



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

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

In Re: 5424571

Date: JAN. 22, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a software design company, seeks to classify the Beneficiary, a visual designer, as an alien 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 had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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 a beneficiary's sustained acclaim and the 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 they must provide sufficient qualifying documentation that meets at least three of the ten categories 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).

## II. ANALYSIS

At the time of filing, the Petitioner employed the Beneficiary as a creative design producer. The Petitioner states:

Throughout her career, [the Beneficiary's] work in the highly specialized field of graphic design and multimedia advertising has been exemplary as her cutting-edge work has attracted international acclaim and amplified the brand visibility of the various companies that have employed her.

Before working for the Petitioner, the Beneficiary worked as a visual designer for [redacted] (sometimes called [redacted]) and [redacted] and then as a senior designer at [redacted].

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

*Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i)

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.* 8 C.F.R. § 204.5(h)(3)(viii)

*Evidence that the alien 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)

The Director found that the Beneficiary met criteria (viii) and (ix), but not (i). On appeal, the Petitioner asserts that the Beneficiary also meets the first criterion. After reviewing all of the evidence in the record, we find that the Petitioner has not shown that the Beneficiary meets the first criterion.

The Petitioner stated that the Beneficiary “has received a number of awards from internationally recognized organizations.” The record, however, does not support the Petitioner's claim that the Beneficiary personally received the awards.

When the Beneficiary worked at [redacted] in 2012, the company's website was nominated for a CSS Design Award. While working at [redacted] in 2015, the Beneficiary worked on an advertising campaign for a financial services company. That campaign received the following recognition:

- A National Silver Addy award for [redacted];
- Honorable mention for a 2015 Shorty Award for [redacted]; and
- Nomination for a Webby Award for [redacted]

Of the four items claimed above, only one is actually an award. A nomination means only that the project was *considered* for an award. Likewise, honorable mention indicates that the project was a strong candidate for an award that ultimately went to a different contender. Nominations and honorable mentions can be significant accolades, depending on the circumstances, but would be best considered in the context of a final merits determination if the case had proceeded that far. But there is a more immediate and fundamental issue that the Petitioner must overcome before we can weigh the significance of the nominations and the honorable mention.

The submitted award materials do not show the Beneficiary's name. The Petitioner asserts: "As is standard design and advertising industry practice . . . , individual creatives are not always credited in press releases of awards given for finished products. However, [the Beneficiary's] contributions and roles were indispensable . . . in bringing these awarded projects to fruition."

Our principal concern is not whether the Beneficiary received credit "in press releases," as phrased by the Petitioner; the regulatory language requires documentation that the Beneficiary *received* prizes or awards. Involvement with award-winning projects does not, by itself, satisfy this requirement. The focus should be on the alien's receipt of the awards or prizes, as opposed to her employer's receipt of the awards or prizes. 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*, 6 (Dec. 22, 2010), <http://www.uscis.gov/legal-resources/policy-memoranda>.

The Director requested "additional evidence of the **beneficiary's** receipt of . . . prizes or awards," with emphasis to show that the Beneficiary herself must have received the prizes or awards.

In response, the Petitioner stated that, in the Beneficiary's field, "awards are nearly always presented to the Design team and *not* to the individual," and asked the Director to take into account "the frequency at which [the Beneficiary] has been on teams that have won or been nominated for awards." Regarding the latter point, the Petitioner had previously identified one award-winning campaign, and a second campaign that earned a nomination. The Petitioner implied the existence of other such campaigns, stating that the awards discussed are "just a sampling of the honors [the Beneficiary] has received," but the Petitioner did not identify or document any further awards or nominations.

The Petitioner referred again to "awards received by [the Beneficiary]," but provided no documentary evidence to show what, if anything, the Beneficiary herself received from any awarding entity.

The Director denied the petition, stating that the Beneficiary "was not the direct recipient of the prize or award." On appeal, the Petitioner states that has "provided ample evidence of [the Beneficiary's] awards"

and maintains that “in the design and advertising industry . . . creative individuals are typically not . . . individually named for awards received for their creative productions.”

The record shows that the Addy Awards go to agencies rather than to individuals. The record does not show that individual members of the creative teams personally receive awards or recognition from the awarding entity. Collective recognition afforded to [redacted] does not distinguish between [redacted] employees or single out the Beneficiary for recognition.<sup>1</sup>

After-the-fact assurances that the Beneficiary was a principal contributor to the award-winning project are not documentation of the Beneficiary’s receipt of prizes or awards. In this respect, we acknowledge that a former vice president and associate creative director at [redacted] stated that the Petitioner was “one of the main designers on the team” that “garnered several awards,” and the president of [redacted] stated that the Beneficiary created the redesigned website that earned a nomination for a “CCS [*sic*] Design Award.” But the record highlights a limitation of such letters.

As the Petitioner asserts, most of the award and nomination materials in the record refer to companies rather than to individual creators. But the documentation from CSS *does* include the name, twice, of the “designer/developer” who created the nominated website design. The name shown is not the Beneficiary’s name, and the president of [redacted] did not acknowledge or explain this discrepancy.

The record contains no documentation of the Beneficiary’s receipt of any nationally or internationally recognized prize or award. We agree with the Director that the Petitioner has not satisfied this criterion.

The Director found that the Petitioner had satisfied the two remaining regulatory criteria, but those are not sufficient to establish eligibility for the benefit sought. Because further discussion of those findings cannot alter the outcome of the appeal, we reserve those issues.

### III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established that the Beneficiary has earned the acclaim and recognition required for the classification sought.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary’s eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.

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<sup>1</sup> Had the case proceeded to a final merits determination, this would have been a particularly significant point. A collective award cannot directly result in acclaim for the anonymous individuals who did the work that resulted in that award, because there is no public recognition or acknowledgment involved that would bring those individuals to the attention of others.