U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43629392

Date: JUL. 22, 2026

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

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

The Petitioner seeks classification as an alien of extraordinary ability in business. *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.

USCIS denied the petition, concluding that the Petitioner provided inconsistent information and therefore her eligibility claims for this immigrant classification lacked credibility.[1] The matter is now before us on appeal pursuant to 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens with 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, provided that the alien seeks to enter the United States to continue work in the area of extraordinary ability, and 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 achievements in the field through a one-time achievement (that is, a

[1] Because of the inconsistent information, the decision stated that "USCIS suspends analysis" as to whether the Petitioner has fulfilled at least three of the ten initial evidentiary criteria set forth at 8 C.F.R. § 204.5(h)(3).

major, internationally recognized award) or 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) (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

A. Evidentiary Criteria

Because the Petitioner has not indicated or established receipt of 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 to have satisfied the criteria relating to awards, membership, published material, judging, original contributions, authorship, leading or critical role, and high salary. *See* 8 C.F.R. § 204.5(h)(3)(i) – (vi), (viii), and (ix). USCIS' decision, however, did not render a determination on whether the Petitioner's evidence meets at least three of the claimed criteria.

B. Inconsistences in the Record

In February 2026, USCIS issued as notice of intent to deny (NOID) informing the Petitioner of "inconsistencies" and a "lack of credibility" regarding the information and supporting documentation she submitted. USCIS' NOID stated:

> [The Petitioner's] claimed employment is declared to be with [redacted] also known as [redacted] and/or [redacted] Per the letters from the company's chief executive officer (CEO), A-S-, [the Petitioner] has been the Chief Revenue Officer (CRO) from January 2024 to present. Inconsistent to such claims, [the Petitioner's] curriculum vitae (CV) provides the dates of "September 2023 - present." It is further noted that A-S- claims [the Petitioner] is a "co-founder" of [redacted] since January 2024. However, the same letter from A-S- demonstrates [the Petitioner] is not in fact a co-founder, as the company was in existence as early as 2021, which is when the Y combinator occurred.
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> In paralleling inconsistencies, the claimed CEO of [redacted] A-S-'s CV is also provided, which notably records the following date inconsistencies when compared to the letters provided. Specifically, the CV indicates the author has not been involved with [redacted] after 2021. As recorded in [A-S's] CV:

[redacted]
Co-founder/CEO
2021 - 2021 (less than a year)

. . . .

In further inconsistencies, the cover letter clearly asserts that funding for [redacted] is attributed to [the Petitioner], such as the $125,000 [redacted] gained from Y Combinator in 2021. However, as noted above, [the Petitioner] was not employed at the time of funding, 2021.

Regarding the claim that [redacted] 2021 Y Combinator funding is attributable to the Petitioner, the NOID points to counsel's January 2025 cover letter which accompanied the filing of the Form I-140 petition. In discussing the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), counsel's cover letter stated:

> Second, venture firms including Y Combinator, Graph Ventures, Occam's Opportunity Fund, and AAVCF LLC have collectively awarded her company $575,000 in funding, a form of merit-based recognition extended to only a tiny fraction of evaluated founders. Together, these exhibits demonstrate that independent institutions with rigorous selection processes have singled out [the Petitioner's] work for distinction, providing strong evidence of "lesser nationally or internationally recognized prizes or awards for excellence" under the EB-1A standard.
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> [The Petitioner] has secured a total of $575,000 in highly competitive venture capital funding from leading U.S, and international investment firms, including Y Combinator, Graph Ventures, Occam's Opportunity Fund, and AAVCF LLC. In technology entrepreneurship, venture capital functions as one of the most selective and prestigious forms of professional recognition, awarded only to founders whose work demonstrates exceptional innovation, technical merit, and market potential. These investments therefore constitute significant merit-based awards acknowledging [the Petitioner's] extraordinary ability in productivity software.
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> Occam's Opportunity Fund and AAVCF LLC likewise operate within this elite investment ecosystem and apply rigorous diligence before awarding capital. Their participation confirms that multiple sophisticated institutions independently recognized [the Petitioner's] unusually strong capabilities as a technology founder.
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> For each of the firms that funded [the Petitioner], the decision followed rigorous review of her product vision, technical execution, initial traction, and ability to scale.
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> Awarded Project
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> [The Petitioner] received these venture funding awards in recognition of her development of [redacted] an AI-powered reporting and planning platform targeting critical inefficiencies in professional services teams, which face 30 percent resource underutilization and 21 percent profit loss. . . . Early traction, including 403 paying customers, $20,000 in monthly recurring revenue, and adoption by leading technology companies, further validated the impact of her innovation. These achievements were central to investors awarding $575,000 in competitive venture funding, reflecting their assessment that [the Petitioner's] work is a high-impact, technically advanced contribution demonstrating extraordinary ability.

As documentation of [redacted] receipt of venture capital funding, the Petitioner presented three 2021 "Simple Agreement(s) for Future Equity" (SAFEs) that collectively totaled $575,000. Each of these SAFE documents was executed in 2021 and signed by [redacted] CEO, A-S- (rather than the Petitioner). Despite the multiple claims in counsel's January 2025 cover letter as quoted above, the record contains no evidence to corroborate his assertions that the $575,000 in venture capital funding received by [redacted] was attributable to the Petitioner or was based on her specific achievements. Nor is there documentation showing that the Petitioner even worked for [redacted] in 2021.

In response to the issues raised in the NOID, the Petitioner presented a March 2026 letter from counsel and supporting evidence addressing USCIS' concerns regarding the start date of her employment at [redacted], her status as the company's co-founder, the dates of A-S-'s employment as [redacted] CEO, and the claims in counsel's cover letter attributing the company's receipt of venture capital funding in 2021 to the Petitioner. USCIS denied the petition, however, stating that the Petitioner "has not resolved the multiple inconsistencies located in the initial filing" and that it was suspending further analysis of the Petitioner's arguments and evidence relating to the evidentiary criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, the Petitioner argues that USCIS' decision should be reversed because it mischaracterized the inconsistencies and did not consider the merits of her evidence using the two-step analysis set forth in *Kazarian,* 596 F.3d at 1119-20. For the reasons discussed below, we conclude that the Petitioner has sufficiently overcome the inconsistencies identified in USCIS decision by a preponderance of the evidence.

1. The Petitioner's Start Date at [redacted]

With respect to her start date with [redacted] the Petitioner contends that "she began her formal employment with [redacted] as a co-founder and Chief Revenue Officer on January 15, 2024." The Petitioner's NOID response included her [redacted] pay statements from early 2024 through 2025,

her Form W-2 for 2025 confirming her status as an employee, emails sent to and received by the Petitioner in her capacity as CRO from throughout 2024 and 2025, and work product samples showing her position with the company.

In addressing the discrepancy relating to the September 2023 [redacted] start date reflected on her CV, the Petitioner presented an affidavit explaining that this date was drawn from her LinkedIn profile and was intended to reflect the period during which she was in discussions with A-S- regarding the company's projects and their potential collaboration. She asserted that during the four-month period in question, she provided informal, unpaid strategic input while the parties explored a formal working relationship. The Petitioner further indicated that the January 2024 date with [redacted] by contrast, reflects the commencement of her formal employment and placement on the company's payroll. She contended that the difference in dates reflects the distinction between informal pre-employment discussions and the start of her formal employment. As evidence of her involvement with [redacted] prior to 2024, the Petitioner offered communications between her and A-S- through LinkedIn, email exchanges, and WhatsApp messages as well as calendar invites/notifications for their meetings, a co-working proposal suggesting a soft-start/trial period for their collaboration in late 2023, and an affidavit from A-S- confirming their late 2023 interactions. We conclude that the combined weight of this evidence is sufficient to overcome USCIS' concern regarding the discrepancy in the Petitioner's starting date.

2. The Petitioner's Co-founder Designation

Regarding the Petitioner's claim that she is a [redacted] co-founder, the Petitioner indicates that "this title reflects her substantial equity ownership and central leadership role within the company." She further asserts that "[i]n the startup ecosystem, it is common for individuals who join during early growth stages to be recognized as founders based on their ownership stake and strategic contributions, even if they were not present at the company's initial formation."

In support of her claim that she was designated as [redacted] co-founder, the NOID response included the Petitioner's January 2024 "Co-Founder Agreement" with A-S- showing her employment capacity and her provision of 20% equity in [redacted] communications from November 2023 in which A-S- specifically proposed that the Petitioner join his company in such a capacity, screenshots from the company's public website that identify her as a co-founder, and collaborative posts with others that refer to her as a co-founder. The Petitioner also provided a 2021 article in *Forbes* entitled "Why Adding a Late Cofounder Could Mean a Business Breakthrough." This article presents an example of a successful entrepreneur who "added a cofounder to his business five years after starting it" and offers six reasons encouraging the practice. In addition, the Petitioner submitted articles from Hexa.com, Cnet.com, and Ycombinator.com demonstrating that the concept of adding a cofounder multiple years after a business has been formed is not unusual within the startup community. This evidence supports the Petitioner's co-founder designation as reflective of industry practice and accurately describes her role within the company. Accordingly, the Petitioner has overcome USCIS' concern regarding her co-founder designation.

3. The Dates of A-S-'s Employment as [redacted] CEO

With respect to the A-S-'s employment as [redacted] CEO after 2021, the Petitioner states that the evidence shows that A-S- "has continuously served as Chief Executive Officer of [redacted] since its founding in 2021. The inconsistent dates reflected on his CV originate from his LinkedIn profile and represent an error in that informal source, rather than an accurate reflection of his employment history." As evidence of A-S-'s dates of employment at [redacted] the Petitioner presented his Forms W-2 showing that he worked at [redacted] from 2021 – 2025, SAAS services agreements between [redacted] and other organizations he signed after 2021, customer agreements executed by [redacted] and signed by A-S- subsequent to 2021, a State of Delaware Annual Franchise Tax Report issued to A-S- for the 2025 tax year, and presentations he authored relating to the company that contain post-2021 project dates in 2023 and 2024. We conclude that the combined weight of this evidence is sufficient to overcome USCIS' concern regarding the dates of A-S-'s employment as [redacted] CEO.

4. Claims that [redacted] Venture Capital Funding is Attributable to the Petitioner

Regarding counsel's assertion at the time of filing that venture capital funding obtained by [redacted] is attributable to the Petitioner and therefore it constitutes her receipt of an award under 8 C.F.R. § 204.5(h)(3)(i), counsel's response to the NOID stated:

> Upon review of the petition record, undersigned counsel acknowledges that the statements attributing the company's venture capital funding to [the Petitioner] were the result of attorney error and should not be considered as evidence in support of the awards criterion.
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> Accordingly, the attribution of the $125,000 Y Combinator funding to [the Petitioner] individually was an inadvertent error by counsel rather than a factual assertion made by [the Petitioner] herself. [The Petitioner] did not claim personal receipt of this award, nor did she intend to represent that the funding constituted an individual award recognizing her achievements.
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> USCIS policy explicitly recognizes that arguments made by counsel do not themselves constitute evidence.
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> In light of this principle, the statements made in the original cover letter regarding the venture capital funding should be understood as (mistaken) legal argument rather than evidence, and therefore should not be given evidentiary weight in evaluating the petition. [The Petitioner] respectfully requests that USCIS disregard these statements to the extent they suggested that the funding constituted an award attributable to her personally.

. . . .

> The error arose from an effort to contextualize [the Petitioner's] contributions within the broader success of the company, rather than from any intention to misrepresent the facts of the case. Importantly, [the Petitioner] herself did not provide inaccurate information, nor did she attempt to claim credit for an award received prior to her involvement with the company.

While USCIS was entirely correct in pointing out the inconsistency between counsel's claim about the Petitioner's attainment of venture capital funding for [redacted] and the documents showing her dates of employment with the company, we also agree that counsel's unsubstantiated assertions do not constitute evidence. *See, e.g.*, *Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). We note, for example, that the Petitioner's curriculum vitae submitted with the initial filing lists multiple awards she received, including her "IT Woman of the Year Award in Business Innovation" (2020), but it does not state that she secured venture capital funding for [redacted] Because the venture capital funding claim has not been established as ascribable to the Petitioner, we conclude that counsel's admission that he was solely responsible is sufficient to overcome USCIS' concern regarding this issue. However, based on the doubts raised by counsel's admitted misstatement of fact pertaining to the criterion at 8 C.F.R. § 204.5(h)(3)(i), his assertions relating to the additional claimed criteria should be fully supported by relevant, probative, and credible evidence that leads USCIS to believe that any such claims are "more likely than not" or "probably" true for the Petitioner to satisfy the standard of proof. *See Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

III. CONCLUSION

For the above reasons, we will withdraw USCIS' decision and remand the matter for further review and entry of a new decision. USCIS should consider all the evidence and determine if the Petitioner satisfies at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). If the Petitioner fulfills these initial evidence requirements, USCIS should evaluate whether the Petitioner has demonstrated sustained national or international acclaim and whether the record demonstrates 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. *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 (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).

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.