



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

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

In Re: 17756172

Date: JUL. 15, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a senior quality assurance associate working in the pharmaceutical industry, 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner satisfies at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). 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 the 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

At the time of filing, the Petitioner was employed as a Quality Assurance Associate III with a [REDACTED] contract development and manufacturing company in the biopharmaceutical industry. The Petitioner received a bachelor of pharmacy degree from [REDACTED] College of Pharmacy in 2002 and subsequently completed a post-graduate program in [REDACTED] industry regulatory affairs at the [REDACTED] India, and a master of business administration at the University of [REDACTED]. She has approximately 15 years of professional experience in the pharmaceutical industry, including eight years with [REDACTED] in India.

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 claimed that she could meet four of these ten criteria, summarized below:

- (iv), Participation as a judge of the work of others in the field;
- (v), Original contributions of major significance in the field;
- (viii), Leading or critical roles for organizations with a distinguished reputation; and
- (ix), High salary or other significantly high remuneration in relation to others in the field.

The Director determined that the Petitioner met two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to her participation as a judge of the work of others in her field and her performance in leading or critical roles for organizations that have a distinguished reputation. We will not disturb the Director’s conclusions with respect to these two criteria. On appeal, the Petitioner asserts that the Director did properly evaluate the evidence she submitted in support of her claim that she has commanded a high salary or other significantly high remuneration in relation to others in her field. We will address this criterion below.

The Petitioner's arguments on appeal are limited to the issue of whether the previously submitted evidence was sufficient to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(ix). She states in the "Conclusion" section of her appellate brief that she has made original scientific contributions of major significance in accordance with the criterion at 8 C.F.R. § 204.5(h)(3)(v). However, she does not otherwise raise this issue or challenge the Director's reasons for concluding that she did not satisfy this criterion; she merely mentions it in passing. Issues or claims that are not raised with specificity on appeal are deemed to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009 *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *see also Greenbriar, Ltd. v. City of Alabaster*, 881 F.2d 1570, 1573 n.6 (11th Cir. 1989) (stating that passing references to issues are insufficient to raise a claim for appeal, and such issues are deemed abandoned).

After reviewing all the evidence in the record, we conclude that the Petitioner has not established that she meets at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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)

To satisfy the requirements of this criterion, the Petitioner must establish that she has commanded a high salary, or significantly high total remuneration, based on a comparison with others in her field working in similar positions and geographic locations.¹

The Petitioner claims that she meets this criterion based on her earnings as a senior scientist for [redacted] [redacted] in India. She provided documentation of her earnings, in Indian rupees (INR), during the period from April 1, 2012 through March 31, 2013.

In a cover letter accompanying her initial evidence, the Petitioner stated that her "total remuneration" in 2012 was INR 964,212. The Petitioner provided a copy of her Form ITR-1, Indian Income Tax Return for the 2013-14 assessment year. This form indicates at line 1 that her "Income from Salary/Pension" was INR 620,926, and identifies her employer as [redacted].

The Petitioner also submitted a document identified as a "Tax Planner for the Month of February 2013" summarizing her remuneration from [redacted]. The document provides a breakdown of her basic pay and other payments made by her employer between April 2012 and March 2013. It reflects that she received monthly "basic pay" of INR 29,992 and other recurring monthly payments that amounted to INR 41,025 (including a house rent allowance, a superannuation allowance, a conveyance allowance and rent paid). In addition, the "Tax Planner" has a gross income calculation that includes the items noted above, plus "gratuity receipts," "taxable LTA," leave salary, a performance bonus, award(s) and "medical domestic rec'd." The document lists a "gross income before exemption" figure of INR 873,194,² a list of exemptions, and a "rounded gross total income" figure of INR 620,926.

¹ *See* 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policy-manual> (noting that it is the petitioner's burden to provide geographical and position-appropriate evidence to establish that a salary is relatively high).

² This figure is the sum of all the items listed above, except for the "rent paid" figure, which according to this document is "data only for information."

In response to the Director's request for evidence (RFE), the Petitioner provided two additional Indian tax forms (Form No. 12BA and Form No. 16), which both indicate the amount paid to her by [REDACTED] [REDACTED] for the 2013-14 assessment year as INR 873,194.

The Petitioner provided comparative salary data from several sources in support of her claim that she commanded a high salary or significantly high remuneration in relation to others in her field in 2012. This evidence included a screenshot from Payscale.com with 2018 country-wide salaries for the occupation of "Analytical Methods Development Scientist" in India. This evidence indicates a median salary of INR 576,112, an average salary of INR 674,074, and a 90th percentile salary of INR 930,000. The information is based on data reported by 26 individuals in India.

The Petitioner also submitted February 2020 data from Glassdoor.com for the position of "Analytical Chemist" in India. This document indicates that the average base pay for this occupation is INR 574,367. Finally, the Petitioner submitted information from Indeed.com for the occupations of Senior Analytical Chemist and Analytical Chemist which she stated is an "equivalent position to an analytical scientist." This evidence indicates an average monthly salary of INR 17,628 per month for "Senior Analytical Chemist" with a range between INR 8,000 and 42,000. For the position of "Analytical Chemist," Indeed.com indicates an average salary of INR 20,663, with salaries ranging from INR 8,000 to 51,000.

On appeal, the Petitioner again emphasizes that her "total remuneration" for her role as a Senior Scientist at [REDACTED] in 2012 was INR 964,212. She asserts that "[i]n *Buletini v. INS*, 860 F. Supp. 1222 (1994), the court found that the beneficiary, an Albanian physician, who earned 'twice the average salary of other Albanian doctors' in Albania to qualify as sufficient evidence to meet this criterion." The Petitioner maintains that the AAO has affirmed the standard upheld in *Buletini* in our unpublished decisions.³ She states that the submitted salary surveys establish that her earnings in 2012 were approximately double the earnings of persons in her field in India, even when compared to salaries reported in 2018-2020.

After reviewing all the submitted evidence, we conclude that the Petitioner has not demonstrated that she satisfies the criterion at 8 C.F.R. § 204.5(h)(3)(ix). The Petitioner maintains that her "total remuneration" was INR 964,212 in 2012, but this figure does not appear on the Petitioner's Indian tax documentation or employer-issued tax planning document. The figure of INR 873,194 reported on the Petitioner's Indian Form No. 16, includes non-salary remuneration, such as rent and conveyance allowances and medical coverage payments. As noted, this figure also includes "gratuity receipts," a "superannuation allowance," and a "special allowance." The Petitioner's "basic pay" during the tax year in question was INR 29,992 which equates to an annual base salary of approximately INR 360,000.⁴

³ For example, she provides a copy of an unpublished decision issued in 2017, in which we noted that we did not contest the *Buletini* court's finding that USCIS "must intend that the salary of the [petitioner] be judged in relation to others who are in comparable circumstances."

⁴ The record reflects that the Petitioner last received her monthly "basic pay" from [REDACTED] in December 2012 and indicates that she relocated to the United States in January 2013. After she left the company, in February 2013, it appears that she was paid for leave (INR 101,973) and received a "gratuity receipts" payment of INR 149,962.

While it appears that other payments beyond her “basic pay” were included in the INR 620,926 figure reported on the Petitioner’s tax return for the 2013-14 year, it is unclear whether, or to what extent, the comparative salary surveys she provided from *Glassdoor*, *Payscale* and *Indeed* included non-salary income. None of these sources indicates that the figures reported reflect “total remuneration” paid to employees. To satisfy this criterion, the Petitioner must demonstrate that her salary is high or that her total “remuneration” is significantly high in relation to others. Demonstrating that her total remuneration is high compared to the average base salaries in the field does not suffice.

The information from *Payscale* indicates an “average salary” of INR 674,074 for an “analytical methods development scientist” as of 2018. The Petitioner’s basic salary for the 2012-13 year was lower than this figure, and no comparative data from 2012 has been provided. The income figure reported on her Indian tax return was closer to this 2018 “average salary,” but again, we cannot determine what types of employer payments, if any, beyond base salary were included in *Payscale*’s average figure. The Petitioner’s claim that she earned nearly double the average salary data reported by *Payscale* is not adequately supported by the record.

We have also reviewed the average monthly salary information for the occupations of “analytical chemist” and “sr. analytical chemist” provided by *Indeed.com*. Assuming that the figures provided by *Indeed* are base salary figures, we acknowledge that the Petitioner’s basic monthly salary of INR 29,992 was higher than the average figures reported for an analytical chemist (INR 20,663) and for a senior analytical chemist (INR 17,628). However, the same survey reports a high salary of INR 51,000 for the analytical chemist position, which is significantly higher than the Petitioner’s documented base salary. There is insufficient evidence to establish that her salary was high, or that her total remuneration was significantly high, when compared to others employed as senior scientists during the relevant period. An above-average salary does not necessarily equate to a “high salary” for purposes of satisfying this criterion.

Finally, the information the Petitioner provided from *Glassdoor* indicates that “average base pay” for an analytical chemist in India (as of 2020) is INR 574,367 and the publisher indicates that it did not have sufficient information to provide a salary range that includes high salaries for this occupation. The publisher does not state that its “average base pay” figure includes non-salary compensation. The Petitioner’s base pay in 2012 was INR 360,000, which is lower than the figure reported by *Glassdoor*. The information provided from this source does not allow us to compare the Petitioner’s 2012 base pay or total remuneration to that of others working in her occupation in India during the same time period.

Therefore, for the reasons discussed above, the Petitioner has not demonstrated that she has commanded a high salary, or other significantly high remuneration, in relation to others in her field.

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. Here, the Petitioner has not shown that the significance and recognition 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 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).

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.

ORDER: The appeal is dismissed.