



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

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

In Re: 9045630

Date: AUG. 10, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a product manager and consultant, 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.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director then granted the Petitioner's motion to reopen and reopen the proceeding, and denied the petition a second time. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 their 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 they must provide sufficient qualifying documentation that meets at least three of the ten categories 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if they are 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).

II. ANALYSIS

The Petitioner states that she “is a highly accomplished and respected consultant in the area of technology product development and business strategy.” Among other positions, she served as a lead product manager for [REDACTED] and as director of product at [REDACTED]. At the time of filing, she was a product lead at [REDACTED]. She also started her own consulting business called [REDACTED]. Shortly before the filing date, two companies engaged the Petitioner’s services as an advisor on a part-time, contract basis. [REDACTED]¹ hired the Petitioner to work “from April 2019 to April 2022 as a Product Manager . . . responsible for managing the tech team and designers responsible for building a mobile app and maintaining and improving a website” used by workers in “the beauty tech industry . . . to rent chair space on an hourly basis” at participating salons. [REDACTED] hired the Petitioner to “support and supervise with conceptualizing, designing, managing and productizing [REDACTED],”

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have met five criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met the fourth criterion, pertaining to participating as a judge. On appeal, the Petitioner asserts that she also meets the four other claimed evidentiary criteria,

¹ The chief executive officer of [REDACTED] has the same surname as the Petitioner. The record does not say whether the two are related, or whether the shared surname is coincidental.

including the submission of comparable evidence relating to the second criterion (membership in associations). We have reviewed all of the evidence in the record, and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria. We discuss the criteria below.

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 she meets this criterion through her mentorship work with [redacted] and [redacted]. In the alternative, the Petitioner asserts that her work with these organizations should be considered comparable evidence under 8 C.F.R. § 204.5(h)(4) because, to her knowledge, “there are no associations . . . in [her] field (Product Management) that require outstanding achievements of members as determined by recognized experts.”

[redacted] is “a [redacted]-based accelerator that aims to support innovative IT startups in the healthcare sector.” Its executive director states: “Mentors become part of our program through either invitation or through an application and screening process. [The Petitioner] was invited to join us because of her excellent reputation as a technology consultant as well as her strong experience specifically in the health care sector.” The same official states: “Our selection team is made of the 3 managing partners at [redacted],”

The executive director of [redacted] describes that entity as “an accelerator program that supports startups from [redacted] and helps them scale globally.” He states: “We selectively recruit mentors who are leaders in their field and will be able to provide the best guidance for our members. [The Petitioner] was asked to join as a mentor because of her expertise and experience as a leading technology consultant.” He states that the advisory board responsible for selecting mentors “is currently made up of nine members, all leading experts in business and finance.” He does not identify these individuals but states that their profiles appear on the organization’s website.²

The Petitioner does not submit any documentary evidence from the two accelerators to establish the formal requirements for acceptance as a mentor. The fairly general references to rigorous and exclusive mentorship selection processes do not show that mentors are chosen by recognized national or international experts in their disciplines or fields. The Petitioner has not established that volunteering for mentorship programs is comparable to membership in an association as described in the regulation.

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)

² The web page that identifies the advisory board members is [http://www.\[redacted\].mentors.html](http://www.[redacted].mentors.html) (last visited July 9, 2020). That page provides no information about the members except their names and links to other pages with further information (usually their LinkedIn profiles). This information does not establish that the advisory board consists entirely of recognized national or international experts.

The Petitioner submits a number of materials intended to satisfy this criterion. For the reasons explained below, we conclude that the Petitioner has not met this criterion.

A [redacted] 2019 piece calling the Petitioner [redacted] is a press release from [redacted]. It appeared verbatim on different websites. There is no credited author, but the article names a contact person named [redacted] at a public relations and marketing firm. The record does not reveal who hired the public relations firm and commissioned the press release. The article includes biographic information about the Petitioner and praise for her abilities, but does not promote any particular company or product. Given the nature and uncertain origin of this article, the Petitioner has not established that it meets the regulatory requirements for the criterion.

Similarly, a list of [redacted] published on *Entrepreneur's* website appeared under the heading "[redacted] Spotlight," with no named author and no date. (The printout also lacks a web address that might otherwise corroborate the information.) The Petitioner is one of the "Top Leaders" mentioned in the article. A legend beneath the "Spotlight" heading reads: "Where brands share their insights," indicating that "Spotlight" articles are promotional pieces originating from outside the publication's own staff. For these reasons, the Petitioner has not established that this article meets the regulatory requirements for the criterion.

A [redacted] 2019 [redacted] post on *ThriveGlobal* calls the Petitioner "one of the lead female figures in the field of product management." The author of the article is [redacted] who "currently runs a six-figure PR firm." The available evidence indicates that he is the same [redacted] named as the contact point in articles credited to [redacted]. The *ThriveGlobal* piece includes a disclaimer that the views of "outside contributors . . . don't necessarily reflect our own." The Petitioner has not shown that this post constitutes qualifying published material.

A [redacted] 2017 piece in the *Huffington Post* named the Petitioner among [redacted] [redacted]. The list is identified as a blog post rather than an article of journalistic reportage. The record does not show that the *Huffington Post* takes responsibility for the content of blog posts as it would for news articles.³ Therefore, the Petitioner has not established that this post is a qualifying article.

AlleyWatch interviewed the Petitioner in [redacted] 2017 as part of a series involving [redacted] [redacted]. The Petitioner has not established that *AlleyWatch* qualifies as a professional or major trade publication or other major media; the site has a "Category Rank" of 2088 among "Technology News" websites. The website's own media kit refers to a "global audience" but also indicates that the "organization [is] focused on the [redacted] startup and tech community." Although the regulation calls for a named author, the article is credited collectively to *AlleyWatch*, with no indication as to who wrote or asked the questions posed to the Petitioner. The Petitioner asserts that the regulation "does not specify that such author must be named as an individual," but a collective attribution does not name the author at all when the record does not name the individual comprising that collective. The omission is particularly significant in the face of the Petitioner's submission of commissioned articles written by public relations firms rather than journalists.

³ We note that the web address provided for the blog post is no longer active. The online archive of posts by the blogger in question does not include the submitted post, or any explanation for the post's deletion.

Another interview published with no named author appeared on the website of *World News* in [redacted] 2018. The article appeared under [redacted], credited to [redacted] about whom the record provides no further information.⁴ The interviewer's questions repeatedly refer to the Petitioner as a leader in the field. For example, the interviewer asked: "How have your [*sic*] grown and have expectations of you changed since becoming a leader in the field?" and "You grew up in technology and are recognized as a senior leader, how would you define your strengths?" Because other articles with such an emphasis trace back to a public relations firm, this effectively anonymous article carries little weight. The Petitioner has not shown that this article is qualifying published material.

There is a named author for an interview with the Petitioner for *100 Product Managers*, a podcast "on a mission to interview 100 product managers," with transcripts published on an affiliated website. The named interviewer from *100 Product Managers* does not refer to the Petitioner as a leader in her field, and the nature of the questions does not indicate that the interviewer had significant knowledge about the Petitioner or her work before the interview. This interviewer mentioned "looking in [the Petitioner's] background" to prepare for the interview, whereas the unidentified *World News* interviewer phrased the questions in a manner that presupposed the Petitioner's prominence in her field.

The Petitioner does not establish that *100 Product Managers* qualifies as a professional or major trade publication or other major media. The website's self-description indicates that, rather than focus on "famous" individuals, the publication seeks to "include[] all kinds of voices and a wide range of experience." The same page invites readers to "request an interview" if they are "somebody who would like to participate in the project."⁵

Apart from the interview in *100 Product Managers*, which appears to have been predicated only on the Petitioner's employment as a project manager and which the Petitioner appears to have initiated through the site's open invitation for interview requests, most of the submitted articles appear to originate from a public relations firm, published on sites that accept outside contributions. Promotional materials of this type do not constitute published material about the Petitioner in professional or major trade publications or other major media, relating to her work in the field. In the same way that one cannot establish eligibility by awarding oneself a prize or offering oneself a high salary, creating or arranging for media coverage on one's own behalf cannot carry the same weight as independent coverage resulting from one's reputation in a particular field.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

We will not disturb the Director's conclusion that the Petitioner satisfied this criterion. If this proceeding had reached a final merits determination, we would have taken into account the level at which this judging took place (such as local events and an event restricted to alumni of one university).

⁴ The record does not show whether the initials [redacted] in the username relate to [redacted] or are coincidental.

⁵ Had this proceeding reached a final merits determination, this practice of openly soliciting interview subjects, without consideration for their recognition in the field, would have undermined any conclusion that *100 Product Managers* specifically approached the Petitioner due to her acclaim in the field.

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 Director determined that the Petitioner has not satisfied this criterion. We disagree.

The Petitioner was a lead product manager at [redacted]. The record establishes [redacted]'s distinguished reputation. [redacted]'s head of broker and bank product management asserts that [redacted] is "considered [redacted]'s most significant strategic step towards embracing social media." He states:

Based on the internal metrics gathered and analysis conducted on this program, it was concluded that [redacted] had significant impact and influence of members trading and the success members had in pursuing their trading activities. The . . . average [redacted] members trade 4.1 times more than [redacted] members . . . [and] generated 2.7 times more revenue [I]t is clear the product line did have an important impact on [redacted]'s success in the market.

A former corporate treasurer at [redacted] states:

[The Petitioner] essentially was responsible for the strategic development for the company's digital products and online branding. . . . She also helped develop and launch technology products in almost every sector within the company's technology suite Within social media, she led the development and management of a cohesive product suite across multiple digital platforms

[The Petitioner's] work undoubtedly directly affected the development and evolution of [redacted]'s technology product offerings and it's [*sic*] trajectory. Therefore in my mind she was also critical to the company's growth from a multi-million dollar company to an over \$2.4 billion company that now serves over 4 million accounts.

The record indicates that the Petitioner performed in a critical role for [redacted], thereby satisfying the requirements of this criterion. Because the Petitioner's work at [redacted] suffices to meet the criterion, we need not discuss the less persuasive evidence submitted regarding her roles at other organizations.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

The Petitioner's tax returns show salary income of \$102,742 in 2015 and business income (after expenses) of \$104,972 in 2016, and \$225,779 in 2017. In 2018, [redacted] paid her \$99,529 as an employee; pay receipts from early 2019 show a rate of \$18,333 per month, or \$220,000 per year. The Petitioner does not identify all the sources of her consulting income, but she documents payments from some individual clients in 2017 and 2018; the largest such payment was \$211,750 in 2017. Other documented payments ranged between \$7500 and \$33,800. In many instances, the Petitioner has not documented the work she performed for these payments, or the amount of time she devoted to each of these clients.

The regulation requires comparison of the Petitioner's compensation to that of others in the field. The comparative evidence is fragmentary and inconsistent. Some former employers assert that the Petitioner earned more than others performing similar tasks, but such comparisons are limited. Similarly, private survey data relies on non-random self-reporting. In terms of official government figures, the Petitioner submits Department of Labor data indicating that the level 4 wage for "Computer Occupations, All Other" in the [] metropolitan area was \$121,222 per year at the time of filing. This broad category includes "Database Architects," "Web Administrators," and "Data Warehousing Specialists." The Petitioner did not explain why this category is the best match for product managers. A former [] official states that the role of a "Product Director . . . is not a software programming role, a function which is usually handled by an engineering team, which is directed by the Product Director." This description indicates a higher-level, managerial role, in which case it is not correct to compare the Petitioner's compensation to that of programmers and engineers.

The evidence of the Petitioner's remuneration is incomplete, and the Petitioner has not provided a reliable basis for comparing her compensation to that of others performing similar work. (The record also does not provide sufficient details about the nature of that work.) Therefore, the Petitioner has not satisfied the requirements of this criterion.

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *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.

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. The Petitioner has documented some degree of success in her field, but the record does not consistently point to sustained national or international acclaim at the top of her field. Of particular concern, there are serious questions regarding the origin of published materials referring to her as a leader in her field; she appears to have arranged for their publication, as shown by the documented involvement of public relations specialists in their publication.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.