



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

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

In Re: 24846831

Date: FEB. 14, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner 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). She claims to be in the field of “digital media strategy and operations field.” 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 Petitioner did not meet the initial evidentiary requirements for this classification through presentation of evidence of either a one-time achievement or showing that she meets at least three of the alternative evidentiary criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). The matter is now before us on appeal.

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

Section 203(b)(1)(A) of the Act makes visas available to immigrants 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 sustained acclaim and the recognition of their 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 they must provide sufficient qualifying documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, published material in certain media, and authorship of scholarly articles).

Where a petitioner meets these initial evidentiary 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

As 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 under 8 C.F.R. § 204.5(h)(3)(i)-(x). In the decision denying the petition, the Director determined that the Petitioner had satisfied two criteria by submitting: evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media; and evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(vi), (viii). On appeal, the Petitioner maintains that she also meets three additional evidentiary criteria, which we will discuss below.

*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).

On appeal, the Petitioner claims that she has offered four pieces of materials that satisfy this criterion. These materials are: (1) [redacted] published on metronews.ru; (2) [redacted] published on vc.ru; (3) [redacted] published on vc.ru; and (4) [redacted] published by [redacted]. The Petitioner has also presented documentation relating to the publication *Metro*, vc.ru, and [redacted].

The evidence in the record is insufficient to establish that the Petitioner meets this criterion. The first material, [redacted] documents the Petitioner’s answers

to questions about her personal and educational background, as well as her professional experience. It does not include an author of the material, as required under the regulation. On appeal, the Petitioner claims that the author is “MetroNews Russia,” which she also lists as the name of the publication. She has not demonstrated that the name of the publication satisfies the regulatory requirement of including the author of the material.

Additionally, the Petitioner has not provided sufficient evidence showing that metronews.ru qualifies as a professional or major trade publication or other major media. While she has offered material about *Metro*, the print version of the publication, she has not provided information on metronews.ru, the digital platform where [redacted] appears. Moreover, although the evidence the Petitioner has submitted indicates that *Metro*, the print version, is “the largest daily newspaper in Moscow,” its “editions are published in 18 countries in over 65 major cities,” and has a daily readership of 668,000, the record lacks other evidence confirming that *Metro*’s circulation and readership level, as compared to other publications, is indicative of the publication’s status as major media.

The materials posted on vc.ru also do not satisfy this criterion. [redacted] [redacted] includes an opening sentence stating that the Petitioner is a [redacted] [redacted] and works as the [redacted] [redacted]. The material then discusses from a first-person perspective the Petitioner’s work and how she manages her teams remotely. [redacted] [redacted] similarly notes in its opening that the Petitioner is a [redacted] [redacted] and that she [redacted] [redacted]. While the Petitioner claims on appeal that another person had authored these materials, a review of the materials does not support this contention. Rather, a review of the materials reveals that she had written these pieces discussing her work and offering advice to other managers. The Petitioner has not established that these self-authored and self-promotional pieces qualify as published material about her, relating to her work in the field for which classification is sought. See 8 C.F.R. § 204.5(h)(3)(iii).

Furthermore, the Petitioner has not demonstrated that these materials were published in a professional or major trade publication or other major media. [redacted] [redacted] received 517 views, while [redacted] [redacted] received 1,974 views. The Petitioner also offers an online printout from vc.ru, claiming that it is “the largest platform in RuNet for entrepreneurs and highly qualified specialists of small, medium and large companies.” According to another online printout from SimilarWeb, vc.ru is ranked 5,946 globally, 300 in Russia, and 15 in the “Computers Electronics and Technology, Other Computers Electronics and Technology” category in Russia. The evidence, including the number of views each piece received, the ranking of vc.ru, and the nature of the publication, is not sufficient to confirm that it qualifies as a professional or major trade publication or other major media.

Finally, the Petitioner has not sufficiently shown that [redacted] [redacted] satisfies this criterion. According to [redacted] [redacted] she “participated in a number of large-scale studies in the field of media and communications,” which led to the publication of [redacted] [redacted] published by [redacted] [redacted]. The material, as suggested by its title, is about trend forecasting, and it includes quotes from the Petitioner discussing findings of the studies. Other than noting her position

as [redacted] the material does not include other information about the Petitioner. While this material, a report on study findings, might satisfy the authorship criterion under 8 C.F.R. § 204.5(h)(3)(vi), it does not qualify as published material about the Petitioner, relating to her work in the field for which classification is sought. See 8 C.F.R. § 204.5(h)(3)(iii).

Based on these reasons, the Petitioner has not submitted published material about her in professional or major trade publications or other major media, relating to her work in the field of digital media strategy and operations. The Petitioner has not satisfied the criterion under 8 C.F.R. § 204.5(h)(3)(iii).

*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).

On appeal, the Petitioner alleges that she satisfies this criterion based on the work she performed for [redacted]

[redacted] She claims that she has offered “testimonial letters from seven experts in the field, all of which corroborated that she is responsible for original business-related contributions and that her contributions are of major significance in the field.” To satisfy this criterion, the Petitioner must establish that not only has she made original contributions, but also that those contributions have been of major significance in the digital media strategy and operations field. For example, a petitioner may submit evidence confirming that her 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. In this case, the record does not support the Petitioner’s contention that she has met this criterion.

The reference letters as well as other evidence in the record indicate that the Petitioner is a capable individual and a valued member of her former and current employers’ staff, but they do not sufficiently establish that her accomplishments constitute original contributions of major significance in the field of digital media strategy and operations. The Petitioner has offered letters from her current and former employers and coworkers. In an August 2022 letter, the chief executive officer of [redacted] to whom the Petitioner reports while working in her position as chief of staff, lists the Petitioner’s duties and responsibilities in the company, and notes that the company “relies on [her] expertise” for its business operation and expansion. In a March 2021 letter, a “Partner, Strategy & Operations Consulting at [redacted] office,” lists the Petitioner’s previous work for [redacted] and her accomplishments for its clients including [redacted]

[redacted] In a February 2021 letter, a “Senior Manager, Advisory, Strategy & Operations at [redacted] office,” discusses the Petitioner’s work at [redacted] and the services she provided its clients. Similarly, in a March 2021 letter, a “self-employed Media/Entertainment/Tech Business Development and Strategy Consultant,” who worked with the Petitioner at [redacted] describes the Petitioner’s work for [redacted] clients. These letters, however, do not specify what the Petitioner has accomplished that is original, such that she is one of the first people to have completed the task, and they do not establish that her work has risen to a level of major significance in the field, such that her strategies or methods have been widely implemented throughout the field.

The record includes other reference letters. In a November 2021 letter, the chairperson of [redacted] (a mobile gaming development studio and publisher) states that the Petitioner “has established herself

as an individual of extraordinary ability in the . . . field based on her employment in leading and critical capacities with [redacted]. The individual claims that the Petitioner “has executed original digital media strategies and operational efficiencies for [redacted] [redacted].”

In a February 2021 letter, the chief executive officer of [redacted] (a business that “transforms any business into a fully automated digital brand”) alleges that the Petitioner “introduced novel digital media strategies and operational efficiencies for [redacted] [redacted].”

In a February 2021 letter, a former chief executive officer for [redacted] confirms the value of the Petitioner’s work for the company, claiming her work “is original and significant to the digital media strategy and operations [field] because it represents an entirely new digital ecosystem for Russian media assets.” The letter then explains that the Petitioner’s work “put [the company] in a position to cover the entire media chain – from strategy to content creation to distribution”; that her strategy “allow[ed the company] to track the customer journey and communicate with the customer every step in the media chain”; and that she suggested “add[ing] to [the company’s] media ecosystem by adopting an online streaming service” with a “programming recommendation system.” Some of the reference letters, including letters from the chairperson of [redacted] and the chief executive officer of [redacted] discuss her work with [redacted] noting that she “open[ed] a new office in Pakistan and introduce[ed the] company’s [redacted].” Other letters, including the letters from individuals who worked at [redacted] provide that the Petitioner helped [redacted] launch a video-on-demand service, and she introduced [redacted] to a dynamic pricing model to attract moviegoers.

These letters, although detail the Petitioner’s projects and explain their value to various businesses, do not demonstrate the purported originality of her work, or show that her strategies and methods have significantly impacted the field as a whole. For example, the letters do not explain how opening a new international office, introducing a customer service initiative, launching a video-on-demand service, or a dynamic pricing model is original. The letters also do not sufficiently establish that her projects impacted the field in a significant way, such that others in the field have widely implemented her strategies and methods. As noted in the Director’s decision, the Petitioner must show that her contributions are original and have “reach[ed] beyond [her] employer and its customers/clients.” *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

In short, the Petitioner has not shown, through the reference letters or other evidence in the record, that her work is original or its impact has reached a level of major significance in the field of digital media strategy and operations. The opinions of the references are not without weight and have been reviewed and considered. For the reasons we have discussed above, however, the letters and other evidence in the record fail to demonstrate that the Petitioner’s work constitutes contributions of “major significance” in the field. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use advisory opinions and statements submitted as expert testimony. *See Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r. 1988). USCIS is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may, as we have in this case, evaluate the contents of those letters as to whether they support the individual’s eligibility. *See id.* at 795-96. Thus, the contents of the references’ statements are important considerations. The record, including the reference letters, does not sufficiently establish that the

Petitioner's work is original or has been unusually influential, has substantially impacted the field, or has otherwise risen to the level of contributions of major significance. As such, she has not demonstrated that she meets this criterion. *See Visinscaia*, 4 F. Supp. 3d at 134-35.

*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).

On appeal, the Petitioner maintains that she has satisfied this criterion. She points to documentation relating to earnings of operations research analysts to support her position that she has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The record includes her 2021 Wage and Tax Statements (Internal Revenue Service (IRS) Form W-2), indicating that she received approximately \$72,211 in wages from [REDACTED], and approximately \$11,440 in wages from [REDACTED]. Page 4 of her petition lists her job title as "Chief of Staff," and notes that she receives \$150,000 a year in wages. In an April 2022 letter, [REDACTED] states that the Petitioner's annual base salary would be increased from \$150,000 to \$200,000 beginning in May 2022, and that the company awarded her a \$20,000 bonus. In a June 2022 letter, [REDACTED] provides that "[s]ubject to approval by the Company's Board of Directors," it was offering her stock options. In her response to the Director's request for evidence, the Petitioner submitted an amended page 4 of the petition, claiming that her title remains "Chief of Staff," but that her salary has been increased to \$200,000 per year. The Petitioner has not offered sufficient evidence showing that she meets this criterion.

As the Director noted in the decision, under 8 C.F.R. § 103.2(b), a petitioner "must establish that he or she is eligible for the requested benefit at the time of filing the benefit request and must continue to be eligible through adjudication." As such, the Petitioner must show that at the time she filed the petition, in April 2022, she was eligible for the classification and satisfied the criterion. Therefore, she cannot rely on evidence showing that she received a raise in May 2022 or documents relating to her higher level of compensation to satisfy this criterion.

Additionally, the Petitioner has offered comparative evidence on individuals who are "operations research analysts," while the petition indicates that her title is "chief of staff." The Petitioner has not demonstrated that these two positions are sufficiently similar, such that she can rely on earning evidence concerning "operations research analysts" to show that she, as a chief of staff, has commanded a high salary or other significantly high remuneration for services in relation to others in the field. According to an April 2022 letter from her employer, as a chief of staff, the Petitioner is responsible for the company's "digital media strategies, growth strategies, technology adoptions, sales, operations and management processes" and she is "vested with ultimate authority to direct and coordinate change management initiatives, budget and financial planning, and project management in the areas of digital media strategies, business strategies and analytics, and corporate communications." The letter further notes that the Petitioner "is responsible for managing the organization's expansion budget, annual operating plan, and customer engagement initiatives" and that she "possesses broad authority to evaluate the organization's performance to determine areas of potential cost reduction, process improvement and policy changes." The letter illustrates that the Petitioner has a certain level of management responsibility and authority to direct the operation of the business. She, however, has not demonstrated that operations research analysts also have these duties. As such, she has not shown that information about operations research analysts' earning is appropriate comparative evidence.

Moreover, according to materials the Petitioner has presented from U.S. Bureau of Labor Statistics as well as [careeronestop.org](http://careeronestop.org), the highest 10 percent of operations research analysts earn more than \$160,850 a year. The Petitioner, as a chief of staff, earned \$150,000 a year in salary when she filed the petition. Even if we were to accept that her position and the position of an operations research analyst are sufficiently similar for comparative purposes, the Petitioner has not demonstrated that her earning is high enough to satisfy the criterion.

Based on these reasons, the Petitioner has not submitted evidence that she has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. She has not met the criterion under 8 C.F.R. § 204.5(h)(3)(ix).

### 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 criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F. 3d at 1119-20. Nevertheless, we note 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 to be classified as an individual of extraordinary ability in the field of digital media strategy and operations.

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. Here, the Petitioner has established that she contributed to the success of her former and current employers and to the success of their clients. But the Petitioner has not shown that her accomplishments rise to the required level of sustained national or international acclaim, or that it is consistent with 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 of individuals who have risen to the very top of the field of endeavor. *See* Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated eligibility to be classified as an individual of extraordinary ability in the field of digital media strategy and operations. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.