U.S. Citizenship and Immigration Services

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

MATTER OF K-T-

DATE: MAY 16, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a ballroom dancer and teacher, seeks classification as an individual of extraordinary ability in athletics. *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 Form I-140, Immigrant Petition for Alien Worker, concluding the Petitioner had not satisfied any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner claims that he meets five criteria. He argues that the documentation contained in the record established eligibility for the benefit sought. With his appeal, the Petitioner submits a brief and additional evidence.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Section 203(b) of the Act states in pertinent part:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> (A) Aliens with extraordinary ability. – An alien is described in this subparagraph 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 two options for satisfying this classification's initial evidence requirements. First, a petitioner can demonstrate a one-time achievement (that is a major, internationally recognized award). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media). 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). 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. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner is a competitive ballroom (dance sport) dancer and teacher who has participated in national and international competitions and worked as a dance instructor and coach. As the Petitioner has not established 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). As noted previously, the Director found that the Petitioner had not met any of the listed criteria. On appeal, the Petitioner asserts that he meets the following criteria: awards at 8 C.F.R. § 204.5(h)(3)(i), membership at 8 C.F.R. § 204.5(h)(3)(ii), published material at 8 C.F.R. § 204.5(h)(3)(iii); original contributions under 8 C.F.R. § 204.5(h)(3)(v); and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the requirements of at least three criteria.

A. Evidentiary Criteria

> *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).

The Petitioner provided evidence demonstrating that he won first place in several events at Latvian national championship competitions held between 2011 and 2016, including the [redacted] 2015 and [redacted] 2014 championships in [redacted] In addition, the record includes documentation such as media coverage and expert letters indicating the national recognition of awards from these competitions. Accordingly, the Petitioner has demonstrated that he satisfies 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).

The Petitioner contends that his membership in the World Dancesport Federation (WDSF) and the National Dance Council of America (NDCA) meets this criterion. Concerning his WDSF membership, the Petitioner states that it is the "governing body for all dance sport competitions and athletes . . . including the [LDSF,]" participation in "WDSF competitions requires membership in a member federation organization" and per WDSF rules, "WDSF competitions must include all levels of youth and juvenile dancers." According to the Petitioner, "[t]hus, exceptional championship dancers compete with outstanding success on national and international levels throughout their school years." Similarly, the Petitioner contends that membership in the NDCA requires "dancers to meet strict qualifications that are based on training, certification and experience." The submitted documentation, including the WDSF statutes and a brief excerpt from the NDCA rules and regulations, does not demonstrate that either association requires "outstanding achievements of their members, as judged by recognized national or international experts." The Petitioner therefore has not established that he meets this criterion.

The Petitioner alternately asserts that his membership on the Latvian [redacted] team within the Latvian DanceSport Federation (LDSF) should be accepted under 8 C.F.R. § 204.5(h)(4) as "comparable" to the evidence required under this criterion. As support, he cites to an example listed in a U.S. Citizenship and Immigration Services (USCIS) policy memo.[1] However, the Petitioner has not demonstrated that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation such that he is eligible to meet the initial evidentiary requirements through comparable evidence. *See* 8 C.F.R. § 204.5(h)(4). As explained in the cited memo, general assertions that any of the ten criteria do not readily apply are not probative, and a petitioner should instead explain why it has not submitted evidence that would satisfy at least three of the criteria.

In addition, the Petitioner has not established the comparable nature of his team membership. As he notes, the memo provides as an example that "[e]lection to a national all-star or Olympic team might serve as comparable evidence for evidence of memberships in 8 CFR 204.5(h)(3)." The Petitioner

[1] USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14* 12 (Dec. 22, 2010), https://www.uscis.gov/policymanual/HTML/PolicyManual.html.

asserts that "all the members of such teams are selected for outstanding achievements." However, while submitted letters confirm the Petitioner's membership on the LDSF [redacted] team, they do not provide sufficient information, nor does the record include documentary evidence, regarding the team's membership requirements or selection process to show that it is truly comparable to membership in an association that requires outstanding achievements of its members, as claimed.

> *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).

We note that the Director's decision includes conflicting statements about the evidence submitted under this criterion. The decision first states that the Petitioner submitted articles about himself relating to his work, but no probative evidence regarding the qualifying nature of the publications. It then states without explanation that the Petitioner provided documentation "that the media is major trade publications," but concludes that the published material is not about him. As explained below, upon *de novo* review of the record, we find the Petitioner has not satisfied the requirements of this criterion.

The Petitioner provided articles from various publications, such as the *Diena* newspaper and various websites, including tvnet.lv/apollo.lv and sportacentrs.com. While one of the *Diena* articles, [redacted]' is about the Petitioner, none of the articles from this publication included an author, as required. Similarly, many of the website articles, including those from www.delfi.lv, unity.lv, and sieviesuklubs.lv, did not identify the author and were not specifically about the Petitioner. Rather, they were about events in which he participated, only briefly mentioning him as a competitor. For example, the article [redacted] notes that the Petitioner will participate in the competition along with dancers from "more than 40 states around the world."

The record does include two articles that are about the Petitioner and identify the author: [redacted] 2015 article from sportacentrs.com; and [redacted] 2014 article from tvnet.lv/apollo.lv. However, the Petitioner has not provided consistent or sufficient information and evidence to demonstrate that either of these articles appeared in qualifying publications. The record includes printouts from Gemius, an internet research and consulting company, indicating that tvnet.lv/apollo.lv was the third-ranked internet site in Latvia for the month of May 2016. In contrast, submitted printouts from Alexa Internet, a data analytics company, noted this site was ranked 17th in Latvia based on website visitors and page views.[2] Gemius also noted that, in May 2016, sportacentrs.com was ranked 22nd in Latvia, while documentation from Wikipedia indicates that sportacentrs.com was ranked 41st in Latvia.[3] Without

[2] A petitioner must resolve 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).

[3] We note that Wikipedia is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the

further information clarifying the rankings of these websites and documentation regarding the significance of the figures noted above, this evidence is insufficient to demonstrate that they are qualifying publications that constitute professional or major trade publications or forms of major media.

> *Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.* 8 C.F.R. § 204.5(h)(3)(v).

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that he has made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

As evidence that he meets this criterion, the Petitioner provided recommendation letters. The documentation includes a letter from [redacted], the general secretary of Latvian sport dance professional federation, and [redacted], a dance sport club owner. [redacted] stated that she is "one of the persons who brought Pro/Am[4] dancing to Latvia." She indicated the Petitioner was her "inspiration" and she "pioneered this dance category" with him. [redacted] stated that the Petitioner is a "brilliant teacher" and he made a "major impact on our success to become a highly regarded brand in [redacted] Latvia." [redacted] indicated the Petitioner "spearheaded the development of a systematic and innovative teaching method that is currently being used to shape the next generation dancers" and he "has a deep understanding of dancing and an amazing ability to teach and inspire the students[.]"

Letters from experts may add value if they specifically articulate how a petitioner's original contributions are of major significance and what impact they had on subsequent work, while letters that lack specifics and simply use hyperbolic language do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.[5] Here, the letters commend the Petitioner's abilities, but they do not explain how he has made original contributions to the field that have been of major significance. Furthermore, the record does not contain sufficient information with corroborating documentation to support [redacted] assertions regarding the Petitioner's pioneering work to bring Pro/Am dancing to Latvia and the significance that this dance category has had since its introduction to the country. Similarly, [redacted] assertion that the Petitioner has developed an innovating teaching method that is shaping the next generation of dancers is not sufficient to meet the criterion because the record does not contain adequate information or documentation to demonstrate the impact of his teaching method and extent of its use. After review, the evidence in the record is insufficient to establish eligibility for this criterion.

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validity of its content. *See* General Disclaimer, Wikipedia, https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *see also Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008).

[4] The Petitioner has explained that Pro/Am is a competition division in which professional dancers compete as partners with their amateur students.

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9.

> *Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner contends that he qualifies for this criterion based on his experience as captain of the [redacted] from 2012 to 2016, which he claims was a leading role for the organization LDSF, and as the head coach of the dance sport club [redacted] from 2010 to 2016, which he asserts was both leading and critical for the club. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.[6] Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.[7]

Concerning the Petitioner's claim that he performed a leading role for LDSF, he refers to letters from various individuals, including the LDSF general secretary, [redacted], and [redacted] an adjudicator with WDSDF. [redacted] indicated, for example, that he "greatly contributed to the success of the [redacted] team due to his unique teaching abilities and methodology." [redacted] stated that the Petitioner and [redacted] have led and trained "the [redacted] dancesport team of Latvia in international formation competitions" and they "have been and continued to be a driving force of dancesport and dancesport training in Latvia." However, the record lacks sufficient information and documentation to support the Petitioner's claim that his experience as captain of the [redacted] qualifies as a leading role for "the whole [LDSF], since one of the main purposes of this distinguished organization is to organize participation of its members, competitive dancers in the international tournaments." Further, the submitted letters do not contain detailed and probative information that specifically addresses how the Petitioner's experience qualifies as a leading role with LDSF.[8] In addition, while the Petitioner presented general information about LDSF, including printouts from its website and details regarding its officials and 2016 champions, he did not demonstrate that it enjoys a distinguished reputation.

In regard to his assertion on appeal that he "has played [a] leading, starring and critical role" for the [redacted] dance sport club in Latvia, the Petitioner refers to two letters from the club owner, [redacted]. He stated that the Petitioner was the captain of the Latvian [redacted] and the club head coach (2010-2016), that "he has become truly representative of my club," and that he "attracted many new clients and became a role model and coach[.]" However, the Petitioner has not provided specific, detailed information or supporting documentation to demonstrate how his contributions led to the success of the organization to demonstrate the critical nature of his role. While he has shown that his position as head coach of the club constituted a leading role for the organization, he has not adequately documented the organization's reputation. Specifically, though the Petitioner provided printouts regarding the club's activities, including its experience as the organizer for and participation

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[6] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

[7] *Id.*

[8] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner's leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

in international dance sport events, and he asserts that [redacted] is the "best dance club in Latvia," owned by "probably the most notable figure in Latvian Dance Sport," he did not provide sufficient corroborative documentation to establish that the organization has a distinguished reputation.

Accordingly, the Petitioner has not established that he satisfies this criterion.

B. O-1 Nonimmigrant Status

In addition, we note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

## III. CONCLUSION

The Petitioner is not eligible because he has failed to submit the required initial evidence of either a qualifying one-time achievement or documents that meet at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20.[9] 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 level of expertise required for the classification sought. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of K-T-*, ID# 2337178 (AAO May 16, 2019)

[9] In addition, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether his intended teaching work constitutes coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii). *See also* USCIS Adjudicator's Field Manual (AFM), ch. 22.22(i)(1)(C).