



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

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

In Re: 28355068

Date: OCT. 25, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chief executive in the field of small business development, seeks classification under the employment-based, first-preference (EB-1) immigrant visa category as a noncitizen with “extraordinary ability.” See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Noncitizens may obtain U.S. permanent residence in this category if they demonstrate sustained national or international acclaim and, through extensive documentation, recognition of their achievements in their fields of expertise. *Id.*

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner met three of the ten eligibility criteria found 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.

The Director determined that the Petitioner provided sufficient documentation to establish his eligibility under two (of the ten) regulatory criteria; namely, evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought; and evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media. However, the Director determined that he did not meet any of the remaining eight criteria. The Petitioner provided evidence under the following criteria: 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; the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field; the alien’s performance in a leading or critical role for organizations or establishments that have a distinguished reputation; and the alien’s command of a high salary or other significantly high remuneration for services, in relation to others in the field.

We adopt and affirm the Director’s decision. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

On appeal, the Petitioner provided a “covering letter,” listing six points: 1. Benefits for the USA; 2. Associations; 3. Refereeing; 4. Contribution to the field of activity; 5. Contribution to the company; and 6. Income.¹ The Petitioner’s only argument, which relates to the high salary or other significantly high remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix), is as follows:

“[a]fter receiving the RFE, in the income section, here the income is presented additionally (to the contract received in the case dated 09/21/2021), which significantly increases the average monthly salary reflected in the “Reference for calculating the payment of bonuses and remunerations” Also presented is an additional agreement to the contract and certificates of bonuses.”

Citing to *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988), the Director noted discrepancies in the record related to the Petitioner’s monthly salary. In the documents he initially submitted, his salary is 230,000 rubles, and in response to the RFE, it appears that his salary is 207,000 rubles. Moreover, the Director explained that the record lacked objective evidence to establish the Petitioner’s high salary or remuneration relative to other chief executives. We agree.

On appeal, the Petitioner does not address the Director’s concerns regarding the lack of objectivity in the evidence or the discrepancy in his salary. As the Director pointed out in the RFE, the Rosstat information is related to development directors and the Petitioner has not shown that his position, and those of a development director, are comparable, such that the salary of a development director is a proper basis for comparison. The Petitioner must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the comparative salary data is insufficient objective evidence for comparison to his salary and position.

In addition, if the Petitioner wishes us to consider evidence of remuneration in the form of year-end and quarterly bonuses, he must also provide objective evidence of the year-end and quarterly bonuses offered others in his field in order for us to evaluate whether his remuneration is “significantly high”

¹ The evidence, in the form of a personal statement dated January 20, 2023, provided to establish points 1-5 was previously submitted in response to the request for evidence (RFE).

in relation to others. Here, the Petitioner has not met his burden under the plain language of the regulation. *Matter of Chawathe*, 25 I&N Dec. at 375-76.

Because the Petitioner did not raise any other arguments or provide evidence related to the other eligibility criteria, we consider them waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

ORDER: The appeal is dismissed.