



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

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

In Re: 11877771

Date: FEB. 26, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a journalist, 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

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

The Petitioner has served as a sub-editor at [REDACTED] which owns several publications in Nepal, including [REDACTED] [REDACTED] a U.S.-based Nepali-language news website, has offered the Petitioner a position as a consulting editor.

Because the Petitioner has not indicated or shown that she 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 all ten criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (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;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met only the fourth criterion, relating to participation as a judge of the work of others. On appeal, the Petitioner asserts that she also meets eight other evidentiary criteria. The Petitioner does not contest the Director's conclusions regarding the seventh criterion, pertaining to artistic display, and therefore we consider that issue to be abandoned.¹

¹ *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also 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); *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 have reviewed all of the evidence in the record and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria. We agree with the Director that the Petitioner has participated as a judge of the work of others. Below, we will discuss the other eight criteria that the Petitioner claims on appeal.

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 discusses two claimed awards on appeal. The record directly documents only one of them. A certificate from [redacted] shows that the Petitioner won an [redacted] Award . . . for Outstanding Performance in a field of Journalism 2014-15.” An official from the awarding organization stated that a three-member committee chose the Petitioner “for her outstanding contribution through journalism in [redacted].” This statement describes how the Petitioner received the award, but it does not show that the award is nationally or internationally recognized.

The record also indicates that the Nepal Press Union (NPU) gave the Petitioner a [redacted] in 2015. The Petitioner does not include a copy of the letter itself. Instead, the Petitioner submits a March 2016 letter from the NPU's coordinator,² stating:

[redacted] is the recognition . . . established to honor the excellence and outstanding contribution of a journalist in the field of journalism. It was awarded to [the Petitioner] . . . in the year of 2015. She was selected by an independent sub committee led by renowned person[s] from [the] field of journalism. The reason behind her selection is her immense contribution [to the] [redacted] journalism as a whole.

Other NPU officials provided subsequent letters, dated 2019. The general secretary of the NPU states: “In recognition of her outstanding journalism, Nepal Press Union had awarded [the Petitioner] with the [redacted] in 2015, which is an award handed over to one journalist annually.” The president of the NPU states that the organization honored the Petitioner as an [redacted] in 2015, based on “her immense contribution to the field of Nepalese journalism, her vision, and her innovative work on establishing [redacted] online portal.” The record does not contain sufficient evidence to establish that the letter of appreciation is a nationally or internationally recognized prize or award for excellence in the field of journalism.

Considering that the Petitioner claims to have received journalism awards from journalists, it bears noting that the Petitioner does not show that any of her claimed awards received any media coverage at the time she received them. This is directly relevant to the question of how widely recognized the awards are.

The Petitioner has not established her receipt of nationally or internationally recognized prizes or awards for excellence in her field of endeavor.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as

² The coordinator has the same surname as the Petitioner. The record does not say whether the two are related.

judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner is a member of Sancharika Samuha, described as “a Forum of women communicators,” and the Federation of Nepali Journalists (FNJ). The record does not establish that either organization requires outstanding achievements of its members. The president of the FNJ states that the organization “is a professional representative body” with “more than 10,000” members, and the record indicates that the FNJ is a trade union rather than an exclusive organization with restrictive membership requirements.

The Petitioner has not shown that she is a member of any organization or establishment that requires outstanding achievements of its members.

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 initially submitted what she called “articles primarily about [her] work.” The Petitioner was the author or editor of these articles, but not their subject. Such articles are not about the Petitioner, relating to her work. Rather, they are *products* of the Petitioner’s work as a journalist.

The Petitioner’s response to a request for evidence includes several articles about her. Some were published after the petition’s filing date. These materials cannot establish that the Petitioner met the eligibility requirements at the time of filing, as required by 8 C.F.R. § 103.2(b)(1), and therefore we need not discuss further details of these articles.

The remaining articles (one from [redacted] and one from [redacted]) do not include the authors’ names as the regulation requires. The Director stated that they also lacked certified translations, but the translator’s certification is in the record.

Of greater concern, the Petitioner does not establish that [redacted] and [redacted] are professional or major trade publications or other major media. A letter from an official of the Press Council Nepal states that [redacted] circulates over 30,000 copies per month, but provides no context (and cites no source) for this figure. The same official states that [redacted] is a “credible online news outlet,” which does not suffice to meet the regulatory standards.

The Petitioner has not satisfied this criterion.

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 submits copies of articles that she wrote or edited, but the submitted articles are not scholarly. A scholarly article should be written for learned persons in a given field. (“Learned” is

defined as “having or demonstrating profound knowledge or scholarship.”)³ The Petitioner’s articles are for a general readership, regarding such topics as a preview of a science fiction film; dressing for cold weather; and profiles of women employed in various fields.

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 Petitioner establishes the distinguished reputation of [redacted] but has not shown that her role with that publisher is leading or critical. If a leading role, the evidence must establish that the alien is (or was) a leader. If a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.⁴

An assistant general manager at [redacted] describes the Petitioner’s work there:

As a sub-editor, she was responsible for identifying interesting stories, interview subjects, collecting data/information, and editing. She wrote educational, informative and entertaining articles [redacted]

[redacted] Through the focus on substantive matters, [the Petitioner] was able to spread awareness among Nepali audience [sic] on these issues. Her leadership, vision and her focus on creating interesting and substantive content helped [redacted] become the largest selling [redacted] magazine in Nepal. . . .

She also came up with creative ideas on supplement issues of [redacted] that were immensely liked by business outlets and was able to generate significant revenue for [redacted]

The editor of [redacted] states:

[The Petitioner] has played an instrumental role in defining, developing and establishing [redacted] stronghold among readers in and outside Nepal [The Petitioner] has been a strong pillar in making [redacted] the household name it is today The supplement of [redacted] is an example of successful planning and implementation which was both content wise and commercially successful She pushed the management towards effective digitization of [redacted] in a country where internet was not yet so widespread.

These officials credit the Petitioner with contributing to [redacted]’s popularity, but do not provide enough information to show that the Petitioner’s work, in particular, had a significant effect on the magazine’s success. The Petitioner has not shown how many reporters and sub-editors [redacted] employs at any one time, or provided an objective basis for comparing the Petitioner’s role to that of others at the publication. Also,

³ 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 9* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

the Petitioner has provided few details about the nature of her work as a sub-editor. Without that information, we cannot conclude that she has shown her role to be leading or critical.

The Petitioner has not established that she satisfies the requirements of 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)

The Petitioner submits two similarly-worded letters signed by other journalists. One letter calls the Petitioner “one of the highest paid female journalists in Nepal”; the other uses nearly the same phrase, substituting “women” for “female.” The letters include no figures or other elaboration. The letters have other similarities as well: for example, both state that the Petitioner “has proven to be an enormous asset to [redacted] magazine of Nepal.” The use of nearly identical language strongly suggests a common author, whom we can infer to be the Petitioner herself.⁵

Nepal’s Minimum Wage Fixation Committee “has fixed minimum remuneration for Nepali journalist[s] at Nrs. 19,200 per month.” A letter from that committee states: “Records show that the monthly remuneration received by [the Petitioner] as a sub-editor of [redacted] and as media adviser/consultant for various organizations was over NRS 170,000 in the fiscal year 2015-2016, which is over 8 times the minimum salary of a journalist . . . and over 4 times . . . the average income [o]f senior journalists.”

The figure provided for the Petitioner, however, is not the salary of a journalist. Rather, it is the combined total of salaries from several employers and clients. Letters in the record indicate that various schools and child care facilities each paid the Beneficiary between 40,000 and 55,000 Nepalese rupees per month. Most of those letters do not specify the Petitioner’s duties as a “media consultant”; one employer indicated that the Petitioner’s duties included marketing and promotion.

The record does not show what salary [redacted] pays to the Petitioner as a journalist and sub-editor, but it is evident that the bulk of the Petitioner’s monthly income has come from schools rather than publishers.

Because the Petitioner has not shown what she earns for her work as a journalist, she has not shown that she has commanded a high salary in relation to others in the field of journalism.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

The Petitioner asserts that, because she has established a high salary under the previous criterion, she has also shown that she satisfies this criterion. This assertion is deficient for several reasons. First, as discussed above, she has not established her level of compensation as a journalist; most of her income derives from promotional work for employers or clients who are not publishers.

⁵ Cf. *Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

Second, the language of this criterion refers specifically to commercial success *in the performing arts*. The Petitioner does not claim or establish that the performing arts include journalism.

Finally, *commercial success* is not synonymous with *high salary*. If it were, then there would be no reason for two separate regulatory criteria. The commercial success of a given film, recording, or performance is separate from the payment received by any one individual participant.

The Petitioner is not employed in the performing arts and has not submitted box office receipts or sales figures to establish commercial success in the performing arts.

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 light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of this remaining criterion cannot change the outcome of this appeal. Therefore, we reserve this issue.⁶

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 lesser 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 conclusion 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. Here, the Petitioner has established that she works for a large and successful publication and has earned some degree of recognition for that work. But she has not shown that this recognition rises to the required level of 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 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.

⁶ *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).