



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 10322812

Date: AUG. 19, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, an advertising senior account executive, 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 had satisfied only two of the ten initial evidentiary criteria for this classification, of which she must meet at least three. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See 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 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 a multi-part analysis. First, a petitioner can demonstrate sustained

acclaim and the recognition of his or her 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 he or she 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).

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 indicates her most recent employment as an executive account director at [redacted] [redacted] in [redacted] Florida. 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).

In denying the petition, the Director determined that the Petitioner fulfilled two of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv) and leading or critical role at 8 C.F.R. § 204.5(h)(3)(viii). The Petitioner's documentary evidence indicates that she judged the Latin American [redacted] Awards in [redacted] 2018 and [redacted] 2019. In addition, the record contains evidence that the Petitioner served as the general account director in charge of all advertising teams for Argentina, Chile, and Peru for a distinguished advertising company in Argentina. Accordingly, we agree with the Director that the Petitioner fulfilled the judging and leading or critical role criteria.

On appeal, the Petitioner asserts that she meets two additional criteria, relating to membership in associations and high salary.¹ After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that she satisfies the requirements of at least three criteria.

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).

On appeal, the Petitioner maintains she meets this criterion based upon her membership in the [redacted] (AAM). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.² Reviewed

¹ We note that the Director determined that the Petitioner initially submitted evidence related to a major, internationally recognized award at 8 C.F.R. § 204.5(h)(3), and the lesser awards and published materials criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii), respectively, but did not satisfy these categories of evidence. The Petitioner does not contest these issues on appeal and therefore we deem them to be waived. See, e.g., *Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

² See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions;

in its totality, the evidence does not demonstrate that membership in AAM requires outstanding achievements as judged by recognized national or international experts in the Petitioner's field or discipline.

Within the Petitioner's initial submission, she provided a July 2018 letter from [redacted], AAM's [redacted] who certifies that the Petitioner has been admitted as an Active member of the AAM. He states that membership as an Active Member is by invitation-only and is "given to recognized [redacted] personalities with more than 15 years of professional experience in the field, whose work has been recognized by the industry and is deemed to be of outstanding quality." He asserts that the AAM's Membership Committee "is comprised of the most recognized [redacted] professionals in the country." He further claims that the Membership Committee "following the criteria established by the association . . . reviews the work and portfolio of the prospective Active Member to verify that they are [redacted] professionals of eminence in the industry who have attained widespread distinction in the field, which is sustained over a minimum period of years." He provides that the Petitioner met the membership criteria because "she is known in the industry as one of the best [redacted] Account Executives in the country."³

Within the Petitioner's response to the Director's request for evidence (RFE), she provided a copy of a certificate from AAM, signed by [redacted] as well as AAM's president, vice-presidents, and secretary, welcoming the Petitioner as a [redacted] Partner" and "[r]ecognizing her trajectory, experience, knowledge, and interest in collaborating with the Board of Directors, developing and sharing content with associates and actively participating in AAM activities."⁴ The Petitioner also submitted an email from [redacted] stating that the AAM does not "have a legal statute with the regulation of how we select the members of the AAM" and that "[t]he election is defined by the board of directors made up of members with high experience in the industry based on the call of very outstanding and extraordinary professionals due to their trajectory and outstanding role in the industry compared to their peers." The Petitioner's RFE response also included screenshots from AAM's website, showing the photographs, names, and titles of the 18 members of AAM's 2018-2019 Board of Directors and Staff, and indicating their employment as executive officers and [redacted] directors for companies including Molinos Rio de la Plata, Conosur Mastercard, Red Link, and South American Campari.

Upon review, the documentation submitted does not establish that to become a member of AAM "recognized national or international experts in their disciplines or fields" must judge the Petitioner's "outstanding achievements," as required under the plain language of the criterion.⁵ The record does not reflect information regarding who evaluated the Petitioner's qualifications before selecting her as a member or whether the individual(s) who evaluated her qualifications are "national or international

Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual's distinguished achievements in original research).

³ Although [redacted] also claims that "[j]ust by being the winner of a [redacted] and a [redacted] is enough to confirm [the Petitioner] as one of the best in her industry," as noted by the Director, the Petitioner's evidence did not establish that she was the recipient of those awards.

⁴ We note that the date at the bottom of the certificate copy is not legible.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6-7.

experts in their disciplines or fields.” For instance, the Petitioner did not identify the members on AAM’s Membership Committee and provide documentation establishing the expertise and recognition of those individuals judging her for admission. The Petitioner must document that she meets each element in the plain language of the criterion. The Petitioner must, therefore, provide some documentation from the association relevant to the nature of who is responsible for making the selections and the qualifications of membership application reviewers.

In addition, although [redacted] asserts that the Membership Committee evaluates prospective members “following the criteria established by the association,” the record lacks evidence that corroborates the actual selection criteria for membership in the AAM. The Petitioner also has not shown that the requirement provided by [redacted] that prospective members are “recognized [redacted] personalities with more than 15 years of professional experience in the field” is tantamount to imposing an “outstanding achievement” requirement for membership. Instead, that membership requirement refers to a minimum number of years of experience in the [redacted] field, which is not tantamount to outstanding achievements.⁶ Further, the record does not establish the process by which prospective members are evaluated. Although [redacted] indicates that membership is reserved for applicants “whose work has been recognized by the industry and is deemed to be of outstanding quality,” who are “[redacted] professionals of eminence” and “widespread distinction,” his statements are not adequately supported by objective evidence of how these factors are considered or weighed. For the reasons discussed above, the Petitioner did not demonstrate that she satisfies this criterion.

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).

In order to meet this criterion, a petitioner must demonstrate that her salary or remuneration is high relative to the compensation paid to others working in the field.⁷ The Petitioner’s initial submission did not address this criterion. Within the Petitioner’s RFE response, she submitted copies of monthly payroll statements from [redacted] for the period from July 2017 through June 2018, showing the following earnings figures in Argentine pesos:

July 2017	60,240
August 2017	61,016
September 2017	2,441 + 58,982
October 2017	61,016 + 50,000 bonus
November 2017	2,441
December 2017	58,982 + 2,034 + 30,711 + 2,441
January 2018	61,016
February 2018	61,016
March 2018	61,016
April 2018	42,711 + 21,966

⁶ See USCIS Policy Memorandum PM 602-0005.1, supra, at 7 (instructing that relevant factors that may lead a conclusion that the alien’s memberships in the associations were not based on outstanding achievements in the field include, but are not limited to, instances where the alien’s membership was based solely on a level of education or years of experience in a particular field).

⁷ See USCIS Policy Memorandum PM-602-0005.1, supra, at 11.

May 2018
June 2018

61,016
61,016 + 32,338

First, we note that the above amounts earned by the Petitioner include remuneration other than salary, in the form of a bonus in the amount of 50,000 pesos. According to the plain language of the regulation, the Petitioner must demonstrate that any other remuneration separate from her salary as a senior account executive is “significantly high.” Although the Petitioner provides comparative salary information, discussed below, she does not argue, nor does the record include, evidence demonstrating that her additional bonus is significantly high in relation to others. Thus, we will evaluate the record to determine whether the Petitioner commanded a high salary (742,399 pesos annually or an average monthly salary of 61,867 pesos) compared to others in her field without considering her bonus as part of her salary.

The Petitioner provided a chart from the [redacted] a labor union in [redacted] Argentina, indicating the minimum monthly wage for several occupations in the advertising field. This documentation shows that the “minimum wage” for October 2018 for a “senior account executive” was 30,885 pesos. On appeal, the Petitioner asserts that this evidence indicates she “earned more than double” the “average” monthly salary of a senior account executive for the same period. Here, the Petitioner has not provided sufficient comparative data regarding the compensation of others in the field. The Petitioner provided evidence reflecting the minimum salaries of senior account executives. The submission of “minimum” wage data from a single union, and the Petitioner’s assertions regarding “average” wage data, does not establish that the Petitioner commands a high salary in relation to others in her field. See *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); see also *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. III. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. III. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Further, the Petitioner did not submit any documentary evidence supporting her claims regarding the “average” salary of a senior account executive in Argentina. For these reasons, the Petitioner did not show that she satisfies 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. 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 work 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 she 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).

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.