U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43197713

Date: JUL. 27, 2026

Appeal of United States 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 although the record establishes that the Petitioner satisfied at least three of the ten initial evidentiary criteria, as required, the totality of the evidence did not show, in a final merits determination, that the Petitioner has received sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor. 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 withdraw the 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 sustained acclaim and the 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 competitive swimmer on the [redacted] swimming teams. Because the Petitioner does not claim, and the record does not show, that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the initial evidentiary requirements.

A. Evidentiary Criteria

The Petitioner asserts that he meets the criteria related to awards, memberships, published material, and performing in a leading or critical role for a distinguished organization under 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii) and (viii). USCIS determined that the Petitioner met the awards, membership, and published material criteria.

The documentary evidence shows that the Petitioner has won nationally and internationally recognized awards in swimming competitions, been a member of teams that require outstanding achievements as determined by national experts, and that he has received media coverage in his sport. For example, the record shows that the Petitioner won gold at the 2024 [redacted] in [redacted] in the men's 4 x 200m freestyle relay, won first and second place races at the 2025 [redacted] and placed third in the men's 100m freestyle event at the 2025 [redacted] a competition held by [redacted] for elite swimmers, current Olympians, and national team members. In addition, he was a member of [redacted] team at the [redacted] and has garnered media coverage in major swimming publications such as *Swim Swam* and *Swimming World*. Accordingly, the record supports USCIS' finding that the Petitioner has satisfied at least three of the ten regulatory criteria.

USCIS did not decide whether the Petitioner established the claim that he has performed in a leading or critical role for a distinguished organization. Because it concluded that the Petitioner established the other three claimed evidentiary criteria, it was not necessary for USCIS to provide a separate analysis as to the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Nevertheless, USCIS erred when it incorrectly stated in its decision that the Petitioner did not claim eligibility under any criteria not discussed in its decision. We discuss the evidence regarding the Petitioner's role in a distinguished organization below.

B. Final Merits Determination

Because the record satisfies at least three of the regulatory criteria at 8 C.F.R § 204.5(h)(3)(i)-(x), USCIS conducted a final merits determination to consider whether the record establishes that the Petitioner enjoys sustained national or international acclaim and demonstrates that is among the small percentage at the very top of the field of endeavor.

In its very brief analysis, USCIS listed in bullet point form some of the Petitioner's accomplishments, including his number 10 ranking for the year and number 24 in U.S. history in his most competitive race, his title as a two-time [redacted] and his four current records at [redacted] an [redacted] school described in one of the Petitioner's support letters as [redacted]"[1] USCIS then appeared to acknowledge that the Petitioner is "among the top 0.001% of competitive swimmers in the United States" and that he has received national or international acclaim "from as early as 2022 to 2025 (and present)." USCIS denied the petition, however, finding that the Petitioner did not establish that this acclaim has been sufficiently "sustained."

On appeal, the Petitioner contends that USCIS did not consider material evidence in the record that establishes that the Petitioner has a leading or critical role in a distinguished organization, that USCIS' conclusions in the final merits determination are contradictory, and that USCIS mischaracterized the Petitioner's career timeline in finding that his acclaim has not been sustained. In the alternative, the Petitioner claims that the two-step framework itself is unlawful based on *Mukherji v. Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026).

We are not persuaded by the Petitioner's alternate argument that USCIS' use of a two-step analysis in extraordinary ability adjudications is unlawful based on *Mukherji v. Miller*, an unpublished district court decision. In contrast to the precedential authority of a published decision of the U.S. Courts of Appeals in matters arising in their jurisdiction, we are not bound to follow a decision of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). While we may consider a court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Salamalekis v. Comm. of Soc. Sec.*, 221 F.3d 828, 833 (6th Cir. 2000); *see also Suchite-Salguero v. Att'y Gen. United States*, 147 F.4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases.").

[1] USCIS also stated in this bulleted list that the Petitioner is a two-time [redacted] having represented [redacted] at both [redacted] However, the record does not appear to show that he competed at the [redacted] although he may have had qualifying race times for these [redacted]

Additionally, we note that the *Mukherji* decision was issued by a district court in Nebraska and is therefore outside of the Petitioner's jurisdiction, which is in [redacted] For these reasons, we are not bound by the ruling of *Mukherji v. Miller* in the instant case and USCIS' analysis of the petition under the two-step review framework provided in *Kazarian* was not in error. *See Kazarian v. USCIS*, 596 F.3d at 1115.

Nevertheless, we do agree with the Petitioner's primary argument that USCIS did not sufficiently consider the record in its entirety in the second step analysis. USCIS did not discuss the specific evidence of the Petitioner's awards, memberships, published material, and claimed performance in a leading or critical role and explain why that evidence was insufficient to establish the Petitioner's sustained national or international acclaim or that he has risen to the top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2); *see also Kazarian v. USCIS*, 596 F.3d at 1115.

This omission is particularly evident as it relates to the Petitioner's claimed performance in a leading or critical role. As noted above, because USCIS concluded that the Petitioner established the other three claimed evidentiary criteria, it was not necessary to provide a separate analysis as to whether the Petitioner established the criterion at 8 C.F.R. § 204.5(h)(3)(viii). Nevertheless, USCIS should have analyzed the totality of the evidence, including the evidence submitted in support of this criterion, in its final merits determination, which it did not. Regarding this criterion, the Petitioner submitted evidence that he has had a leading role as team captain of the [redacted] men's swimming team and that his role has been critical because, among other reasons, his performance in particular race events was determinative in his team's finishing wins.

Finally, USCIS primarily rests its denial on the conclusion that the Petitioner's national or international acclaim has not been sustained. However, USCIS does not sufficiently explain why the Petitioner's five-year career, starting from 18 years of age and appearing to maintain a trajectory of increasing recognition and accomplishment through the present, is not sufficient to be "sustained." In determining whether an individual has enjoyed "sustained" national or international acclaim, USCIS should consider that such claim must be maintained. However, the term sustained does not imply an age limit. A petitioner may be very young or early in his or her career and still be able to show sustained acclaim. *See generally* 6 *USCIS Policy Manual* F.2(A)(1), https://www.uscis.gov/policy-manual.

An officer must fully explain the reasons for denying a visa petition to allow the petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(i); *see also Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). On remand, USCIS should consider the evidence in the record in its totality to determine whether it is supportive of the Petitioner's sustained national or international acclaim.

C. Continuing to Work in the Area of Extraordinary Ability & Substantially Prospectively Benefit to the United States

To qualify as a person with extraordinary ability, he or she must intend to continue to work in the area of his or her expertise, and his or her entry must substantially benefit the United States prospectively.

Section 203(b)(1)(A)(iii) of the Act. In its decision, USCIS did not make a determination as to whether the record establishes either of these requirements.

In support of the Petitioner's intention to continue to work in the United States in his area of expertise, the Petitioner submitted a personal statement. In support of the substantial prospective benefit of the Petitioner's entry to the United States, he submitted a letter of support from [redacted], an Olympic gold medalist and current member of the U.S. National Swimming team.

In the Petitioner's statement, he affirms that he is committed to a rigorous U.S.-based competition schedule and that following the NCAA season he will focus on qualifying and competing at upcoming European and World Aquatics Championships, culminating in the 2028 Olympic Games. He describes his intention to continue his career and participate in swim clubs and training camps in the United States. The letter of support from [redacted] corroborates these plans and describes the increased visibility and prestige that a competitive swimmer at the Petitioner's caliber brings to the sport of swimming.

We acknowledge the Petitioner's intention to continue in the sport; however, the record reflects that the Petitioner is in his senior year at [redacted] and he may soon leave collegiate athletics. Therefore, USCIS may wish to request additional evidence regarding the Petitioner's plans following his collegiate career in the United States. While the requirement to "substantially benefit" the United States has been interpreted broadly, USCIS should look at how the Petitioner's post-collegiate plans would be of substantial prospective benefit to the United States. *See Matter of Price*, 20 I&N Dec. 953 (Assoc. Comm. 1994) (a golfer of the individual's caliber will substantially benefit prospectively the United States given the popularity of the sport), *see also* 6 *USCIS Policy Manual, supra* at F.2(A)(3).

For example, the record contains letters of support from senior [redacted] staff and [redacted] swimming team staff who describe the Petitioner's prior and current accomplishments in their respective swimming programs. However, due to their positions as representatives of these organizations, the letter writers do not provide specific support for the Petitioner's post-collegiate plans in the United States, their feasibility, and their substantial prospective benefit. On remand, if USCIS is not able to determine, based on the evidence in the record, that the Petitioner's entry would substantially benefit prospectively the United States, it may request additional evidence to meet this requirement.

III. CONCLUSION

On remand, USCIS should consider whether the totality of the evidence in the record demonstrates the Petitioner's sustained national or international acclaim and his place among the small percentage at the top of his field, consistent with the analysis above. If USCIS needs further information to determine whether the Petitioner has established any of the eligibility requirements, including the substantial prospective benefit of his entry to the United States, it may request additional evidence.

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