



U.S. Citizenship  
and Immigration  
Services

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 23193901

Date: APR. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a competitive swimmer, 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 record did not establish that the Petitioner met the initial evidentiary requirements through evidence of a one-time achievement or meeting at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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)(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). 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. at 376.

## II. ANALYSIS

The Petitioner did not indicate, and the record does not establish, that she has received a major, internationally recognized award pursuant to 8 C.F.R. § 204.5(h)(3). The Petitioner must therefore demonstrate her eligibility under at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claims to meet four criteria. The Director found that the Petitioner satisfied the regulatory requirements for two criteria, lesser nationally or internationally recognized prizes or awards at 8 C.F.R. § 204.5(h)(3)(i) and published material in professional or major media at 8 C.F.R. § 204.5(h)(3)(iii). The record supports the Director’s conclusion that the Petitioner satisfied these criteria.

The Director found the Petitioner did not satisfy the regulatory requirements for membership in associations that require outstanding achievements at 8 C.F.R. § 204.5(h)(3)(ii), or for leading or critical role for distinguished organizations or establishments at 8 C.F.R. § 204.5(h)(3)(viii). On appeal, the Petitioner asserts that she has satisfied both evidentiary criteria. After reviewing the evidence in the record, we find that the Petitioner has demonstrated that she satisfies at least three of the ten initial evidentiary criteria.

The Petitioner claims she performed a leading or critical role with an organization of distinguished reputation through her roles as team captain and swimmer for the [redacted] University [redacted] women’s swimming and diving team. The Director evaluated the evidence relating to the Petitioner’s role with the [redacted] women’s swimming and diving team, finding that although the Petitioner had a leading role with the [redacted] women’s swimming and diving team as its team captain, she did not have a leading or critical role with the overall organization of [redacted]. The Director explained that the

criterion requires a leading or critical role for an “entire organization, as opposed to a department, component, time frame or season within the organization.” The Director’s analysis is incorrect, as USCIS policy states that the leading or critical role may be “for an organization, establishment, or a division or department of an organization or establishment.” See generally 6 USCIS Policy Manual F.2(B)(2) (Appendices), <https://www.uscis.gov/policymanual>. Therefore, consideration may be given to the Petitioner’s leading or critical role within a division or department of [redacted] including her team captain role within [redacted] women’s swimming and diving team. Therefore, the Director’s finding is withdrawn.

The record indicates that during the Petitioner’s senior year at [redacted] she served as co-captain for the [redacted] women’s swimming and diving team. For a leading role, the evidence must establish that the individual is (or was) a leader. A title, with appropriate matching duties, can help to establish if a role is (or was), in fact, leading. *Id.* Evidence shows as a team captain, the Petitioner provided mentoring and support to her teammates, and led the team to winning the [redacted] Team Championships. A letter from the team’s associate head coach, [redacted] states that the Petitioner “served as a co-captain of the team, as voted to the position, by her fellow teammates” showing “outstanding leadership, accountability, positivity, and dedication toward her teammates. Her contributions as a team leader, as well as exemplary student-athlete, were extremely valuable to our Swimming and Diving program’s culture and success.” Another letter from the team’s head coach, [redacted] confirms the Petitioner’s captain role and details her accomplishments, including multiple [redacted] swimming records. The record shows that during her time as team captain, the Petitioner was named [redacted] swimmer of the year and was one of a limited number of swimmers who qualified for and competed at the NCAA championships where she set a [redacted] school record. She also helped her team to a conference title at the [redacted] championships by setting a meet record and winning a gold medal in the 100 meter freestyle event; winning gold medals in the 50 meter freestyle and 100 meter backstroke events; and being part of three gold medaling relay team events. The record demonstrates the Petitioner performed a leading role for the [redacted] women’s swimming and diving team as its team captain.

The record also shows the [redacted] women’s swimming and diving team has a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are “marked by eminence, distinction, or excellence.” *Id.* (citing to the definition of Distinguished, Merriam-Webster, <https://www.merriam-webster.com>). News articles and statistics in the record detail the team’s accomplishments during the Petitioner’s time on the team, and the team’s rankings from 2017 to 2020. Ranking statistics from [redacted] com indicate for the year 2020, the team was ranked [redacted] in its conference; [redacted] in NCAA Division I mid-major, and [redacted] in NCAA Division I. News articles show multiple wins and accomplishments of the team and its individual team members, including the team having won seven consecutive [redacted] Championships. The recognized accomplishments of the team sufficiently demonstrate the team’s distinguished reputation under the criterion.

Based on this evidence, we find that the Petitioner has met the requirements of this criterion.

With eligibility under this additional criterion, the Beneficiary satisfied part one of this two-step adjudicative process. As the Beneficiary has met the initial evidence requirements of at least three

criteria, it is unnecessary to discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)-(x).

### III. CONCLUSION

For the reasons discussed above, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. Because the Petitioner has established her qualifications under criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), and (viii), on remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, her status as one of the small percentage at the very top of his 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.

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