



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

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

In Re: 7745591

Date: MAR. 6, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a gourmet baker, 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 Nebraska Service Center denied the petition, concluding that the Petitioner had satisfied only one of the ten initial evidentiary criteria, of which she must meet at least three.

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, along with her sister, operates [redacted] Café based in [redacted] Illinois. The record indicates that the Petitioner is the head baker of the cafe, which specializes in [redacted] cakes, a [redacted] donut-style dessert. The Petitioner has been employed as the café's secretary and baker since 2015. She is also co-founder, with her sister, of the online candy company [redacted]  
[redacted]

### A. Evidentiary Criteria

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 Director found that the Petitioner met one of the evidentiary criteria, relating to leading roles in organizations that have a distinguished reputation. We agree that the Petitioner provided sufficient evidence to establish that she served in a leading role for [redacted] as well as evidence to establish that this business enjoys a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the Petitioner asserts that she meets four additional criteria. After reviewing all of 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 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)

In order to fulfill this criterion, the Petitioner must demonstrate her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.<sup>1</sup> The description of this type of evidence in the regulation provides that the focus should be on “the alien’s” receipt of the awards or prizes, as opposed to his or her employer’s receipt of the awards or prizes.<sup>2</sup>

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<sup>1</sup> See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; 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>.

<sup>2</sup> *Id.*

The Petitioner initially claimed that she satisfied this critierion based on evidence that her employer, [redacted] Café, was recognized as the Best [redacted] in Illinois in an article published by buzzfeed.com in [redacted] 2016. However, as noted by the Director, the Petitioner did not establish that she herself, as opposed to her employer, received this recognition. The Petitioner's employer, [redacted] Café, was recognized in the article, which contains a photograph and a favorable Yelp review of the cafe's [redacted] cakes. In addition, the record does not establish that [redacted] Café's recognition by buzzfeed.com is a "nationally or internationally recognized prize or award" as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). In response to the Director's request for evidence such as a photograph of the award or copy of the award certificate, the Petitioner asserted that "[t]he award certificate is the Buzzfeed article itself," but she did not provide evidence that she received an award or prize from buzzfeed.com. Further, the Director determined that the record lacked evidence demonstrating the criteria used in recognizing the Petitioner's employer. Although the Petitioner provided evidence that BuzzFeed recognized the Petitioner's employer based on Yelp ratings "for every [redacted] business on Yelp," the record does not demonstrate the national or international significance of that recognition.

Based on the above, the Petitioner has not submitted documentation that satisfies 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 record contains news articles about the Petitioner's baked goods and the recognition [redacted] Café received from Buzzfeed in 2016 as the best [redacted] in Illinois, from websites such as [redacted] www.abc7chicago.com, www.nbcchicago.com, www.dailyherald.com, www.patch.com, and www.chicagoparent.com. In order to satisfy this criterion, the record must demonstrate published material about the Petitioner in professional or major trade publications or other major media, as well as the title, date, and author of the material.<sup>3</sup> Upon review, the evidence does not demonstrate that the publications qualify as major media.

The Petitioner offered printouts from Similar Web regarding the aforementioned publications' rankings and "traffic overview." Similar Web reflects that the websites range from a global ranking of 3,832 to 342,329; a country ranking of 649 to 122,706; and total visits of 363,525 to 122,300,000. The Petitioner, however, did not demonstrate the significance of the Internet rankings and viewing statistics or explain how such information elevates them to major media relative to other publications. Regarding the website [redacted], the Petitioner also submitted a screenshot from the publication's website, describing it as a Polish-language daily publication of the Chicago metropolitan area with 113,699 monthly unique visitors, but it did not provide evidence showing how this Internet viewership compares to other publications. In reference to NBC Chicago, the Petitioner also submitted an article from www.blog.feedspot.com listing NBC Chicago as number 57 in a list of "Top 100 USA News Websites," however, as there is no author identified the article does not satisfy all elements of this criterion.

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<sup>3</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

Further, the record contains an advertisement for the Petitioner's online candy company [redacted] [redacted] from www.abc7chicago.com, however the Petitioner has not demonstrated that "published material" as referenced in the regulation includes this type of promotional material.<sup>4</sup>

In light of the above, the Petitioner did not show that she fulfills the requirements of this criterion.

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

The Petitioner argues that she meets this criterion based on her appearance in a four-minute segment from the weekly local food magazine program *Chicago's Best*. The record contains photographs and a transcript of the segment, titled [redacted], showing the Petitioner, her sister, and the program host baking and eating [redacted] cakes at [redacted] Café. The record also indicates that the segment was posted on the *Chicago's Best* blog, along with the café's address, contact information, and the legend, [redacted].

The language of this criterion specifically requires display of the Petitioner's work at "artistic exhibitions or showcases" (emphasis added). The Petitioner did not submit sufficient documentary evidence establishing that conducting a baking demonstration at her cafe for the food magazine program *Chicago's Best* equates to displaying her work at artistic exhibitions or showcases. The Petitioner has not submitted evidence to establish that the program on which her work was displayed can be considered "artistic" in nature,<sup>5</sup> as opposed to commercial media. As such, she has not established that this evidence meets this criterion.

Based on the above, the Petitioner did not establish that she meets this criterion.

#### B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form 1-140 immigrant petitions are correctly denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *affd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

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<sup>4</sup> *Id.* (providing that marketing materials created for the purpose of selling a petitioner's products or promoting his or her services are not generally considered to be published material about the petitioner).

<sup>5</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9-10.

### III. CONCLUSION

We find that although the Petitioner satisfies the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), she does not meet any additional criteria on appeal regarding nationally or internationally recognized awards, published material, and artistic display. While she argues and submits evidence for one additional criterion on appeal, relating to high salary or other remuneration at C.F.R. § 204.5(h)(3)(ix), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.<sup>6</sup> Accordingly, 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). Although the Petitioner’s work as a gourmet baker has brought praise for her creativity, experience, and technical skill, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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.

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<sup>6</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).