



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 23607602

Date: MAR. 13, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, an 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 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).

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 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual’s occupation.

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 indicates he is a competitive athlete in karate and intends to continue his career in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he has received a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), 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 satisfied only the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). However, for the reasons discussed below, we do not agree with the Director that the Petitioner fulfilled the awards criterion. On appeal, the Petitioner maintains eligibility for two additional criteria: published material at 8 C.F.R. § 204.5(h)(3)(iii) and membership at 8 C.F.R. § 204.5(h)(3)(ii). After reviewing all the evidence, the record does not reflect that the Petitioner meets the requirements of at least three criteria.¹

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).

To fulfill this criterion, the Petitioner must demonstrate that he received prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.² The Director determined that the Petitioner submitted sufficient evidence to satisfy this criterion. We disagree and withdraw the Director’s conclusion on this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” However, a review of the record of proceeding reflects that although the Petitioner documented his receipt of prizes or awards, he did

¹ While we do not discuss each piece of evidence in the record individually, we have reviewed and considered each one.

² *Id.*

not submit sufficient documentary evidence establishing that that they were nationally or internationally recognized for excellence.

In support of this criterion, the Petitioner submitted a letter from the Turkish Karate Federation listing competitions and camps attended by the Petitioner from [] 2012 to [] 2022, with the Petitioner's placements in each competition. The letter indicates the Petitioner placed in the following competitions:

- fifth place at the [] Karate Championship in [] 2019,
- first place in six Turkish karate championships,
- first place at the [] Croatia on [] 2019,
- first place at the [] Karate Championship in [] 2019,
- second place at the [] Championship in [] Portugal on [] 2017,
- second place at [] Karate Championship in [] 2017,
- first place at [] Croatia on [] 2016,
- second place at [] European Championship and [] Portugal on [] 2014,
- first place at [] World Karate Championships in [] Spain on [] 2013,
- first place at [] Championship in [] Serbia on [] 2013,
- first place at [] Championship in [] Turkey on [] 2012,
- second place at [] Championship in [] Russia on [] 2012, and
- third place at [] Greece on [] 2012.

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.³

The evidence shows that most of the Petitioner's awards were from age-limited junior competitions and university student competitions. Age-limited and university student awards are intended for a specific subset of individuals and exclude those already in the field. See *Hristov v. Roark*, 2011 WL 4711885 (E.D.N.Y. 2011) (upholding AAO finding that an award which was limited to students was not granted for excellence in the field of endeavor); see also *Strategati, LLC v Sessions*, 2019 WL 2330181 (S.D. CA 2019) (upholding finding that "Woman of the Year" award eliminated men from consideration and thus did not "measure the petitioner's standing or selection from the whole field.")). The Petitioner has not shown that he faced competition throughout the field of karate in these competitions, which were restricted by age, student, or non-professional status. Due to these

³ See generally 6 USCIS Policy Manual F.2 Appendix, <https://www.uscis.gov/policymanual> (noting relevant considerations in determining if the award or prize meets this criterion, among others, are its national or international significance in the field).

competitions excluding a majority of the field, the Petitioner has not established that these awards are for excellence in the field, as required by the regulation. See 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner also submitted letters indicating he placed fifth at the [] Karate Championship in [] 2019, and first in six Turkish karate championships. The record does not sufficiently demonstrate the national or international recognition for excellence in karate for the awards. Besides listing the placements, the record does not provide details of the awards. Without supporting documentary evidence to provide information regarding the actual competitions themselves, such as the sponsoring organizations of the events, the official entry requirements from the sponsoring organizations, the level of those who participated, or the degree of attention the events attract within the field, we cannot conclude that they are nationally or internationally recognized awards for excellence in karate.⁴ While letters of recommendation from coaches and other athletes in his field indicate the Petitioner has extraordinary ability based on these placements, they do not explain how these awards are nationally or internationally recognized for excellence in the field of endeavor. The burden is on the Petitioner to demonstrate the level of recognition and achievement associated with the awards.

With the initial evidence, the Petitioner also submitted documents relating to competitions he participated in after the petition's filing date. The documents may be considered to help establish the Petitioner's intention to continue working in the field of karate, however, they may not be considered to establish awards received by the Petitioner. The Petitioner must establish eligibility for the criterion as of the petition's filing date. See 8 C.F.R. § 103.2(b)(1).

After considering the record, the Petitioner has not met the plain language requirements of this awards' criterion. 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, or that they are recognized for excellence in the field of karate, as required. The Petitioner has not submitted documentation sufficient to establish his eligibility for this criterion. Therefore, we disagree with and withdraw the Director's determination of the Petitioner's eligibility for this criterion.

For the reasons stated above, the Petitioner does not meet 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 Director determined that the Petitioner did not establish eligibility for this criterion. We agree with the Director's determination. A review of the record does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The record includes several articles reporting karate competition results that do not include the title, date, or author of the material, thereby not meeting the plain language of the criterion. For instance,

⁴ See generally 6 USC1S Policy Manual, *supra*, at F.2 Appendix.

the article published in TRTSPOR entitled, [redacted] dated [redacted] 2014; the article published in [redacted] entitled, [redacted] [redacted] dated [redacted] 2019; and the article published in Haberler.com entitled, [redacted] [redacted] dated [redacted] 2019, all do not identify an author. Therefore, such articles do not meet the plain language of the criterion requiring “the title, date, and author of the material”. Id. Another article published by the Istanbul Provincial Directorate of Youth and Sports does not include any of the title, date, or author, therefore, also not meeting the plain language of the criterion.

To meet this criterion, the evidence must establish that material was published, that it was about the Petitioner and his work as a karate athlete, and that the medium in which it was published is a professional, major trade or other major medium.⁵ As noted by the Director, published material “must primarily be about the [P]etitioner relating to his work in the field. . . .” See *Noroozi v. Napolitano*, 905 F.Supp.2d 535 (2012) (articles about the Iranian Table Tennis Team which only briefly mentioned the person were not about him.); see also *Negro-Plumpe v. Okin*, 2008 WL 106997512 (D. Nevada 2008) (articles focusing on a character played by the person or the show he performed in were not about the person).

Although the Petitioner submitted materials mentioning the Petitioner’s name, the materials are primarily reporting the results of competitions and briefly mention the Petitioner being part of the male kata teams and his teams’ placements at competitions.⁶ For instance, the Karate Federation of Turkey Official Journal dated [redacted] 2013, and the article entitled, [redacted] [redacted] dated [redacted] 2019, each briefly mention the Petitioner, within the context of reporting the results of the of the competitions and the Petitioner being part of the male kata teams. Although mentioning the Petitioner being part of a team and the team’s competition results, the material is not about the Petitioner but is instead about the team and the competition results. Therefore, the articles do not meet the criterion.

On appeal, the Petitioner submits additional evidence of published material, including links to website articles and quotes from the articles. The Petitioner had an opportunity to provide evidence for this criterion in response to the Director’s request for evidence. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). We will therefore not consider this newly submitted evidence in our decision. While, the new evidence is not considered on appeal, we note that the links and news’ quotes are not sufficient evidence of published material, in that the Petitioner did not submit a copy of the full publications with the title, date, and author of the material, and any necessary translation, as required by 8 C.F.R. § 204.5(h)(3)(iii).

For the reasons stated above, the Petitioner does not meet this criterion.

⁵ See generally 6 USC1S Policy Manual, *supra*, at F.2 Appendix.

⁶ The Petitioner submitted articles in a foreign language and uncertified English language translations of the articles. The regulation at 8 C.F.R. § 103.2(b)(3) provides in pertinent part, “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.”

B. Summary and Reserved Issue

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents demonstrating that he meets at least three of the ten criteria. Although the Petitioner claims eligibility for an additional criterion on appeal, relating to memberships at 8 C.F.R. § 204.5(h)(3)(ii), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁷

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement under 8 C.F.R. § 204.5(h)(3), or documents that meet at least three of the ten criteria under 8 C.F.R. § 204.5(h)(3). 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 conclusion 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 recognition 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). Although the Petitioner has experience as a karate athlete, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

ORDER: The appeal is dismissed.

⁷ 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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).