



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

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

In Re: 17513981

Date: JUL. 01, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a film and television director, seeks classification as an individual 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 for this classification, 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 by a preponderance of the evidence. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 the 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 is a film and television director who has directed episodes of primetime television series [redacted]. In addition, she has written and directed [redacted] films. The record reflects that the Petitioner has a bachelor of arts from The University of [redacted] and is a graduate of the [redacted]'s [redacted] and [redacted] Program. She currently works in the United States in O-1 nonimmigrant status and provided evidence of her upcoming commitments to direct episodes of [redacted] [redacted] [redacted] and [redacted], among other series.

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 meet eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published materials in professional publications or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance.
- (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 determined that the Petitioner satisfied one of the criteria, relating to judging the work of others in her field. We agree. The record reflects that the Petitioner has served on judging panels for film festivals and film awards competitions and therefore supports the Director's determination that she satisfies the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner asserts that she also meets the other seven claimed criteria, which we will discuss below. After reviewing all the evidence in the record, we conclude that the Petitioner has satisfied only one of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Documentation of the individual'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 satisfy this criterion, a petitioner must demonstrate that they received prizes or awards, and that the awards are nationally or internationally recognized for excellence in the field of endeavor. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.¹

The Petitioner has documented her receipt of the following awards for her short and feature films:

- [redacted] Award, presented by [redacted] Network (1999);
- [redacted] Film Festival, Best of the Festival Winner (2005);
- [redacted] Film Festival, [redacted] Award, [redacted] Film (2005);
- [redacted] Film Festival, [redacted] Award Winner (2005);
- [redacted] Emerging Television Director Award, presented by [redacted] Film and Television [redacted] (2008);
- [redacted] Film Festival, [redacted] Award [redacted] (2012); and
- [redacted] [redacted] Award," presented by [redacted] (2016).

The Petitioner also provided evidence that she was nominated for a [redacted] Award for Outstanding Directorial Achievement in a [redacted] for an episode of the [redacted] series [redacted] in 2017.² We observe that a national Director's Guild [redacted] Award of this nature would be sufficient to meet this criterion; however, a nomination for this award does not satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

The Petitioner's 2008 [redacted] Emerging Television Director Award," was co-presented by the [redacted] branch of the Director's Guild [redacted] rather than by the national organization. The Petitioner did not provide supporting evidence to establish that this regionally granted, early career award garners the national recognition of the Director's Guild [redacted] annual industry awards for which the Petitioner was subsequently nominated, or otherwise establish the national or international recognition associated with this award. The description of the award states that is granted to an "emerging [redacted] director" and included a two-month mentorship with an established television director and intensive industry coaching. The Petitioner generally asserts that Director's Guild [redacted] awards are

¹ See 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policymanual> (providing guidance on the evaluation of evidence submitted in support of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

² The Petitioner's Internet Movie Database (IMDB) profile lists a second Director's Guild [redacted] award nomination (specifically, for a [redacted] Team Award") for an episode of [redacted] 2014, but she did not submit any additional evidence related to this nomination.

“equivalent” to Director’s Guild [redacted] awards and otherwise “equal in stature and reputation,” but has not submitted sufficient evidence to support this claim with respect to her [redacted] award received in 2008.

The Petitioner’s [redacted] Award” was presented to her by the [redacted] regional chapter of the [redacted], a national union for [redacted] performers working in these industries. Although the record documents her receipt of the award, she has not addressed this award in her brief on appeal or in any letters in support of the petition. The record contains a copy of her award plaque, a *Wikipedia* article about [redacted] screenshots from the [redacted] website, and an [redacted] press release about the 2019 [redacted] Awards. This evidence indicates that the award, first given in 2016, is intended to honor diversity in the industry and to “celebrate one individual and one company each year whose work demonstrate a commitment to inclusion on screen.” The evidence does not further address the criteria for granting the award or the scope of the awards, which appears to be limited to the [redacted] chapter. Nor does the record include any media coverage of the Petitioner’s receipt of the award that would assist in establishing whether it garnered publicity commensurate with a nationally recognized entertainment industry award. Accordingly, the evidence submitted is insufficient to demonstrate that the [redacted] award is a nationally recognized award for excellence in television or motion picture directing.

With respect to the Petitioner’s film festival awards, the record is similarly lacking evidence that the awards she received are nationally or internationally recognized prizes or awards for excellence. Her [redacted] Award” was accompanied by evidence that appears to relate to a different awards program called [redacted] Awards. The Petitioner’s award was presented to her by the [redacted] Network in 1999. The information provided regarding [redacted] Awards indicates that this award was first presented in 2000 and is overseen by [redacted]. [redacted] Therefore, this information does not appear to relate to her 1999 award. Similarly, while the Petitioner provided a certificate documenting her receipt of an award at the [redacted] Film Festival, the record lacks any supporting evidence regarding this festival or the national or international recognition associated with this award.

The Petitioner indicates in supporting letters that she received a 2004 [redacted] Award at the 2004 [redacted] Film Festival, which is described in the record as a festival dedicated to providing [redacted]. She did not provide documentary evidence of her receipt of this award or additional information regarding the festival or award. According to the Petitioner’s IMDb profile, she received the [redacted] Award for Best Feature Film at the [redacted] Film Festival for her film [redacted] in 2005. The record includes a photograph of a trophy that appears to be a 2005 [redacted] Award.” However, she did not mention this award in her supporting letters, submit any additional evidence related to this award, and has not established that it is a nationally or internationally recognized award for excellence in her field.

Regarding the [redacted] Film Festival, the Petitioner submitted a screenshot from the website [redacted] which briefly describes the [redacted] Award and the rules and terms of entry for the 22nd edition of the festival, indicating that it was [redacted].” According to the information provided, the festival’s award winner receives “an InkTip script listing to assist the winner in getting their script for their next film to producers.” The record does not contain any other evidence related to this award and does not support a

determination that this festival's [redacted] Award is a nationally or internationally recognized prize for excellence.

Finally, the Petitioner documented her receipt of a [redacted] Award in the [redacted] [redacted] category at [redacted] Film Festival, in 2012. She provided information about the festival and its 2020 entry requirements from the website *Film Freeway*, a *Wikipedia* article about the festival, and a 2017 article about the festival's 50th anniversary, published online by *Houston Press*. The information from *Film Freeway* describes [redacted] as "one of the oldest and largest film and video competitions in the world, with more than 4,574 category entries received from 74 nations in 2020." The record reflects that the festival has over 200 sub-categories, with approximately 15-20% of all entries receiving awards across categories. Awards are based on scoring by a jury with a score cutoff for each level of award, which include the Grand Remi, special jury award, platinum, gold, silver, and bronze awards. The description of the festival indicates that the festival is international in scope and that several well-known filmmakers received their very first awards at [redacted]

While the festival appears to be well-established in the independent film industry, it bestows several hundred awards annually. The record does not contain sufficient evidence to demonstrate that every level of Remi Award in every category is a nationally or internationally recognized prize or award. The issue here is not the national or international scope of the competition, but rather whether the Petitioner's specific award is a nationally or internationally recognized prize or award for excellence in the field. The record does not contain evidence of the nature or type of recognition the Petitioner received as a result of this award, such as, for example, media about the 2012 festival in which she participated, nor does it contain evidence of the nature and type of independent recognition that Remi award winners receive in general, outside of the festival itself.

For the reasons discussed, the Petitioner has not established that she satisfies this criterion. Although we acknowledge that the Petitioner is the recipient of several awards in her field which recognize the quality of her work, the evidence she submitted does not demonstrate that the awards are nationally or internationally recognized prizes or awards for excellence in her field of endeavor.

Documentation of the individual'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 eligibility under this criterion. In response to a request for evidence (RFE), the Petitioner mentioned in her cover letter that she "is a member of a major industry guild and union who selected her for membership due to her high level of achievements and having reached certain milestones and benchmarks." The Director determined, however, that the Petitioner did not provide evidence in support of her claim that she has one or more qualifying memberships in associations.

On appeal, the Petitioner repeats her assertion that she satisfies this criterion but does not address the Director's determination that the record lacks evidence to support that claim. There are references in the record to the Petitioner's membership in the Director's Guild [redacted]. However, there is no primary evidence of her membership in this or any other association in her field. Nor is there evidence to establish that she is a member of an association in her field which requires outstanding achievements of its members

as judged by nationally or internationally recognized experts, such as documentation of official membership requirements and member selection procedures for the Director's Guild [redacted] or other associations. Accordingly, the Petitioner has not demonstrated that she meets this criterion.

Published material about the individual in professional or major trade publications or other major media, relating to the individual'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)

To satisfy this criterion, the Petitioner must provide evidence of published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material. Here, the Petitioner has consistently claimed that she "has been extensively featured in major newspapers, magazines and trade publications in [redacted]"

The Director acknowledged that the Petitioner submitted articles from the websites wdtvpress.com, Indiewire.com, sheknows.com, blackincanada.com, caribbeantalesfestival.com, playbackonline.ca, the audienceawards.com, as well as various online reviews for television shows in which she was identified as the director of a particular episode or episodes. The Director determined that the articles from these sources did not satisfy this criterion because, while they mentioned the Petitioner, they were not about the Petitioner and her work. Because this required element of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) was not met, the Director did not further evaluate this evidence to determine if the referenced articles included all required information (author, date and title) or whether they appeared in qualifying professional or major trade publications or other major media.

The Director determined that some of the submitted articles are about the Petitioner and her work in the field, specifically referencing articles from the websites pennantmediagroup.com, megadiversities.com, wgsi.utoronto.ca, filmfatales.org, and notablelife.com. However, the Director concluded that the Petitioner did not submit sufficient supporting documentation to establish that these publications are professional or major trade publications or other major media, as claimed.

On appeal, the Petitioner makes the same claims she made at the time of filing and in response to the Director's RFE, without identifying specifically any erroneous conclusion of law or statement of fact for the appeal, or even referencing the Director's decision on this issue. Rather, the brief submitted on appeal repeats previous claims that the Petitioner "has been extensively featured in major newspapers, magazines and trade publications in [redacted]"

As the Petitioner has not specifically contested the Director's reasons for finding the submitted evidence to be deficient, we will not address every article here. Nevertheless, we have reviewed the evidence submitted in support of this criterion, including evidence not expressly mentioned in the denial decision, and conclude that the record supports the Director's determination that the Petitioner did not establish that any of the submitted articles satisfy all requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii).

For example, the Petitioner submitted a printout of an article titled '[redacted] [redacted]' from the website of the National Screen Institute (NSI) - [redacted]. The article contains a group photograph that includes the

Petitioner and her name is mentioned in the caption, but the article is not about her and she is not otherwise mentioned. Even if this could be considered a “professional or major trade publication” in the Petitioner’s field, it would not satisfy this criterion. The Director mentioned that the Petitioner submitted evidence from an ABC television press website (wdtvpress.com/abc). This website published behind-the-scenes photographs taken on set during the filming of an episode of [REDACTED]. [REDACTED] The Petitioner is identified in the captions accompanying the photographs, but there is no accompanying article about her, and therefore, this evidence does not satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(iii).

Another article, titled [REDACTED], is about a [REDACTED] television network’s decision not to air [REDACTED] [REDACTED]” and the ensuing court battle over the show. The Petitioner was one of several [REDACTED] television industry figures contacted by the article’s author, who solicited her view on [REDACTED]. [REDACTED]” The article refers to her as “a rising star,” mentions that she has directed episodes of [REDACTED] and [REDACTED] and includes a quote from her about [REDACTED]. [REDACTED] However, the lengthy article, published online by *Medium*, is not about the Petitioner.³

The Petitioner submitted a second article from *Medium*, an interview with the Petitioner about the Netflix series [REDACTED] published by [REDACTED]. While this article is about the Petitioner and her work as a director, it does not identify an author or include the full date of publication. Further, the article is not accompanied by sufficient evidence that *Medium*, an open online publishing platform, qualifies as a professional or major trade publication. We note that evidence of published material in major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics.⁴ The Petitioner submitted ranking data from *SimilarWeb* indicating that the website ranked 219th in the United States, but did not offer further support for a claim that this ranking qualifies the blogging platform as “other major media.”

The Petitioner provided circulation statistics and rankings for only two other publications. She provided a 2013 article published by notablelife.com, which is self-described as [REDACTED] [REDACTED] covering “all aspects of millennial life.” The article, an interview with the Petitioner about her career as a director, does not identify the author. Further, the *SimilarWeb* ranking for this publication in [REDACTED] is 43,059 and the Petitioner has not explained how this qualifies the magazine as a major medium. Therefore, while the article is about the Petitioner and her work, the evidence submitted regarding this publication’s circulation and intended audience does not establish that it qualifies as a professional or major trade publication or other major medium.

The Petitioner also provided a traffic overview and rankings from *SimilarWeb* for the website Indiewire.com. The accompanying article from *Indiewire*, an online publication covering film and television, was written in 2015 regarding about an upcoming [REDACTED].

³ The author includes a note in the introduction of his article, indicating that a shorter version of the piece had been published by the [REDACTED] *Globe and Mail*. The record does not include a copy of that version and it is unknown if the brief paragraph that mentions the Petitioner was included.

⁴ See 6 USCIS Policy Manual, *supra*, at F.2 appendix.

television series called [REDACTED]. The Petitioner's name is mentioned at the end of the article as one of four individuals "rounding out the directing team," but the article is not about her and would not satisfy this criterion even if we determined that the article appeared in a qualifying publication.

As noted by the Director, while the record includes other articles that are about the Petitioner and related to her work as a director, none of them were accompanied by the required evidence of publication in professional or major trade publications or other major media. The Petitioner and another [REDACTED] filmmaker are featured in a print article titled [REDACTED] [REDACTED] but the evidence does not clearly identify the name and full date of the publication or contain any information about the publication, such as its intended audience and circulation statistics. A profile about the Petitioner and her career was published by the website of the Women and Gender Studies Institute of the University [REDACTED] [REDACTED], the Petitioner's alma mater, but the article is not accompanied by evidence that this website qualifies as a professional or major trade publication or other major media.

We have reviewed all the evidence submitted in support of this criterion and conclude that it does not support the Petitioner's claim that she "has been extensively featured in major newspapers, magazines and trade publications in [REDACTED]." The Petitioner has not demonstrated that she meets this criterion.

Evidence of the individual'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)

To satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions, but that they 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 Petitioner did not initially claim to meet this criterion. In a cover letter accompanying her response to the RFE, counsel confusingly referred to "compulsive and overwhelming evidence that [REDACTED] [sic]" meets this criterion. Other than mentioning that the Petitioner has made "significant contributions to high-profile productions," the letter did not elaborate on how the Petitioner satisfies this criterion. For example, it did not identify her original contributions and their major significance or point to specific evidence she was submitting in support of this criterion.

At the time of filing and in response to the RFE, the Petitioner submitted several letters from colleagues in the film and television industry who praise her technical skills and artistic talents as a director and note the high profile nature of some of her network television projects. The Petitioner offered these letters as "other qualifying evidence of her extraordinary achievement," rather than submitting them in support of the "original contributions" evidentiary criterion. The Director nevertheless evaluated the testimonial evidence, noting that the letters from experts in her field did not establish either her specific original contributions to the field or the major significance of such contributions.

On appeal, the Petitioner maintains that she satisfies this criterion, repeating her claim that the record contains "compulsive and overwhelming evidence" related to this and all other claimed criteria.

However, her brief does not further elaborate on this claim, makes no additional reference to this criterion, and does not acknowledge or address the Director's reasons for finding the submitted evidence to be insufficient to meet her burden of proof. Therefore, the Petitioner has effectively abandoned this issue and we need not further address it. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *see also Hristov v. Roark*, No. 09–CV–2731, 2011 WL 4711885, at *1, *9 (E.D.N.Y. 2011) (plaintiff's claims found to be abandoned when not raised on appeal to the AAO); *see also Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

As noted by the Director, the Petitioner submitted testimonial evidence from individuals who attest to her talent, comment on the quality of her work on specific projects, and state that she is in demand as an episodic television director. They do not explain the major significance of specific artistic contributions that the Petitioner has made or elaborate on how such contributions are "original." Having a unique or special skill set as a director is not a contribution of major significance in-and-of-itself. The record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which she has not shown. For example, the Petitioner's letters do not contain specific, detailed information identifying her original contributions and explaining the unusual influence her work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.⁵ However, the letters submitted here do not demonstrate the Petitioner's impact beyond the individual television episodes she directed.

For the reasons discussed above, the Petitioner has not shown that she has made original contributions of major significance in the field.

Evidence that the individual 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)

To satisfy this criterion, the Petitioner must satisfy three elements: that her role was (1) leading or critical; (2) that such role was for an organization or establishment; and (3) that the organization or establishment has a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role should be apparent from the Petitioner's impact on the organization or the establishment's activities. The Petitioner's performance in this role should establish whether the role was critical for the organization or establishment as a whole.

In claiming eligibility under this criterion, the Petitioner describes the many responsibilities of a television director, noting that the director "is a key, major role in the production of any feature film or television production," and that the position is "key, vital and important to every production studio and television network." She asserted that she has served in a "critical lead position" with distinguished film and television production companies as a result of her work as a director on television shows for ABC, CBS, FOX, NBC, CW Network, Netflix, Warner Bros. Television, Amblin

⁵ *See* 6 USCIS Policy Manual, *supra*, at F.2 appendix.

Entertainment and others. Her initial evidence in support of this criterion included information about NBC, BBC America, and Warner Bros. Television Group.

The Director determined that the evidence submitted did not establish how serving in a leading or critical role for an episode of a television show equates to serving in a leading or critical role for a television network, studio, or production company as a whole. Accordingly, he concluded that the Petitioner did not meet her burden to demonstrate that she has served in a qualifying role for an “organization or establishment” with a distinguished reputation.

On appeal, the Petitioner repeats her assertion that episodic television directors provide “a critical and leading function to the overall production,” and serve in a role that is “key, vital and important to every production studio and television network.”

The regulation requires a Petitioner’s role to be leading or critical “for organizations or establishments,” and the Petitioner has not established that any of the television shows she has directed qualify as organizations or establishments. Therefore, even if we determined that she held a leading or critical role for a distinguished production (i.e., one or more episodes of a successful television series) additional evidence would be required to meet the requirements of this criterion.

The testimonial evidence in the record includes several letters from television studio and production company executives. These letters, however, do not establish that the Petitioner held a leading or critical position for these organizations.⁶ [redacted] Chair and CEO of [redacted] media company [redacted] confirms that the Petitioner directed a total of six episodes of the [redacted] series. [redacted] He describes the show and praises the Petitioner’s ability to understand and “visualize our show’s character driven comedy and unique cultural perspective.” A letter from [redacted] of [redacted] Television praises the Petitioner’s work on two episodes of [redacted] and her “exceptional talent as a director and storyteller,” and [redacted] President of [redacted], states that he is an “enormous fan” of the Petitioner’s work and speaks highly of the “special touch” she brought to individual episodes of [redacted] shows [redacted] [redacted] and [redacted]

While the authors of these and other letters uniformly offer high praise for the Petitioner and her artistic work as a director, they do not comment on whether or how her role has been critical in a way that contributed to the success of a production company, television network, or other organization or establishment or how her role as an episodic director has otherwise been commensurate with performing in a leading or critical role with their respective organizations. Other letters in the record are from executive producers of [redacted], [redacted], [redacted], [redacted] and [redacted] and highlight the Petitioner’s work on individual episodes of these shows; however, the producers do not speak to the Petitioner’s leading or critical role for the production companies that develop the shows or the networks that air them. Again, a given individual’s role must be leading or critical for a particular organization or establishment, rather than for one project, event, or assignment within that organization or establishment.

⁶ See USCIS Policy Manual, *supra*, at F.2 appendix (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

For the reasons discussed, the Petitioner has not established that she has performed in a leading or critical role for organizations or establishments with a distinguished reputation.

Evidence that the individual 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)

To satisfy the requirements of this criterion, the Petitioner must establish that she has received a high salary, or other significantly high remuneration, based on a comparison with others in her field in similar positions and geographic locations.⁷

To document her past earnings, the Petitioner provided her 2019 IRS Forms W-2 and 1099, a copy of her 2018 U.S. nonresident tax return, copies of deal memos and evidence of payments she received for her work, and letters from the talent agency that represents her, which include additional details regarding her earnings from specific projects. The Petitioner's tax documents reflect that she had over \$404,000 in earnings from her work as a television director in 2019.

In a cover letter submitted with her initial evidence, the Petitioner cited to data from *Payscale* and *Salary.com*, noting that her annual earnings in 2019 were significantly higher than the average and high salaries for television directors reported by these two sources.⁸ However, she also submitted data from other sources indicating that salaries for television directors working in southern California are significantly higher than the general nationwide figures provided by *Payscale* and *Salary.com*.

For example, the Petitioner submitted Occupational Employment and Wage data for "Producers and Directors" from the Department of Labor's Occupational Employment Statistics website. This data, which was from May 2016, shows a mean annual wage of \$93,840 and a 90th percentile wage of \$189,870. The mean annual wage in the [redacted] metropolitan area where the Petitioner works is \$141,040, 50.3% higher than the national average. The evidence submitted does not include data on what constitutes a "high" salary in [redacted] as a point of comparison. Demonstrating that she earns above the average wage in the [redacted] area is insufficient to satisfy this criterion.

Further, because the Petitioner provided evidence that she works on television productions that pay directors based on rates set by the Directors Guild of America (DGA), a more relevant point of comparison is the DGA's Minimum Salary Schedule, a copy of which was submitted with the initial filing.⁹ According to this schedule, directors (in 2017-2018) were required to be paid at least \$45,981 for a one-hour network primetime television episode, for a guaranteed period of 15 days' work, with \$3,065 per day in compensation for any additional days of work.

⁷ See 6 USCIS Policy Manual, *supra*, at F.2 appendix (noting that it is the petitioner's burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high).

⁸ The data she provided from *Salary.com* reported a median salary of \$33,465 for the position of "Director – Stage, Motion Pictures, Television" and a 90th percentile salary of \$47,660. The information provided from *Payscale* indicates a "television director" median salary of \$65,445 and a 90th percentile salary of \$170,000.

⁹ The Petitioner submitted the DGA's Minimum Salary Schedule valid from July 2017 through June 2018. The evidence in the record covers a multi-year period and reflects that these rates undergo an incremental increase on an annual basis. We note that the rate for a one-hour network TV episode for the period July 1, 2020 through June 30, 2021 was set at \$48,318, with a daily rate of \$3211. See Website of Director's Guild of America, "Basic Agreement Directors," <https://dga.org/Contracts/Rates-2020-to-2021/BA-FLTTA-Rate-Card/Directors-2020-to-2021.aspx> (last visited on June 30, 2021). The same source reports a \$46,671 rate for 2018-2019 and a \$47,371 rate for 2019-2020.

While directors working on DGA-scale television productions may generally earn higher salaries compared to directors working on other types of projects, it is reasonable to compare the Petitioner's earnings to that of other professional television directors whose pay is also based on this minimum salary schedule. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

Based on the evidence of payments she received for individual projects, the Petitioner has not established that she has commanded a high salary compared to other similarly employed television directors. She submitted three deal memos that she signed in 2017 for episodes of [redacted], [redacted] and [redacted]. Each one reflected that she received the minimum salary set forth in the DGA salary schedule. A letter from her agent, [redacted], regarding her projected earnings (based on one closed deal and seven others in negotiation) indicates that she was expected to earn \$47,371 per episode for upcoming work in 2020 and 2021. Overall, the initial evidence indicated that the Petitioner has earned, and would continue to earn, the minimum salary set by the DGA for each of her projects.

In response to the RFE, the Director submitted two letters from [redacted] of [redacted] both dated July 21, 2020, which address the Petitioner's earnings relative to the DGA minimum salary. In one letter, she indicates that [redacted] can confirm that the Petitioner "has been paid above industry standard" and states:

The typical compensation for a DGA hour long drama is \$46,371.00 and [the Petitioner] has been paid well above that on several shows between 2018 and 2020, including [redacted] for [redacted] (\$75,447), [redacted] for [redacted] (\$60,003), [redacted] for [redacted] (\$65,337), [redacted] for [redacted] (\$60,597) and [redacted] for [redacted] (\$56,845).

In the second letter, [redacted] states that "for a Director in the US, the minimum episodic rate for an hour-long television series is \$46,671 (USD)." [redacted] listed fees the Petitioner earned for eight network television episodes in 2018. These fees ranged from \$46,671 to \$60,597. According to [redacted] the Petitioner earned \$50,666 for directing episode [redacted] of [redacted], but the initial evidence, which included the Petitioner's deal memo for this episode, indicated that she was contracted to receive DGA scale for a basic cable episode (\$33,775 for 14 days, plus \$2,413/day beyond 14 days). While the Petitioner may have been paid for extra days of shooting, there is insufficient evidence to establish that she was paid well above the DGA scale for this episode. The record does not contain copies of contracts or deal memos for the other 2018 projects listed in [redacted]'s letter.

[redacted] also lists the Petitioner's earnings per episode for various projects in 2019, indicating rates that range from \$44,383 for an episode of [redacted] to \$150,895 for two episodes of [redacted]. The record does not contain the Petitioner's deal memos for these projects completed in 2019 but does include other documentation of payments she received for some of this work. For example, while the letters from [redacted] indicate that the Petitioner commanded a per episode rate of

approximately \$75,000 for [redacted] other evidence indicates that she received the DGA rate of \$46,671 per episode, along with \$3,111 per day for 17 days of extra shooting on the two episodes.

The letter from [redacted] also states that the Petitioner's earnings are "more than double the Standard [redacted] TV/Director's Guild [redacted] rate" and place her among the top income earners in television in [redacted]. However, given that the Petitioner is working on U.S. television projects that pay according to the DGA rate, the record does not establish that the Director's Guild [redacted] rates provide a relevant point of comparison.

Finally, while the record contains evidence that the Petitioner has received additional remuneration for some of her work in the form of residual payments, she has not provided supporting evidence to establish that such remuneration has been "significantly high" when compared to the residual payments that others in the field receive, or otherwise shown that her total remuneration is significantly high.

For the reasons discussed, the Petitioner has not established that she meets this criterion.

B. Summary and Reserved Issue

We conclude that the Petitioner satisfies the criterion related to judging at 8 C.F.R. § 204.5(h)(3)(iv), but for the reasons discussed above, did not submit evidence that satisfies the criteria relating to awards, memberships, published material, original contributions, leading or critical roles, and high salary. Although she claims on appeal that she can also satisfy the criterion relating to commercial success in the performing arts at 8 C.F.R. § 204.5(h)(3)(x), we need not reach this additional issue. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this criterion. *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).

C. O-1 Nonimmigrant Status

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 statute, regulations, and case law. 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 satisfy at least three of the ten criteria. Accordingly, 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 sustained 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. The record reflects that the Petitioner is in the latter category. The evidence establishes that the Petitioner has built a successful career in a competitive industry, has earned the high regard of her industry colleagues, and has enjoyed an increase in demand for her services in the years leading up to the filing of the petition. However, 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 record does not demonstrate the Petitioner, as of the date of filing, has garnered the required sustained national or international acclaim in her 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 her eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.