



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

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

In Re: 6524417

Date: MAR. 30, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a writer and consultant on occupational safety and mediation, 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 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).

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 describes herself as a “writers consultant” and a “writer of content related to the mediation of conflicts, good labor practices and industrial safety.” The Petitioner states that she has worked as a “legal advisor to various companies,” attorney, college professor, and “Labor Judge.” The Petitioner states that she hopes to promote her theories through various means, including publications, “International Forums and Seminars,” and “a radio program in the State of Nebraska” directed at “the large amount of Latin-Americans living in that State.”

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 initially claimed to have met seven criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director granted only (iv), relating to participation as a judge. On appeal, the Petitioner withdraws her claim regarding artistic exhibitions or showcases, and claims two additional criteria:

- (ii), Membership in associations that require outstanding achievements; and
- (vi), Authorship of scholarly articles.

After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has met only the criterion relating to judging the work of others.¹ We discuss the remaining claimed criteria below.

Documentation of the alien'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 [redacted] Corporation and [redacted] Foundation awarded the Petitioner a prize “for her Bright Career as National and International Labor Law Writer.” Background information refers to “[l]ocal initiatives in the state of [redacted] in Venezuela, but other information from the entity indicates that individuals in other countries can receive the award.

The [redacted] Foundation of Venezuela chose the Petitioner from “among 5 nominees” for the [redacted] Award for “Best Writer in the Law Area.” Information from the foundation states: “The [redacted] is a nonprofit national and international award, whereby the candidates are chosen on a national level and from all parts of the world.” The information also indicates: “The award is extended to other nations of the continent,” which seems to contradict the reference to “all parts of the world.”

The Director determined that the Petitioner did not establish national or international recognition of the awards. Rather, the Director concluded that the scope of the awards is “limited to members of [the awarding] association,” and that the [redacted] is a “local initiative.”

On appeal, the Petitioner correctly observes that the phrase “local initiative” refers to the organization’s roots rather than to the scope of its activities. The information from the entities indicates that the awards are available to individuals beyond Venezuela.

It remains, however, that the Petitioner has not established the national or international recognition of the awards. Information provided by the awarding entities themselves provides important context, but cannot establish the level of recognition of those awards outside of those organizations. An entity’s promotional statements about the significance of its own awards carries little weight. The submitted information also indicates that both entities are “endorsed by the International Awards Foundation,” but the record does not directly document this endorsement or establish its significance. The regulatory standard is national or international recognition of the awards, rather than endorsement by any particular body or national or international *availability* of the awards.

Also on appeal, the Petitioner states: “I consider that this Criterion has been proven since it has been recognized by important National Newspapers of the Country.” This appears to be a reference to several newspaper articles published in [redacted] of 2019. We address these articles in more detail further below, but they bear discussion here in terms of their relevance to the Petitioner’s prizes. A number of these articles do mention the Petitioner’s awards, but, as we discuss below, the articles appear

¹ The Petitioner served on the jury for the 2016 [redacted] awards. She also served on an “External Jury [for] the presentation and defense” of master’s theses at a university in Venezuela. The Director found that the Petitioner satisfied this criterion. We will not disturb that finding. Had the case proceeded to a final merits determination, we would have considered the evidence (or lack thereof) concerning the nature and significance of the Petitioner’s judging activity.

to derive from promotional press releases. The Petitioner did not submit evidence to show that either prize received media coverage at the time she received the prizes in 2016 and 2018.

The Petitioner has not satisfied this criterion.

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 did not initially claim any memberships under this criterion, and therefore the Director did not address the issue in the denial notice. On appeal, the Petitioner states: (note: errors have not been corrected):

I am a member of two important associations which belong to these institutions outstanding achievement is required, to enter you need a number of requirements between those who have written works and who have caused extraordinary recognition, through awards or have been recognizing in newspapers of greater circulation, they as experts evaluate the work and if they consider that they met the requirements grant him the membership. There in the letters praise my career as a professional highlighting my merits. Consequently, he requested that these letters be analyzed well and consider granting this criterion. **So I request it.**

The Petitioner does not identify the “two important associations” in the appellate brief. Other materials submitted on appeal refer to three associations: the Society of [redacted] of Venezuela; the Association of [redacted] of Venezuela; and the Bar Association. The Petitioner does not show that any of these associations require outstanding achievements of their members, as judged by recognized national or international experts in their fields. Furthermore, the Petitioner did not previously claim to have met this criterion. Therefore, the Director did not err by disregarding the issue in the denial notice.

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 Petitioner submitted letters indicating that she appeared on programs on two radio stations in [redacted] Venezuela, to speak about mediation. The Petitioner did not submit transcripts to show the content of the broadcasts, or evidence to show that the two radio stations are major media. The Petitioner later submitted copies of articles announcing the publication of her latest book.

The Director acknowledged the submitted articles, but found that the Petitioner did not establish that they appeared in publications that meet the requirements of the regulation.

On appeal, the Petitioner submits background information about some of the publications. But there is a more fundamental issue. The articles all appeared in late [redacted] 2019, after the

Petitioner had filed the petition, and after the Director had issued a request for evidence. A petitioner must establish eligibility at the time of filing, and continuing through the adjudication of the petition. 8 C.F.R. § 103.2(b)(1). Because the articles were published after the petition's filing date (January 11, 2019), they cannot establish eligibility as of the date of filing.

Furthermore, the articles share similar content and tone, focusing on a book that the Petitioner published in [] 2018 and providing biographical details about the Petitioner. Many articles show the same photograph of the Petitioner holding a copy of her book. Some of the articles share the same text. The similarities are especially significant considering that these articles do not name the author(s), as required by 8 C.F.R. § 204.5(h)(3)(iii).

In the absence of persuasive evidence to explain why so many newspapers and websites simultaneously took notice of a book that had been published several months earlier, using similar or identical language, we conclude that the most likely common source for these materials is a press release issued by either the Petitioner or someone acting on her behalf.²

The Petitioner has not satisfied this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy this criterion, petitioners must establish that not only have they made original contributions, but also that those contributions have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

Letters from various individuals, primarily at universities, indicate that the Petitioner has made significant contributions through her work on mediation and occupational health. The letters, however, provide few details about the nature of those contributions, and little explanation as to how her work is significant.

For example, an occupational physician states that the Petitioner wrote a judicial decision in a court case involving an injured worker, and that the Petitioner's decision highlighted safety violations by the employer. The physician asserted that, as a result, "[e]mphasis was placed on the importance of the presence of the Safety Personnel in all field work." The record lacks documented detail about how the Petitioner's work, specifically, led to significant and widespread improvements in occupational safety.

Another occupational physician stated that the Petitioner wrote a safety manual that "was made available to higher education institutions," but the record does not establish the extent of the manual's distribution or its impact on the field of occupational safety.

² *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

A professor at a school of public administration in Colombia stated that the Petitioner's work on mediation "has made a momentous change in our university It contributed to the establishment of a University Mediation system." The Petitioner did not show how the effect of the Petitioner's work on one university's internal policies amounts to major significance in the field.

The Petitioner stated that two of her judicial decisions "caused extraordinary achievements in the companies, which implemented correction mechanisms." From the context, we cannot tell whether the Petitioner means the specific companies named in the court decisions, or all the companies under the court's jurisdiction. The Petitioner did not show that the court in question had jurisdiction beyond the region of Venezuela.

The Director noted the publication of the Petitioner's work, but stated that publication does not establish significance. The Director also acknowledged the submitted letters, but concluded that they do not meet the Petitioner's burden of proof.

On appeal, the Petitioner asserts that the submitted letters show "gratitude for the great contribution I made." The Petitioner notes that she has been invited to make a presentation at a conference on occupational health and safety. The invitation arrived after the petition's filing date, and the record does not show the circumstances under which the Petitioner received the invitation.

The Petitioner's response to the request for evidence added some details to the discussion of the Petitioner's claimed contributions, but do not establish the significance of those contributions or show how they have had an impact beyond and a small number of identified companies.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner states that she wrote three books: a "study guide for law students and professionals" which "compiles the most important stages and phases of the Venezuelan Labor Procedure"; a "Manual of Rulings and case law analysis in labor matters"; and a book that "focuses on the mediation techniques." The Petitioner submitted evidence that the books have been published and are available for sale.

The Petitioner initially claimed that these books constituted display at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii), but now asserts that this was in error and that she meant to claim them as scholarly articles.

The submitted evidence is not sufficient to show that the works are scholarly. The record does not contain copies or substantial excerpts of the works themselves. The assertion that universities use the Petitioner's materials is not sufficient to establish their scholarly nature. The Petitioner also did not submit evidence to establish the nature or reputation of the publishers, to establish that the books appeared in professional or major trade publications or other major media.

A publishing contract in the record does not indicate that the publisher exercised any editorial control over the Petitioner's work, or subjected it to peer review. Rather, the Petitioner "bear[s] full responsibility for the Work's content."

Because the Petitioner did not claim authorship of scholarly articles before the denial of the petition, the Director had no opportunity to address this claim. We conclude that the Petitioner has not satisfied the newly-claimed criterion.

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)

Managers at a print shop, a security services company, and an oil and gas company stated that they relied on the Petitioner's writings on occupational health and safety. The manager of a "Safety and Labor Health" company stated that the Petitioner's "consultancy contributed to improve the labor conditions of the organizations [to which] we provided technical support." A professor at a university in Colombia credited the Petitioner with "important contributions in the legal field." The letters from these entities do not contain enough information to show that the Petitioner performed in a leading or critical role, and the Petitioner did not submit evidence to establish that the organizations have distinguished reputations.

The Director found that the Petitioner did not establish a leading or critical role with any organization shown to have a distinguished reputation.

On appeal, the Petitioner asserts that she performed in a leading role as a judge and as a teacher at the National School [redacted]. She had documented this employment previously, but did not identify these roles as leading or critical prior to the appeal. Also, the Petitioner did not show that her former employers have distinguished reputations relative to other entities of the same kind. The assertion that "the Judicial Branch . . . is recognized worldwide" is not sufficient in this regard.

The Petitioner has not satisfied 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)

An "Income Attestation Report" lists the Petitioner's monthly income from 2015 through 2018, showing that the Petitioner derived income from three countries (Venezuela, Colombia, and Peru). The accountant who prepared the report stated the Petitioner "earns a high salary or with any other earning notably high in comparison with other persons in her line of business, as shown in [the] annexed list." The document, however, only shows the Petitioner's earnings; it does not provide any basis for comparison to show that her remuneration is high in relation to others in the field. Furthermore, the accountant did not identify the "line of business" in question. This is an important consideration because the Petitioner has, at various times, identified herself as a lawyer, a judge, a professor, a writer, and a consultant. The report does not show the specific source(s) of the Petitioner's remuneration, such as salary, book royalties, or consulting fees. Presented without any context, the raw numbers relating to the Petitioner's earnings cannot satisfy this regulatory criterion.

Asked for more details, the accountant stated that the Petitioner's earnings derived from "Legal Advice, a sale of art products and books of reading and art" and "Remuneration as [redacted] Judge of the Labor of the Judicial District of the [redacted]" The accountant also stated that the Petitioner earns "a remarkably high income and salary," but did not provide figures to allow a comparison with other writers or other judges.

A "Certification of Salary" indicates that the Petitioner, as a judge, received a basic salary, plus a professional premium, seniority premium, and additional sums for travel and meal expenses.

In the denial notice, the Director found that the Petitioner did not provide "a proper basis for comparison" to show that her remuneration is high relative to that of others in the field.

On appeal, the Petitioner states that she had shown that she earned a "high salary in comparison [to] other Professionals of same field and in the same position." The "Certification of Salary" showed that the Petitioner earned more than the base salary, but did not show that her remuneration was significantly high in relation to others in her field – a field that includes judges with long experience in addition to newer judges who do not yet earn a seniority premium.

Furthermore, as noted above, the Petitioner is not coming to the United States to work as a judge, but as a writer. Her earnings as a judge consistently exceeded her income from "professional fees" and other outside sources, and the Petitioner did not show that she ever earned significantly high remuneration from the kind of work she intends to perform in the United States.

The Petitioner has not met 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.

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.