U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43781317

Date: AUG. 24, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner, a competitive swimmer, 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.

USCIS denied the petition, concluding that the record did not establish that the Petitioner warranted a favorable determination in the case's final merits analysis. The matter is now before us on appeal pursuant to 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 dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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, provided that the individual seeks to enter the United States to continue work in the area of extraordinary ability, and the individual'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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence 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

Because the Petitioner has not indicated or established that he 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). The Petitioner initially claimed he met four of these criteria. USCIS determined that the Petitioner satisfied three of the criteria, relating to awards, membership, and published material. 8 C.F.R. § 204.5(h)(3)(i)-(iii). However, USCIS ultimately determined that the totality of the evidence in the record did not warrant a favorable decision in the final merits determination.

On appeal, the Petitioner asserts that he meets the remaining criterion of performing in a leading or critical role. 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner also contends that the totality of the evidence demonstrates that he has sustained national or international acclaim and ranks among the small percentage at the top of his field: competitive swimming. Upon review, we conclude that the record does not demonstrate that the Petitioner meets the required minimum amount of regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), and he is not eligible for the extraordinary ability classification.

A. Published Materials

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." These materials must include "the title, date, and author of the material, and any necessary translation." *Id.* The published material should be about the alien and his work, rather than the alien's employer and its work (or about an organization and its work). Professional or major trade publications may be identified by their intended audience, while other major media and major trade publications should have elevated circulation or readership relative to other media in the field. *See generally 6 USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual.

USCIS concluded that the Petitioner met this criterion; however, we disagree. The Petitioner submitted six articles in support of meeting this criterion. The articles mostly show competition results where the Petitioner is briefly mentioned in a sentence or two or his name appears in the results of the competition. For example, in the articles, titled [redacted] another titled [redacted]

[redacted]' and [redacted]' the only mention of the Petitioner is his name and the results of the competition including his swim time. Here, articles with the Petitioner's name listed in passing or that merely list the results of a competition do not equate to published material about the Petitioner to satisfy this criterion. *Javakhadze v. Mayorkas*, No. 3:21-CV-00617-E, 2023 WL 8037730, at *6 (N.D. Tex. Nov. 20, 2023) (upholding USCIS' determination that the published material criterion was not met because the materials submitted discussed the outcomes of various competitions, mentioning the plaintiff in passing as it related to competition results).

Further, in the articles titled, [redacted]" and [redacted]' the Petitioner is named among a list of athletes who would be competing in the [redacted] The most detail is provided in an article titled [redacted] in which the article provides a brief update that the Petitioner withdrew from multiple events. However, these articles do not provide sufficient detail or substance for us to determine that they sufficiently meet the standard of "published material about Petitioner's work in the field," rather than providing results, general descriptions, and assertions about the Petitioner. *Aravamuthan v. Jaddou*, No. 3:23-CV-01412-N, 2025 WL 1708126, at *4 (N.D. Tex. June 17, 2025) (upholding the finding that the plaintiff's submission of an article reflecting generalized assertions did not provide specific information about his work in the field). We conclude that the publications in the record do not provide sufficient information about the Petitioner and his work to meet this criterion.

Therefore, we withdraw USCIS' finding that the Petitioner satisfied this criterion.

B. Leading or Critical Role

The regulation at 8 C.F.R. § 204.5(h)(3)(viii) calls for "evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The role may be shown to be leading or critical for a division or department of an organization or establishment, or for the organization or establishment overall. Evidence of a leading role should show that the alien was a leader for the claimed component, and a job title with matching duties may help to establish that a role was leading. For a critical role, evidence should show that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities or those of a division or department of the organization or establishment. In determining whether the organization or establishment, or a department or division thereof, has a distinguished reputation, relevant factors include its size, longevity, scale of its customer base, and relevant media coverage. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

On appeal, the Petitioner contends that he has performed a critical role for the [redacted] athletics program. He details two events, the [redacted] where he was assigned the third leg of the [redacted] which "set a program record of [redacted] earned a silver medal, achieved an automatic [redacted] qualifying time, and recorded the [redacted] time in the nation that season"; and the [redacted] where his team finished [redacted] nationally. He contends that because this team only finished by [redacted] ahead of the next team, "the significance of every scoring swim is a mathematical fact." Although the Petitioner provides letters from his head

coach and a fellow competitor that confirm this information, the evidence is insufficient to show that the Petitioner himself had a critical role in these wins that would stand out from the rest of the team. The Petitioner contends that he provided results documentation with the request for evidence, however that evidence is not in the record. Without supporting evidence that shows the Petitioner's specific results were integral to the to the team's success, we cannot determine that his role was critical. *Melnattur v. United States Citizenship & Immigr. Servs.*, No. 8:21CV345, 2022 WL 18086892, at *5 (D. Neb. Sept. 12, 2022) (finding "USCIS determined the evidence did not show how [the plaintiff] 'is any more leading or critical to the outcome of the lab's activities than any other scientist in the lab . . . .'").

The Petitioner further asserts that he performs a critical role within the national governing body of competitive swimming in Canada. He states that he won at the earned a bronze medal at the and represented Although the record contains evidence that the Petitioner was successful in these various competitions, the evidence does not establish how these were critical to an organization, rather than personal accomplishments for the Petitioner. *Aravamuthan v. Jaddou*, No. 3:23-CV-01412-N, 2025 WL 1708126, at *7 (N.D. Tex. June 17, 2025) (finding that being successful in his roles is not analogous to contributing in a way that is of significant importance to the outcome of the organization or establishment's activities). In addition, the Petitioner submits evidence that he received the . However, the letter of congratulations states that he received this award for at the and not for a critical role he performed as a member. It appears that everyone who received this medal, and although it provides recognition for his participation, it does not provide evidence that he performed a critical role, standing out from any other member of the . *Chivukula v. Allen*, No. 3:22-CV-0381-S, 2023 WL 4504601, at *6 (N.D. Tex. May 1, 2023) (finding USCIS did not add novel requirements by stating that the plaintiff did not include documentary evidence establishing whether his role was more leading or critical than other individuals at the same level); *Tapia v. Jaddou*, No. 8:23-CV-813-CEH-AAS, 2025 WL 2780815, at *5 (M.D. Fla. Sept. 30, 2025) (finding a comparison of the plaintiff's role to others in the organization to determine whether the role is leading or critical falls within the plain language of the criterion).

Finally, the Petitioner contends that he performed in a leading role and meets this criterion as he served on the . While the record confirms that he served on the advisory council, the record establishes the role has more liaison responsibilities than leadership responsibilities. For example, the press release which announced the council members states that "[t]he council acts as the communication between and high performance athletes to provide feedback to the organization . . ." and that through the advisory council swimmers can "contribute ideas, ensuring their voices are heard." This is confirmed by the advisory council "Terms of Reference" document which states that "the purpose of the Council is to act as communication conduit between and High Performance Swimmers." In addition, the advisory council appears to have leadership positions as it has two "co-chair" positions, however, the Petitioner is not named as a co-chair on the advisory council. Therefore, as the record does not establish the Petitioner is performing in a role in which he leads others, the record does not establish the Petitioner has performed in a leading role to meet this criterion. *Kinuthia v. Rosenberg*, No. CV 17-10255-LTS, 2018 WL 1243955, at *6 (D. Mass. Mar. 8, 2018), *aff'd sub nom.*, *Kinuthia v. Velarde*, No. 18-1244, 2019 WL 11671989 (1st Cir. July 3, 2019), *cert. denied*, 140 S. Ct. 2643, 206 L. Ed. 2d 714

(2020) (upholding AAO's determination that the petitioner did not establish that his role required him to manage or lead others).

C. Final Merits Determination

The Petitioner did not satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Therefore, we are not required to make a final merits determination. But, as the Petitioner has appealed USCIS' final merits determination, we have reviewed the record and determine that even if the Petitioner had established that he met the initial evidentiary standard and the requirements of section 203(b)(1)(A)(ii), (iii) of the Act, we would nonetheless conclude the Petitioner did not demonstrate he has extraordinary ability in his field of endeavor upon conducting a de novo final merits determination.

In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to, by a preponderance of the evidence, demonstrate that he has extraordinary ability in the field of endeavor through sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his 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 v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). As discussed further below, the Petitioner is active in the competitive swimming field. He has earned medals and been a member of collegiate and national teams. However, in considering the totality of the evidence, the Petitioner has not demonstrated that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. 1990 U.S.C.C.A.N. 6710, 6739. Furthermore, the Petitioner has not shown that he has risen to that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 FR 30703-01, 30704. Here, the Petitioner has not established that he meets this very high standard.

On appeal, the Petitioner contends that the record reflects sustained national and international acclaim as he has documented "a continuous pattern of elite-level performance from 2022 through 2025," with his evidence of awards including the [redacted] However, his awards alone do not sufficiently establish national or international acclaim. *Donskoy v. United States Citizenship & Immigr. Servs.*, No. 21-CV-04757-CRB, 2021 WL 5240224, at *5 (N.D. Cal. Nov. 11, 2021) (finding that what matters for the purpose of the visa classification is whether the award brought the petitioner individual acclaim). The Petitioner also asserts that, along with earning medals in competitive swimming, he received government recognition through receiving the [redacted] The record indicates that the Petitioner received this medal for his participation in the [redacted] However, the record does not establish that he received any additional acclaim for his receipt of the [redacted]. *Id.* (finding the petitioner did not submit any evidence that he received any publicity for winning the award, or that he stands out among the thousands of recipients of the award each year). Here, although the Petitioner provides evidence of success in

competitive swimming and some recognition, the record does not establish that these achievements resulted in sustained national or international acclaim.

Moreover, USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). On appeal, the Petitioner attempts to distinguish himself from this case by stating that he is "not merely a participant" in competitive swimming as he has won various medals. However, as stated above, although he has a record of achievements in competitive swimming, the record does not establish that he has garnered national or international acclaim from winning these medals as the threshold for extraordinary ability is above the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). *See Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (upholding the finding that the plaintiff did not contextualize his awards throughout his career to show sustained national or international acclaim). The Petitioner highlights his media coverage as evidence of his continuous achievement in the field. However, as we discussed above, the limited media coverage provides his competition results but does not provide additional details or substantive coverage that meets the threshold of national or international acclaim. *Nelson v. U.S. Citizenship & Immigr. Servs.*, No. CV 21-10334-LTS, 2022 WL 20583561, at *10 (D. Mass. June 15, 2022) (finding plaintiff did not point to evidence in the record distinguishing him from the merely successful and qualifying him as extraordinary).

The Petitioner contends that achievements such as [redacted], and his contributions to his [redacted] team place him among the small percentage at the top of his field. While the record includes evidence of his medals, letters of recommendation detailing his contributions to his team, and his membership on the [redacted] the record does not provide sufficient context in which we can determine that he is among that small percentage at the very top of his field. Although the Petitioner provides letters praising his swimming, the letters do not provide sufficient detail, nor does the record contain evidence that his achievements garnered field-wide praise or attention that would be considered national or international acclaim, indicating that he is one of the small percentage at the top of his field. *Trajano v. U.S. Citizenship and Immig. Services*, No. CV 25-12388-FDS, 2026 WL 2137917, at *6 (D. Mass. July 24, 2026) (upholding the finding that the plaintiff did not demonstrate the significance of his awards, individually or in the aggregate, such as prompting wide praise for his work from critics, drawing notable crowds, raising attendance, or resulting in the success of the events).

The Petitioner submits four letters of recommendation in support of his petition. Here, the letters do not contain sufficient information and explanation to show that the Petitioner is viewed by the overall field, rather than by a solicited few, among the upper echelon or that he has garnered recognition on a national or international scale, consistent with being among the small percentage at the very top of the field of endeavor. *Mishra v. Richardson*, No. 120CV991LMBTCB, 2021 WL 1566071, at *3 (E.D. Va. Apr. 20, 2021) (finding that none of the plaintiff's letters point to evidence of extensive documentation of his accomplishments to show sustained national or international acclaim). Although the letters highlight the Petitioner's work, they do not reflect a career of acclaimed work in the field, garnering the required sustained national or international acclaim. *See Bodhankar v. United States*

Citizenship & Immigr. Servs., No. 119CV706MADCFH, 2020 WL 777211, at *5 (N.D.N.Y. Feb. 18, 2020) (finding the submitted letters failed to establish the plaintiff's contributions resulted in significant acclaim). For example, in the letter written by his head coach W-D-, the author gives examples of the Petitioner's success in two specific competitions. While the letter indicates that the Petitioner was a part of the [redacted] that produced a program-record time and earned a silver medal, evidence of this achievement does not provide context in order for us to determine that this is more than evidence of a personal and a team accomplishment.

Although we acknowledge the Petitioner has various accomplishments within the field of competitive swimming, the record does not establish the Petitioner's eligibility for the benefit sought. Here, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. at 954 (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability"); *Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2002) (stating that extraordinary ability is such an elite level of accomplishment); *Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *2 (N.D. Tex. Sept. 2, 2022) (holding that extraordinary ability visas are known as "Einstein" visas, are extremely "coveted," and are "reserved for only the most talented" aliens). In this case, the Petitioner has not shown the significance of his work is indicative of the required sustained national or international acclaim or it is consistent with a career of acclaimed work in the field. Section 203(b)(1)(A) of the Act. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, the record is insufficient to demonstrate that he is among the small percentage at the top of his field. *See* 8 C.F.R. § 204.5(h)(2).

III. CONCLUSION

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. In visa petition proceedings, it is a petitioner's burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

ORDER: The appeal is dismissed.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.