U.S. Citizenship and Immigration Services

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

In Re: 43546559

Date: JULY 22, 2026

Appeal of U.S. Citizenship and Immigration Services (USCIS) Decision

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

The Petitioner – a photographer, visual strategist, and editor – requests classification under the employment-based, first-preference (EB-1) immigrant visa category as an alien with "extraordinary ability." *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). Petitioners for U.S. permanent residence in this category must demonstrate "sustained national or international acclaim" and extensively document recognition of their achievements in their fields. Section 203(b)(1)(A)(i) of the Act.

U.S. Citizenship and Immigration Services (USCIS) denied the petition. The Acting Associate Director of Service Center Operations found that the Petitioner met the initial evidentiary requirements of the requested immigrant visa category. But, in a final merits determination, the Director concluded that the Petitioner did not demonstrate her receipt of sufficient acclaim and recognition to establish her purported extraordinary ability. On appeal, the Petitioner contends that the Director mischaracterized her field, imposed unwritten requirements, and did not assess the evidence cumulatively.

The Petitioner bears the burden of demonstrating eligibility for the requested benefit by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Exercising de novo appellate review, *see Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015), we conclude that, although she points out potential flaws in the Director's decision, she has not established her claimed place among the small percentage at her field's very top. We will therefore dismiss the appeal.

## I. LAW

To qualify for the requested immigrant visa category, a petitioner must demonstrate that they:

- Have "extraordinary ability" in the sciences, arts, education, business, or athletics;
- Seek to continue work in their field of expertise in the United States; and
- Would substantially benefit the country as a permanent resident.

Section 203(b)(1)(A)(i-iii) of the Act.

The term "extraordinary ability" means expertise commensurate with "one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Unless a petitioner received "a major, international recognized award," they must satisfy at least three of ten initial evidentiary criteria. 8 C.F.R. § 204.5(h)(3).[1] If a petitioner meets either evidentiary standard and the requirements at sections 203(b)(1)(A)(ii), (iii) of the Act, USCIS must then make a final merits determination. To merit final approval, the record – as a whole – must establish a petitioner's receipt of "sustained national or international acclaim" and recognized achievements placing them among the small percentage at their field's very top. *See Kazarian v. USCIS*, 596 F.3d 1115, 1119-20 (implementing a two-step analysis of I-140A petitions); *see generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual.

## II. ANALYSIS

### A. The Petitioner and Her Field

The record shows that the Petitioner, a Ukrainian native and citizen, has had a varied career. She has served as editor-in-chief of a variety of publications, including inflight magazines for Ukrainian airlines and a children's magazine. She also headed visual storytelling for a creative agency and was a lead photographer for a fashion designer. International magazines have published her photos; she authored a book; and she even co-founded a hotel.

The record supports the Director's findings that the Petitioner successfully submitted evidence of her:

- Receipt of nationally or internationally recognized awards for excellence in her field;
- Membership in associations in her field requiring outstanding achievements of their members as judged by experts;
- Appearance in published materials about her and her work;
- Participation as a judge of others' work in her or an allied field;
- Authorship of scholarly articles in her field; and
- Performance in a leading or critical role for distinguished organizations.

*See* 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (vi), (viii).

On appeal, the Petitioner also claims that she provided evidence of original contributions of major significance in her field and display of her work at artistic exhibitions or showcases. *See* 8 C.F.R. § 204.5(h)(3)(v), (vii). But, because she has already met the requisite number of evidentiary requirements, we need not consider whether she satisfied the additional claimed criteria. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies need not make "purely advisory findings" on issues unnecessary to their ultimate decisions). We will, however, consider her evidence in the two additional categories when we review the Director's final merits determination. *See* 6 *USCIS Policy Manual* F.2(B)(2) (requiring USCIS to consider, in the aggregate, any potentially

[1] If an evidentiary criterion does not "readily apply" to a petitioner's occupation, they may submit "comparable evidence" to establish eligibility. 8 C.F.R. § 204.5(h)(4).

relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence).

B. The Final Merits Determination

To establish eligibility, the Petitioner must demonstrate her receipt of sustained national or international acclaim and recognition of her achievements in her field sufficient to show that she is one of that small percentage who has risen to her field's very top. *See generally* 6 *USCIS Policy Manual* F.2(B)(2). Congress intended classification as an alien with extraordinary ability to reflect a "career of acclaimed work in the field." *See* H.R. Rep. No. 101-723, at 59 (Sept. 19, 1990).

Under USCIS policy:

> [t]he petitioner must provide sufficient context … to establish the person's extraordinary ability in the totality of the circumstances. This means that the petitioner must explain the significance of the submitted evidence, and how it demonstrates that the person has achieved sustained national or international acclaim and recognition in their field of expertise.

6 *USCIS Policy Manual* F.2(B)(2). As previously indicated, we must consider, in the aggregate, any potentially relevant evidence of record, even if it does not fit one of the regulatory criteria or was not presented as comparable evidence. *Id.*

1. Awards

The Petitioner submitted evidence that some of her photographs won 2025 honorable mention awards at national and international photo contests. Also, the record shows that, in 2019, an international magazine chose one of her photographs as its "photo of the week."

On appeal, the Petitioner contends that the Director improperly narrowed the Petitioner's stated field of expertise from photography, visual strategy, and editing to only visual strategy. She claims that the Director "used that truncated definition to discount the Petitioner's conceded 2025 … international photography awards." The Director found that "[t]hese awards alone do not demonstrate that the petitioner is at the top of the visual strategy field."

The Petitioner argues that a federal court rejected a similar narrowing of an EB-1 petitioner's field from medical science to nephrology research. *See Buletini v. INS*, 860 F. Supp. 1222, 1229-30 (E.D. Mich. 1994). She states: "Excising 'photography' and 'editing' from that defined field to discount her conceded 2025 awards is an abuse of discretion under *Buletini*."

*Buletini* is a U.S. district court decision. It therefore does not bind us in this matter. *See Trump v. CASA, Inc.*, 606 U.S. 831, 858 n.17 (2025) ("[D]istrict court opinions lack precedential force even vis-à-vis other judges in the same judicial district.") Also, on the Form I-140, Immigrant Petition for Alien Workers, the Petitioner herself listed her "occupation" and "job title" as "visual strategist," without mentioning photography or editing.

Further, the record does not sufficiently demonstrate that the Director discounted the Petitioner's awards for falling outside the visual strategy field. Immediately before the decision quotation cited above, the decision stated that "the evidence does not … establish that the petitioner is at the top of the field." Considering the context of the finding as a whole, we interpret the decision as discounting the Petitioner's awards because their number or quality did not reflect extraordinary ability in the field.

On that basis, the record supports the Director's finding. The Petitioner did not submit sufficient evidence to contextualize whether others near the top of her field have won similar awards. *See Hamal v. U.S. Dep't of Homeland Sec.*, No. CV 19-2534 (RC), 2021 WL 2338316, at *4 (D.D.C. June 8, 2021), *aff'd sub nom. Hamal v. United States Dep't of Homeland Sec.*, No. 21-5160, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) ("Because the record did not contextualize the awards received by Plaintiff throughout his career, it is entirely reasonable to conclude that the awards do not, without more," demonstrate his claimed extraordinary ability); *see generally* 6 *USCIS Policy Manual* F.2(B)(2) ("The petitioner must provide sufficient context … to establish the person's extraordinary ability in the totality of the circumstances.")

Even if the Director improperly discounted the Petitioner's awards for falling outside the visual strategy field, the error would be harmless because the record shows that she did not demonstrate that her awards reflect extraordinary ability even within the photography or editing fields. *See Kazarian*, 596 F.3d at 1122 (citation omitted) (finding that an "error 'clearly had no bearing' on either 'the procedure used or the substance of the decision reached.'"); *see generally Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

2. Memberships in Associations

The Petitioner provided evidence of her memberships in a photographic society, marketing association, and natural history museum. The record shows that, within the marketing association, she belongs to a "TOP Marketing Club" for members who have made significant contributions as vetted by an expert committee.

The record demonstrates that the memberships garnered the Petitioner some acclaim and recognition. But she has not demonstrated that they reflect someone among the small percentage at her field's very top. *See Hamal*, 2023 WL 1156801, at *3, *aff'd*, 2023 WL 1156801 ("[The Petitioner's evidence of membership …, while demonstrating his professional stature, … did not establish the exceptional level of distinction required for this extraordinary-ability visa.");*see also* 6 *USCIS Policy Manual* F.2(B)(2) ("[T]he petitioner must explain the significance of the submitted evidence.")

3. Published Material About the Petitioner

The Petitioner submitted copies of articles about her and her work at magazines. These articles generated some acclaim and recognition for her. But she has not demonstrated that this level of media attention reflects extraordinary ability in her field. *See Hamal*, 2021 WL 2338316, at *4, *aff'd*, 2023 WL 1156801 (affirming our determination "that Plaintiff failed to show that 'his press coverage is indicative of a level of success consistent with being' at the top of his field); *see also* 6 *USCIS Policy Manual* F.2(B)(2) ("The petitioner must provide sufficient context … to establish the person's extraordinary ability in the totality of the circumstances.")

4. Judge of Others' Work

The Petitioner provided copies of certificates and letters demonstrating that she served as a peer reviewer of others' articles for an educational sciences journal in 2025. She also submitted evidence that she previously worked at magazines as an editor-in-chief and editorial board member.

The Petitioner, however, has not established that her level of judging activities reflects someone among the small percentage at her field's very top. *See Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *23 (D. Neb. Sept. 12, 2025) (affirming USCIS' finding that "the petitioner has not shown how the beneficiary has judged to such an extent, or at a high enough level, that her judging surpasses the majority of the field and places her in the top echelons of [her field]."); *see also* 6 *USCIS Policy Manual* F.2(B)(2) ("[T]he petitioner must explain the significance of the submitted evidence.")

5. Original Contributions

The Petitioner submitted a variety of materials to demonstrate her original contributions to her field. The evidence included: magazine covers and pages featuring her photographs and travel articles; and promotional materials about her book. These original contributions generated some acclaim and recognition for her. But she has not established that they garnered her sufficient accolades to place her among the small percentage at her field's very top. *See Hamal*, 2021 WL 2338316, at *4, *aff'd*, 2023 WL 1156801 (affirming our finding that "the submitted evidence [of the Plaintiff's original contributions] did not show 'that [he] has significantly influenced the field'"); *see generally* 6 *USCIS Policy Manual* F.2(B)(2) ("The petitioner must provide sufficient context ... to establish the person's extraordinary ability in the totality of the circumstances.")

The Petitioner also submitted letters from former employers, professors who reviewed some of her writings, and an artist. The letters praise the Petitioner's work, but they do not demonstrate her claimed extraordinary ability in her field. The letters indicate that all their authors personally know the Petitioner. *See Mishra v. Richardson*, No. 120CV991LMBTCB, 2021 WL 1566071, at *3 (E.D. Va. Apr. 20, 2021) ("[I]t is generally expected that an individual whose accomplishments have garnered sustained national or international acclaim would have received recognition for his or her accomplishments well beyond the circle of his or her personal and professional acquaintances"); *see generally* 6 *USCIS Policy Manual* F.2(B)(3).

6. Authorship of Scholarly Articles

The Petitioner provided a copy of a scholarly article that she wrote in 2025 regarding photography as a way of preserving cultural heritage. She also submitted evidence of other writings, including her book and travel articles.

The Petitioner, however, has not demonstrated that these materials garnered her significant acclaim or recognition or generated citations from others in her field. *See Kazarian*, 596 F.3d at 1121 ("[O]ther authors' citations (or a lack thereof) might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor.")

7. Display of the Petitioner's Work at Artistic Exhibitions or Showcases

The Petitioner submitted evidence of the display of her photographs in magazines and at a gallery, church, and film festival. A letter also states that promotional banners for a 2020 film contained her visual work.

The record shows that these displays generated some acclaim and recognition for the Petitioner. But she has not demonstrated that the accolades reflect extraordinary ability in her field. *See Hamal*, 2023 WL 1156801, at *2 (affirming USCIS' finding that the petitioner did not demonstrate "that his plays brought praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the event;" *see generally* 6 *USCIS Policy Manual* F.2(B)(2) ("[T]he petitioner must explain the significance of the submitted evidence.")

8. Leading or Critical Role

The Petitioner provided evidence that she served as editor-in-chief of multiple magazines, head of visual strategy for a creative agency, and lead photographer for a fashion designer. Letters from the creative agency and fashion designer praise the Petitioner's performance in her roles.

The record shows that the Petitioner received some acclaim and recognition for these roles. But she has not explained how her work in these roles places her among the small percentage at her field's top. *See Hamal*, 2021 WL 2338316, at *4, *aff'd*, 2023 WL 1156801 (upholding USCIS's finding that "[the plaintiff] did not establish that his work ... has been recognized by the field as being significantly important or viewed as unusually influential."); *see generally* 6 *USCIS Policy Manual* F.2(B)(2) ("The petitioner must provide sufficient context ... to establish the person's extraordinary ability in the totality of the circumstances.")

The record identifies the Petitioner as a talented photographer, visual strategist, and editor who has made original contributions to her field. She met the requested category's initial evidentiary requirements and demonstrated her receipt of some acclaim and recognition. But, even considering the evidence in its entirety, the Petitioner has not established herself among the small percentage at her field's top.

9. The Petitioner's Other Arguments

The Petitioner contends that the Director improperly imposed a "recency requirement" on the Petitioner's activities. The Director's decision states: "Much of the petitioner's editorial, authorship, and leadership activity occurred several years ago and does not reflect recent, sustained activity at the highest level in the field." The Director also found that the Petitioner's roles for the creative agency and fashion designer "are not recent."

The Petitioner argues that the Director imposed requirements that neither the Act nor regulations state. Section 203(b)(1)(A)(i) of the Act requires a petitioner to demonstrate "sustained" acclaim. But the Petitioner contends that the acclaim must be "*maintained* over a period of time, not a perpetual, uninterrupted peak of activity *up to the date of filing*." (emphasis in original). The Petitioner cites a federal court case that rejected USCIS' findings expecting an EB-1 petitioner to have "continuously

received awards" or "kept up with that level of production." *See Mukherji v. Miller*, No. 4:24CV3170, 2026 WL 895708, at *9 (D. Neb. Jan. 28, 2026).

The Petitioner also argues that the decision's "recency rationale" is "internally inconsistent." She notes that the Director found that – in 2025, shortly before the petition's filing – she received photography awards, authored a scholarly article, and served as a peer reviewer of others' articles. Yet the Director also found that many of her activities "occurred several years ago." She asserts: "The same record cannot simultaneously support both findings."

Considering the evidence in the totality, however, the Petitioner has not demonstrated that she received acclaim and recognition sufficient to place her among the small percentage at her field's top. *See generally* 6 *USCIS Policy Manual* F.2(B)(2) ("The petitioner must provide sufficient context … to establish the person's extraordinary ability in the totality of the circumstances.") Thus, any errors that the Director made regarding the recency of the Petitioner's activities would be harmless. *See Kazarian*, 596 F.3d at 1122; *Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

The Petitioner also contends that the Director's final merits determination did not cumulatively weigh her evidence, but rather considered each evidentiary criterion "in isolation." She states: "This piecemeal assessment is not the FMD [final merits determination] that *Kazarian* contemplates. At step two, the adjudicator must evaluate 'the evidence in its entirety' and determine, by a preponderance, whether that cumulative showing establishes extraordinary ability." *See* 6 *USCIS Policy Manual* F.2(B)(2) ("In the second step of the analysis, the officer should consider the petition in its entirety.")

The record, however, does not support the Petitioner's contention that the Director failed to cumulatively weight the evidence. At the start of her final merits determination, the Director stated: "USCIS must now examine the evidence presented *in its entirety*." (emphasis added). At the end of the determination, she stated: "After a careful review and analysis of *all evidence within the record*, USCIS finds that the petitioner has not established eligibility for the benefit sought." (emphasis added).

We acknowledge that the Director organized her final merits determination by discussing the evidence in each individual criterion. But a U.S. circuit court of appeals has affirmed the validity of a final merits determination in that format. *See Amin v. Mayorkas*, 24 F.4th 383, 394 (5th Cir. 2022) ("The agency looked at each of the criteria Amin satisfied and explained why his accomplishments under each merited little weight in the overall assessment.") Thus, we find that the Director sufficiently considered the evidence in its entirety.

Even if the Director did not cumulatively consider the evidence, we have done so, and the Petitioner has not demonstrated her receipt of acclaim and recognition sufficient to place her among the small percentage at her field's top. Thus, the Director's error would be harmless. *See Kazarian*, 596 F.3d at 1122; *see generally Matter of O-R-E-*, 28 I&N Dec. at 336 n.5.

C. The Petitioner's Intent to Continue Work in Her Field in the United States

Although unaddressed by the Director, the Petitioner has not demonstrated her required intent to continue work in her field in the United States. An alien with extraordinary ability must demonstrate that they "seek[] to enter the United States to continue work in the area of extraordinary ability." Section 203(b)(1)(A)(ii) of the Act.

> [T]he petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

8 C.F.R. § 204.5(h)(5).

Contrary to the Act and regulation, the Petitioner did not submit evidence that she intends to continue work in her field in the United States. Counsel stated that "[t]he evidence demonstrates that [the Petitioner] intends to continue working in the United States in her area of expertise." But the submitted evidence of the Petitioner's recent U.S. activities falls short of establishing her intent to *continue* working here in her field. *See* 8 C.F.R. § 204.5(h)(5) ("[T]he petition must be accompanied by *clear evidence* that the alien is coming to the United States to *continue* work in the area of expertise.") (emphasis added).

The Director did not notify the Petitioner of this evidentiary deficiency or provide her with an opportunity to respond. We therefore do not base this decision on this deficiency. In any future filings in this matter, however, the Petitioner must submit statutory and regulatory required evidence of her intent to continue work in her field in the United States. *See* 8 C.F.R. § 204.5(h)(5).

Congress intended to set "a very high standard" for aliens of extraordinary ability, reserving this immigrant visa category "for that small percentage of aliens who have risen to the very top of their field of endeavor." Proposed Rule for Employment-Based Immigrants, 56 Fed. Reg. 30703, 30704 (July 5, 1991). Considering the evidence as a whole, the Petitioner has not established her claimed extraordinary ability in his field. *See Amin*, 24 F.4th at 386 ("[G]iven the lofty bar for extraordinary ability classifications, we cannot say that the agency acted arbitrarily when it determined that [a petitioner] was not 'extraordinary' but merely very good."); *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (holding that even athletes performing in their sports' premier leagues do not automatically meet the extraordinary ability standards).

## III. CONCLUSION

The Petitioner met the initial evidentiary requirements of the requested immigrant visa category. But she has not established acclaim and recognition sufficient to place her among the small percentage at her field's very top. We will therefore affirm the petition's denial.

**ORDER:** The appeal is dismissed.

**NOTICE:** This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.