U.S. Citizenship and Immigration Services

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

MATTER OF H-G-

DATE: SEPT. 25, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a martial artist, 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 that the Petitioner had not shown that he met any of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional evidence and contends that he meets three criteria.

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 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).

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 martial artist who intends to train and coach while also competing in mixed martial arts events. The Director addressed the Petitioner's experiences as a martial artist, noting that where the evidence did not establish 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). The Director concluded that the evidence did not establish that he met any of these criteria.[1]

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), and published material at 8 C.F.R. § 204.5(h)(3)(iii). For the reasons discussed below, the record does not support a finding that the Petitioner satisfies at least three criteria.

[1] In addition, the Director held that the Petitioner's letter regarding how he intends to work in his area of expertise did not comply with 8 C.F.R. § 204.5(g) because it was undated and did not state an address. We note that the cited regulation identifies requirements for letters submitted as evidence of qualifying experience, not as evidence that the Petitioner will continue to work in the area of expertise. More relevantly, the regulation at 8 C.F.R. § 204.5(h)(5) provides that the beneficiary may submit a statement detailing how he intends to continue his work in the United States. Here, because the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, as discussed below, we need not determine whether he is coming to "continue work in the area of extraordinary ability" under section 203(b)(1)(A)(ii).

> *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 record contains documentation demonstrating that from 2007 through 2017, the Petitioner has won international championship medals in the [redacted] the [redacted] and the [redacted], among other competitions. Here, the record reflects that at the [redacted] the Petitioner won gold medals in 2007, 2011, 2013, and 2015 as well as a silver medal in 2009, among other awards. The record contains a document from the [redacted] stating that it is the international federation "which governs wushu in all its forms worldwide" and that it is "recognized by the [redacted] Committee." While we acknowledge that the [redacted] oversees the [redacted] the record does not demonstrate that these events are internationally recognized. Although sanctioned by the [redacted] the record does not establish that winners at these competitions receive national or international recognition. Therefore, the Petitioner has not established that he meets this criterion for the awards received.

> *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 asserts that he meets this criterion due to his membership on the [redacted] The Director held that the record did not contain the association's bylaws or evidence demonstrating that the individuals reviewing prospective members' applications were experts in the field, and it was unclear if the Petitioner's membership was current.

While we note that the regulatory language of 8 C.F.R. § 204.5(h)(3)(ii) does not state that an individual must have current membership in an association that requires outstanding achievements of its members, the Director's decision focused on the lack of evidence regarding how one obtains membership on the [redacted] and of the qualifications of those who make membership decisions. On appeal, the Petitioner has submitted a copy of the his team membership card and two letters from the [redacted] indicating that he is a member of the team. Although this establishes the Petitioner's membership on the national team, the Petitioner has not provided documentation showing that membership on this team is based on outstanding achievements of those seeking to join the team. In addition, the Petitioner has not provided evidence demonstrating that the individuals making membership decisions are recognized national or international experts in the field as noted by the Director.

On appeal, counsel states that in order to be part of the national team and compete for such a lengthy period of time with this association, one must possess outstanding achievements. Assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)). Counsel's statements must be substantiated in the record with independent evidence. The regulation states that the association must require outstanding achievements for membership. Accordingly, the Petitioner must show that

he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national team requires outstanding achievements of its members for membership on the team. The Petitioner must meet his burden of proof by submitting relevant, probative evidence. *Matter of Chawathe*, 25 I&N Dec. at 376; *see also* section 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not sufficiently established the procedures utilized for his selection on the national team. Therefore, he has not met 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 held that the Petitioner did not meet this criterion because several of the articles were published after the filing of the petition, while others lacked proper translations, and some of the publications appeared to have a local or regional circulation rather than being in professional or major media.

On appeal, the Petitioner states that numerous articles have been published in major trade publications and media relating to his work in the field since the beginning of his career in 2006. He asserts that the Director overlooked several articles from 2011 through 2015 regarding his work and participation in the [redacted] He also indicates that all foreign language articles submitted were accompanied by a full English language translation as required by 8 C.F.R. 103.2(b)(3).

We note that the Petitioner cites eleven articles from 2011 through 2017, but only five of them were published before the petition was filed. Under 8 C.F.R. § 103.2(b)(1), the Petitioner must establish eligibility for the requested benefit at the time of filing. While all of the articles may be considered in a final merits determination as evidence of sustained international acclaim, we will consider only the articles that were published before the date of filing to establish eligibility under this criterion. We note that several articles in the record do not contain the date as required under 8 C.F.R. § 204.5(h)(3)(iii) and will not be considered.

Even though the translation certifications for the Varzesh3 and Gul articles from 2011 through 2015 do not specifically state the exact language as required of translations under 8 C.F.R. § 103.2(b)(3), we find that the certifications are substantially similar to the language of this regulation, and therefore we withdraw the Director's decision regarding the translations.[2] While we find that these articles are about the Petitioner and relate to his work in the field, they do not identify the author as required by 8 C.F.R. § 204.5(h)(3)(iii).[3]

[2] "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as completed and accurate," with a translator's certification "that he or she is competent to translate from the foreign language into English." 8 C.F.R. 103.2(b)(3)

[3] The Director incorrectly cited 8 C.F.R. § 204.5(g) when it is 8 C.F.R. § 204.5(h)(3)(iii) that requires the "*title, date, and*

Next, we find that the record does not contain sufficient evidence about these publications. The Petitioner claims that Varzesh 3 and Gul are the top two online sports websites in Iran, but the only documentation about these publications in the record is a printout from Iranianacademy.com ranking Iranian sport websites. It is unclear what information that site used in formulating this ranking. The Petitioner states that Razmavar is a monthly sports magazine that has been circulated both in print and online for at least 17 years, but the record does not contain evidence to substantiate this. The Petitioner has not established whether Varzesh 3, Gul, and Razmavar constitute professional publications. Therefore, the evidence in the record is insufficient to establish that the Petitioner meets this criterion.

## III. CONCLUSION

The Petitioner is not eligible because he has not submitted 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), or comparable evidence establishing his eligibility. Thus, we do not need to fully address the totality of the materials in a final merits determination. *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 finding that the Petitioner has established the acclaim and recognition required for the classification sought.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-G-*, ID# 1625961 (AAO Sept. 25, 2018)

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*author of the material.*"