



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

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

In Re: 10468354

Date: FEB. 2, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a vice president and chief content officer of a media company, 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

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

Before 2016, the Petitioner was co-founder and editor-in-chief of [REDACTED]. Since 2016, the Petitioner has served as a vice president and chief content officer of [REDACTED] an online provider of business news and information. She intends to work as [REDACTED] U.S. representative in the United States, where her role would be to “develop the media business, build a professional content team and manage the daily operation of [REDACTED]’s subsidiary in the U.S.”

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 Petitioner claims to have met four criteria, summarized below:

- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

The Director concluded that the Petitioner met two of the evidentiary criteria, relating to participation as a judge of the work of others and a leading or critical role for distinguished organizations or establishments.

Upon review, we have determined that the Petitioner satisfies a third criterion, relating to high salary or other significantly high remuneration. In the denial notice, the Director stated that pay statements show salary payments that are substantially lower than the salary claimed elsewhere in the record. On appeal, the Petitioner states that the Director misread a municipal tax document, and mistook tax paid *by* the Petitioner for salary paid *to* her. The record supports this assertion. The Petitioner has established that she has commanded a high salary in relation to others in her field.

Rather than further discuss the specific requirements of the evidentiary criteria, we will evaluate the totality of the evidence in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim and that she is one of the small percentage at the very top of the field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.¹ In this matter, we conclude that the Petitioner has not shown her eligibility.

The Petitioner asserts that her work with [redacted] in the United States “would satisfy the national interest standard,” and that she has submitted “at least three types of initial evidence as an alien of exceptional ability under section 203(b)(2) of the Act.” These and other assertions relate to a different immigrant classification. In this proceeding, the Petitioner seeks classification as an alien of extraordinary ability under section 203(b)(1)(A) of the Act, not as an alien of exceptional ability, with a national interest waiver of the job offer requirement, under section 203(b)(2)(B)(i) of the Act.

The Petitioner asserts that “chief content officer” is a “relatively new title,” and therefore relatively little evidence exists that would permit a direct comparison between her and others in similar positions. Nevertheless, the statutory and regulatory requirements are inherently comparative, demanding evidence to show that the Petitioner is at the top of her field *relative to others in that field*. In this case, the Petitioner's evidence satisfies the facial requirements of three regulatory criteria, but upon examination, that evidence does not show that the Petitioner has earned sustained national or international acclaim and stands at the very top of her field.

The Petitioner holds a high-ranking position at a media company that has attracted attention in the field. For this reason, the Director concluded that the Petitioner satisfied the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(viii), relating to performance in a leading or critical role for organizations or establishments with a distinguished reputation. Such a role, however, is not intrinsically tantamount to sustained national or international acclaim. The reputation of a given organization does not automatically or presumptively demonstrate acclaim for its high-ranking officers.

The Petitioner emphasizes published materials in the record which name her as a top official of [redacted]. The record, however, does not establish the significance of this coverage. Many of the submitted articles

¹ *See also* 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 4* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

lack an author credit, and appear to be promotional in nature rather than reflecting acclaim from outside the organization.

The Petitioner has established that she is successful in her field, but the evidence submitted does not meet the much higher threshold of establishing sustained national or international acclaim.

III. CONCLUSION

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. U.S. Citizenship and Immigration Services 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 the required sustained national or international acclaim or that her career 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 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.

ORDER: The appeal is dismissed.