



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

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

In Re: 13011369

Date: APR. 15, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a beauty products company, seeks classification of the Beneficiary as an alien of extraordinary ability in the field of business. *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 although the record demonstrated that the Beneficiary met the initial evidence requirements for the requested classification, it did not establish that she had sustained national or international acclaim and was one of the small percentage of business executives at the top of the field.

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) 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 international 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 criteria 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) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

At the time of filing, the Beneficiary served as the [redacted] President for the Petitioner's [redacted] brand of cosmetics. She was previously employed by the [redacted] organization and [redacted] and has held managerial and executive positions with these companies for 20 years.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must show that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met the requisite three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her leading role for organizations with a distinguished reputation, published material about her and her work in professional, major trade or other major media, and a high salary relative to others in her field. Upon review of the evidence, we agree with the Director's decision regarding the first two of these criteria, but withdraw his conclusion concerning the Beneficiary's salary.

On appeal, the Petitioner asserts that the Beneficiary also meets two additional evidentiary criteria relating to her receipt of lesser nationally or internationally recognized awards in her field, and original contributions of major significance to the field. After reviewing all of the evidence in the record, we find that she does not meet the initial evidence requirement for this classification, and does not qualify as an individual of extraordinary ability.

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)

To meet the requirements of this criterion, a petitioner must show that the individual has received a prize or award, that the prize or award was granted based upon excellence in the individual's field of endeavor, and that the prize or award is nationally or internationally recognized within the field. Here, the Petitioner submitted evidence that the Beneficiary led efforts to launch and market, and in some

cases develop, cosmetics products which were later selected for awards based upon their performance. These awards include the *Allure* magazine [redacted] and [redacted] awards and *Cosmetics Magazine* [redacted] Awards,” which were received by products issued by the Petitioner and by the Beneficiary’s previous employer, [redacted]. In addition, the Petitioner submitted evidence that its [redacted] advertising campaign was a finalist in the 11th Annual [redacted] Awards” in the [redacted] category.

However, as noted by the Director, the Beneficiary is not named as a recipient and did not personally receive any of these awards, as is required by the plain language of this criterion. The focus in this criterion is on the individual’s receipt of awards or prizes, as opposed to his or hers employer’s receipt of award or prizes.¹ On appeal, the Petitioner concedes that the awards “do not bear [the Beneficiary’s] name,” but focuses instead upon her contribution to these products’ recognition. Letters from the Beneficiary’s direct superiors in both organizations state that due to her leadership in the areas of marketing (and in some cases product development), the recognition afforded to the products through these awards can be attributed to her. But it is the awarding organizations which determine upon whom or what recognition is bestowed, and in this case they chose to name the products and the companies which sell them. In addition, the evidence indicates that the awards issued by the magazines were based upon an appraisal of the relative performance of the cosmetics and related products, not upon the business acumen of those who developed and marketed them. They are not, therefore, awards for excellence in the Beneficiary’s field of endeavor.

Further, even if we were to accept the Petitioner’s assertion that the evidence of the Beneficiary’s work related to the recognized products is sufficient under this criterion, which we do not, we note that at least some of the recognition asserted to be attributable to her did not come in the form of prizes or awards as required. Examples of this include the appearance of [redacted] sold by [redacted] in a *Vogue* article titled [redacted] as well as the previously mentioned marketing campaign which was a finalist for a [redacted].” This evidence does not demonstrate that either the Beneficiary or her employer were the recipient of a prize or award.

Based upon the above analysis, we conclude that the Petitioner has not established that the Beneficiary is the recipient of prizes or awards for excellence in her field of endeavor.

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 successfully demonstrate that an individual meets this criterion, a petitioner must establish that he or she has made contributions to the field that are both original and of major significance. “Contributions of major significance” connotes that the individual’s work has significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 134. 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 in the field.

¹ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*. Page 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

The Petitioner asserts on appeal that the Beneficiary's accomplishments "have had a major impact on product development and marketing in the global beauty industry," and refers to her leadership of projects to develop and launch beauty products which were recognized by the industry awards mentioned above. It begins by highlighting her leadership of the development of [redacted] and [redacted] as examples of contributions to the field of business, noting that these products represented "groundbreaking innovations" such as a magnetic [redacted] case "that has since been copied by other [redacted] companies." Also mentioned is [redacted] which the Petitioner states is "one of the best-selling franchises in the world."

In support of these assertions, the Petitioner refers to reference letters from executives at [redacted] [redacted] Executive Vice President of Human Relations at the company, confirms the Beneficiary's employment in progressively more senior managerial and executive positions from 1999 to 2016, and notes that during this time she "defined and implemented marketing, media, and promotional strategies" and "was involved in the creation and launched numerous highly successful and groundbreaking products." He confirms that these included the three products mentioned above as well as others, and goes into greater detail regarding the first two. [redacted] describes [redacted] [redacted] as "game-changing," having "innovative features," and "one of the leading products in its category to this day," and notes that [redacted] came in "a novel [redacted] package with a magnetic opening system, which was the first of its kind in the market." Although this letter confirms that the Beneficiary led the development of products which are said to have novel features, at least one of which remains a sales success for her former employer, it does not explain how the Beneficiary's work in these examples was of such wide impact or influence on her field that they were of major significance. For example, while the Petitioner asserts on appeal that other companies followed [redacted] in offering magnetic [redacted] cases, [redacted] does not make this claim in his letter, nor does the record include documentary evidence to support this claim or demonstrate how it was of major significance to the field. In addition, while the Petitioner submitted evidence regarding an *Allure* [redacted]' award received for the [redacted], the webpage in the record which announces the award and describes this product makes no mention of its magnetic case.

Similarly, the Petitioner names products for which the Beneficiary has led the development and marketing under its employment, also including [redacted] products. [redacted] the Petitioner's Chief Marketing Officer and also former colleague of the Beneficiary's at [redacted] confirms that "several new products" have been introduced during her tenure as Global Brand President, some of which "were recognized by the industry for their innovation," including the *Allure* [redacted] recognition in 2019. However, as noted above, the evidence of these awards indicates that they were granted based upon home testing of the products' performance by the magazine's staff, not upon any judgment of innovation or excellence in product development.

Although the evidence demonstrates that the Beneficiary has successfully led the development of products for her current and former employers, it does not show that her work has led other executives in the cosmetics industry or elsewhere to change the way they conduct their work, or has otherwise impacted the area of product development in her overall field. The commercial or critical success of the products may have led to improved sales for her employers, but the evidence shows that that impact was felt by those employers only, not the broader field.

Turning to the Beneficiary's contributions related to the marketing of cosmetics during her long career in the industry, the Petitioner first refers on appeal to the reference letter from [redacted] a former colleague of the Beneficiary's at [redacted]. He describes product launch marketing campaigns for two [redacted] products, both of which featured well-known actresses. [redacted] then explains that the Beneficiary was responsible for relaunching the [redacted] website for the United States, "which was so successful that it quickly became the standard reference for all [redacted] business units worldwide." He states that she "established standards, methods, and processes that at still in use at [redacted] today." We note that this same paragraph regarding the Beneficiary's work on the [redacted] website appears in [redacted]'s letter as well. However, neither letter indicates that these processes or methods have been applied outside of the [redacted] brand, or the [redacted] organization, to have an impact on the broader field.

[redacted]'s letter touches on other aspects of the Beneficiary's marketing efforts while at [redacted], stating that "she was responsible for redefining the brand equity for [redacted] in the United States," and that her strategy "became the platform for [redacted] globally." It is unclear if he is referring to the website relaunching as referenced in the other two letters, as he does not expand upon what was involved in redefining [redacted]'s "brand equity," but [redacted] later notes that the Beneficiary "accelerated the company's digital presence, achieving double-digit growth in e-commerce ..." As with the previously mentioned letters, there is no indication in this letter that her work in leading marketing campaigns for [redacted] significantly impacted the field beyond her employer.

The Petitioner also asserts that media articles featuring quotes from the Beneficiary, as well as an interview of her which appeared on the website of *Women's Wear Daily (WWD)* confirm her "preeminence" and "elite status." Some of these articles were published during her time with [redacted], such as a 2013 article in the *New York Times* which includes a statement from her regarding the company's effort in targeting the [redacted] market. Another article appearing in the same newspaper a year earlier is about a [redacted] commercial featuring the [redacted] and includes a short quote from the Beneficiary. While these articles confirm her position as a marketing executive for [redacted] and its [redacted] brand, and thus an expert in cosmetics marketing who is authorized to speak on the brand's behalf, they do not focus on any contributions made by the Beneficiary to the cosmetics industry or the field of business.

Other articles were published since the Beneficiary began working for the Petitioner. The WWD interview discusses [redacted]'s [redacted] campaign, noting it as a departure for the company, and allows the Beneficiary to discuss her efforts to reverse the company's sales struggles and compete with "indie" brands. This article also serves to confirm the Beneficiary's role as an executive and provides more detail about certain marketing projects she has undertaken. Another article, posted on the website [redacted] is about brands conducting marketing campaigns at live events, and dedicates several paragraphs to the Beneficiary's description of the Petitioner's efforts in this vein. Although both of these articles indicate that she led the Petitioner in marketing campaigns that were novel for the company and brand, they do not indicate that these campaigns represented contributions to the overall field which influenced other companies to take a similar approach.

Another way in which the Petitioner asserts that the Beneficiary has made a contribution of major significance to the field of business relates to her work in internal processes for the company. [redacted] writes that she was able to reduce development time for new products from 18 to 24 months

down to 6 to 18 months. The Beneficiary also discusses this change in the *WWD* article, noting that accelerating this timeline is a way in which the Petitioner is changing its business model to compete with newer cosmetics companies. As with the discussions above, this evidence does not show that the changes made to the Petitioner's internal processes are contributions which have influenced others in the industry or broader field of business to implement within their organizations.

Upon consideration of all of the evidence pertaining to this criterion, some of which has been specifically mentioned in the analysis above, we conclude that the Petitioner has not established that the Beneficiary has made original contributions of major significance in her field.

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 support of its claim to this criterion, the Petitioner submitted a letter regarding the Beneficiary's promotion in 2018, her IRS Forms W-2 for the years 2018 and 2019, earnings statements for 2019, and information about the salaries of Chief Executive Officers and Chief Sustainability Officers in [redacted] during the relevant period. The letter states that as President of [redacted] the Beneficiary earns \$600,000 in salary, a 100% bonus, and an award under the company's Long Term Incentive Plan of up to \$1,000,000. The Forms W-2 for 2018 and 2019 show that in those years, she earned "wages, tips and other compensation" of \$865,602 and \$1,099,303, respectively. Also, the earnings statement for January 31, 2020 shows that at that point her base salary was \$662,000, and that other compensation included a car allowance, life insurance and financial consulting.

For purposes of comparison, the salary data from the United States Department of Labor's Online Wage Library (OWL) does not provide values for wage levels 1 through 4, but states that such information is not provided "due to limitations in the OES data." It further notes that the wage data may be at least \$208,000 per year, but does provide a "Mean Wage (H-2B)" of \$256,776 per year. Although we acknowledge that the Beneficiary's base salary of \$600,000 in 2018, and \$662,000 in 2020, exceeds the mean salary reported, the information provided in the OWL is not sufficient to demonstrate that her salary is high in comparison to the salary of other executives in [redacted] or that her total remuneration is significantly high in comparison to those executives.

First, since the OWL does not take indicate that compensation other than base salary is included in the figures provided, we can only consider the Beneficiary's base salary as shown in the promotion letter and earnings statements when making this comparison. Second, the mean wage by itself does not provide a sufficient basis to determine whether the Beneficiary's salary is high, as it does not provide a complete picture of the range of executive salaries which are above average, high, and near the top echelon. Therefore, the record does not include evidence that demonstrates that the Beneficiary's salary is high in comparison to other executive, and we withdraw the Director's conclusion that she meets this criterion.

B. O-1 Classification

We note that the record reflects that the Petitioner has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although 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 I-140 immigrant petitions are 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), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990).

Further, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

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 that the Beneficiary has 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 the Beneficiary’s 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 Beneficiary has garnered national or international acclaim in the field, and that 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 his 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.