U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 43130966

Date: JUNE 1, 2026

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

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

The Petitioner, who works in the field of marketing, seeks classification as an alien 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.

USCIS denied the petition, concluding that although the record established that the Petitioner satisfied the initial evidentiary requirements, it did not establish, as required, that the Petitioner has sustained national or international acclaim and is an alien in the small percentage at the very top of the field. The matter is now before us on appeal under 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.

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. A petitioner must establish that the alien seeks to enter the United States to continue work in the area of extraordinary ability, and that their entry into the United States will substantially benefit the United States. The term "extraordinary ability" refers only to those aliens 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 international recognition of an alien's achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those

standards do not readily apply to the alien's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the alien 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 earned bachelor's and master's degrees in finance in Ukraine and worked in various marketing management positions since 2011. She worked in positions of increasing authority for a photography software company in Ukraine from 2015 to 2023. The Petitioner has been in the United States since September 2023, working in [redacted] as a contractor, as head of product marketing for a company that makes photograph editing software using artificial intelligence (AI). The Petitioner is also head of marketing and communications for local hackathon events associated with a company that organizes such events worldwide. The Petitioner also co-hosts "a podcast on leadership and innovation." She filed the Form I-140 petition in September 2025.

A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that she 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 to have satisfied eight of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (ix), High remuneration for services.

USCIS concluded that the Petitioner met four of the criteria, pertaining to awards, judging, authorship of scholarly articles, and leading or critical roles. On appeal, the Petitioner disputes many of USCIS' conclusions, asserting that she had satisfied additional criteria. Because USCIS had concluded that the Petitioner had satisfied at least the minimum of three criteria and proceeded to a final merits determination, we will consider the evidence in the broader context of whether it establishes the sustained national or international acclaim that section 203(b)(1)(A)(i) of the Act requires.

B. Final Merits Determination

Because the Petitioner submitted the required initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, sustained national or international acclaim; 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 their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *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 generally* 6 *USCIS Policy Manual* F.2(B)(2), https://www.uscis.gov/policy-manual (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 for the immigrant classification).

In this matter, we determine that the Petitioner has not established eligibility.

On appeal, the Petitioner cites a district court decision, *Mukherji v. Miller*, No. 4:24-CV-3170 (D. Neb. Jan. 28, 2026), in which the court objected to USCIS' reliance on *Kazarian* to justify its use of the final merits determination as the basis for denying a petition. We disagree with the Petitioner's reliance on this non-precedent decision. In contrast to the precedential authority of the case law of a United States circuit court, we are not bound to follow a decision of a United States district court. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

Moreover, while we may consider the court's reasoning when it is properly before us, unpublished opinions are not considered binding precedent. *See Suchite-Salguero v. Att'y Gen. United States*, 147 F. 4th 355, 359-60 (3d Cir. 2025) ("[W]e have cautioned over and over again that non-precedential opinions carry little to no weight for future cases."); *Wang v. Holder*, 569 F.3d 531, 538 n.5 (5th Cir. 2009); *cf. Matter of K-S-*, 20 I&N Dec. at 719 (considering the reasoning of district court decisions). Importantly, we note that the *Mukherji* decision was issued by a district court in Nebraska. In the present case, the Petitioner is in California and the petition was denied at the Texas Service Center, outside the jurisdiction of the Nebraska court that decided *Mukherji*.

The two-step adjudication process is an interpretive rule that does not violate the Administrative Procedure Act, nor is it a legislative rule. *Nagaiah v. Allen*, 784 F. Supp. 3d at 810; *Agrawal v. Miller*, No. 4:24CV3143, 2025 WL 2879217, at *12 (D. Neb. Sept. 12, 2025); *Etsy, Inc. v. Jaddou*, No. 4:22CV3022, 2023 WL 3689555, at *23 (D. Neb. May 25, 2023) (citing *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 96 (2015).

The final merits determination considers the totality of the evidence in the broader context of sustained national or international acclaim as required by the statute. Issues that "are not relevant to the antecedent procedural question of whether the petitioner has provided at least three types of evidence" "might be relevant to the final merits determination of whether a petitioner is at the very top of his or her field of endeavor." *Kazarian v. USCIS*, 596 F.3d at 1121. Considerations that might impermissibly amount to "a novel evidentiary requirement" within the narrow confines of an initial criterion nevertheless "might be relevant to a final merits determination." *Id.*

The final merits determination hinges on whether the Petitioner has established sustained national or international acclaim and has reached the small percentage at the very top of the field. This determination is related to, but separate from, the antecedent question of whether the Petitioner has satisfied at least three of the initial criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x).

Therefore, we review the record with an eye toward the broader issue of sustained acclaim rather than the narrower focus of those initial criteria.

The Petitioner had claimed receipt of several awards, fulfilling the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(i). USCIS concluded that the Petitioner's evidence regarding most of these awards was deficient. USCIS acknowledged that the Petitioner had submitted satisfactory evidence regarding [redacted] in 2021 and 2022, but concluded that the Petitioner had not shown that receipt of these awards placed the Petitioner at the very top of her field.

On appeal, the Petitioner stated that USCIS "ignor[ed] extensive evidence of additional nationally and internationally recognized awards . . . , spanning more than a decade." The Petitioner also asserts that USCIS did not acknowledge or consider further documentation that she submitted in response to a request for evidence (RFE).

Many of the awards went to the Petitioner's employers. The Petitioner has shown that her marketing work benefited those employers, and USCIS took that evidence into consideration when it granted that she had performed in leading or critical roles for organizations with distinguished reputations. But in terms of whether a particular award satisfies the requirements of 8 C.F.R. § 204.5(h)(3)(i), the focus should be on the person's receipt of the awards, as opposed to the employer's receipt of the awards or prizes. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). Apart from the [redacted] the Petitioner has not shown that the awarding entities publicly acknowledged her individually as an award recipient.

A number of the awards appear to be for factors such as software or product design rather than for marketing. It is not readily apparent that awards based primarily on product features rather than marketing would significantly affect the Petitioner's reputation in her field.

The Petitioner submitted letters from officials of various awarding entities, asserting that the entities consider the Petitioner to be part of the teams whose work resulted in the awards. These letters were written specifically for submission to USCIS. The record does not show that the awarding entities publicly acknowledged the Petitioner as one of the award recipients. Without such an announcement or other publicity or coverage, it is not evident how a given award contributed to the Petitioner's acclaim and recognition among those in the field who did not already know she worked on the award-winning project.

Furthermore, while the letters indicate that marketing and product presentation are factors that play a role in selecting award winners, public materials such as printouts from the awarding entities' websites do not include that information. Letters of support should be corroborated by documentary evidence in the record. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).

Even if an individual is not a named award recipient, such awards can be relevant in the broader context of acclaim, provided the petitioner can show that his or her involvement in the award-winning project resulted in widespread recognition. In this case, the Petitioner has submitted printouts of social media posts expressing thanks and congratulations, but has not shown that her participation in such projects received wide recognition at a level that would indicate sustained national or international acclaim.

The Petitioner also indicated that she was on teams that won prizes at various hackathon competitions. Much of the evidence relating to these events consists of social media posts from teammates, which do not show that the prizes or awards, and the Petitioner's involvement, received a level of attention consistent with sustained national or international acclaim.

The regulation at 8 C.F.R. § 204.5(h)(3)(iii) relates to 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. Among the evidence the Petitioner submitted under this criterion is a transcript of a podcast interview with her. USCIS stated: "The petitioner did not submit evidence that establishes that this criterion should be so broadly interpreted to include podcasts as a publication." USCIS also concluded that the Petitioner did not submit statistical evidence to show that the "podcast has a widespread viewership or traffic rate on a national or international level."

On appeal, the Petitioner asserts that podcasts are broadcast media and ought to qualify as published material. We agree that published material should not be disregarded out of hand simply because it took the form of a podcast. But the burden remains on the Petitioner to show that a particular podcast meets the applicable regulatory requirements. We need not explore that specific issue here in more detail, because the question at hand is not whether the Petitioner had satisfied at least three initial criteria, but rather whether she had shown sustained national or international acclaim. In the context of a final merits determination, an important issue appears to be that the podcast focused not on the Petitioner's field of marketing, but on photography. The Petitioner worked for a photography software company at the time of the interview, and much of the podcast interview revolved around features of that software.

On appeal, the Petitioner cites a letter from the host of the podcast, who asserted that his podcast featured the Petitioner "not as a company representative promoting a product, but as a recognized expert in marketing within the imaging technology field." The record contains a transcript of the podcast, in which the word "marketing" appears two times, including when the host stated the Petitioner's title. There is some discussion of the Petitioner's promotional work, such as "photography . . . camps in Iceland" and events "with . . . influencers, and ambassadors and affiliates," but most of the host's questions are about the Petitioner's employer and its products.

Regarding the Petitioner's judging activity, USCIS concluded: "The evidence does not indicate that these events only invited judges with demonstrated extraordinary ability in the field. The petitioner did not demonstrate, for example, how this judging experience compares to others in the field, or how either the quality or quantity of the reviews she conducted stands out from her peers." USCIS also concluded that the judging activity took place during only a short fraction of the Petitioner's career.

The Petitioner, on appeal, asserts that USCIS did not "analyz[e] the nature, selectivity, or stature of the events" at which the Petitioner served as a judge. The Petitioner also contends that "[t]he decision fails

to meaningfully engage with the evidence establishing the role as a judge for Techstars Startup Weekend, one of the most influential and selective startup accelerator ecosystems globally."

The record includes evidence of Techstars' global reach as a startup accelerator, but the Petitioner has not shown that she judged for Techstars at a national or international level. Rather, the record shows that Techstars is involved with local "Startup Weekends" in hundreds of cities. A printout from Techstars' website indicates that the accelerator has held over 7,000 such events. The Petitioner was one of an unspecified number of judges at one such event local to [redacted]

The Petitioner has not shown that national or international acclaim was a condition for her selection as a judge at the Techstars Startup Weekend or other "hackathon" events, and she has not shown that her judging work resulted in such acclaim afterward.

USCIS determined that the Petitioner's "valuable contributions" amounted to leading or critical roles under 8 C.F.R. § 204.5(h)(3)(viii). But USCIS concluded: "While the petitioner has been successful in her work, the record does not demonstrate that the petitioner's work . . . has resulted in the petitioner receiving widespread acclaim from the field."

The Petitioner states, on appeal, that USCIS did not "address[] the distinguished reputation[s] of the organizations involved." But the organizations' distinguished reputations are a core requirement of the criterion. By concluding that the Petitioner had satisfied the criterion, therefore, USCIS stipulated that the Petitioner had established those reputations. It remains that leading or critical roles for distinguished organizations do not always result in recognition outside those organizations, which is why the criterion is only one piece of a larger whole.

The Petitioner submitted information about a podcast that she co-hosts. Screenshots indicate that the podcast's channel has "219 subscribers" on YouTube and "31 followers" on LinkedIn. YouTube view counts for the individual videos, also visible in the screenshots, indicate that one video had been viewed 5,000 times in a year; the remaining episodes had accumulated between 250 and 2,200 views during that period. The Petitioner did not establish that these numbers indicate sustained national or international acclaim at the top of her field. The podcast's other co-host wrote an article in a newsletter distributed to alumni of a business training program that the Petitioner attended. The newsletter article appears to indicate that the guests on the podcast are faculty and other participants in the same training program.

The Petitioner asserts on appeal that "the final merits discussion also omits any meaningful consideration of" her published scholarly articles, letters from independent experts, and her "proprietary original [redacted] documented and adopted beyond [her] employers." Below, we will examine these three issues.

USCIS stated that, while the Petitioner's authorship of scholarly articles satisfies 8 C.F.R. § 204.5(h)(vi), "the petitioner did not establish that publishing in these journals is noteworthy or reserved only for the best in the field." On appeal, the Petitioner states that USCIS did not sufficiently consider her "academic publications in selective scholarly venues." The Petitioner does not elaborate or directly dispute USCIS' conclusions. The Petitioner's passing reference to insufficient consideration of her scholarly articles identifies no specific error that could be remedied on appeal. *Cf. Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997).

When the Petitioner first filed her petition, her initial statement summarized her career but did not mention the [redacted] In response to the RFE, she stated that many of the achievements she had claimed in the initial submission "were the direct result of [the [redacted] The Petitioner claimed that "several external marketing professionals adopted its principles in their own work or integrated its components into their own methodologies." But the Petitioner has not established that the [redacted] has been widely adopted at a level that would show sustained national or international acclaim.

The Petitioner stated that, through conference presentations, guest lectures, and articles, "the framework has circulated well beyond [the Petitioner's] employers and has been adopted as a basis for professional education, industry knowledge-sharing, and scholarly contribution." The Petitioner documented the presentation of her work, but these materials do not show the impact they had after their presentation.

A screenshot from the "Startup Toolkit" on an Eastern European venture capital company shows a link to information about the Petitioner's [redacted] The website also indicates that the latest update was in December 2025, the same month the Petitioner responded to the RFE. The printout does not show that the toolkit incorporated the Petitioner's framework before December 2025, and it does not show how many people downloaded and used the information.

The Petitioner, on appeal, does not name the "independent experts" who provided letters on her behalf. Apart from the letters from awarding entities, already discussed above, the letters in the record are generally from individuals who have worked, collaborated, or studied with the Petitioner. Some are associated with the same business training program that the Petitioner attended, and the Petitioner interviewed them for her podcast. Some of these individuals worked more closely than others with the Petitioner, but their letters do not directly establish that the Petitioner has a wider reputation commensurate with sustained national or international acclaim. Fewer than half of the writers indicated that they themselves work in the field of marketing.

In response to the RFE, the Petitioner submitted letters from three individuals who praised the [redacted] All three have ties to the Petitioner through employment or appearing on her podcast. We note their high opinions of the [redacted] but their letters do not establish its implementation at a level that would show sustained national or international acclaim.

The record shows that the Petitioner has been successful in her field, for example by contributing to award-winning projects. But the classification the Petitioner seeks has a very high threshold of eligibility, and we agree with the conclusion that she has not established by a preponderance of the evidence that she has achieved sustained national or international acclaim in that field.

III. CONCLUSION

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*,

4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design"); *Hamal v. Dep't of Homeland Sec.*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"); *Lapteva v. Schuurmans*, No. 8:24CV83, 2025 WL 815087, at *1 (D. Neb. Mar. 10, 2025) (stating that EB-1 visas are intended to be available to only an exceedingly small amount of individuals with extraordinary ability); *see also Hamal v. Dep't of Homeland Sec.*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach).

Here, the Petitioner has not shown a degree of recognition of her work that rises to the level of sustained national or international acclaim and demonstrates 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 the Petitioner 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).

The Petitioner has not demonstrated eligibility as an alien of extraordinary ability. We will therefore dismiss the appeal.

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.