



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

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

In Re: 28563276

Date: OCT. 27, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a provider of business, computing, and human capital management solutions, seeks to classify the Beneficiary 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 Petitioner did not establish the Beneficiary satisfied the initial evidence requirements for the classification by demonstrating her receipt of a major, internationally recognized award or by meeting 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

## I. LAW

An individual is eligible for the extraordinary ability classification if they have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, and their achievements have been recognized in the field through extensive documentation. Section 203(b)(1)(A)(i) of the Act. In addition, the individual must seek to enter the United States to continue work in the area of extraordinary ability and their entry must be of substantial prospective benefit to the United States. Section 203(b)(1)(A)(ii) and (iii) of the Act.

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 may demonstrate

international recognition of the beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). Absent such an achievement, the petitioner must provide sufficient qualifying documentation demonstrating that the beneficiary 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 beneficiary 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).

## II. ANALYSIS

The Beneficiary is employed by the Petitioner, a leading provider of human capital management products and services, as Vice President – Product Management, Small Business Services. The Petitioner asserts that she is eligible for classification as individual of extraordinary ability in business, specifically in the field of corporate product strategy.

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must demonstrate that she satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims that the Beneficiary meets three criteria:

- Original contributions of major significance;
- Performance in leading or critical roles; and
- High salary, or other significantly high remuneration, in relation to others.

The Director determined that the Beneficiary satisfied only one of the three claimed criteria. Specifically, the Director concluded that she has served in leading or critical roles for organizations that have a distinguished reputation, and thus satisfied the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(viii). The record supports the Director's conclusion that the Beneficiary meets this criterion.

On appeal, the Petitioner maintains that the previously submitted evidence was sufficient to establish the Beneficiary's original contributions of major significance in her field and her high salary in relation to others, thus satisfying the criteria at 8 C.F.R. § 204.5(h)(3)(v) and (ix). The Petitioner contends that the Director did not fully and correctly review the information and documentary evidence submitted in support of the petition and in response to a request for evidence (RFE), and "applied arbitrary evidentiary standards, linguistic interpretations and definitions not found in regulations, guidance or practice." After reviewing all the evidence in the record, we conclude Petitioner has demonstrated that the Beneficiary satisfies three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

*Evidence of the individual'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 determining that the Petitioner did not demonstrate the Beneficiary satisfies this criterion, the Director stated that the record contained “no documentary evidence” such as “published material patents, copyright or trademark material” to corroborate the Beneficiary’s contributions, noting that without such evidence, the Petitioner had not illustrated “the originality of the contribution.” The Director acknowledged that the Petitioner submitted two letters from company executives, as well as “other correspondences,” “website print screens” and “other documents” but concluded that the evidence was insufficient to establish the major significance of the Beneficiary’s business-related contributions. However, the Director’s analysis is limited to discussion of a single letter submitted at the time of filing and does not address other evidence relevant to this criterion. On appeal, the Petitioner maintains that the evidence the Director characterized as “other correspondence” and “other documents” was submitted to corroborate its claims regarding the Beneficiary’s significant contributions and was not considered.

In evaluating whether a given beneficiary has made original contributions of major significance, relevant evidence may include, but is not limited to, published materials about the significance of their work and letters from experts in the field explaining the nature and significance of the person’s original contribution. *See generally* 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual> (discussing factors to be considered in evaluating initial evidence of extraordinary ability under 8 C.F.R. § 204.5(h)(3)(i)-(x)). Here, the Petitioner indicated that the Beneficiary initiated strategies for development of its small business product line which have been influential in the human capital management industry and impactful in the broader field of business. The Petitioner further contended that the Beneficiary’s product development strategies and initiatives have a far-reaching impact on how small businesses manage their human resources functions, due to the company’s market position as a leader serving over 800,000 clients in this sector. The Petitioner’s president emphasized in her letter that the company’s “actions set the benchmark for the human capital industry and how it serves its clients” and that the Beneficiary was responsible for several product strategies and initiatives that received industry-wide notice.

The record contains ample evidence establishing the Petitioner’s market position and reach in its industry. In addition, the Petitioner submitted detailed, credible letters from its senior executives explaining the Beneficiary’s original contributions to its product strategies and product offerings in the small business sector as well as evidence that new product features, prominent partnerships and other innovative strategies and tools introduced by the Beneficiary have been featured in industry publications. The Petitioner also submitted probative letters from executives at other companies who explain that they deem the Beneficiary’s strategies and techniques for product management to be best practices and, as such, have introduced similar initiatives within their own enterprises. These letters and other evidence corroborate the Petitioner’s claims regarding the significance of the Beneficiary’s contributions. After considering all evidence submitted in support of this criterion, we conclude that the Petitioner established, by a preponderance of the evidence, that the Beneficiary satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(v).

*Evidence that the individual 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 determining that the evidence was insufficient to establish that the Beneficiary meets this criterion, the Director observed that she has received a base salary as high as \$220,000 for fiscal year 2021. The

Director acknowledged various evidentiary exhibits containing comparative wage data but concluded that the data provided was “not based on an individual in a comparable field,” “is not based on the years that the beneficiary earned the salary,” and was limited to data showing “average salary” information for “those performing work in a related but distinct occupation.” On appeal, the Petitioner asserts that the Director mischaracterized or overlooked some of the evidence submitted in support of this criterion. Upon review, we conclude that the Petitioner met its burden to establish that the Beneficiary, more likely than not, has commanded a high salary in relation to others in her field.

First, although the Director determined that the Beneficiary’s highest documented salary was \$220,000, the Petitioner provided evidence that her annual base salary, as of August 2022, was \$279,272. The Petitioner’s evidence included comparative data from Department of Labor sources for both financial and marketing managers. The Petitioner conceded that the nature of the Beneficiary’s role as a divisional vice president for product management is not an exact match for either of these occupational classifications. However, it also provided a Wilson Towers Watson (WTW) salary survey that focuses on “Senior Group Managers” in the product management discipline within large international organizations and which is specific to the geographic area where the Beneficiary works. We disagree with the Director’s finding that this survey provided only “average salaries” or that the provided data was for a distinctly different occupation. The WTW survey indicates a 2022 90th percentile base salary of \$248,993 for the referenced occupation. Based on a comparison of the Beneficiary’s \$279,272 base salary to this data, we find the Petitioner met its burden to establish that she has commanded a high salary and therefore meets the criterion at 8 C.F.R. § 204.5(h)(3)(ix).

Because the Petitioner has established that the Beneficiary satisfies the initial evidence requirements for this classification by meeting three of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), it has overcome the only stated ground for denial of the petition. However, meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3) does not, by itself, establish eligibility for the requested classification. Accordingly, we will withdraw the Director’s decision and remand the matter for entry of a new decision that includes a final merits determination consistent with *Kazarian*.

### III. CONCLUSION

Because the Petitioner has established the Beneficiary’s qualifications under criteria at 8 C.F.R. § 204.5(h)(3)(v), (viii), and (ix), on remand, the Director should conduct a final merits review of the evidence of record. The new decision should include an analysis of the totality of the evidence evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary’s sustained national or international acclaim, her status as one of 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. *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.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.