



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 7072339

Date: AUG. 31, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an Executive Vice President (Producer), 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 denied the petition, concluding that the record did not establish that the Petitioner meets any of the ten initial evidentiary criteria for this classification, of which she must meet at least three.

On appeal, the Petitioner asserts that she submitted probative and credible evidence that she meets four out of the ten criteria and is otherwise qualified for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, the Petitioner has not met this burden and we will dismiss the appeal.

## I. LAW

Section 203(b)(1) 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 international recognition of his or her 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 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## II. ANALYSIS

The Petitioner has been employed as Executive Vice President (Producer) for [REDACTED] [REDACTED] an independent film and television production company, since 2017. Previously, she worked in the United Kingdom television industry in production roles for [REDACTED], [REDACTED], and [REDACTED].

### A. Evidentiary Criteria

Because 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 at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner initially claimed to have met five criteria, summarized below:

- ∑ (iii), Published material about the alien in professional or major media;
- ∑ (v), Original contributions of major significance;
- ∑ (viii), Leading or critical role for distinguished organizations or establishments;
- ∑ (ix), High salary or other significantly high remuneration; and
- ∑ (x), Commercial successes in the performing arts.

The Director concluded that the Petitioner did not meet any of the claimed evidentiary criteria. On appeal, the Petitioner does not contest the Director’s conclusions regarding criterion (x), relating to

commercial success in the performing arts. Therefore, we consider that issue to be waived.<sup>1</sup> The Petitioner maintains that she meets the other four criteria claimed previously.

We have reviewed all of the evidence in the record and conclude that the Petitioner has established that she meets the criteria relating to published materials, leading or critical roles, and high salary.

With respect to the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), the Petitioner submitted a total of nine articles published by television and film industry publications Deadline Hollywood (www.deadline.com), RealScreen (www.realscreen.com), Television Business International (www.tbivision.com), and Broadcast magazine (www.broadcastnow.co.uk). The Director determined that the submitted articles are not about the Petitioner, noting that “the majority of the articles announced her change in employment status” and that “articles that are not about the alien do not meet this regulatory criterion.” Although the Director correctly noted that each of the articles publicized the Petitioner’s hiring by a new employer, they provide sufficient information relating to her and her work in the field to satisfy the plain language of the criterion, and included the required title, date and author of the material. For example, the [redacted] 2017 Deadline Hollywood article, titled [redacted] [redacted] mentions some of the Petitioner’s expected responsibilities in her new position, her previous work with [redacted] [redacted] [redacted] [redacted] and [redacted] and includes quotes from the Petitioner and [redacted]’s executive staff about her hiring.

The Director further found that the Petitioner provided “no evidence” in support of her claim that the submitted articles were published by professional or major trade publications or other major media. The Director noted that “information submitted from the bulk of the blogs and websites have little probative information for meeting this criterion,” without acknowledging the Petitioner’s supporting evidence pertaining to the specific online publications submitted. While the Petitioner did not submit sufficient evidence to establish that all four publications qualify as professional or major trade publications or other major media, the evidence is sufficient to establish that the articles published by Deadline Hollywood and Broadcast magazine meet all requirements of this criterion.

The Director determined that the Petitioner did not meet the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii), observing that the submitted letters from persons familiar with her work “fall short of providing probative information that specifically addressed how [her] role for the organizations was leading or critical.” However, the Director did not discuss the submitted letters individually. Upon review, we agree that some of the testimonial evidence lacks information needed to establish that specific roles the Petitioner held were “leading or critical” to the respective organizations that employed her. We conclude that the Petitioner nevertheless demonstrated that she holds a leading role as Executive Vice President of [redacted] and also established her current employer’s distinguished reputation.

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<sup>1</sup> See Matter of R-A-M-, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also Sepulveda v. U.S. Att’y Gen., 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing United States v. Cunningham, 161 F.3d 1343, 1344 (11th Cir. 1998); Hristov v. Roark, No. 09–CV–27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims were abandoned as he failed to raise them on appeal to the AAO).

Finally, with respect to the high salary criterion at 8 C.F.R. § 204.5(h)(3)(ix), the Director acknowledged evidence of the Petitioner’s 2018 earnings as well as her submission of various published wage surveys for producers and directors. The Director noted that the Petitioner’s earnings in 2018 were high in comparison to those reported in the submitted surveys, but found she “has performed in what appear to be freelance capacities” and observed there was insufficient evidence of her “earnings over a period of time.” The evidence reflects the Petitioner was a full-time salaried employee in 2018 and last worked in a freelance capacity in 2004. The Director also noted that the Petitioner did not provide “documentary evidence of the earnings of those in the Petitioner’s occupation performing similar work at the top level of the field.” Such evidence is not required to meet the plain language of this criterion, but rather should be considered in a final merits determination. The Petitioner submitted sufficient evidence to satisfy this criterion.

Accordingly, the Petitioner has demonstrated that she meets the requisite three evidentiary criteria. While the Petitioner claims to meet a fourth criterion (relating to her original contributions in the field) we will consider that claim together with the totality of the evidence in the context of the final merits determination below.

#### B. Final Merits Determination

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 and that she is one of the small percentage at the very top of the 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.<sup>2</sup> While the Petitioner has had success in the entertainment industry, the evidence does not establish that she has sustained national or international acclaim and is among the small percentage at the top of her field. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner submitted evidence reflecting her professional background. This evidence indicates that she has steadily worked in the United Kingdom [redacted] television industry, initially in a freelance capacity, and then joining [redacted] in 2004, where she was eventually promoted to the position of Director of Development. After four years with [redacted] where she created and commissioned the scripted reality series [redacted], she spent three years as an executive producer at [redacted] [redacted] where her most acclaimed project was [redacted] a seven-part documentary produced for [redacted]. Subsequently, the Petitioner spent one year working as a producer for [redacted] as head of television before joining [redacted] in 2012 as a commissioning editor, where her most high-profile project was oversight and expansion of the scripted television series [redacted].

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<sup>2</sup> See also USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established, by a preponderance of the evidence, the required high level of expertise for the immigrant classification).

[redacted] Since 2017, she has worked as the Executive Vice President (Producer) for [redacted] in the United States.

As mentioned above, the Petitioner has been the subject of published articles in trade publications, she has held a leading role for an organization with a distinguished reputation, and she has earned a high salary. In addition, we have also considered evidence relating to her original contributions to the television industry. The record, however, does not demonstrate that she has reached the very top of the field or that her achievements reflect a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As noted, some of the Petitioner’s career transitions have received media coverage in television industry publications. The Petitioner submitted a total of nine articles, including five that reported her hiring by [redacted] in 2017, one that reported her hiring by [redacted] in 2012, two that reported her hiring by [redacted] in 2011, and one that reported her hiring by [redacted] in September 2008. While the Petitioner established that two of the four websites that published these articles (Deadline Hollywood and Broadcast) qualify as major trade publications, the record does not include adequate support for the Petitioner’s claim that this evidence amounts to a “vast array of published materials” about the Petitioner and her more than 15 years of work in the field, or that the nature and scope of this industry media coverage submitted demonstrates that she is “at the pinnacle of the field.” Rather, the record suggests that these types of brief news articles are routinely published when television producers move from one network or production company to another. The articles mark the Petitioner’s success and advancement in her field, but do not demonstrate that she has achieved sustained national or international acclaim as a television producer.

The Petitioner also provided articles from publications such as The Hollywood Reporter, Deadline Hollywood, The Daily Mail, The Mirror, and The Sun. Although the Petitioner did not claim that these articles are about her or that they otherwise satisfy the published materials criterion, she emphasizes that they nevertheless establish that she “is routinely referenced and quoted” in major media articles. For example, the Petitioner submitted three 2019 articles about [redacted]’s upcoming development of [redacted]’s co-produced reality show [redacted]. These articles mention in passing that the Petitioner will serve as one of three executive producers for the program. As a television producer who produces or commissions programming for national networks, the Petitioner works in an industry in which most, if not all, projects receive media coverage. Without evidence that sets her apart from others in this field, she has not established how being briefly referenced or quoted in media articles about her shows demonstrates that she is recognized as a television producer who is among “that small percentage who [has] risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2).

Much of the remaining documentation in the record is testimonial evidence addressing either the Petitioner’s original contributions in the field, and/or her leading or critical roles with her employers. With respect to her original artistic-related contributions, the Petitioner indicates that she: (1) introduced the [redacted] television genre in the United Kingdom based on her role in developing and commissioning [redacted] for [redacted] (2) introduced the use of [redacted] rigs in a commercial business documentary series based on her role in producing [redacted] for [redacted] and (3) “revolutionized digital programming around [redacted] television” by expanding [redacted] to include digital content while working as a commissioning editor at

[redacted] At issue in the final merits determination is not the nature or significance of the Petitioner's contributions, but rather the extent of the acclaim she has earned in her field as a result of them.

[redacted] currently an executive producer at [redacted], states that he met the Petitioner during his previous role as Senior Vice President of [redacted]. He explains that in the mid-2000s, [redacted] television was increasingly popular in the United States, but there were not yet any comparable programs in the United Kingdom. [redacted] indicates that the Petitioner "instinctively knew that Britain was ready" for this type of programming, chose [redacted] to develop the program, and "established herself as a trailblazer creating [redacted] which took an American-style glamorous [redacted] setting into [redacted] in Britain." He notes that [redacted] ran for two seasons. He further explains that its influence remains because it created the [redacted] genre in the United Kingdom and "paved the way for consequent series, both in terms of tone, style, technique and even characters," pointing to the popular series [redacted] [redacted] and [redacted] which aired on other networks. [redacted] concludes that the Petitioner's "original contributions to this genre have firmly planted her at the very top of our field."

The Petitioner submitted an article titled [redacted] published by The Guardian in 2011 which primarily discusses [redacted], which, at the time, had recently received a BAFTA award. The author interviewed producers and directors from the show's creator, [redacted] and states that [redacted] began the UK trend for these [redacted] hybrids back in 2006 when [redacted] asked it to make a British version of the hit US show [redacted] which resulted in [redacted]. The Guardian article goes on to state that [redacted] while "not a ratings hit, set a pattern for programs that followed." This article supports [redacted]'s claim that [redacted] was original in the U.K. television industry and is considered influential in the genre, but does not support a conclusion that the Petitioner garnered national acclaim based on her contributions to the program, or that those contributions "firmly planted her at the very top" of the field.

[redacted] former creative director and co-CEO at [redacted] provided a letter discussing the Petitioner's work as producer on [redacted] a [redacted] documentary series which aired on the U.K.'s [redacted] in 2011. [redacted] describes the format of the series as "groundbreaking" noting that it was the first program "to use [redacted] rigs in a commercial business and in an 'entertainment' feature." She also notes that the Petitioner incorporated a crew in combination with the [redacted] format in order to provide viewers with "unprecedented footage" of the [redacted]. [redacted] describes the show as a "critical and commercial triumph" and winner of a [redacted] Television Award. She also indicates that [redacted] "went on to inspire and pave the way for other productions." [redacted] discussed the originality of the techniques the Petitioner employed and describes her as a "renowned producer" with "extraordinary" talent but does not indicate that her role as a producer for [redacted] garnered her national acclaim in the field.

Nor does the supporting evidence establish that the Petitioner received significant industry recognition for her work on [redacted]. The Petitioner provided a 2011 article published by The Guardian titled [redacted] which mentions [redacted] but was published before the show aired. The author interviewed [redacted] executives who discuss the advantages of the program format, but the article does not mention the Petitioner. The

Petitioner submitted evidence that [redacted] received some media attention when [redacted] commissioned [redacted] to produce it in 2010 (from Birmingham Post and Broadcast), but the submitted articles also predate the airing of the show. These articles mention the Petitioner's executive producer role and the show's original [redacted] format, but do not demonstrate that she received wide industry recognition or acclaim for her work on the series. The Petitioner provided evidence of the show's [redacted] TV Award as [redacted]" from Digital Spy, and an article about the show's cast published by Marie Claire, but these articles do not mention the Petitioner.

The third and final original contribution the Petitioner mentions is her expansion of [redacted]'s original format to include digital content. [redacted]s [redacted] provided a letter explaining that the Petitioner joined the network after the show's original creation but "took the helm" as commissioning editor and expanded it to include a summer spinoff series that appeared on [redacted]'s digital channel and achieved "some of the highest ratings on our network." [redacted] also discusses the Petitioner's building of a "full digital brand" from [redacted] by creating "a series of [redacted] marketing and merchandise" including a live music platform, a fitness DVD, and other spinoffs that were shown on U.S. and Australian television. She indicates that the Petitioner "expanded the program's very "English" reality television brand into an international and cross platform one, which is truly a unique contribution to our field." [redacted] concludes that the Petitioner "is at the top of her field for commissioning television productions," and has "pioneered [redacted] within the United Kingdom."

The Petitioner submitted two articles about the [redacted] [redacted] spinoff. One of them mentions the Petitioner by name and includes a brief quote from her but does not demonstrate that she garnered national or international acclaim by commissioning this digital spinoff to the popular show. The Petitioner also provided an article titled [redacted], published by Mail Online, which discusses [redacted]'s receipt of a BAFTA award for [redacted] TV Show in 2013. The article provides reactions to the win from other attendees at the awards show but does not mention the Petitioner or indicate that she was a recipient of the award.<sup>3</sup>

Considered individually and collectively, the evidence establishes that the Petitioner has earned recognition from those who have worked with her on [redacted] television programming, but does not demonstrate that the Petitioner has made impactful or influential contributions in the greater field reflecting a "career of acclaimed work in the field," garnering the required sustained national or international acclaim. See H.R. Rep. No. at 59 and section 203(b)(1)(A) of the Act. Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Petitioner is viewed by the overall field, rather than by a solicited few, as being among that small percentage at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

<sup>3</sup> Although [redacted] won a BAFTA during the Petitioner's tenure as the [redacted] commissioning editor for the show, the record does not establish that she was credited as a producer or executive producer of the show, nor does she claim that she has been the recipient of this or any other industry award.

The Petitioner relies on similar evidence to support her claim that she has held leading or critical roles with [redacted], [redacted], [redacted], [redacted] and [redacted]. The Petitioner submitted two letters from [redacted]'s CEO, [redacted] which are sufficient to establish that she was hired in a critical role for this company as Executive Vice President. Specifically, the evidence reflects that she was engaged to adapt the international group's British television formats for the United States market and to expand the group's programming slate on American television channels. [redacted] notes that the Petitioner has already secured co-productions between [redacted] and [redacted] and between [redacted] and [redacted] and secured developments with [redacted] and [redacted] including the [redacted] series [redacted] which is based on a U.K. series. Based on the scope of her role with [redacted], the Petitioner has established that she contributes in a way that is of significant importance to the outcome of the group's activities in the United States.

The submitted testimonials addressing her work at [redacted], [redacted] and [redacted] are limited to discussing only or two of her individual projects and do not sufficiently demonstrate how her role was leading or critical to these organizations as a whole. In fact, she initially relied on a letter from [redacted] to establish that she met this criterion, but [redacted] who currently works for [redacted] appears to have only worked with the Petitioner as a fellow commissioning editor at [redacted] in the past and did not establish that she is in a position to confirm the Petitioner's leading or critical roles with other organizations. Although the Petitioner also submitted letters from [redacted] of [redacted] [redacted] (formerly of [redacted], and [redacted], who worked with her at [redacted] they primarily discussed the contributions she made to [redacted] [redacted] and [redacted], respectively. Their letters did not provide sufficient detail regarding the overall significance of her contributions on the outcome of their respective employers' activities to support a conclusion that her roles were leading or critical to these organizations as a whole. Moreover, the Petitioner has not shown that her employment with these entities was reflective of, or resulted in, widespread acclaim from her field or was commensurate with being at the very top of the field of endeavor. See 8 C.F.R. § 204.5(h)(2).

As noted, the Petitioner demonstrated that she earned a high salary in 2018 when comparing her earnings (approximately \$311,000) to reported earnings of "directors and producers" in the same geographic area. Based on the information accompanying the submitted Department of Labor wage surveys, it appears that the data collected includes, for example, the salaries of directors and producers of radio and stage productions, as well as individuals like the Petitioner, who produces television programming for national networks. As such, it is unclear that the provided wage information allows us to meaningfully compare her earnings to those of the highest earners in her specific 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 Grimson v. INS, 934 F. Supp. 965, 968 (N.D. III. 1996) (considering NHL enforcer's salary versus other NHL enforcers); Muni v. INS, 891 F. Supp. 440, 444-45 (N. D. III. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In addition, the Petitioner has only documented her past earnings for one year, the year preceding the filing of the petition. Therefore, while the evidence may demonstrate some degree of recognition of her achievements in the field, she has not submitted evidence showing her earnings have consistently been at a level reflecting that she among the small percentage at the very top of her field.



The record as a whole, including the evidence discussed above, does not establish the Petitioner's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. The evidence reflects that the Petitioner has consistently worked as a producer or commissioning editor for television programs with a national audience, but she has not supported her extraordinary ability claim with extensive documentation recognizing her achievements in the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." Price, 20 I&N Dec. at 954. While the record shows that the Petitioner is a successful producer and commissioning editor who has worked on several well-received television projects, the totality of the evidence does not indicate she has sustained national or international acclaim and is among the small percentage at the top of her field. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2).

### C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., Q Data Consulting, Inc. v. INS, 293 F. Supp. 2d 25 (D.D.C. 2003); IKEA US v. US Dept. of Justice, 48 F. Supp. 2d 22 (D.D.C. 1999); Fedin Bros. Co., Ltd. v. Sava, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), aff'd, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. Louisiana Philharmonic Orchestra v. INS, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that she is eligible to be classified as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

ORDER: The appeal is dismissed.