



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

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

In Re: 23841303

Date: DEC. 28, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a juris doctorate tax consultant, seeks classification as an individual of extraordinary ability in business. 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 meets any of the eligibility criteria at 8 C.F.R. § 204.5(h)(3), that she is seeking to enter the United States to continue to work in her area of extraordinary ability, or that her area of extraordinary ability falls under one of the categories at section 203(b)(1)(A)(i) of the Act.

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

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation; they seek to enter the United States to continue work in the area of extraordinary ability; and their entry into the United States will substantially benefit prospectively the United States. Section 203(b)(1)(A) of the Act.

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 a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then they must provide documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (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

A. Evidentiary Criteria

The Petitioner is a juris doctor tax consultant who indicates that she intends to continue this career in the United States. 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 Director found that the Petitioner does not meet any of the criteria. On appeal, the Petitioner asserts that she meets the following criteria:

- (i), Receipt of lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance in the field;
- (vi), Authorship of scholarly articles in the field; and
- (viii), Leading or critical role for organizations with a distinguished reputation.

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 states that she qualifies for this criterion based on her receipt of the Order of Barristers National Award and the President's Award Kenya.

The record indicates that the Beneficiary was inducted into the Order of Barristers National Honor Society, rather than receiving an Order of Barristers National Award. As such, we will discuss her claims under the "membership" criterion at 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner's letter of support indicates that the President's Award Kenya was awarded for her community service and charitable advocacy. The record does not contain any supporting documentation about this award's selection criteria. As there is no indication that this is an award for excellence in the field of law, it does not meet the plain language of this criterion, which requires the award or prize to be for excellence in the Petitioner's field of endeavor.

The Petitioner has not established that she received lesser nationally or internationally recognized prizes for excellence in her field of endeavor. Therefore, she does not meet this criterion.

Documentation of the alien'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 states that she qualifies for this criterion due to her membership in the Order of Barristers National Honor Society and in Pi Sigma Alpha, the National Political Science Honor Society. The Director determined that because these are academic honor societies restricted to students, they are not associations in the Petitioner's field that require outstanding achievements of their members. On appeal, the Petitioner disputes this conclusion and states that members of the legal profession can also gain membership in the Order of Barristers.

The Petitioner's initial cover letter describes Pi Sigma Alpha as an honor society for students of the political and social sciences, rather than the Petitioner's field of endeavor, which is law. The letter from the executive director of Pi Sigma Alpha states that entry for undergraduate students requires the completion of a certain number of academic credits in political science, including at least one upper-level course, with an average grade of B or above, as well as an overall grade point average that is in the top third of their class. Furthermore, the Pi Sigma Alpha website printout indicates that individual chapters of the society are not permitted to "impose any non-academic requirements" for entry and are "discouraged from imposing any requirement that involves subjective evaluation." Taking certain college courses and maintaining a certain grade point average are not extraordinary achievements judged by nationally or internationally experts in the field of law. The Petitioner's membership in Pi Sigma Alpha does not qualify for this criterion.

Membership in Order of Barristers National Honor Society is similarly based on law school student achievement, honoring law students who excel in moot court activities. The support letter from the Order of Barristers states that the only mandatory requirement for membership is that the students participate in law school moot court programs or teaching programs for brief writing and/or oral advocacy. While the Petitioner states on appeal that membership in the Order of Barristers is not restricted to law students, she is seeking to qualify for this criterion based on her membership in the Order of Barristers National Honor Society, which is based on student achievements. The evidence does not establish that this society requires outstanding achievements of its members.

The support letter from [redacted] of the University of [redacted] College of Law states that students are nominated for membership in the Order of Barristers National Honor Society through a poll of third-year students, followed by an evaluation by faculty members. The letter is accompanied by [redacted] faculty profile, which indicates that she has worked as a law school professor but does not indicate that she is a nationally or internationally recognized expert in the field of law or courtroom advocacy. This does not establish that the achievements of members of this society are judged by nationally or internationally recognized experts in the Petitioner's field.

Because the record does not establish that Pi Sigma Alpha or the Order of Barristers National Honor Society require their members to have outstanding achievements in the field of law or that those achievements are judged by nationally or internationally recognized experts in the field of law, the Petitioner does not meet this criterion.

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 states that she qualifies for this criterion based on articles on the websites of her law school, a law firm, and Court News Ohio, as well as a county newspaper in Ohio.

First, the articles provided are not about the Petitioner and her work in the field of law. For example, the article from Court News Ohio is about a bar admissions ceremony for 600 new attorneys in Ohio and quotes the Beneficiary as one member of this group. Similarly, the law firm article is a press release congratulating all of the winners of a competition for first-year law students, and the county newspaper article is an announcement of the winners of a scholarship. These are not published materials about the Petitioner and her work in her field.

Second, while Court News Ohio, a service of the Supreme Court of Ohio, may be a professional publication in the field of law, the record does not establish that the Petitioner's law school website, the law firm website, or the county newspaper constitute professional or major trade publications or other major media. While the Petitioner's brief states that any website or newspaper available to the public is a "professional trade publication," she provides no documentation to support this claim. Given that posting information online for general public consumption is a standard practice for organizations such as universities, law firms, and newspapers, the Petitioner's interpretation of the regulation would render the "major media" requirement meaningless, and we decline to adopt it. The Petitioner has not submitted independent, objective evidence showing that these publications are "professional trade publications" or other major media.¹

The Petitioner has not submitted published material in professional or trade publications or other major media which is about her work in the field of law. Therefore, she does not meet this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner states that she qualifies for this criterion based on her role as [redacted] for Human Rights Quarterly (HRQ), an academic journal in the field of international law, and as the [redacted] for the Moot Court Honor Board at her law school.

According to her briefs, the Petitioner conducted peer review of articles published at HRQ while acting as a staff member and later as its [redacted]. However, the letter from [redacted] of HRQ, only states that she was "responsible for overseeing a law student staff of 60." The HRQ website states that its student editorial staff acts as "articles editors," but does not indicate whether they perform peer review duties. This does not establish that the Petitioner conducted

¹ See generally 6 USCIS Policy Manual F.2, Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence, <https://www.uscis.gov/policy-manual> (stating that evidence of professional or major trade publications or other major media should establish a high viewership or readership as well as who the intended audience is).

peer review while working at HRQ or that her work there constituted a formal designation in a judging capacity.²

Similarly, while the Petitioner states in her initial cover letter that she acted as a judge in moot court competitions while with the Moot Court Honor Board, the supporting documentation only states that members of the board organize, administrate, and compete in moot court competitions.

The Petitioner has not established that she participated as a judge of the work others in the same or an allied field. She does not meet this criterion.

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).

The Petitioner states that she qualifies for this criterion based on her article in the Immigration and Human Rights Law Review.

To support her claim that her article constitutes an original contribution of major significance, the Petitioner provides website printouts from PlumX Metrics indicating that the article has been downloaded 1,338 times since it was published and has 1,766 “usage.” The documentation provided does not explain what “usage” means in this context. The Petitioner also provides a printout from Google Scholar indicating that her article has been cited once. While a substantial number of citations of a person’s scholarly work as authoritative in the field may help establish the significance of their contribution to their field,³ one citation is not considered a substantial number. The evidence does not establish what influence or impact the Petitioner’s article has had on her field.

The Petitioner has not established that her article has been of major significance to her field. Therefore, she does not meet 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 states that she qualifies for this criterion based on an article she published in the Immigration and Human Rights Law Review. The Director found that she had not established that her article was actually published in a professional or major trade publication or other major media. On appeal, the Petitioner states that her previously-submitted evidence demonstrates her eligibility for this criterion.

The record includes a copy of the Beneficiary’s article, which indicates that it is scholarly in nature and that it was “accepted for inclusion in Immigration and Human Rights Law Review by an authorized editor at University of [redacted] College of Law Scholarship and Publications.” The documentation includes the volume and issue number and a recommended citation format for the

² See generally 6 USCIS Policy Manual, *supra*, at F.2, Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence (stating that peer review in a scholarly journal may be evidenced by a request from the journal for such a review as well as proof that the review was completed).

³ *Id.*

article. We therefore find that the Beneficiary published her article in a professional publication and withdraw the Director's finding to the contrary.

However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires the petitioner's authorship of scholarly articles in the field, in the plural. Because the Petitioner has only published one scholarly article, she does not meet this criterion.

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 states that she qualifies for this criterion based on her role as [redacted] at HRQ. However, the evidence does not contain sufficient information about this position or its duties to establish that she led HRQ or a department or division of it or that her role was significantly important to the outcome of HRQ's activities.⁴

According to the letter of support from [redacted] the Petitioner's role at the journal consisted of "overseeing a student staff of 60." While the letter states that selecting an exceptional [redacted] [redacted] is "critical" for the journal, it does not provide further information about the Petitioner's duties, her place in the journal's overall organizational structure, or how her role was significant to the journal's outcomes. We further note that the information provided about this journal by its publisher, [redacted] University, indicates that its editor-in-chief is [redacted] and does not mention the Beneficiary or her position as [redacted]. It is not apparent from this evidence how the Petitioner's role for HRQ was leading or critical.

Furthermore, the Petitioner has not established that HRQ is an organization with a distinguished reputation. The Google Scholar printout provided with the initial evidence states that HRQ is ranked 10th of 20 existing journals in the field of international law. While the printout from the publisher's website states that HRQ is "widely recognized as the leader in the field of human rights," an organization's recognition and reputation come from how it is seen by others. Therefore, a publication's assertions do not suffice to demonstrate its reputation in the field. The record does not establish that HRQ has a distinguished reputation.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the Petitioner to perform in a leading or critical role for "organizations or establishments" in the plural. The Petitioner here has only submitted evidence relating to one organization, and so does not meet this criterion.

B. Other Issues in the Director's Denial

As explained above, the Petitioner has not established that she either has a one-time achievement or meets at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3). Since this issue is dispositive of the appeal, we decline to reach and hereby reserve the Director's determinations that the Petitioner's area of extraordinary ability does not fall within the scope of section 203(b)(1)(A)(i) of the Act and that she is not seeking to enter the United States to continue to work in this area. *See INS v. Bagamasbad*,

⁴ See generally 6 USCIS Policy Manual, *supra*, at F.2, Appendix: Extraordinary Ability Petitions – First Step of Reviewing Evidence.

429 U.S. 24, 25 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).

III. CONCLUSION

Because 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 at 8 C.F.R. § 204.5(h)(3), we need not provide the type of final merits determination described in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, determining 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. 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 submitted documentation of her achievements in college and law school but has not demonstrated that these achievements have translated into a level of recognition that constitutes sustained national or international acclaim or demonstrates 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. Furthermore, 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. Section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

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.