



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

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

In Re: 19936837

Date: FEB. 18, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a producer and journalist, 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 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 individuals 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 describes herself as a “Radio, Television, and Short Film producer, focusing primarily on journalism production.” The Petitioner states that she has acted as a producer in Venezuela and, since 2013, in the United States, in the [redacted] area. Her work in the United States, discussed in more detail below, includes radio, television, and print work. A submitted article in the online news site *La Nota Latina* describes the Petitioner’s “biggest project, [redacted]” as a “project . . . to offer businesses, entrepreneurs, professionals and brands the possibility to promote themselves in a massive outlet.” The record does not provide a more precise description of what [redacted] is, what it does, its format, or direct evidence of its activities. The Petitioner’s “Letter of Intent to Continue Working as a Producer” does not mention [redacted].

The Petitioner holds O-1B nonimmigrant status as an individual with extraordinary ability in the radio or television industry.¹ U.S. Citizenship and Immigration Services (USCIS) records show that [redacted] filed the nonimmigrant petition in 2014 to classify her as an O-1B nonimmigrant.²

The Petitioner initially claimed that she received two major, internationally recognized awards, specifically [redacted] Awards [redacted]. (She received the awards in [redacted] 2014, after her arrival in the United States, but the awarding entity is in Venezuela. Materials relating to the award do not identify the specific projects for which she received the awards.) The Director determined that the Petitioner had not established that these awards are major, internationally

¹ We acknowledge that O-1 status relates to extraordinary ability. Though the prior approval of an O-1 petition may be a relevant consideration in adjudicating an immigrant petition for a person with extraordinary ability, it is not determinative. Eligibility as an O-1 nonimmigrant does not automatically establish eligibility for immigrant extraordinary ability classification. Moreover, the O-1 nonimmigrant classification has different definitions and standards for persons in the arts and the motion picture and television industry when compared to the definition and standard set forth for the immigrant with extraordinary ability. 6 *USCIS Policy Manual* F.2(B)(3), <https://www.uscis.gov/policymanual>.

² Her O-1B nonimmigrant status did not authorize the Petitioner to work for any employer other than [redacted] between 2014 and 2017 (at which time she obtained broader employment authorization). *See* 8 C.F.R. § 274a.12(b)(13). In 2017, on Form G-325A, Biographic Information, the Petitioner identified [redacted] as her only employer in the United States. Nevertheless, the present petition’s record of proceeding does not contain any documentation from [redacted] or statements from its officials to establish how her work in the United States relates to [redacted].

recognized awards, and the Petitioner does not pursue this claim on appeal. Because the Petitioner does not contest the Director's conclusions regarding this issue, we consider it to be abandoned.³ We will discuss the awards further in the context of lesser awards under 8 C.F.R. § 204.5(h)(3)(i).

Because the Petitioner has not 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 claims to have satisfied six of these 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 individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met two of the criteria, pertaining to judging and display.⁴ On appeal, the Petitioner asserts that she also meets the other four claimed criteria. Upon review of the record, and as discussed below, we agree with the Director that the Petitioner has not satisfied those four remaining criteria.

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 initially claimed to satisfy this criterion through four awards:

- [redacted] Award, Best Producer of the Year (2014);
- [redacted] Award, Best Broadcaster of the Year (2014);
- [redacted] Festival, Best Film Photography [redacted] (2014); and
- [redacted] Award, Best International Producer (2017).

The Director concluded that the Petitioner had not established that any of the awards are nationally or internationally recognized. On appeal, the Petitioner alleges no error regarding the award from the [redacted] Festival. We address the other awards below.

The Petitioner's evidence regarding the [redacted] Award consists of a letter from the president of the awarding entity, stating that the Petitioner won "[t]his unique award which recognizes the [Petitioner's] effort, popularity and excellence." The Petitioner asserts that this letter is, itself, the "award certificate"; there is no other evidence of the award in the record, nor any indication that such

³ 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).

⁴ Because this proceeding has not reached a final merits determination, we need not discuss whether or not the Petitioner's activities relating to judging and artistic display rise to the level of sustained national or international acclaim. Such discussion would not change the outcome of the appeal.

other evidence exists. At the time of the Director's decision, the record contained no evidence of the award's significance.

On appeal, the Petitioner submits two short online articles (each four to six sentences in length), published in 2017, regarding the awards. The Petitioner does not explain why she did not submit these materials after the Director issued a request for evidence (RFE), specifically requesting evidence of the awards' significance. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, we will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Furthermore, the two brief articles would have been material to the outcome of the appeal. The articles name some recipients of the award (not the Petitioner), but do not indicate that the award is nationally or internationally recognized.

The Petitioner documents her receipt of two [redacted] Awards in 2014, as described above, but initially she did not submit any independent, objective evidence to establish the national or international recognition of those awards. Instead, she submits letters from the president and other officials of the awarding entity and printouts from that entity's own website. These individuals attest that "[t]he [redacted] is the most important award given internationally by Venezuela," but such statements alone do not constitute sufficient independent, objective evidence of the national or international significance of the award or prize.

In the RFE, the Director requested documentary evidence of the award's significance and recognition, and "[p]ublic announcement . . . issued by the granting organization." In response, the Petitioner submitted further statements from officials of the awarding organization. However, the evidence in the record, consisting of statements from such officials and no other supporting evidence, is insufficient to establish the organization's distinguished reputation by a preponderance of the evidence.

In terms of publicity and coverage, the Petitioner submitted printouts of two online articles, neither of which identifies its author. A 2016 article from *La Nota Latina* states: "With 61 years of history, the prestigious [redacted] de Venezuela' debuts in the city of [redacted] with the [redacted] Awards,' with the purpose of recognizing the work of Latino talent who live in the [redacted]" This wording implies that the pool of potential recipients is local rather than national or international.

A 2017 article from *El Universal* announces that "[redacted] will recognize national talent" at an awards gala in [redacted] Venezuela, celebrating "50 years of the [redacted]" The *El Universal* article also indicates that "[t]he [redacted] is the only Venezuelan award that belongs to the [redacted]" an organization also said to include the Latin Grammy, Golden Globe, and other well-known awards. But the record contains no evidence from the [redacted] to support this claim, establish the significance of that membership, or even confirm the existence of the [redacted] itself.

The Director concluded that the Petitioner had not sufficiently established the national or international recognition of the [redacted] Award. The Director noted that it was not even clear that all the evidence relates to the same award, because some record materials refer to the [redacted] and others to the [redacted] [redacted] Also, with regard to the length of time the award has existed, the reference to "61 years" in the 2016 article is not consistent with the reference to "50 years" in the 2017 article.

On appeal, the Petitioner asserts that “[t]he [redacted] Award was founded on [redacted] 1958” in Venezuela, but does not explain why an article from 2017 referred to the award’s 50th anniversary. The Petitioner submits further news articles, dated between 2016 and 2018, to support the contention that “the [redacted] Awards . . . [have] in fact received significant media attention at a national or international level.” Even if we were to set aside concerns as to why the Petitioner did not submit this evidence in response to the RFE, these articles all refer to the [redacted], whereas the Petitioner’s own award documentation refers consistently to the [redacted]. Although the Director had already raised this issue, the Petitioner, on appeal, does not address the issue or establish that these different terms refer to the same award.

As explained above, the Petitioner has not established that her awards meet the regulatory requirements.

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 initially claimed that she meets this criterion through her membership in three organizations in Venezuela: the Association of Venezuelan Journalists Overseas (APEVEX); the National Board of Journalists of Venezuela; and the Radio, Theater, Movies, TV and Related Workers Union of the State of Miranda. The Director concluded that the Petitioner had not shown that the organizations require outstanding achievements.

On appeal, the Petitioner discusses her membership in only one association, APEVEX; she does not allege error in the Director’s conclusions regarding the other claimed memberships.

In a printout in the record, APEVEX’s own website describes the organization as a “trade union” that “represent[s] the interests of our members and stimulate[s] their professional growth in the United States.” A letter from the president of APEVEX lists three “Membership Requirements”: a college diploma, a résumé, and evidence of at least three years of employment with a news organization. APEVEX’s articles of organization do not indicate that the organization exists to recognize the most accomplished individuals in the field, or that outstanding achievements are required for membership; rather, they state that “APEVEX will group together *all* Venezuelan journalists living in the United States and other countries who share the same goals and are willing to work to achieve them.”

Memberships in organizations that admit members based on education or experience, and trade unions that admit members based on occupation, are not qualifying memberships to meet the regulation. *See 6 USCIS Policy Manual F.2 appendix.* On appeal, the Petitioner asserts that “experts in the field are responsible for choosing prospective members based on their qualifications and achievements in the field.” Because the membership requirements are minimal (based on factors such as occupation, experience, and education) rather than necessarily outstanding achievements, information about who selects new members cannot show that APEVEX membership meets the regulatory requirements.

The Petitioner has not shown that APEVEX requires outstanding achievements of its members.

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).

Letters from employers, attesting to an employee's role in the organization, must contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was leading or critical. 6 USCIS Policy Manual F.2 appendix. In determining whether an organization or establishment has a distinguished reputation, the relative size or longevity of an organization or establishment is not in and of itself a determining factor. Rather, the organization or establishment must be recognized as having a distinguished reputation. *Id.* Merriam-Webster's online dictionary defines distinguished as "marked by eminence, distinction, or excellence or befitting an eminent person."⁵

The Petitioner initially asserted that she satisfies this criterion through her work for two employers in the [redacted] Florida area. Specifically, she asserts that she "was responsible for the entire production of [a] talk show" for [redacted] and she "is responsible for the production of all journalism content for" [redacted]. She later claimed a qualifying role for a third [redacted] entity, [redacted].

The founder and president of [redacted] based in [redacted] describes the company as "an Advertising Agency, dedicated to the elaboration of an International Magazine," also called [redacted]. The magazine published a one-page interview with the Petitioner in its [redacted] 2016 issue. The Petitioner specifically cites this article as evidence of her leading or critical role with the magazine's publisher, but the article does not describe her role except to refer to her as a "Journalist."

The first letter from the company president contained few details about the nature of the Petitioner's work for the company. In response to the RFE, he stated:

[The Petitioner] has worked with me in multiple projects for the magazine as journalist and producer, writing, selling, covering and organizing events, managing social media, interviewing, among many other activities. . . . Among [her] key responsibilities . . . are: talent scouting for interviews, interview conducting, writing and preparation; looking for possible clients and sponsors; organizing and executing all the events at the magazine, specially monthly cover parties to honor different personalities; covering city events and producing articles and photos; managing content for social media, producing posts and videos.

The listed responsibilities appear to have only a small amount of overlap with the Petitioner's self-described occupation as a "Radio, Television, and Short Film producer." We need not discuss the nature of the Petitioner's role in great detail, however, because the Petitioner has not established that [redacted] [redacted] has a distinguished reputation.

Prior to the appeal, a section of the record labeled "[e]vidence of [redacted]'s distinguished reputation" consisted solely of a printout from the digital publishing platform [redacted] showing the covers of several issues of the magazine. The printout documents the magazine's existence, but not the reputation of the organization that publishes it. The Petitioner has not submitted any evidence to indicate

⁵ See <https://www.merriam-webster.com/dictionary/distinguished>.

that [] only accepts material from organizations with a distinguished reputation, or otherwise explained why the Issuu printout is evidence of a distinguished reputation.

The Petitioner states, on appeal, “[w]e respectfully submit . . . independent, objective evidence to document the eminence, distinction, and excellence of []” But the Petitioner does not say what this evidence is, or cite to any exhibit in the record. The founder’s own claims about the company he established are, by definition, not “independent, objective evidence” of that company’s distinguished reputation. The appellate brief includes the claim that “[] has been a mainstay in the advertising market since 1998,” but the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 534 n.2 (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

The vice president and general manager of [] in [] Florida, states that the Beneficiary produced [] and [] (The record does not specify whether these were television or radio programs.) The official does not explain how the Petitioner’s work on two programs was leading or critical for the studio at the organizational level, and the Petitioner submits no other information or evidence regarding the shows.

The Petitioner submitted no independent evidence of the reputation of [] in [] The Petitioner submits evidence about the larger [] described as “a global enterprise” with television channels throughout Latin America. The Petitioner has not established whether the shows she produced aired throughout the []’s different territories, or only in the [] area where [] is located. The record contains no statement from any official of the international organization, and no other evidence that the Petitioner performed in a leading and critical role for the entire organization.

The general manager of [] in [] states that the Petitioner “worked for this company from January 16th 2015 to May 21st 2015 as the Producer of the entertainment show titled []” The network’s founder and director states that the Petitioner’s responsibilities ranged from “[o]rganizing weekly meetings with her team” and “[b]eing TV host” to “[h]and[ing] the teleprompter” and “cover[ing] for camera operators.” Whatever the importance of these activities to a particular program, the Petitioner has not established that [] is an organization or establishment with a distinguished reputation.

A web printout describes [] as comprising “more than 30 FM Radio Stations, with presence in South America, the Caribbean, Europe and now North America.” The network is based in Venezuela, but the letter quoted above does not specify whether [] was broadcast throughout the network or only its [] affiliate, nor does it establish that the Petitioner’s role was leading or critical for the entire network. Because the background information relates to the entire network, it does not show that the [] station where the Petitioner worked has a distinguished reputation in its own right.

Apart from the organizations that the Petitioner specifically identifies, she also cites more general letters of support and recommendation from individuals who have worked with her in various capacities. The Petitioner does not say how these letters establish her leading or critical role with any specific organization or establishment with a distinguished reputation. Instead, the letters offer general praise for the Petitioner’s talent and accomplishments.

For the above reasons, the Petitioner has not satisfied the requirements of this regulatory 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: "Because of her longstanding career as a producer, she has been recognized extensively in major nationally circulated newspapers and magazines." Despite the claim of "extensive" coverage, the Petitioner submits copies of only two articles, both from 2016. One article appeared in an online publication called *La Nota Latina*, the other in [REDACTED]

As noted above, [REDACTED] is either an employer or client of the Petitioner (the exact nature of the relationship is unclear from the record). The interview in that company's magazine consists largely of biographical material and very general information about the Petitioner's past and ongoing work. The Petitioner does not provide circulation information for [REDACTED] indicating that such information is unnecessary because it is a "trade journal," but the regulation specifically refers to "major trade publications." Although the word [REDACTED] is in the magazine's title, magazine covers reproduced in the record show the names of several cities, all in Southeast Florida, consistent with a regional rather than international publication. The record does not establish the existence of editions in other localities. In this respect, it is relevant that the magazine's editor claims that the "magazine . . . [is] one of the favorites in South Florida."

The article from *La Nota Latina* does not identify an author as the regulation requires. Furthermore, the regulation requires the published material to be about the Petitioner's "work in the field in which classification is sought." The Petitioner seeks, in her words, "classification as an Alien of Extraordinary Ability in the Arts as a **Producer**" (emphasis in original), but the article refers to her as a "journalist," and the discussion of her work is limited to mention of [REDACTED] in terms so general that the nature of the project is difficult to discern.

On appeal, the Petitioner devotes considerable attention to the reliability of SimilarWeb as a source of online readership data. But the SimilarWeb printout in the record does not support the Petitioner's claim that *La Nota Latina* is a major publication. It has a "Global Rank" of 639,905; a "Country Rank" of 53,291 in Mexico (the country for which such data was provided); and a "Category Rank" of 29,373. The Petitioner does not explain how these statistics support her claims. The Petitioner notes that the site received 79,700 visits in May 2017, but the Petitioner does not establish that this raw number is consistent with major media, particularly in light of what appear to be very low rankings, shown above. The printout the Petitioner submitted also indicates that most visitors to the site looked at only one page and left the site within 30 seconds.

The Petitioner has not established that she has been the subject of coverage in professional or major trade publications or other major media.

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. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the recognition of her work is indicative of the required 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. 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). The record minimally documents her work in Venezuela, and her work in the United States appears to have been limited to local Spanish-language media in the Miami area.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.