



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

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

In Re: 36779215

Date: FEB. 25, 2025

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Outstanding Professors/Researchers)

The Petitioner, a competitive swimmer, requests classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with “extraordinary ability.” *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Successful petitioners in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner met four of ten initial evidentiary requirements – one more than needed for a final merits determination. But the Director’s final determination found insufficient acclaim and recognition to demonstrate the Petitioner’s extraordinary ability in his field. On appeal, the Petitioner contends that the Director disregarded evidence and misapplied U.S. Citizenship and Immigration Services (USCIS) policy.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that the Director overlooked important evidence. We will therefore withdraw her decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

To qualify as an alien with extraordinary ability, a petitioner must:

- Have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- Seek to continue work in their field of expertise in the United States; and
- Through their work, substantially benefit the country prospectively.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence of

extraordinary ability must demonstrate an alien's receipt of either "a major, international recognized award" or satisfaction of at least three of ten lesser evidentiary criteria. 8 C.F.R. § 204.5(h)(3).¹

If a petitioner meets either evidentiary standard and the requirements at section 203(b)(1)(A)(ii), (iii) of the Act, USCIS must then make a final merits determination. To merit approval, the record – as a whole – must establish a beneficiary's "sustained national or international acclaim" and recognized achievements placing them among the small percentage at their field's very top. *See Amin v. Mayorkas*, 24 F.4th 383, 391 (5th Cir. 2022) (holding that USCIS' two-step extraordinary ability analysis "is consistent with the governing statute and regulation"); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

II. ANALYSIS

A. Facts

The record shows that the Petitioner, a Mexican national and citizen, began swimming as a child and first entered international competitions in 2017. He has won multiple medals at the Central American and Caribbean Games, a quadrennial event for athletes from 32 countries and five territories in Central America, the Caribbean, Mexico, and four South American nations. He also holds Mexican national records in the [REDACTED] He has further competed in the Pan American Games, which is open to athletes from the Americas, and has qualified for multiple FINA (International Swimming Federation)² World Championships.

The Petitioner graduated from a U.S. university in 2020 and then swam for a team in the former International Swimming League. He states that, in the United States, he "plans to continue training and competing at the highest levels of international swimming."

The record does not indicate – nor does the Petitioner claim – his receipt of a major internationally recognized award. He therefore had to meet at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i-x).

The record supports the Director's findings that the Petitioner submitted evidence of his:

- Receipt of lesser nationally or internationally recognized awards for excellence in his field;
- Membership in associations requiring outstanding achievements in the field;
- Status as a subject of published material about his work in the field; and
- Performance in a leading or critical role for organizations with distinguished reputations.

See 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (viii). We will now review the Director's final merits determination.

¹ If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

² FINA is now known as World Aquatics. *See, e.g.*, Geoff Berkeley, "International Swimming Federation to be renamed World Aquatics as new constitution approved," (Dec. 12, 2022), www.insidethegames.biz/articles/1131538/fina-renamed-world-aquatics.

B. Final Merits Determination

In a final merits determination, a petitioner must demonstrate their maintenance of national or international acclaim and recognition of their achievements in their field commensurate with one of that small percentage who has risen to the field's very top. *See generally* 6 *USCIS Policy Manual* F.2(B)(2). USCIS considers "any potentially relevant evidence" of record, even it does not fit one of the evidentiary criteria and was not submitted as comparable evidence. *Id.* A petitioner must explain evidence's significance and how it demonstrates their sustained national or international acclaim or recognition in their field. *Id.* A petition's approval or denial rests on the evidence's type and quality. *Id.*

The Director acknowledged the Petitioner's medals, awards, and records at national and regional international competitions. But the Director found that the Petitioner has not been as successful "on the elite international swimming scene." The Director noted that, although the Petitioner qualified for world championships, he did not medal in them or qualify for the 2020 Olympic Games. The Director concluded:

This performance history by the petitioner at major international swimming events that are attended by athletes from across the globe does not showcase an athlete who has risen to the very top of the field of endeavor nor does it demonstrate 'extraordinary ability.'

On appeal, the Petitioner asserts that the Director "intentionally" disregarded his receipt of a bronze medal in the U.S. Open Swimming Championship. He states that this "major international award establishes his extraordinary ability in the Olympic sport of swimming." He describes the U.S. Open as "one of the pre-eminent international swimming competitions." He states that his bronze medal at the event reflects his "high level of expertise indicating that he is one of the small percentage who has risen to the very top of the field of endeavor."

As the Petitioner argues, the Director's decision does not discuss the Petitioner's bronze medal in the [REDACTED] at the [REDACTED] U.S. Open Swimming Championship. Contrary to the Petitioner's allegation, the record lacks evidence that the oversight was intentional. But the record appears to identify the U.S. championship as a major swimming competition open to athletes from around the world – the kind the Director faulted the Petitioner for purportedly not medaling in. *See Amin*, 24 F.4th at 394 ("Total failure to consider important evidence is a basis for setting aside agency action.") (citation omitted). We will therefore withdraw the Director's decision and remand the matter.

On remand, the Director should reconsider whether the Petitioner's evidence – including documentation of his bronze medal at the U.S. Open – demonstrates his place among the small percentage at his field's very top. If the Director needs further information about the U.S. Open, she may request additional evidence from the Petitioner. Upon reconsidering all evidence, the Director should issue a new decision.

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