



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

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

In Re: 7072279

Date: JAN. 28, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a business owner and consultant, seeks classification 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 Petitioner satisfied two of the initial evidentiary criteria, of which she must meet at least three.

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, 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 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 he or she 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 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).

## II. ANALYSIS

The record indicates that the Petitioner founded the company, [redacted] located at her residence in June 2018 and also works as a consultant for [redacted] in [redacted], California since December 2018.<sup>1</sup> 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).

In denying the petition, the Director determined that the Petitioner fulfilled the criteria relating to published material at 8 C.F.R. § 204.5(h)(3)(iii) and judging at 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that major media published material about the Petitioner. In addition, the Petitioner judged investment/business competitions. Accordingly, we agree with the Director that the Petitioner met the published material and judging criteria.

On appeal, the Petitioner submits a brief claiming eligibility for a third criterion. After reviewing all of the evidence in the record, we conclude that the Petitioner did not demonstrate that she satisfies the requirements of at least three criteria.

### A. Evidentiary Criteria

*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).

The Petitioner contends that she meets this criterion based on her critical role as a business development director at [redacted].<sup>2</sup> Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.<sup>3</sup>

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<sup>1</sup> See the Petitioner's cover letter in response to the director's request for evidence.

<sup>2</sup> The Petitioner does not argue that she performed in a leading role for [redacted], nor does the record reflect that she held such a leadership position.

<sup>3</sup> See 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 10* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

In her brief, the Petitioner references an unsigned letter purportedly from [redacted] founder of [redacted].<sup>4</sup> However, as the letter is not signed, it has diminished probative value, and the Petitioner did not demonstrate that [redacted] authored the letter. Notwithstanding, the letter praises the Petitioner without providing specific information showing that she contributed to the successes or standing of [redacted].<sup>5</sup> Moreover, the letter makes broad assertions without demonstrating how the Petitioner caused significant outcomes to [redacted]'s activities.

For instance, the letter claims that “[t]he value [the Petitioner] has brought to the development of [redacted] and our portfolio companies can’t be overstated, and her efforts have driven us to being the leading investment fund in the robotics and hardware industry.” The letter, however, does not elaborate on what the Petitioner developed and how she contributed to [redacted] being the leading investment fund, as claimed. Moreover, although the letter lists several of her responsibilities, such as developing investment focus and strategy, managing external communications, and presenting at events, it again does not point to specific instances where the Petitioner’s actions resulted in successes for the company.

Further, the Petitioner argues that “as the sole director of the company’s initial investment fund, [her role] absolutely qualifies under this criteria [sic].” While the letter indicates that the Petitioner “was [redacted] first employee, and for a while she remained its only employee responsible for all functions of the fund,” the letter does not show that this role resulted in critical or important outcomes for [redacted]. In addition, the Petitioner did not demonstrate that being the first employee, as well as the only employee for a period of time, automatically establishes the critical nature of a role. Here, the Petitioner did not show that she performed in a critical role for [redacted].

In addition, the Petitioner did not demonstrate the [redacted] enjoys a distinguished reputation.<sup>6</sup> The record reflects that the Petitioner submitted screenshots from various websites about [redacted] and [redacted]. Although the screenshots indicate [redacted]'s investment funds, as well as investments in different companies, the Petitioner did not establish the significance of these business actions. For instance, the Petitioner provided screenshots from crunchbase.com showing that [redacted] has 25 investments, 5 lead investments, and the “most recent investment was on Sep 13, 2018, when they invested \$63M in [redacted].” Again, the Petitioner did not explain the relevance of these characteristics or demonstrate how they indicate [redacted]'s distinguished reputation. The Petitioner, for example, did not include evidence showing the general field’s view of the company or how its reputation or standing compares to similar investment companies, signifying a distinguished reputation consistent with this regulatory criterion.

Accordingly, the Petitioner did not show that she satisfies this criterion.

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<sup>4</sup> The letter is dated approximately 20 months prior to the filing of her petition and references a previously filed nonimmigrant O-1 petition.

<sup>5</sup> See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

<sup>6</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster’s Dictionary* definition of “distinguished” as marked by eminence, distinction, or excellence).

## B. 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. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at \*2 (E.D. La. 2000).

## 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 the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). Although the Petitioner has received some media coverage, judged a few recent competitions, and has some business and investment experience, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

**ORDER:** The appeal is dismissed.