



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

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

In Re: 32905318

Date: SEP. 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a triathlete, 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 Texas Service Center denied the petition, concluding that the Petitioner did not establish that she had received a one-time achievement (a major, internationally recognized award) or that she satisfied at least three of the initial evidentiary criteria, as required for the requested classification. 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 visas available to immigrants with extraordinary ability if:

- (i) the [noncitizen] 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 [noncitizen] seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the [noncitizen'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 their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then they 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 triathlete who has competed on the Venezuelan [redacted] She represented Venezuela at the 2014 [redacted] and is currently ranked in the top [redacted] women’s triathletes in the Americas by the World Triathlon Continental Rankings. She has also competed in open water swimming competitions. The Petitioner states that she intends to continue competing as a triathlete for the United States, including in the [redacted] and [redacted] [redacted] Since she does not claim to have a one-time achievement, she must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner initially claimed that she met four of these criteria:

- (i), Lesser nationally or internationally recognized awards;
- (ii), Memberships in associations that require outstanding achievements;
- (iii), Published materials about her in major trade or professional publications or other major media; and
- (viii), Performing in leading or critical roles for organizations or establishments with a distinguished reputation.

The Director issued a request for evidence (RFE), notifying the Petitioner that the evidence in the record did not demonstrate that she met any of the criteria at 8 C.F.R. § 204.5(h)(3). The Director allowed the Petitioner an opportunity to submit additional evidence to demonstrate that she satisfied at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In response to the RFE, the Petitioner submitted additional evidence reasserting that she meets the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(iii) and (viii).

In denying the petition, the Director determined that the Petitioner demonstrated that she met only one of the claimed criteria. Specifically, the Director concluded that the Petitioner met the criteria at 8 C.F.R. § 204.5(h)(3)(iii), published materials about her in major trade or professional publications or other major media. The record supports the Director's determination that the Petitioner satisfied this criterion.

The Director concluded that, because the Petitioner did not establish that she met at least three of the criteria at 8 C.F.R. § 204.5(h)(3), it was not necessary to conduct a final merits determination regarding whether the Petitioner has sustained national or international acclaim and that her achievements have been recognized indicating that she is one of that small percentage who has risen to the very top of the field of endeavor.

On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to establish that she satisfied these additional criteria. She asserts that the Director's decision includes several errors and "is an arbitrary and capricious interpretation" of the requirements.

A. Evidentiary Criteria

The Petitioner maintains on appeal that she satisfies at least two additional alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, she maintains her prior claim that she meets the three criteria at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (viii), for lesser nationally or internationally recognized awards, memberships in associations that require outstanding achievements, and performing in a leading or critical role for organizations with distinguished reputations. For the reasons discussed below, we conclude that the Petitioner has not established that she meets at least two additional categories of evidence.

Documentation of the individual'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 asserts that she meets this criterion based on two awards:

- Bronze Medal, 2022
Women's category.
- Bronze Medal, 2019 Venezuelan

In the RFE, the Director stated, "It appears the award took place while [the Petitioner] participated as a non-professional level youth. [The Petitioner] is now attempting to immigrate as a professional Triathlete. As such, the submitted evidence does not meet this criterion." The Director does not name the award she is referencing in her statement or provide other reasons that the evidence is not sufficient.

In the decision, the Director stated, "[The Petitioner] did not specifically state they would become a professional triathlete, therefore the evidence is *sufficient*. As such, the submitted evidence *does not meet this criterion*." Emphasis added.

When denying an application or petition, the Director must explain in writing the specific reasons for the denial. 8 C.F.R. § 103.3(a)(1)(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). Here, the Director's statements in both the RFE and in the decision do not sufficiently explain why the Petitioner's evidence does not satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(i). Further, the Director's statement in the decision that the evidence is "sufficient" but "does not meet this criterion" is conflicting. Additionally, the Director appears to have disregarded the Petitioner's personal statement in the record, stating her intention to continue her profession in the field of endeavor, as a competitive triathlete.

The record includes evidence that the Petitioner was awarded a bronze medal at the 2022 [REDACTED] [REDACTED]. The record also includes evidence to establish that this award meets the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(i), including evidence of the competition's reputation and contemporaneous media coverage.¹

Upon de novo review, we conclude that the Petitioner has submitted sufficient documentation that satisfies this criterion.

Documentation of the individual'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).

In order to meet this criterion, an individual must establish that they are a member of associations in their field of claimed extraordinary ability. In addition, they must show that these associations require that their members have outstanding achievements, and that those achievements were judged to be outstanding by recognized national and international experts in their disciplines or fields.

The Petitioner asserts that she meets this criterion based on her participation in the 2014 [REDACTED] [REDACTED] and the 2014 [REDACTED].

Regarding the 2014 [REDACTED] the Petitioner provided evidence of the results of the Youth Women Triathlon event, listing her ranking, having finished in [REDACTED] for Venezuela. She also submitted news articles covering the event, and general information about the [REDACTED]
[REDACTED]

Regarding the 2014 [REDACTED] the Petitioner submitted evidence of the results of the Junior Women's Triathlon event, listing her ranking, having finished in [REDACTED] for Venezuela. She also submitted a news article covering the event, and general information about the [REDACTED].²

¹ Because we conclude that the Petitioner's bronze medal at the 2022 [REDACTED] satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(i), we need not further consider her additional bronze medal from the 2019 Venezuelan [REDACTED] and whether this award is for excellence in the Petitioner's field of endeavor as a triathlete.

² We note that the Petitioner submitted news articles covering other events, identified as the [REDACTED] and the [REDACTED].

In the RFE, the Director acknowledged the evidence regarding the [REDACTED] but determined that the Petitioner had not provided evidence demonstrating the requirements for membership or that membership is “continuous past a one time event.” The Director asked that the Petitioner submit additional information, such as a certificate of membership, the associations’ constitutions or bylaws, and evidence to establish that those responsible for admitting members are recognized national or international experts. In response to the RFE, the Petitioner referenced evidence already in the record.

The Director concluded that the Petitioner did not submit sufficient evidence that she meets the criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Director stated, “being a participant and qualifying for events is completely different than being asked to join an association and to become a member.”

On appeal, the Petitioner states that the Director’s conclusion is a misapplication of law. She notes that the USCIS Policy Manual states, “Election to a national all-star or Olympic team might serve as comparable evidence for evidence of memberships in 8 C.F.R. § 204.5(h)(3)(ii).” *6 USCIS Policy Manual* F.2(B)(1), <https://www.uscis.gov/policy-manual>.

A petitioner’s participation as a member of a national team may demonstrate eligibility for this criterion, as such teams typically limit their number of members and have a rigorous selection process. It is the Petitioner’s burden, however, to demonstrate that she meets every element of a given criterion. We will not assume that every “national team” is sufficiently exclusive and requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines.

The Petitioner relies on her rankings and information about the events in support of her claim that membership on the team requires an outstanding achievement, i.e., a national championship. While the news articles refer to competitors in each event as “elite” and “top” athletes, the Petitioner does not provide evidence demonstrating how she was selected for either team or who selected her. She does not describe the selection process or provide evidence that the process is overseen by national experts. The record does not contain corroborating evidence, such as a copy of the official rules or selection procedures from the bylaws or constitution of the [REDACTED] although the Director specifically requested this type of evidence in the RFE.

The Petitioner did not submit sufficient evidence to establish that her participation in the 2014 [REDACTED] [REDACTED] are memberships in associations requiring outstanding achievements in the field of triathletes, as judged by recognized national or international experts, or that participation in either event met any comparable evidence standard. Therefore, this criterion has not been met.

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).

[REDACTED] 2022.” However, the Petitioner does not explain the relevance of this evidence to this criterion.

To qualify under this criterion, a petitioner must show that they played a leading or critical role for an organization or establishment, and that that organization or establishment has a distinguished reputation. When evaluating whether a role is leading, we look at whether the evidence establishes that the person is or was a leader within the organization, or a department or division thereof. A title, with appropriate matching duties, can help to establish that a role is or was leading. For a critical role, we look at whether the evidence establishes that the person 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. 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual>.

To support that an organization has a distinguished reputation, the relative size or longevity of an organization is considered together with other relevant information, such as the scale of its customer base or relevant media coverage. "Merriam-Webster's online dictionary defines 'distinguished' as 'marked by eminence, distinction, or excellence' or 'befitting an eminent person.'" *Id.*

The Petitioner asserts that her performance in events organized by the [redacted] demonstrates that she meets this criterion. The Petitioner submits evidence that she is ranked [redacted] in Venezuela and [redacted] in the Americas by the World Triathlon Continental Rankings. She also submits evidence of media coverage of her participation in the 2014 [redacted] Triathlon event, as well as general information about [redacted]

In the RFE, the Director acknowledged the Petitioner's assertion to meet this criterion but determined that "no specific evidence was submitted." In response to the RFE, the Petitioner reiterated her assertion and submitted copies of evidence already in the record. The Director noted that the Petitioner's evidence of national and international rankings, the media coverage of her 2014 event, and the information about [redacted] does not state that she "is critical to the infrastructure of [the organizations] in Venezuela."

On appeal, the Petitioner again asserts that the submitted evidence is sufficient to establish that her role is critical to [redacted] and that the Director's decision is "an arbitrary and capricious interpretation of the regulatory requirement."

The evidence in the record does not describe the Petitioner's specific role with either [redacted] or the [redacted]. The Petitioner's rankings indicate that she participates in events organized by [redacted] but she has not described her role beyond that of participant or competitor. The record demonstrates that the Petitioner participated in the 2014 [redacted] but similarly, she has not described her specific role or duties other than as a competitor. The record does not contain corroborating supporting evidence to identify her role as leading or critical for either organization, as required by 8 C.F.R. § 204.5(h)(3)(v). The Petitioner has not claimed or submitted evidence to establish that she serves in a leading or critical role, either for the organization as a whole or as a member of the triathlon team in any event.

Upon de novo review, we agree with the Director's determination that the record does not contain detailed and probative information that specifically addresses how the Petitioner's performance in her role is leading or critical. The record demonstrates that the Petitioner is a talented triathlete whose skills are

critical to her event performances. However, the Petitioner has not established how her individual performances serve as a critical role for the organizations managing the events. Nor has she established how her performances are of significant importance to the outcome of the activities of [] or the []. Because the Petitioner has not established that she played a leading or critical role for an organization, we need not further consider whether the claimed organizations have a distinguished reputation.

For these reasons, the Petitioner has not established that she meets this criterion.

As discussed above, the Director erred in the analysis of the evidence in the record relating to 8 C.F.R. § 204.5(h)(3)(i), and we conclude that the Petitioner has established that she meets this criterion with her receipt of a nationally recognized prize for excellence as a triathlete. However, we need not remand the matter for further consideration because the Petitioner has not overcome the basis for denial regarding the other claimed criteria. As such, she has only met two criteria.

The Petitioner has not demonstrated that she satisfies at least three of the initial evidentiary criteria. Therefore, the Petitioner has not established eligibility for classification as an individual of extraordinary ability.

B. Summary

For the reasons discussed above, we agree with the Director that the Petitioner is not eligible for the benefit sought because she has not submitted the required initial evidence of either a one-time achievement or documents that she meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we have reviewed the record in the aggregate, and conclude that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought.³

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 significance of her accomplishments as a triathlete 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).

³ This review included consideration of additional evidence that was not claimed to satisfy any particular regulatory criterion, such as event results and media coverage of additional triathlon and swimming competitions.

III. CONCLUSION

The Petitioner has not shown that she qualifies for classification as an individual of extraordinary ability under section 203(b)(1)(A) of the Act. The appeal will be dismissed for the above stated reasons. 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.