



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

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

In Re: 19825526

Date: MAR. 8, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, a digital product and business manager in the mobile communications industry, 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 (1) had satisfied at least three of ten initial evidentiary criteria; (2) seeks to enter the United States to continue working in her area of expertise; and (3) will substantially benefit prospectively the United States, 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 the initial evidence requirements (through either a one-time achievement or meeting three lesser criteria), 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 works in the mobile communications industry. The Petitioner seeks employment as a multi-access edge computing digital technology and product manager. She did not identify a prospective or intended employer on the petition form. In India, she worked for [redacted] from 2001 to 2004, and for [redacted] from 2004 to 2005. From 2005 to 2019, she worked for [redacted] and affiliated companies in India, Germany, and the United States, most recently for [redacted] of America from 2016 to 2019, first as head of strategy and business development/business product management, and then as a senior product manager. She is the author of a U.S. patent, published in 2019, for what she describes as [redacted] [redacted]. The Petitioner is in the United Kingdom. At the time she filed the petition in March 2021, she was studying for a master’s degree at [redacted] and had recently accepted an offer of employment as a “Principle [*sic*] Product Manager” for [redacted] also in London.

Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied three of these criteria, relating to original contributions of major significance; leading or critical roles for distinguished organizations or establishments; and high remuneration for services. The Director concluded that the Petitioner did not meet any of the claimed criteria. On appeal, the Petitioner asserts that she meets all three claimed criteria. Because the Petitioner only claims to have satisfied three of the ten regulatory criteria, the petition cannot proceed to a final merits determination unless she meets all three. Therefore, an adverse determination regarding any one of the criteria is sufficient to determine the outcome of the appeal.

Upon review of the record, we agree with the Director that the Petitioner has not satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ix), which calls for evidence that the petitioner has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

In claiming a high salary or other significantly high remuneration for services, the Petitioner does not submit any evidence of past salaries or remuneration paid to her. Instead, the Petitioner states that she “has received multiple global offers from industry giants, [redacted], [redacted], and [redacted]” The Petitioner submits a table of figures in U.S. dollars and U.K. pounds, stating that they represent the compensation packages accompanying those offers. The table, reproduced below, is incorporated into a letter dated March 5, 2021:

Position offered	[redacted] Product Line Manager, [redacted]		Senior Strategy and Business Development Manager, [redacted]		Principal Product Manager/Director, [redacted]	
	US\$	UK£	US\$	UK£	US\$	UK£
Base salary	167,000	123,000	206,021	150,960	180,300	132,115
Bonus	26,500	19,500	63,870	46,800	63,870	49,570
Equity	48,125	35,000	20,000	14,650	262,500	192,300
Total	241,625	177,500	289,891	212,410	506,670	373,985

The Petitioner’s initial submission did not include documentary evidence to support the figures claimed above. When the Director requested such evidence, the Petitioner responded by documenting two offers from [redacted] and [redacted] that do not match what the Petitioner previously claimed. The Petitioner submitted no documentation regarding [redacted]’s claimed offer.

In a January 29, 2021 message, [redacted] offered the Petitioner a position as a “Senior Technical Sales Manager Network Solutions & Telecom Segment,” with the following “Compensation Illustration”:

Base pay: £144,000 (US\$197,586 at 1/29/2021 exchange rate¹)
 Commission Target (25%): 36,000
 Quarterly Profit Bonus Estimate: 10,800
 Base + Bonus Targets: 190,800
 Hire Bonus: 20,000
 Stock Grant (vested over 3 years): 60,000

[redacted] offered the Petitioner a position as “Principle [sic] Product Manager” on February 9, 2021; the Petitioner accepted the job offer, with a signature dated February 12, 2021. The job offer letter describes the following compensation package:

Base salary: £123,715 (US\$170,671 at 2/9/2021 exchange rate²)
 On-hire stock award: \$450,000³
 Bonus scheme: Eligibility for a performance-based bonus of up to 40% of salary

¹ See <https://www.xe.com/currencytables/?from=GBP&date=2021-01-29#table-section>.

² See <https://www.xe.com/currencytables/?from=GBP&date=2021-02-09#table-section>.

³ The offer letter does not make clear the timing of distribution of the award. The 2021 [redacted] annual report notes, “Stock awards entitle the holder to receive shares of [redacted] common stock as the award vests. Stock awards generally vest over a service period of four years or five years.” See [https://www.\[redacted\].com/investor/reports/ar21/index.html](https://www.[redacted].com/investor/reports/ar21/index.html).

The Petitioner asserts: “The total of each remuneration package offered to [her] is well above the national average salary as provided by the Willis Towers Watson wage survey report.”⁴ That report shows the following figures (in U.S. dollars) for “Strategic Planning/Corporate Development|Digital Strategy|Group Manager (Supervisory/Management)”:

Percentile	Average	10th	25th	50th	75th	90th
Base Salary	181,893	155,146	160,170	175,192	189,900	241,000
Actual Performance Bonus	43,344	11,016	18,588	31,856	64,179	106,765
Actual Total Annual Incentives	44,759	11,097	20,564	36,018	66,890	106,181
Actual Total Annual Compensation	221,474	177,670	191,136	210,245	235,000	306,965
Target Total Annual Compensation ⁵	200,747	160,086	176,871	202,843	227,500	240,954

We note that the base salary for the [redacted] position the Petitioner accepted is below the average base salary shown in the survey report, and the 90th percentile wages reflect a substantially higher base salary. Even then, the survey report is insufficient to show how the Petitioner’s compensation stands in relation to others in the field, for two key reasons. First, the survey report is designated “United States,” with no indication that any data pertains to positions in the United Kingdom.⁶ Therefore, the Petitioner has not established the survey’s applicability to the two U.K. job offers she has documented.

Second, the compensation packages from [redacted] and [redacted] include equity elements that are not reflected in the submitted data from the survey report. Explanatory text in the survey report differentiates between “Annual Incentives” and “Long-Term Incentives.” The latter category includes stock- and share-related benefits such as “Stock Options” and “Performance Shares,” which appear to amount to equity. The Petitioner did not submit any survey data regarding these “Long-Term Incentives.” Thus, the comparative survey figures that the Petitioner has provided appear to be incomplete relative to the data she provided regarding her claimed job offers. As such, the figures provided do not allow a full comparison, because the Petitioner listed stock as part of her offered compensation. Also, it is unclear how to interpret the Petitioner’s stock award. If the award vests over the course of multiple years, then the award would appear to be less than the annual amounts of equity on the offers initially submitted. The record does not contain sufficient information on the timing of the award and how it factors into her annual compensation. Without such evidence, we cannot sufficiently determine whether the Petitioner’s total remuneration is high in relation to others in the field.

On appeal, the Petitioner asserts: “The total of each remuneration package offered to [the Petitioner] is well above the national average salary as provided by the Willis Towers Watson wage survey report,” but the “total . . . remuneration package” includes a number of elements that do not count as “salary, and the elements submitted do not appear to necessarily correspond to the elements in the chart. Therefore, such a comparison would not be accurate.

⁴ The full title of the report is *United States / 2020 General Industry Middle Management, Professional and Services Survey Report / Compensation Data*.

⁵ The submitted materials do not explain the difference between “Target” and “Actual” numbers.

⁶ Persons working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States. ⁶ *USCIS Policy Manual* F.2 appendix.

For the above reasons, the incomplete U.S. compensation figures do not show that the Petitioner's U.K. compensation offers meet the requirements for this criterion.

We must also note that the base salaries in the job offer documents are lower than the figures the Petitioner initially claimed. Both offers predated March 2021, when the Petitioner filed the petition; the Petitioner had actually accepted one of those offers in early February 2021, several weeks before the filing date. The Petitioner does not explain why the terms described in the March 2021 filing did not match the actual job offers, which were already known to her at that time. The Petitioner did not submit the actual job offer documentation, or disclose the changes to the offers and compensation packages, until after the Director issued a request for evidence.

In light of our determination that the Petitioner has not satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(ix), we decline to reach, and hereby reserve, the Petitioner's appellate arguments regarding (1) the other claimed criteria; (2) the Petitioner's intended work in the United States; and (3) the prospective benefit to the United States, because they cannot change the outcome of the appeal.⁷

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. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown 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). We note the Petitioner's submission of [redacted]'s 2018 Annual Report, which lists various "2018 highlights," but we can find no recognizable references to the Petitioner's activities as described in letters submitted in support of the petition. This is in keeping with the Director's conclusion that the Petitioner's work was important for individual projects, but not critical for [redacted] at the organizational level.

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.

⁷ See *INS v. Bagamasbad*, 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).