



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

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

In Re: 8335500

Date: MAY 28, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a business development and marketing manager, 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 Texas 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 defines “her field” as “Over-the-Top (OTT) South Asian Television Marketing.” (OTT refers here to media distributed over the Internet rather than traditional broadcast or cable networks; well-known examples include Netflix and Hulu.) This description is extremely narrow; not only does it exclude the vast majority of those employed in marketing, it also excludes everyone employed in marketing OTT services that are not specifically geared toward South Asian programming. The Petitioner has not established that OTT Asian television marketing differs, in any substantive way, from marketing of other products or services.

The Petitioner seeks to continue working as the marketing manager (Americas) for [REDACTED] a provider of OTT streaming South Asian video programming, which has employed her since 2013.¹ From 2009 to 2013, the Petitioner worked as a project manager for [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:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director found that the Petitioner had satisfied only one criterion, relating to performing in a leading or critical role for distinguished organizations or establishments.

¹ The Petitioner is the beneficiary of an earlier immigrant petition (in a different classification) filed by [REDACTED] which was approved in June 2016, with a priority date of September 4, 2015.

On appeal, the Petitioner maintains that she has met the requirements of the criteria numbered (i), (iii), and (v). The Petitioner does not reassert her claim to have satisfied criterion (vi), relating to authorship of scholarly articles in the field. Therefore, we consider that claim to be abandoned.²

Because the Director found that the Petitioner satisfies one criterion, and the Petitioner has abandoned another, she must satisfy at least two of the remaining three criteria in order to qualify for the classification sought. As explained below, we find that she has not satisfied any other criteria.

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 Petitioner received plaques and certificates from several local, state, and regional ethnic associations in the Mid-Atlantic area of the United States. None of these materials appear to be prizes or awards for excellence in the field of business development and marketing. Rather, they reflect the Petitioner's participation in various local or regional ethnic events such as parades and conventions. A certificate from the Bangladesh Society of New York expressed appreciation for the Petitioner's "participation in the 2017 [redacted]." At least some of these accolades arose from the Petitioner's work with [redacted] but the Petitioner has not shown that she received them to recognize excellence in her field of endeavor. Furthermore, the Petitioner has not shown that awards from local, state, and regional associations are nationally or internationally recognized.

In a request for evidence, the Director advised the Petitioner that the submitted evidence did not appear to satisfy the requirements of the criterion. The Petitioner's response includes a letter, attributed to [redacted] [redacted] Director of [redacted] which reads, in part:

Congratulations on receiving the [redacted] award. As you know, this is an award that is provided by us to members of [the] South Asian community who have done outstanding work in their field whom we believe contributed the most to [the] South Asian community in North America.

....

... Your work within the [redacted] community for [the] last decade has been impressive. Your grassroot[s] work brought awareness of legal and affordable ways the community can enjoy Bangladeshi Television. . . . So, it gives me great pleasure to notify you that you have been selected to receive the [redacted] award.

This newly submitted letter is questionable for several reasons. The letter is dated July 22, 2019, after the petition's filing date. Prior to the filing the petition, the Petitioner received two much shorter award letters in 2016 and 2018. Neither of those letters mentioned television. The 2016 letter mentioned the

² See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); see also *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). We briefly note that the submitted writings are not scholarly articles in the field of business development and marketing. Rather, the Petitioner wrote several newspaper articles during a student internship in 2003, and she co-wrote a political commentary in 2004.

Petitioner's "contribution to the Bangladeshi community in North America," without elaboration. The 2018 letter added that the Beneficiary "has been a patron of the [redacted] Organization since 2016."

The 2016 and 2018 letters both refer to [redacted]'s "Street Fair." Consistent with this, the inscription on the plaque from 2016 reads:

[redacted] STREET FESTIVAL 2016
[redacted] Virginia, [redacted] 2016
This Award is presented to our Patron
[The Petitioner]
[redacted]

The newest letter is not merely more detailed than the earlier letters. Rather, it amounts to a very substantial revision of the reason the Petitioner received the award. This revision, apparently written specifically to address the Director's request for evidence, raises serious questions regarding the truth of the facts asserted.³ Of particular concern, all three letters are attributed to [redacted] but the signature on the 2019 letter is entirely different from the signatures on the two earlier letters. Furthermore, the new evidence does not establish that the [redacted] award is nationally or internationally recognized. The Petitioner submits several printouts from [redacted]'s website Facebook page, but none of these printouts mention the Petitioner or the award.

The Petitioner contends that "[redacted] is operating nationwide," but the submitted printouts indicate that [redacted] is a local organization that exists to "promote and support the ethnic communities living here in . . . Washington, DC, Maryland, and Virginia." The [redacted] events described in the record all took place in the Northern Virginia suburbs of Washington, DC.

The Petitioner shows that the North American Telugu Association (NATA) and the American Telugu Association (ATA) are national organizations, but the record does not show that either of those associations gave any award to the Petitioner. A certificate from NATA reads, in part:

NATA proudly honours for [sic] your esteemed presence
at the NATA Convention [redacted] 2018.
Your valuable contribution made the convention a grand success.

The record does not contain any clarification from NATA to show how many people received those certificates, who those recipients were, or why they received them. Because the wording is so vague, it may simply acknowledge attendance at the convention. The certificate does not give any indication that NATA awarded it to the Petitioner for excellence in her field. Because the recipient's name is not on the certificate, it does not show whether NATA gave the certificate to the Petitioner, to [redacted] or to some other recipient. NATA's bylaws refer to an Awards Committee, but the record contains nothing from that committee to say that NATA gave the Petitioner any award, and if so, the reason for that award.

³ Cf. *Matter of Bueno*, 21 I&N Dec. 1029, 1033 (BIA 1997); cf. also *Matter of Ma*, 20 I&N Dec. 394 (BIA 1991) (discussing the evidentiary weight accorded to delayed birth certificates in immigrant visa proceedings).

With respect to ATA, the Petitioner submits a screen capture from a YouTube video, showing four unidentified men and a woman onstage. The title of the video is “[redacted]” Visiting the web address of this video, we see that the video was posted on the Petitioner’s own YouTube channel. The video shows the woman receiving a floral bouquet and what appears to be a cape or shawl. This person may be the Petitioner, but the image (captured by filming a television screen) is of poor quality. The sound on the video is also indistinct, and someone appears to be talking over it.

The very brief video (40 seconds long) does not explain the significance of the events shown. The Petitioner asserts that she “was recognized . . . for her contribution and promotion to the Telugu community and culture through South Asian television access in North America,” but this is not evident from the video. Even if the woman in the video is the Petitioner, the video does not show that she received a prize or award for excellence in her field.

The evidence submitted does not show that the Petitioner received any nationally or internationally recognized prize or award. The Petitioner has received some recognition from local entities, but the record does not show that she received this recognition for excellence in her field.

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)

South Asia Mid Week published an interview with the Petitioner, discussing the effect of OTT streaming on television viewing, particularly with regard to expanding the availability of South Asian content. The article identifies the Petitioner as someone with expertise on the subject, but the article is not about her, relating to her work.

The Petitioner states that she has been interviewed in various Canadian broadcast and print media, such as the Tamil-language television channel [redacted] and the *Brampton Guardian*, discussing [redacted] programming and “the launch of [redacted] Digital Network.” The Petitioner has also participated in [redacted]’s involvement in Canada’s annual India Day Parade, which received television coverage. The Petitioner has not shown that these interviews and activities were about her, relating to her work; the various media were not reporting on the Petitioner’s skills and achievements in the field of marketing. Rather, the Petitioner made these appearances as part of her marketing duties to promote her employers’ services and products. A transcript in the record, for example, shows that the Petitioner discussed pricing packages and channel availability.

Because the Petitioner has not established that the media appearances were about her, relating to her work in the field (rather than about her employer and its services), we need not address the separate question of whether the broadcasters and newspapers constitute major media.

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 found that the Petitioner had satisfied the requirements of this criterion. We disagree.

The Petitioner claims to have performed in leading or critical roles for five different employers since 2006. For each position, the Petitioner must show both that (1) her role was leading or critical, and (2) the employer has a distinguished reputation.

The Petitioner cites Exhibit 2 as evidence that she performed in leading or critical roles in the following capacities:

- Associate Producer, [redacted] Digital Entertainment
- Production Assistant, [redacted] Channel 13
- Online Advertising Assistant, [redacted] New York

Exhibit 2 is the Petitioner's own résumé. As such, it constitutes a series of the Petitioner's own claims, rather than evidence to support those claims. Furthermore, "leading or critical" is not merely a synonym for "useful." It cannot suffice for the Petitioner simply to describe her responsibilities and explain how her work was beneficial to her employers.

The Petitioner emphasizes, and documents, her two most recent positions at [redacted] and [redacted]. The Petitioner describes the latter company as "an online video technology company specializing in TV Everywhere platform." The documents submitted as evidence of these companies' reputations, however, are mostly internally-generated promotional materials such as press releases, marketing presentations, and the companies' websites. A company's reputation is how it is perceived from outside, not how it describes itself to potential clients, customers, and business partners.

The exception is an online article from *The Frisky*, which lists [redacted] among the "Best 30 Free Live TV Streaming Sites for Watching TV Online." The record provides no other information about *The Frisky*. Information in the printout raises questions about the article and its editorial oversight. For example, the title of the article refers to "30 Free Live TV Streaming Sites," but the article's web address refers to "25-free-live-tv-streaming-sites." Also, the list of "free" sites includes several paid sites, such as Netflix, Hulu, and DirecTV Now. The "About the Author" section at the end of the article is blank except for a name and a photograph. Therefore, the reliability of this article is questionable.

Even then, the article refers specifically to [redacted] in Asia, calling that provider "very popular on the subcontinent." The article does not mention [redacted] or the company's services or viewership in the United States. Likewise, the submitted statistics about [redacted] concern the larger, international organization, whereas the letters discussing the Petitioner's role deal with the related, but legally distinct, [redacted]. Global information about [redacted] does not reflect or convey a distinguished reputation on [redacted], and the Petitioner's role with [redacted] does not necessarily translate to leading or critical role with the larger, international [redacted] organization.

The Petitioner has not submitted objective, documentary evidence that [redacted] and [redacted] have distinguished reputations, and therefore we need not consider the separate question of whether her roles for those company were leading or critical.

In light of the above conclusions, the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion that the Petitioner claims at 8 C.F.R. § 204.5(h)(3)(v) cannot change the outcome of this appeal. Therefore, we reserve the remaining issue.⁴ In doing so, we neither affirm nor withdraw the Director's finding that the Petitioner played a leading or critical role for organizations or establishments with a distinguished reputation.

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.

⁴ 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); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).