



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

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

In Re: 25234474

Date: MAR. 22, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a nail design artist and manicurist, 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 Nebraska Service Center concluded the Petitioner satisfied at least three of the ten initial evidentiary criteria for the classification, but denied the petition, determining that she did not demonstrate her sustained national or international acclaim and that she was among the small percentage at the very top of her field of endeavor. 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 sustain the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the 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

As discussed, the Director concluded the Petitioner established three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x), specifically that: 1) there was published material about her in professional or major trade publications or other major media related to her work pursuant to 8 C.F.R. § 204.5(h)(3)(iii), 2) she participated as a judge of the work of others in her field as specified in 8 C.F.R. § 204.5(h)(3)(iv), and 3) she authored scholarly articles in her field as indicated by 8 C.F.R. § 204.5(h)(3)(vi). We agree with the Director’s determination that the Petitioner has met at least three of the initial criteria at 8 C.F.R. § 204.5(h)(3).

As the Petitioner submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, her sustained national or international acclaim, that she is among the small percentage at the very top of her field of endeavor, and that her achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner’s accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

The Director concluded that the record did not demonstrate the Petitioner’s sustained national or international acclaim and that she was among the small percentage at the very top of her field of endeavor. For the reasons discussed below, we conclude that the Petitioner has met her burden of proof to establish, by a preponderance of the evidence, that she is eligible for the benefit sought.

The Petitioner is a native of Russia asserting that she is an award-winning nail artist and master of the manicure and pedicure arts. The Petitioner contends that she has contributed to the industry through the introduction of innovative methods and techniques in stamping, airbrushing, and nail treatment. The record reflects that the Petitioner has received international acclaim for her work including winning 14 awards at seven international nail and beauty competitions in Russia, Italy, New York, Poland, and the Netherlands. The supporting evidence indicates that these awards were given by a mix of international industry experts in her field. The evidence further reflects that the Petitioner is a member of the International East European Beauty Association (IEEBA) and a reference letter from

this organization's president acknowledges her contributions to the field as a judge, instructor, and coach in the nail art industry.

In addition, the Petitioner provided several online articles highlighting her as a leading presence in the field in her country and documentation reflecting her wide involvement as a representative and judge in international nail and beauty competitions, including in New York, Japan, the United States, Qatar, Egypt, and Russia. The Petitioner's wide participation as a judge in international nail and beauty competitions, along with other representatives from around the world, indicates that she is a leading figure in the nail design and manicure industry in her country.

The Petitioner also submitted numerous reference letters from prominent individuals within the nail design industry credibly discussing her contributions and acclaim within the field, advanced and novel nail design techniques, creation of innovative nail instruction courses and master classes, advanced knowledge of nail disease and treatment, and aesthetically pleasing and visually interesting nail designs. The provided support letters indicate that it is more likely than not that the Petitioner has wide influence in her country's nail industry and that industry leaders from around the world attest to her acclaim in the field. Likewise, the Petitioner submitted documentation reflecting that she contributed five scholarly articles to trade articles in the industry. The provided evidence further supports a conclusion that the Petitioner has worked in a leading role as a nail design lecturer for the [REDACTED] a specialized nail design center in Russia, and that she has delivered lectures, workshops, and seminars, and developed innovative educational materials for these programs.

Based on this evidence of the Petitioner's achievements and earned recognition, as well as other evidence not discussed above, she has demonstrated her extraordinary ability as a nail design artist and manicurist and established that she has a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The totality of the evidence establishes that the Petitioner possesses a level of expertise that is consistent with a concluding that she is one of a small percentage at the very top of the field of endeavor and that she has the required sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

The Petitioner has established that she meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). She has also demonstrated sustained national and international acclaim and her achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that she intends to continue working in her area of expertise and that her work will substantially benefit the United States prospectively. Therefore, the Petitioner qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.