [redacted] World [redacted] Championship, Male [redacted]
- Pro-Am Champion, 2011 [redacted] World Championship
- First Place, 2011 [redacted] National Championship in [redacted]

However, there are some discrepancies with this evidence, consisting mainly of certificates with some photos of medals, and other evidence in the record. For example, the Petitioner submitted a copy of his profile posted on the website [redacted] which lists him as the “2011 [redacted] Champion of Asia.” The record does not include evidence that he received this award, nor does he claim to have received such an award. While this profile is not an authoritative source of information, it presents evidence which conflicts with other evidence in the record.

In addition, a letter from [redacted], President of the [redacted], states that the Petitioner was a world champion in Thailand in 2011, 2012 and 2016, and a world champion in Indonesia in 2015. But this conflicts with the evidence noted above, which shows that he won a silver medal at the 2011 World [redacted] Championship, and that his 2015 gold medal win was at the Asian [redacted] Championship. The Petitioner must resolve these 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).

We further note that both the certificate evidencing the Petitioner’s win at the 2011 [redacted] National Championship and the letter from [redacted] reference a [redacted], which indicates that there is or was a separate national [redacted] association and championship recognized by the [redacted] apart from those recognized by other international martial arts associations. As all of the Petitioner’s awards were earned at [redacted] sanctioned events, the record does not establish that they are recognized in the overall martial arts field at the national and international levels, including by those who are members of and participate in competitions sanctioned by other martial arts associations such as the [redacted]

Also, as noted by the Director in his opinion, the record lacks evidence of national or international recognition of these awards beyond the certificates and medals themselves. The Petitioner submitted evidence of a single article which appeared in the newspaper *Darakchi* which was about the [redacted] World Cup to be held in [redacted], Uzbekistan in 2011. This article focuses on this [redacted] sanctioned event, and does not show that the Petitioner’s awards received at [redacted] events received any similar discussion in either major media or in the martial arts field.

On appeal, the Petitioner asserts that the awards he received are not local or regional in nature, and that the focus of our analysis should be on the recognition of the awards, not the Petitioner. Although we agree with these statements, they do not aid in establishing the national or international recognition of the awards received by the Petitioner. As noted above, the record lacks sufficient evidence of the recognition of those awards, and there are unresolved inconsistencies regarding his receipt of some of them. Therefore, for all

of the reasons noted above, we agree with the Director's conclusion that the Petitioner has not established that he meets 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)

This criterion requires that a petitioner show that they are a member of an association in their field, and that the association requires outstanding achievements of their members, as judged by recognized experts. In his decision, the Director acknowledged the letter from [REDACTED] in which he confirms that the Petitioner has been representing the [REDACTED] team since 2010, but noted that it did not establish that the national team requires outstanding achievements of its members. On appeal, the Petitioner references this letter and asserts that the team meets this requirement. However, [REDACTED]'s letter provides no insight on the selection process for the [REDACTED] team, nor does any other evidence in the record. While membership on a national team may meet the requirements of this criterion, it is the Petitioner's burden to establish that those requirements have been met in each case. Because he has not done so, we conclude that he has not met 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)

The evidence submitted under this criterion consists of a single article published in the newspaper *Zeravshan* on [REDACTED] 2008, titled [REDACTED]. While the Petitioner is mentioned and quoted in this article, the Director determined that it was not about him. In addition, he noted that the evidence did not demonstrate that *Zeravshan* is a professional or major trade publication, or other major media.

In his appeal, the Petitioner did not address the Director's finding that the article was not about him, but asserts that we should focus "on the circulation of the publication, its intended audience if it is a professional or trade publication, or the editorial influence of the media source..." Because the Petitioner has not challenged an adverse finding on one of the elements of this criterion, and the record includes no evidence of the circulation of *Zeravshan* or any other information about it, we concur with the Director's decision regarding this criterion.

B. Final Merits Determination

We find that the Petitioner does not satisfy the criteria relating to lesser awards, membership, and published material about him. Although he also claims eligibility for an additional criterion on appeal, relating to contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), we need not reach this additional ground. Because the Petitioner cannot meet the initial evidence requirement of three criteria

under 8 C.F.R. § 204.5(h)(3), we reserve that issue.² Accordingly, 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.

III. CONCLUSION

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 that 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.

² *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).