



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

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

In Re: 31109123

Date: JUNE 12, 2024

Appeal of Texas Service Center Decision

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

The Petitioner, a web developer and digital marketing entrepreneur, 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). Successful petitioners in this category must demonstrate “sustained national or international acclaim” and extensively document recognition of their achievements in their fields. *Id.*

The Director of the Texas Service Center denied the petition. The Director concluded that the Petitioner did not demonstrate her required intent to continue working in the United States in her field. The Director also found that she met two of ten of the requested category’s initial evidentiary criteria – one less than required for a final merits determination.

On appeal, the Petitioner contends that the Director overlooked evidence of her intent to continue working in the United States in her field. She also claims that she met the requisite third evidentiary requirement by submitting evidence that she: received nationally or internationally recognized awards for excellence in her field; and performed in a leading or critical role for organizations with distinguished reputations.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo’s, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that she has established her intent to continue working in her field in the United States and her leading role in a company with a distinguished reputation. We will therefore withdraw the Director’s decision and remand the matter for a final merits determination and entry of a new decision consistent with the following analysis.

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and

- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

The term “extraordinary ability” means expertise commensurate with “one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). Evidence must demonstrate a noncitizen’s receipt of either “a major, international recognized award” or satisfaction of at least three of ten lesser evidentiary standards. 8 C.F.R. § 204.5(h)(3)(i-x).¹

If a petitioner meets either of the evidentiary criteria above, USCIS must make a final merits determination whether the record, as a whole, establishes their sustained national or international acclaim and recognized achievements placing them among the small percentage at their field’s very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (9th Cir. 2010) (requiring a two-part analysis of extraordinary ability); *see generally* 6 *USCIS Policy Manual* F.(2)(B), www.uscis.gov/policy-manual.

II. ANALYSIS

The record shows that the Petitioner, a Russian national and citizen, earned a bachelor’s degree in computer engineering technology and a master’s degree in computational design in her home country. In 2007, she founded a digital marketing and information technology (IT) firm in Russia. She has also lectured on digital marketing at a Russian university.

The Petitioner states that, in the United States, she intends to establish a digital marketing and IT firm modeled on her Russian business. For that purpose, she has established a U.S. limited liability company (LLC). She says that she has already provided web development and digital marketing services to several U.S. businesses.

A. Intent to Continue Working in the Field

A successful petitioner in this immigrant visa category must “seek[] to enter the United States to continue work in the area of extraordinary ability.” Section 203(b)(1)(A)(ii) of the Act. A petition need not contain a job offer. But a filing must contain “clear evidence” of a petitioner’s intent to continue working in their field, such as: “letter(s) from prospective employer(s), evidence of pre-arranged commitments such as contracts, or a statement from the [petitioner] detailing plans on how [they] intend[] to continue [their] work in the United States.” 8 C.F.R. § 204.5(h)(5).

The Petitioner’s initial filing lacked sufficient evidence that she would continue to work in the IT entrepreneurial field in the United States. In response to the Director’s request for additional evidence, she submitted a signed statement and copies of her U.S. LLC’s articles of organization, website, and agreements with two U.S. businesses to provide web development and digital marketing services.

¹ If the standards do not readily apply to a petitioner’s occupation, the noncitizen may submit comparable evidence to establish eligibility. 8 C.F.R. § 204.5(h)(4).

The Director's decision states: "[I]t has not been established that the [Petitioner] is coming to the United States to work as a CEO of [a] Digital Marketing Agency." But the record does not support that finding. The Petitioner stated: "I intend to continue my activities in the United States in my chosen field of web development and digital marketing entrepreneurship." The agreements with the U.S. businesses identify her as the LLC's "Chief Executive Officer." Although the Petitioner's initial filing omitted her statement, the LLC's agreements and articles of organization predate the petition's filing. *See* 8 C.F.R. § 103.2(b)(1) (requiring a petitioner to demonstrate eligibility "at the time of filing the benefit request"). The record lacks any contrary evidence. Thus, consistent with 8 C.F.R. § 204.5(h)(5), the Petitioner has provided "clear evidence" of her intent to continue working in the United States in the IT entrepreneurial field. We will therefore withdraw the Director's contrary finding.

The Petitioner must still meet the initial evidentiary requirements for the requested immigrant visa category. She does not claim – nor does the record show – her receipt of a major, international recognized award. She must therefore satisfy at least three of the ten evidentiary requirements at 8 C.F.R. § 204.5(h)(3)(i-x).

The Director found that, by submitting copies of published materials about herself in the IT entrepreneurial field and evidence that she judged the work of others in the field, the Petitioner met two evidentiary criteria. *See* 8 C.F.R. § 204.5(h)(3)(iii), (iv). On appeal, she contends that she also documented her receipt of nationally recognized awards in the field and her performance in a leading or critical role for an organization with a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(i), (viii).

B. Performance in a Leading or Critical Role for a Distinguished Organization

The Petitioner contends that she submitted evidence of her "perform[ance] in a leading or critical role for organizations or establishments that have a distinguished reputation." *See* 8 C.F.R. § 204.5(h)(3)(viii).

When adjudicating this requirement, USCIS first determines whether a petitioner has performed in a leading or critical role for an organization or establishment. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). A leading role means that the person is (or was) a leader within the organization or establishment. *Id.* In contrast, a petitioner in a critical role "has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities." *Id.* A petitioner's role, rather than their title, determines whether their role is (or was) critical. *Id.*

Second, USCIS determines whether the organization or establishment for which a petitioner holds (or held) a leading or critical role has a distinguished reputation. *See generally* 6 *USCIS Policy Manual* F.(2)(B)(1). The term "distinguished" means "marked by eminence, distinction, or excellence" or "befitting an eminent person." *Id.* When determining whether an organization has a distinguished reputation, USCIS considers its size and longevity together with other relevant factors, such as: the scale of its customer base; or relevant media coverage. *Id.*

We disagree with the Director's finding that the record lacks "objective, documentary evidence which demonstrates that [the Petitioner's] roles were leading or that she contributed in ways that are of significant importance to the outcome of the organizations' activities." Besides the Petitioner's

statement, a portion of her Russian company's policy manual lists her responsibilities as CEO. These duties include: strategic and tactical planning; drafting company policies; and determining its developmental priorities. The Petitioner also submitted copies of government and tax records showing that she solely owns and founded the company. The record also includes proof that she has won various entrepreneurial awards for developing the business. The Petitioner has therefore sufficiently established her leading role in her Russian company.

We also disagree with the Director's conclusory statement that insufficient evidence demonstrates the Russian company's distinguished reputation. The record lacks evidence of the scale of the company's client base. But the record shows that the firm has conducted business since 2007. Evidence also shows the company's receipt of multiple regional Internet awards for web development services and significant Internet contributions. The awards were based on a combination of popular votes on the Internet and final determinations by expert committees of specialists. The awards show that the company has attained excellence and distinction in its field. The record also contains a copy of a letter from a regional government official praising the company for contributing to the area's digital development. The Petitioner has therefore sufficiently demonstrated that her Russian company has a distinguished reputation.

A preponderance of the evidence establishes the Petitioner's leading role with a distinguished company. We will therefore withdraw the Director's contrary finding.

C. Nationally or Internationally Recognized Awards

The Petitioner has met the requisite three of ten initial evidentiary criteria. Thus, we need not consider whether she received nationally or internationally recognized awards in her field. *See* 8 C.F.R. § 204.5(h)(3)(i).

USCIS must now make a final merits determination on her qualifications as a noncitizen with extraordinary ability in the IT entrepreneurial field. The Director did not make this finding. Rather than determine the issue in the first instance, we will remand the matter.

On remand, the Director must determine whether the Petitioner has demonstrated receipt of sustained national or international acclaim and that her achievements have been recognized in her field, indicating her status as one of that small percentage at her field's very top. *See generally* 6 USCIS *Policy Manual* F.(2)(B)(2). The Director should consider any potentially relevant evidence of record, even if it does not fit a regulatory criterion or was not presented as comparable evidence. *Id.* The petition's approval or denial should stem from the evidence's type and quality. *Id.*

III. CONCLUSION

The Petitioner has demonstrated her intent to continue working in the United States in her field and her leading role in a company with a distinguished reputation. USCIS must now make a final merits determination regarding her eligibility as a noncitizen with extraordinary ability.

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