



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

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

In Re: 28048571

Date: AUG. 16, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a journalist, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner met the initial evidence requirements for the requested classification through evidence of a major, internationally recognized award or meeting at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

To establish eligibility as an individual of extraordinary ability, a petitioner (or anyone on the petitioner's behalf) must establish that they:

- Have extraordinary ability in the sciences, arts, education, business, or athletics;
- Seek to enter the United States to continue work in their area of extraordinary ability; and that
- Their entry into the United States will prospectively substantially benefit the United States.

Extraordinary ability must be demonstrated by evidence of sustained national or international acclaim as well as extensive documentation that their achievements have been recognized in the field. Section 203(b)(1) of the Act.

The implementing regulation further states that 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.” It also sets forth a multi-part analysis. A petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If such evidence is unavailable, then they must alternatively provide evidence that meets at least three of the ten listed criteria, which call for evidence about other awards they may have received, published material about them in qualifying media, and their authorship of scholarly articles, among other types of evidence. 8 C.F.R. §§ 204.5(h)(2),(3).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination, assessing whether the record shows that the individual possesses the acclaim and recognition required for this highly exclusive immigrant visa classification. *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 journalist who has written and edited for a women’s magazine in her native Nepal for several years. She states that she will continue working as a journalist, editor, and media consultant in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established 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 Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that she meets nine of the evidentiary criteria. After reviewing all of the evidence in the record, we find that the Petitioner does not meet at least three of the criteria, and thus does not meet the initial evidence requirement as an individual of extraordinary ability.¹

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)

Under this criterion, if an individual submits evidence showing that they have received a prize or award, they must then establish that the award was given to recognize excellence in the individual’s field of endeavor, and that the award itself is nationally or internationally recognized in that field.

In his decision, the Director acknowledged the Petitioner’s receipt of the [redacted] award in 2015, issued by the nongovernmental organization Women Act, but concluded that the evidence did not show that this award is nationally or internationally recognized. On appeal, the

¹ The Petitioner initially claimed the criterion at 8 C.F.R. § 204.5(h)(3)(vi), relating to her authorship of scholarly articles, but states on appeal that she is no longer claiming this criterion. Accordingly, we will consider this issue to be waived.

Petitioner takes issue with the Director's statement regarding the lack of evidence of media coverage of the award, asserting that he added a novel evidentiary requirement to the plain language of the regulation. However, the Director did not indicate that evidence of media coverage was a requirement under this criterion, but appropriately used the lack of such evidence in the record as an example of how the Petitioner had not established that this award is nationally or internationally recognized in her field.

The Petitioner asserts that a letter from the President of the Nepal Press Union (NPU) sufficiently demonstrates this award's national recognition. But we note that this letter, dated July 10, 2022, is nearly identical to an initially submitted letter dated January 2, 2019, but signed by a different individual as President of the NPU. The only other difference between these two letters is that while the former refers to the [redacted] Award" 2015 from Women Actin [sic] 2015," the latter names the award as [redacted] from Nepal Press Union in 2015." As a general concept, when a petitioner has provided affidavits from different persons that contribute to the eligibility claim, but the language and structure contained within the affidavits is notably similar, the trier of fact may treat those similarities as a basis for questioning a petitioner's claims.² When affidavits contain such similarities, it is reasonable to infer that the petitioner who submitted the notably similar documents is the actual source from where the suspicious similarities derive. *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007); *Wang v. Lynch*, 824 F.3d 587, 592 (6th Cir. 2016). As a result, the probative value of these letters is significantly undermined.

In addition, the descriptions of the justifications and process pertaining to the claimed NPU award in the 2019 letter do not pertain to the Women Act award. For example, the 2022 letter describes the award as being "given each year," but the certificate and the Petitioner's brief both describe the award from Women Act as biennial. Further, the 2022 letter misnames the award given to the Petitioner, which the certificate states is the [redacted] Award." The Petitioner must resolve these discrepancies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Another letter highlighted on appeal, from an official of Women Act, states that the 2015 award is "the highest honor to a woman journalist," and was given to the Petitioner for her "significant involvement, contribution, and role of a facilitator throughout the various interaction programs with Members of Parliament and other associated stakeholders." However, this statement from the issuing organization is not sufficient to show that the award is recognized in the field of journalism outside of that organization on a broader, national basis. Despite the presence of letters from other individuals in the record which mention the Petitioner's receipt of this award, the record lacks contemporaneous evidence of national or international recognition in the field.

The record also includes evidence of other awards received by the Petitioner, including a certificate from her employer, [redacted]. In addition, several letters reference the 2015 award from the NPU, but we note that they provide different titles for this award, and the record lacks any evidence

² See *Matter of R-K-K-*, 26 I&N Dec. 658, 665 (BIA 2015); *Singh v. Garland*, No. 19-60937, 2021 WL 5984797, at *2 (5th Cir. Dec. 17, 2021); *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006); *Wang v. Lynch*, 824 F.3d 587, 592 (6th Cir. 2016); *Dehonzai v. Holder*, 650 F.3d 1, 8 (1st Cir. 2011); *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, WL 2338316, at *4, n.3 (D.D.C. June 8, 2021).

of a certificate, plaque, trophy, or other indication that she received this award. The record does not show that any of these awards are nationally or internationally recognized, and we note that the Petitioner does not so assert on appeal. After review of the totality of the evidence relating to prizes and awards in the record, we conclude that the Petitioner has not established that she meets 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)

In his decision, the Director acknowledged the evidence of the Petitioner's membership in the Federation of Nepali Journalists (FNJ) and the NPU, but concluded that the record did not show that either association requires outstanding achievements of its members. On appeal, the Petitioner provides an updated page from FNJ's website, indicating that it now has more than 13,000 members, and refers to the previously submitted 2014 article from [redacted] which names her as one of 22 members elected as central representatives. While she stresses that she is "not an ordinary member," she does not elaborate on the requirements or process for election as a central representative, nor does she point to evidence that central representatives are required to have outstanding achievements. And although the Petitioner reminds that she is also a member of NPU, she does not argue that the Director was in error in determining that her membership in this association also does not require outstanding achievements. Accordingly, she has not established that she meets 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)

To meet this criterion, a petitioner must submit evidence of published material about them and relating to their work in their field. In addition, they must show that the material was published in a professional or major trade publication or other major media, and that it includes the required identifying information.

The Director determined that the evidence submitted in support of this criterion did not meet its requirements because some of the articles did not identify an author, others were written by the Petitioner, and others appeared to be marketing materials.³ On appeal, the Petitioner focuses on articles she wrote for [redacted] magazine, and refers to evidence of the magazine's prominence in the Nepali market. However, as noted by the Director, these articles are her work product, and despite her claims on appeal, are not about her, as she is mentioned only in the heading as the author or co-author. While articles need not focus solely on a petitioner in order to be about them, they should include a substantial discussion of the petitioner's work in the field and mention them in connection

³ Marketing materials created for the purpose of selling the petitioner's products or promoting their services are not generally considered to be published material about the petitioner. See generally 6 USCIS Policy Manual F.2, Appendices tab.

with that work. *See generally* 6 USCIS Policy Manual F.2, Appendices tab. www.uscis.gov/policy-manual. The articles published in [] lack such a discussion, and thus do not qualify under this criterion. In addition, the articles published in other publications that are about the Petitioner and her work lack author information and were not shown to have been published in one of the qualifying types of media. As such, we agree with the Director and conclude that the Petitioner 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)

In order to satisfy this criterion, a petitioner must establish that not only have they made original contributions, but that the contributions 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. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

Here, the Petitioner asserts that that the evidence of her contributions to [] and its publisher, [] are original and of major significance. A letter from the editor of the magazine states that she has played an important role for several years in “planning stories, strategizing the way forward, networking, marketing, and ensuring its commercial success.” He also writes that she served as [] online coordinator, pushing management towards digitization. While the Petitioner’s efforts may have been important to her employer, this evidence does not establish that they were either original or remarkably influenced the field of journalism. The 2019 letter from the president of NPU, discussed above, states that in leading *Nari* online, she “set the standard for online presence for other media houses as well.” But the record lacks documentary evidence showing that she broke new ground in the field of journalism through her efforts, or that other magazines or publishers implemented their own online presence based on a model developed by the Petitioner. For these reasons, we conclude that the Petitioner has not established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

In support of her claim to this criterion, the Petitioner points to two letters from businesses stating that they employed her as a media advisor, one dated 2014 stating that she was paid Rs. 40,000 per month, and another from 2016 stating that she was paid Rs. 55,000 per month. She also refers to an October 7, 2018 article in [] which states that the minimum wage for a journalist is Rs. 19,500 per month. We first note that the letters do not specify the Petitioner’s duties as a media advisor, and thus do not demonstrate that a comparison to the salary of a journalist is meaningful to show that the Petitioner’s salary was high in relation to others in her field. While the record indicates that she was employed as a journalist and editor at the time, the record lacks evidence of the salary she received in this role.

In addition, even if the record did include evidence of the Petitioner’s salary as a journalist and editor, the article provides information about only the minimum salary for a journalist. As the record lacks evidence of the full range of salaries paid to both journalists and editors, it is insufficient to

demonstrate that the Petitioner's salary is high in relation to others performing the same duties. As such, we conclude that the Petitioner does not meet this criterion.

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

The Petitioner raises a claim to this criterion for the first time on appeal, and refers to no supporting evidence of the type specifically called for in the record. We further note that this criterion applies specifically to successes in the performing arts, and the Petitioner's work as a journalist, editor, and media consultant is not in the performing arts. She does not meet the plain language of this criterion.

B. Final Merits Determination

The Petitioner has not established that she meets at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). Although she claims eligibility for two additional criteria on appeal, relating to her participation as a judge of the work of others in her field and her leading or critical role for organizations having a distinguished reputation, we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.⁴ 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 acclaim and recognition required for the classification sought.

ORDER: The appeal is dismissed.

⁴ See *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).