



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

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

In Re: 10894857

Date: MAR. 3, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, an art director and photographer, seeks classification as an alien of extraordinary ability.<sup>1</sup> 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 Nebraska Service Center Director denied the Form I-140, Immigrant Petition for Alien Workers, concluding that the record did not establish that the Petitioner had a major, internationally recognized award, nor did it demonstrate that she met at least three of the ten regulatory criteria. The matter is now before us on appeal. The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence.<sup>2</sup> We review the questions in this matter *de novo*.<sup>3</sup> 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.

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<sup>1</sup> See Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A).

<sup>2</sup> Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010).

<sup>3</sup> See *Matter of Christo's Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015).

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.”<sup>4</sup> 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).

## II. ANALYSIS

The Petitioner received her degree in photography from [redacted] College of Art and Design and currently serves as an art director and photographer working on various projects in the United States on her O-1 nonimmigrant visa.

### 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 six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services

The Director found that the Petitioner met the criteria relating to prizes or awards and the display of the alien’s work, but that she had not satisfied the criteria associated with published material, judging, leading or critical role, and high salary or remuneration. On appeal, the Petitioner maintains that she meets each of the criteria in which the Director found in the negative. After reviewing all of the evidence in the record, we agree with the Director that the Petitioner has satisfied the awards and

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<sup>4</sup> 8 C.F.R. § 204.5(h)(2).

display criteria. Additionally, we conclude that she has also satisfied the judging as well as the published material requirements.

*Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).*

The Petitioner provided several articles about her and relating to her work. The Director determined that the Petitioner did not meet the requirements of this criterion. However, the record supports the Petitioner's eligibility claims related to this requirement because she provided a [redacted] 2018 article from *InStyle Magazine* discussing her and her work in the field. The record also contains circulation statistics from Comscore demonstrating this publication, during the time frame the Petitioner's article appeared in the magazine, qualifies as major media. The Director appears to have mistaken these publication statistics to have originated from *InStyle Magazine* itself. As a result, the Petitioner has satisfied this criterion's requirements.

*Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv).*

The Director determined that the Petitioner did not meet the requirements of this criterion. The Director indicated that some of the material lacked complete translations and discussed various shortcomings with the quality of her judging experience. However, we note that the Petitioner provided emails that did not require any translation that indicated she had judged three competitions, as well as one publication listing her as one of the jury of judges. This sufficiently demonstrates that the Petitioner satisfied the basic elements of this criterion's requirements.

Our above analysis comprises all the criteria that the Petitioner satisfied within part one of this two-step adjudicative process. As she has met the initial evidence requirements of at least three criteria, it is unnecessary that we discuss any additional eligibility claims relating to the regulatory provisions at 8 C.F.R. § 204.5(h)(3)(i)–(x).

## B. Final Merits Determination

As the Petitioner has 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 her successes are sufficient to demonstrate that she has extraordinary ability in the field of endeavor.<sup>5</sup> In this matter, we determine that the Petitioner has not shown her eligibility.

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<sup>5</sup> 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. See also U.S. Citizenship and Immigration Services (USCIS) Policy Memorandum PM 602-0005.1, *Evaluation of Evidence*

The Petitioner is an art director and photographer based in [REDACTED]. She attained her Master of Fine Arts in photography and has worked as a photographer and a writer. Her career began as a freelance photographer and she published her first photo book in 2016. As indicated above, the Petitioner garnered awards, received press coverage, judged others, and displayed her work. The record, however, does not demonstrate that her personal and professional achievements rise to a level of a “career of acclaimed work in the field” as contemplated by Congress.<sup>6</sup>

The Petitioner provided evidence of three awards that satisfied the prizes or awards criterion. Those included a 2018 gold prize at the [REDACTED] competition. The Petitioner achieved this accolade while competing against other professionals in the [REDACTED] category. She also earned a third-place finish in the 2013 version of this competition as a [REDACTED]. The Petitioner did not show the prestige or level of recognition that this competition enjoys. The Petitioner also made a notable third-place finish at the 2015 [REDACTED] Photography Awards, and she finished in second place at the 2015 [REDACTED] Awards. The only material relating to the prestige of these competitions were from a regional version of GQ Magazine in Taiwan, self-promotional claims made within documentation from the competition itself, or from one lesser-known website, photocompetitions.com.<sup>7</sup> The Petitioner also received several honorable mentions at other various photography competitions. It is not apparent that the Petitioner has demonstrated sustained acclaim at the requisite national or international level. She has not shown that her achievements received significant attention and as a result, has not demonstrated her prizes and awards are commensurate with those among the top of her field.

Regarding media coverage, the Petitioner offered material from several organizations relating to her and her work. Although two notable articles covered her and discussed her work, the Petitioner did not demonstrate that such press coverage is consistent with the sustained national or international acclaim necessary for this highly restrictive classification.<sup>8</sup> Much of the remaining material was from local media stations without demonstrating the significance of the program or the radio or television station.<sup>9</sup> She also provided work from other regional media with similar shortcomings. Further, the Petitioner did not offer material from entities serving similar localities or a similar intended audience for us to compare to her localized media coverage, which is required by USCIS policy.<sup>10</sup>

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*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) (Policy Memo), <https://www.uscis.gov/legal-resources/policy-memoranda> (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 of the immigrant classification).*

<sup>6</sup> H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

<sup>7</sup> Even though the Petitioner did not present this evidence for consideration under the prizes or awards category, we observe that she provided the circulation statistics for GQ Taiwan for 2019. We reiterate that the article discussing her [REDACTED] Photography Award was published in 2015. The Petitioner has not demonstrated this publication’s circulation statistics from 2019 should apply to the article discussing her 2015 in an attempt to demonstrate national or international recognition relating to the competition’s prestige or to her award’s recognition.

<sup>8</sup> See section 203(b)(1)(A) of the Act.

<sup>9</sup> Although the Petitioner claimed she was featured in an interview that appeared on [REDACTED] (the mobile application and news aggregator developed by [REDACTED]), the record did not support this claim as she only provided pictures with a foreign language embedded within the picture and an accompanying translation. She did not show that this material appeared on [REDACTED].

<sup>10</sup> Policy Memo at 7 (noting that published material evidence should establish that the circulation is high compared to other circulation statistics and should demonstrate the publication’s intended audience).

Additionally, the Petitioner has not shown that audience or viewer figures for a media outlet from several years after a piece about her was published should represent that organization's same audience from years earlier.<sup>11</sup> Moreover, the Petitioner presented circulation statistics for some parent organizations, rather than the entity that actually published material about her without explaining why we should recognize the parent's circulation as the subordinate entity's figures.<sup>12</sup> Ultimately, she did not show how her overall media coverage was indicative of a level of success being among that small percentage who has risen to the very top of the field of endeavor.<sup>13</sup> Thus, the Petitioner did not establish that the media reporting on her and her activities reflected a career of acclaimed work in the field.<sup>14</sup>

Although we did not agree with the Director as it relates to the Petitioner's judging experience under the criterion at 8 C.F.R. § 204.5(h)(3)(iv), it does not appear that she has met the high standard of this classification in this final merits determination. While the focus of the Director's analysis under the individual criterion did not apply at that stage of the adjudication, much of it is applicable here and the weaknesses the Director identified appear to establish that the Petitioner's record of judging falls short of the expectations associated with this highly restrictive visa classification. We note that much of the evidence under this category was in a foreign language and, as the Director noted, it wasn't accompanied by translations as required by the regulation at 8 C.F.R. § 103.2(b)(3) and the Petitioner has not remedied that on appeal.

Within the appeal, the Petitioner claims that she judged the work of professional-level photographers. The record does not bear out what level of candidates the Petitioner judged other than to reflect that she judged material from "a selection of international photographers . . . ." The Petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of the Beneficiary's national or international acclaim. *See Kazarian*, 596 F.3d at 1122. Her experience consists of one competition limited to photographers utilizing a certain type of phone camera (i.e., an  smartphone), and two competitions from "a selection of international photographers" at an unspecified career level. Without evidence that sets her apart from others in her field, such as evidence that she has a consistent history of reviewing or judging recognized, acclaimed individuals in her field, the Petitioner has not shown that her judging experience places her among that small percentage who has risen to the very top of the field of endeavor.<sup>15</sup>

As noted above, the Petitioner provided evidence satisfying the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). As it is expected that a photographer, such as the Petitioner, would show her work at exhibitions and other events, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this highly restrictive classification. We will consider the prestige of both the venues and the exhibitions in which she participated. Although the Petitioner's work was displayed at a

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<sup>11</sup> This applies to following media outlets where the publication or entity published material about the Petitioner several years before the circulation statistics she provided: *Gacha Magazine*; *TVBS News*; *Art Trade Journal*; *IPPA Apple Daily*; and *FLiPERmag.com*.

<sup>12</sup> For *Global Views Monthly Magazine* and *Gacha Magazine* the Petitioner only provided statistics for the parent entity, and not for these two publications.

<sup>13</sup> See 8 C.F.R. § 204.5(h)(2).

<sup>14</sup> See H.R. Rep. No. 101-723 at 59 and 56 Fed. Reg. at 30703, 30704 (July 5, 1991).

<sup>15</sup> See 8 C.F.R. § 204.5(h)(2) and 56 Fed. Reg. at 30704.

few intermediate venues, her showings largely consisted of small and local events. She did not establish that these are considered prestigious or popular settings, or that her exhibitions garnered attention in a manner consistent with sustained national or international acclaim. Further, the Petitioner did not demonstrate that her performances brought praise from critics, drew notable crowds, or raised attendance. Without evidence distinguishing the Petitioner's shows from others in her field, she has not shown that she "is one of that small percentage who [has] risen to the very top of the field of endeavor."<sup>16</sup>

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the Petitioner presented three organizations, but failed to demonstrate that she: (1) performed in a leading or critical role for every organization, and (2) that each entity enjoyed a distinguished reputation. Although [redacted] has a distinguished reputation, the Petitioner did not show that she performed in a qualifying role for this organization as a whole versus for a smaller entity within the company. To illustrate, within the initial filing the Petitioner stated that "she was essential to the success of the [redacted] [sic] [redacted] campaigns. As a result of her photography for this campaign, the social media page gained hundreds of new followers and provided the company with more exposure."

The Petitioner has not illustrated how playing a part in an advertisement campaign for a line of smartphones is impactful on an entire organization that is a multinational computer hardware and consumer electronics company. Nor has she substantiated how this accomplishment shows that she has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor. On appeal, the Petitioner argues that her leading or critical role does not have to be for the distinguished organization as a whole. First, this position is contrary to multiple federal court decisions on this topic.<sup>17</sup> Additionally, performing in a role for a subordinate entity that itself does not enjoy a distinguished reputation falls short of the high standard applicable when considering whether the Petitioner is among those at the top of her field of endeavor.

In addition to [redacted], the Petitioner claims the role she performed for [redacted]. This entity began as an art gallery in 2010 and expanded into design furniture specializing in [redacted] design. The correspondence from this organization primarily discussed how the Petitioner performed in important roles for the business but does not demonstrate that the organization has a distinguished reputation. The Petitioner only offered articles that discussed her work being displayed at this organization, but none that establish this entity is marked by eminence, distinction, or excellence.<sup>18</sup> Performing in a leading or critical role for an organization that does not itself have a distinguished reputation does not substantiate her sustained national or international acclaim.

Similarly, the Petitioner offered letters from [redacted] a cosmetic company started in 2015. The letters from this entity also do not establish that this organization is marked by eminence, distinction, or excellence. The correspondence from [redacted] the company's founder, repeatedly mentions their great reputation, but did not explain how they attained that reputation since their founding in 2015 other than through financial success. The Petitioner has not demonstrated that this organization's unsubstantiated level of financial success should be considered to have earned it a distinguish reputation. The

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<sup>16</sup> See 8 C.F.R. § 204.5(h)(2).

<sup>17</sup> Evidence relating to this requirement must provide specifics relating to how the Petitioner's role was critical to the organization as a whole. *Strategati, LLC v. Sessions*, No. 3:18-CV-01200-H-AGS, 2019 WL 2330181, at \*7 (S.D. Cal. May 31, 2019); *Noroozi v. Napolitano*, 905 F. Supp. 2d 535, 545 (S.D.N.Y. 2012).

<sup>18</sup> Policy Memo, *supra* at 10–11.

documentation the Petitioner submitted does not indicate that she is one of that small percentage who have risen to the very top of her field.

Finally, we turn to whether the record reflects the Petitioner has earned a high salary or other significantly high remuneration consistent with this restrictive visa classification. First, we note the Petitioner provided compensation figures for two currencies; U.S. dollars and Taiwan dollars. She only demonstrated that she earned compensation in the form of Taiwan dollars through her translated Taiwanese income tax returns. USCIS policy provides that “[a]liens working in different countries should be evaluated based on the wage statistics or comparable evidence in that country, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.” We note that the Petitioner did not offer any material relating to salaries or remuneration for art directors or photographers in Taiwan. Consequently, the Petitioner’s comparisons to earnings data for the United States is not in compliance with agency policy.

Alternatively, we note a statement within a letter from the Taiwanese company [redacted], that they paid the Petitioner 200 U.S. dollars per hour for her work, and this was significantly higher than the average hourly wage for the Art Directors profile found in the Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook*. The Petitioner has not shown that this one instance of hourly earnings should equate to that same wage allocated at an annual rate. We do not extrapolate this one instance of eight hours of work (resulting in 50,000 Taiwan dollars on the Petitioner’s 2016 income tax returns, or approximately \$1,621 in U.S. currency) to an equivalent annual salary. And even if we were to make such a presumption, one instance of being well-paid for work in the field is not representative of sustained acclaim on a national or international level. The Petitioner has not provided information that establishes her earnings as reflective “of that small percentage who have risen to the very top of the field of endeavor.”

In summary, the Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard.<sup>19</sup> The Petitioner’s evidence confirms that she has received attention from those in her field. However, considering the full measure of the Petitioner’s ability and achievements, the level of her national or international acclaim and the extent to which her achievements have been recognized in the field are not indicative of a record of sustained acclaim. Also, she has not submitted extensive documentation exhibiting she has attained a level of expertise placing her among that small percentage that has risen to the very top of the field of endeavor.

### III. CONCLUSION

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. In visa petition proceedings, it is a petitioner’s burden to establish eligibility for the immigration benefit sought. The Petitioner has not met that burden here.

**ORDER:** The appeal is dismissed.

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<sup>19</sup> *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994).