



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

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

In Re: 31260820

Date: JUL. 16, 2024

Appeal of Nebraska Service Center Decision

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

The Petitioner, a fashion and lifestyle blogger, 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 initially denied the petition and subsequently affirmed his decision on motion, concluding that the record did not establish that the Petitioner satisfied the initial evidence requirements for this classification by demonstrating her receipt of a major, internationally recognized award or by submitting evidence to satisfy at least three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). Specifically, the Director determined that the evidence demonstrates the Petitioner met only one of the initial evidentiary criteria, performance in leading or critical roles at 8 C.F.R. § 204.5(h)(3)(viii). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

On appeal, the Petitioner submits a brief and argues that the Director erred in finding she did not satisfy an additional eight criteria related to lesser awards; membership; published material; judging; original contributions; display; high salary; and commercial successes. She asserts that the Director did not fully consider all the documentation submitted, including “articles about the Petitioner and other published material, recommendation letters, bank statements, tax declarations, etc.”

We adopt and affirm the Director’s decision with the comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been “universally accepted by every other circuit that has squarely confronted the issue”); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as long as they give “individualized consideration” to the case).

As a preliminary matter, the Petitioner contends that the Director “failed to acknowledge that she is specifically an LGBT blogger, which sets her apart from other bloggers and establishes her as an extraordinary individual de facto.” Again, the Petitioner seeks classification as a blogger in the fields of fashion and lifestyle. The Director did not limit the Petitioner’s field of expertise to lifestyle and fashion blogging for members of the LGBT community. To hold otherwise would render meaningless the requirement that an individual be among the small percentage of the very top of their field by allowing a petitioner to narrow their field until they rank among the top of a small group in that “field.” *See Buletini v. INS*, 860 F.Supp. 1222, 1229 (E.D. Mich. 1994) (finding that the individual’s field was medical science rather than nephrology). Thus, the Director correctly evaluated the documentation as it pertains to the Petitioner’s field of expertise as a fashion and lifestyle blogger.

In relation to lesser nationally or internationally recognized prizes or awards at 8 C.F.R. § 204.5(h)(3)(i), the Petitioner contends the record does not support the Director’s conclusions regarding the [redacted] award and the YouTube Silver Creator award.¹ The Director determined that although materials from YouTube’s parent company, Google, provide some information regarding the selection process for the award, the record does not sufficiently establish that the YouTube Silver Creator Award received in 2018 by the Petitioner’s YouTube channel [redacted] is recognized nationally or internationally for excellence in the field of fashion or lifestyle blogging. Rather, the Director noted the documentation shows that YouTube channel owners “apply” for a Creator Award once they reach predetermined subscriber milestones such as 100,000 (Silver), 1 million (Gold), 10 million (Diamond), and 100 million (Red Diamond). In addition, the Director noted the record indicated that [redacted] was one of 24,000 channels that received the award, and over 300,000 channels eligible for it.² Further, the record does not show that YouTube Silver Creator award winners receive a level of media coverage associated with a nationally or internationally recognized award in the field.

Regarding the [redacted] award, the Director determined that documentation from [redacted] shows that the Petitioner received the award in 2018. Further, the Petitioner provided materials indicating that some media coverage, such as press releases on the online platforms vk.com and Facebook.com, reported on the background, nominees, and winners of the award. Although she demonstrated her receipt of a [redacted] Award, the Petitioner did not show that the field of fashion and lifestyle blogging recognizes her [redacted] Award as a national or international award for excellence. The presented evidence, for instance, does not discuss or acknowledge her field’s view of receiving a [redacted] Award to reflect its national or international recognition for excellence.

¹ The Petitioner previously claimed that she also meets this criterion based on her having been selected by www [redacted] as one of the “TOP of the best bloggers in Russia” according to her Instagram account rating, and her receipt of a “verified badge” from Instagram. On appeal, the Petitioner claims eligibility based on the two awards mentioned above and does not address these additional two awards.

² *See generally 6 USCIS Policy Manual F.2(B)(1)*, <https://www.uscis.gov/policy-manual> (noting that relevant considerations regarding whether the basis for granting a prize or award was excellence in the field include: the criteria used to grant the awards or prizes; the national or international significance of the awards or prizes in the field; and the number of awardees or prize recipients as well as any limitations on competitors).

Pertaining to membership in associations at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner maintains that she meets this criterion based on membership with Psychology for Human Rights (PHR), the Russian LGBT Network (RLN), and as an honorary member of the National Association of Bloggers (NAB). As the Petitioner acknowledges, the record describes PHR and RLN as LGBT rights organizations. Therefore, the Director concluded that the Petitioner's claimed membership in these organizations was not "membership in associations in the field for which classification is sought," which is fashion and lifestyle blogging. Further, the Director concluded that counsel's assertions that PHR and RLN "grant membership only to those bloggers who have a substantial following base on Instagram and who belong to the LGBT community" were not supported by a letter from O-R-, a representative of both organizations.

Regarding NAB, the Petitioner submitted the association's bylaws reflecting that an honorary member of the association "can be recognized as a blogger recognized by the Council of the Association as exclusive in terms of content or artistic content of the blog content and/or for special services to the Association, the blogosphere or the audience." The Director determined that the Petitioner did not demonstrate how "being 'recognized' by the Council based on 'content' or 'special services to the Association' or greater community" reflects outstanding achievements consistent with this regulatory criterion. In addition, the NAB bylaws do not indicate that membership in the association requires outstanding achievements as judged by national or international experts in the field. Further, the Director noted that although a letter from O-B- indicates that NAB requires such factors as "a high level of recognition in the field of blogging," "the highest popularity and engagement rates in the industry and their area of expertise," and "whether the influence they have will or did potentially change the world for better," these statements are broad and are not corroborated by any supporting evidence regarding NAB or its membership requirements. For the reasons the Director already explained, the Petitioner has not established eligibility under this criterion.

Regarding 8 C.F.R. § 204.5(h)(3)(iii), related to published material about the Petitioner in trade publications or other major media, the Petitioner maintains that she meets this criterion based on a 2021 article published by howtogreen.ru.³ While the Director determined that this article is about the Petitioner and her work as a fashion and lifestyle blogger, the Petitioner did not demonstrate that howtogreen.ru is a professional or major trade publication or other major medium, such as through circulation statistics or other relevant data. The Petitioner seeks to rely on information from SimilarWeb, which indicates that howtogreen.ru has a ranking of 4,166 in the "Books and Literature" category in Russia. The Director found that the Petitioner did not explain the significance of the ranking and how such data supports a determination, as claimed, that this website qualifies as a "major trade publication" or "major media," by having a high circulation or distribution relative to other online publications.⁴ Therefore, the Director found that the article does not meet all requirements for the published materials criterion. The Petitioner has not overcome the deficiencies the Director identified under this criterion. While the Petitioner urges she has shown that howtogreen.ru has 118K followers

³ The Petitioner previously claimed that she also meets this criterion based on articles published by Oops.ru, Knife.media, SRSLY, NOZH, Wonderzine, Calvert Journal, and AVIASALES. On appeal, the Petitioner claims eligibility based on the howtogreen.ru article mentioned above and does not address any other publications.

⁴ See generally 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (providing that in evaluating whether a submitted publication is a professional publication, major trade publication, or other major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media)).

on Instagram, the Petitioner does not demonstrate the significance or relevance of this number to establish the major status of the website.

Regarding the judging criterion at 8 C.F.R. 204.5(h)(3)(iv), the Petitioner's response to the Director's request for evidence (RFE) provided a letter dated November 22, 2021, from T-B-, the organizer of the Top Blog competition, that states the Petitioner participated as a judge of "the semi-finals and the final round" of the Top Blog competition on [REDACTED] 2021. In the denial decision, the Director noted that the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). As she filed her petition in October 2021, the Petitioner did not demonstrate that her judging occurred prior to or at the time of her initial filing. Later, on motion, the Petitioner submitted an additional letter from T-B- asserting that the Petitioner's participation as a judge "actually commenced in [REDACTED] 2021" during "this initial phase of the competition," and "[i]n [REDACTED] the semi-final round of the competition . . . she contributed to the selection process. . . ."

The Director found insufficient evidence to establish that the Petitioner actually participated as a judge in the competition. The Director found that there is an unexplained inconsistency between T-B-'s initial statement that the Petitioner served as a judge for one day in [REDACTED] 2021, and his second letter that indicates she served as a judge for unidentified dates in [REDACTED] and [REDACTED] 2021. The record does not contain sufficient evidence from the competition's organizer clarifying in what stage or stages the Petitioner participated as a judge. For these reasons, the Director found T-B-'s letters alone are insufficient to verify the Petitioner's participation as a judge in the competition, and she has not established that she meets this criterion.

Pertaining to original contributions of major significance at 8 C.F.R. § 204.5(h)(3)(v), in his motion decision, the Director found that although the Petitioner's creation of unique hashtags (# [REDACTED] and # [REDACTED]) was an original contribution, simply making contributions is not sufficient to meet this criterion unless the Petitioner shows those contributions have been majorly significant in the field.⁵ The Director determined that letters and license agreements from four Instagram bloggers who used those hashtags do not demonstrate that her work has remarkably impacted or influenced the field. The Director acknowledged that contributions that "attracted significant attention or commercialization may establish the significance of the person's original contribution to the field."⁶ Although the authors of the letters indicated how much they valued those licenses, the Director determined that evidence of four license agreements did not reflect significant attention or commercialization of the Petitioner's contributions.⁷ The Petitioner did not show the impact of her contributions extended beyond those licensees who received financial benefits from her work to constitute a contribution of major significance in the overall field.

⁵ *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1) (evidence that the person's work was funded, patented, or published while potentially demonstrating the work's originality, will not necessarily establish, on its own, that the work is of major significance in the field).

⁶ *Id.*

⁷ The Petitioner previously claimed that she also meets this criterion based on business agreements with several brands to create user generated content for advertisements. On appeal, the Petitioner claims eligibility based on license agreements with four Instagram bloggers and does address any other business agreements.

In relation to the display of her work at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vii), the Petitioner did not claim to meet this criterion within her initial submission or her RFE response. On motion, she claimed to satisfy this criterion based on publishing articles and videos on Instagram's and YouTube's social media accounts. However, the Director determined that the Petitioner did not demonstrate that any of these instances involves displaying her work products at artistic venues consistent with this regulatory criterion.

Regarding 8 C.F.R. § 204.5(h)(3)(ix), related to high salary, the Petitioner provided a letter from her accountant and a bank statement showing that for the first nine months in 2021 (prior to the time of filing in October 2021) she received 7,060,590 RUB for her services as a blogger in Russia.⁸ In addition, the Petitioner submitted materials from rbc.com that indicate that "on average" Russian bloggers earn between 200,000 and 650,000 RUB monthly, or between 2,400,000 and 7,800,000 RUB annually. Further, materials she provided from perfluence.net indicate that bloggers in Russia receive between 1,000,000 to 150,000,000 RUB annually. Therefore, the evidence show that the Petitioner's 2021 earnings were above the average salary reported by rbc.com, but well below the high salary reported by perfluence.net. Therefore, the Director concluded that based on the documentation submitted the Petitioner had not established that she commanded a high salary in relation to others in the field based on her earnings in Russia.

Pertaining to the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x), on appeal, the Petitioner maintains she meets this criterion based upon evidence that her YouTube channel "generated \$26,510.28 for the period from January 26, 2023, to April 25, 2023." We note that the Petitioner has not established that her YouTube channel's claimed earnings establish eligibility at the time of filing her petition in October 2021. *See* 8 C.F.R. §103.2(b)(1). Nonetheless, the Director concluded that, even assuming that her occupation were within the field of the performing arts, the record does not include sufficient evidence of the sales associated with the Petitioner's blogging accounts/channels, and no evidence was provided identifying the Petitioner as having commercial successes relative to other performing artists.

Finally, the Director noted that the Petitioner's motion filing contained a heading entitled, in part, "Comparable Evidence." The motion was accompanied by a narrative of the Petitioner's acclaim in the field and articles that mention that her Instagram account discusses LGBT life in Russia. The regulatory provision at 8 C.F.R. § 204.5(h)(4) provides petitioners the opportunity to submit comparable evidence to establish their eligibility, if it is determined that the evidentiary criteria described in the regulations do not readily apply to their occupation. When evaluating such comparable evidence, officers must consider whether the regulatory criteria are readily applicable to the petitioner's occupation and, if not, whether the evidence provided is truly comparable to the criteria listed in that regulation. Here, the Director found that the Petitioner submitted a declaration and articles without explaining which criterion or criteria do not apply to her occupation, and how the documentation is comparable in meeting a particular criterion or criteria. For these reasons, the Petitioner did not demonstrate the documentation submitted qualifies for the comparable evidence provision.

⁸ The Petitioner also provided evidence of earnings for 2022 and 2023. However, because this criterion requires evidence that she "has commanded" a high salary in the past, the Petitioner must establish eligibility at the time of filing (October 2021) in accordance with 8 C.F.R. §103.2(b)(1) and we have evaluated evidence that pre-dates the filing of the petition.

The Petitioner does not provide any new evidence or arguments which overcome the Director's determination regarding the above criteria. The Petitioner's appellate brief lists or references the same documentation and makes the identical arguments it presented in response to the Director's RFE, and on motion in response to the Director's denial decision. In fact, the Director's motion decision discussed the submitted evidence, addressed the arguments, and explained how the evidence did not show that the Petitioner satisfied the criteria relating to lesser awards; membership; published material; judging; original contributions; display; high salary; and commercial successes. The Petitioner does not explain how the Director erred as a matter of law, statement of fact, or evaluation of the evidence in any of his findings regarding the above criteria. Accordingly, for the reasons the Director discussed, and those explained above, the Petitioner did not demonstrate that she meets at least three criteria.

ORDER: The appeal is dismissed.