U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37420541

Date: MAR. 27, 2025

Appeal of Texas Service Center Decision

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

The Petitioner, a human resources professional, 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.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish that she meets the initial evidence requirements for this classification, either through her receipt of a major, internationally recognized award, or, in the alternative, by submitting evidence that she satisfies at least three of the ten evidentiary criteria set forth in the regulations. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3. On appeal, the Petitioner contends that "the criteria presented . . . were not properly analyzed by the Director."[1]

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

An alien is eligible for the extraordinary ability immigrant classification under section 203(b)(1)(A) of the Act if:

- They have extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and their achievements have been recognized in the field through extensive documentation;
- They seek to enter United States to continue working in the area of extraordinary ability; and
- Their entry will substantially benefit the United States in the future.

[1] The Petitioner stated on the Form I-290B, Notice of Appeal or Motion, that she would submit a brief and/or additional evidence directly to our office within 30 days of filing her appeal. The record indicates that she has not submitted a brief or any supplemental evidence during or after that 30-day period. We consider the record complete as presently constituted.

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 a one-time achievement (that is, evidence that they have received a major, internationally recognized award). If a petitioner does not submit this evidence, then they must provide 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 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*, *Amin v. Mayorkas*, 24 F.4th 383, 391-392 (5th Cir. 2022); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013).

II. ANALYSIS

The Petitioner, who has a bachelor's degree in psychology from a Brazilian university, states that she has worked primarily in the human resources field since completing her degree in 2010. She indicates her intent to work as the managing partner and chief executive officer of a new Florida-based human resources consulting and recruitment business if granted lawful permanent residence in the United States. She claims eligibility for this classification based on extraordinary ability in the human resources and occupational psychology fields.

A. Evidentiary Criteria

The Petitioner does not claim to qualify for extraordinary ability classification based on a one-time achievement. Accordingly, she must submit evidence meeting at least three of the ten initial evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Director acknowledged that the Petitioner submitted evidence relating to five of the ten criteria, including evidence relating to her membership in an association in her field, her participation as a judge of the work of others, her contributions in her field, her performance in leading or critical roles for various organizations, and her receipt of a high salary. *See* 8 C.F.R. § 204.5(h)(3)(ii), (iv), (v), (viii) and (ix).[2] The Director concluded she submitted sufficient evidence to satisfy only one of the five claimed criteria. Specifically, the Director determined that the Petitioner demonstrated that she has participated as the judge of the work of others in the same or an allied field and thus met the criterion at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner maintains that she "would like to clarify why she qualifies as an alien of extraordinary abilities, since the criteria presented before USCIS were not properly analyzed by the

[2] The Petitioner did not submit relevant evidence or claim eligibility under the criteria at 8 C.F.R. § 204.5(h)(3)(i), (iii), (vi), (vii) or (x).

Director." In a brief statement on the Form I-290B, the Petitioner asserts that the Director's determinations with respect to the criteria at 8 C.F.R. § 204.5(h)(3)(v), (viii) and (ix) were "contrary to the evidence submitted." As noted, the Petitioner has not submitted a brief or supplemental evidence in support of her appeal.

For the reasons provided below, we conclude the Petitioner has not demonstrated that she satisfies the requirements of at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

1. Memberships in Associations

The criterion at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of memberships in associations in the field for which classification is sought that require outstanding achievement of their members, as judged by recognized national or international experts in their disciplines or fields. Relevant factors that may lead to a conclusion that a person's membership in an association was not based on outstanding achievements in the field include, but are not limited to, instances where the person's membership was based on attaining a level of education or certain amount of experience in the field, or where the membership is a requirement, compulsory or otherwise, for employment in an occupation. *See generally* 6 *USCIS Policy Manual* F.2(B)(1), https://www.uscis.gov/policy-manual (providing guidance on evaluating initial evidence of extraordinary ability submitted under each of the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x)).

The Petitioner provided a declaration from [redacted] of the [redacted] which states she is "authorized to practice the profession of psychologist in the State of [redacted]' She also provided a copy of the Professional Identity Card issued to her in 2018 based on her initial registration with the [redacted] According to an excerpt from the council's website, the purpose of this body is "guiding, disciplining and supervising the exercise of the profession of psychologist, in accordance with the provisions of Federal Law No. 5,766, of December 20, 1971." The [redacted] website notes that there are 24 regional psychology councils in Brazil that are guided by Brazil's National Congress of Psychology.

The Petitioner provided a copy of Federal Law No. 5766 of December 20, 1971, which created Brazil's Federal and Regional Councils of Psychology. Chapter IV of the law, titled "Exercise of Profession and Enrollment," provides that "[a]ll Psychology professionals, in order to exercise their profession, must register with the Regional Council in their area of action." This chapter states that candidates for enrollment must: "meet the requirements of Law No. 4,119 of August 27, 1962"; must not be prevented from exercising the profession; and must "enjoy a good reputation for [their] public conduct." The record does not describe or document "the requirements of Law No. 4,119."

Based on this document, it is evident that enrollment or registration with one of Brazil's regional psychology councils is compulsory for persons who seek to practice as professional psychologists in Brazil. There is no language in the law indicating that enrollment in a regional council is reserved solely for those who have outstanding achievements in psychology as judged by recognized national or international experts in the field.

In evaluating the evidence submitted in support of this criterion, the Director acknowledged the Petitioner's claim that Brazil's regional psychology councils exclude persons with "with significant

ethical violations" and that such policy is "a direct reflection of the association's commitment to outstanding achievement in the field of psychology." We agree with the Director's determination that the regional councils' exclusion of persons with significant ethical violations does not lead to a conclusion that they require enrolled members or registrants to have outstanding achievements in the field of psychology as an essential condition for enrollment. Further, with respect to this criterion, the Petitioner has not addressed the Director's specific conclusions in her appeal.

Given that enrollment in a regional council is compulsory for those who seek to practice as professional psychologists in Brazil, the record does not demonstrate that [redacted] requires its members to have outstanding achievements as judged by national or international experts in the field. The Petitioner has not demonstrated that her registration with this professional council satisfies the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(ii).

2. Performance in a Leading or Critical Role

A petitioner may satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(viii) by providing evidence that (1) they have performing in a leading or critical role for organizations or establishments; and (2) these organizations or establishments have a distinguished reputation.[3] The petitioner must satisfy both elements to meet the plain language requirements of the criterion.

The Director acknowledged that the Petitioner submitted letters from former supervisors and colleagues describing her work-related responsibilities and achievements, as well as "general information" regarding the companies that employed her. However, the Director concluded that the evidence was insufficient to demonstrate that she performed in a leading or critical role and that she has worked for an organization or establishment that has a distinguished reputation.

On appeal, the Petitioner objects to the Director's determination that "the establishment in which she worked most of her career [was] not to be considered as of distinguished reputation." She does not contest the Director's conclusion that the previously submitted evidence was insufficient to demonstrate her performance in a leading or critical role. Accordingly, she has not overcome the Director's determination regarding that first element of this evidentiary criterion.

Nevertheless, we will address the Petitioner's suggestion that the previously provided evidence was sufficient to demonstrate the distinguished reputation of the organizations that employed her. To determine whether an organization or establishment has a distinguished reputation, its relative size or longevity is not, by itself, a determining factor, but is considered together with other information. Other relevant factors for evaluating an organization or establishment's reputation can include evidence of the scale of its customer base or relevant media coverage. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). USCIS applies a common dictionary definition of the term "distinguished" which means "marked by eminence, distinction or excellence." *Id.*

[3] USCIS will also consider evidence that the person has performed in a qualifying role for a division or department of an organization or establishment that has a distinguished reputation. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner claimed eligibility under this criterion based on her employment as a human resources development coordinator with [redacted] Ltda, a vehicle transport company, and as a store manager and shareholder of her family's business, [redacted] Ltda, a "lottery house." In addition to providing letters from these employers, she provided (1) information from the company website of [redacted] Ltda describing its services and history; and (2) an article from [redacted] which describes the operation of lottery houses in Brazil.

In a request for evidence (RFE), the Director acknowledged this initial evidence, noting it was insufficient to demonstrate that the Petitioner's prior employers have a distinguished reputation. The Director observed that documentation provided did not contain, for example, information about any awards, recognitions or achievements garnered by her employers. Accordingly, the RFE instructed the Petitioner to provide "objective evidence" to document the distinguished reputation of the organizations that employed her.

In response to the RFE, the Petitioner provided additional employer letters but otherwise resubmitted the same supporting evidence she provided at the time of filing. She noted that the letters from representatives of [redacted] Ltda "attest to the distinguished reputation" of the company, its "high standards," and its "status as a distinguished and respected entity in the transportation and logistics sector." She further described [redacted] Ltda as "an establishment of significant public importance and distinguished reputation" noting that it was "authorized by [redacted] a state-owned bank responsible for managing public and social services in Brazil." The Petitioner emphasized that there are "only 13 thousand" lottery houses in Brazil and that "the stringent licensing process and continuous oversight by [redacted] ensures that the business operates "with the highest standards" and demonstrates its status "as a reputable and trustworthy establishment."

While we have considered the Petitioner's assertions, the record lacks independent, objective evidence demonstrating that either of the Petitioner's former employers have a distinguished reputation marked by "eminence, distinction or excellence." Contrary to the Petitioner's claim, letters from company officials that "attest to the distinguished reputation" of an organization and general information from a company website are not sufficient to meet her burden of proof. While the website for [redacted] provides some information regarding the history and scope of the business, these factors alone are not sufficient to demonstrate its distinguished reputation. Likewise, the Petitioner implied that all lottery houses in Brazil are licensed and overseen by a state-owned bank and therefore must be considered to have a distinguished reputation. However, she did not provide evidence that would distinguish her prior employer from the other 13,000 similar businesses that she claims are operating in Brazil. The evidence of record is insufficient to demonstrate the distinguished reputation of either company. Therefore, for the reasons discussed, we conclude that the Petitioner did not submit evidence that satisfies all elements of the plain language of this criterion.

3. High Salary or Other Significantly High Remuneration

The regulation at 8 C.F.R. § 204.5(h)(ix) requires evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. Evidence relevant to evaluating an alien's eligibility under this criterion may include tax returns, pay statements

or other evidence of past salary or remuneration for services, as well as comparative wage or remuneration data for the person's field, such as geographical or position-appropriate compensation surveys. *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner provided sufficient evidence to demonstrate that she earned an annual base salary of R$ 80,486 in 2015 while working as a human resources development coordinator for [redacted] Ltda. Specifically, she submitted copies of her monthly pay statements for the entire calendar year showing her receipt of a monthly base salary of R$ 6707.17.

The Petitioner also submitted a declaration from the owner and partner of [redacted] Ltda stating she has been working "in the role of Store Manager, holding the position of Human Resources Specialist," since [redacted] 2012, with a monthly salary of R$ 12,000.00, which includes "bonuses and profit sharing."[4] However, this letter is not sufficient, by itself, to document the salary or other remuneration she received in any given year. The Petitioner did not provide any other objective evidence to document her earnings from this business, such as pay statements or tax returns. Notably, the record includes a letter from the Petitioner's accountant in Brazil stating her annual earnings for the years 2013 to 2015, but the accountant does not mention her employment with [redacted] Ltda, or any remuneration the Petitioner received from this company. Finally, the record contains inconsistent information regarding the Petitioner's claimed job title and duties with this business. While a letter from the company's partner indicates that she primarily performed the functions of a "human resources specialist," the Petitioner's resume indicates she was the store manager and performed a broad range of management responsibilities, rather than working specifically in the human resources field that she claims is her area of extraordinary ability.

Therefore, for the purposes of evaluating whether the Petitioner demonstrated eligibility under this criterion, we will base our determination on her documented earnings from employment as a human resources development coordinator with [redacted] Ltda, and specifically on the monthly base salary of R$ 6707.17 she earned in 2015.

The Petitioner provided the following comparative salary information:

- Three printouts from the Brazilian website *VAGAS* indicating salary ranges for the following positions, based on "values reported by VAGAS.com candidates":
    - Occupational Psychologist: R$ 2,108.00 to R$ 3,181.00 with an average salary of R$ 2759.00
    - Human Resources and Personnel Department Coordinator: R$ 3,178.00 to R$ 6,800.00 with an average salary of R$ 5,015.00.
    - HR/DP Manager: R$ 2,813.00 to R$ 7,523.00 with an average salary of R$ 4,554.00.

[4] The Petitioner provided a Power of Attorney document executed in December 2011 in which her father, as managing partner of [redacted], appointed the Petitioner, her sibling and her mother as attorneys in fact and granted them broad and general powers to manage all aspects of this business, described in the record as a retail lottery outlet. The two company letters from this business are signed by the Petitioner's mother in her capacity as "owner and partner."

- A printout from *Glassdoor* (dated August 2024) indicating that human resources managers in Brazil earn between R$ 3,000 and R$ 7,000 per month with an average base salary of R$ 5,000.00 and estimated average monthly compensation of R$ 6,047.00 based on salary information provided by 132 users.

- A printout titled "Human Resources Analyst – Minimum Wage 2024" indicating that this position earns an average of R$ 3,858.62 based on a salary survey performed by [redacted] and published by [redacted]. This survey reports that salaries may vary between a minimum monthly wage of R$ 3,753.24 and a ceiling of R$ 7,885.13 depending on various factors.[5]

In a letter accompanying the Petitioner's response to the RFE, she acknowledged that she must demonstrate that she earned more than an "above average" salary to meet the plain language of this criterion. The Petitioner argued that "[l]ogically, an 'above average salary would be any amount that surpasses the average by at least 10%, a common proportion used for salary increases in companies." She further reasoned that a "high salary" would imply a comparable increase of "at least 50%" and asserted that the Petitioner's earnings meet this threshold. We agree with the Director's conclusion that the record does not contains sufficient support for the Petitioner's assertions that a "high salary" in any given field is one that is "at least 50%" higher than average. Moreover, the salary surveys the Petitioner provided are variable, indicating average salaries ranging from under R$ 3,000 to over R$ 5,000. While the Petitioner's documented earnings exceeded these averages, they are lower than the "high" salaries reported in most of the submitted salary surveys.

When evaluating whether a comparison between a petitioner's documented remuneration and the remuneration in a given survey is accurate, USCIS may consider factors such as the description of the occupation and the validity of the survey. Here, the Petitioner provided salary survey data for the position of "occupational psychologists" but has not shown that this role is the same or similar to the human resources development coordinator position she held in 2015. In addition, some websites, like *Glassdoor* and *VAGAS*, rely on user-reported salary data, which may not be a valid comparison if too few users reported their salaries or the data is otherwise not credible or reliable. *See generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). For example, the evidence the Petitioner submitted from *VAGAS* indicates a higher average salary for human resources coordinators than it does for human resources managers, an incongruity that may reflect that only small pools of data were available for one or both of these occupations.

Finally, as noted by the Director, the Petitioner has documented her earnings for the 2015 calendar year but has not provided any comparative salary data for that period. Overall, based on the evidence submitted, the record does not sufficiently demonstrate that the Petitioner commanded a "high salary" in relation to others in the field as required by the plain language of 8 C.F.R. § 204.5(h)(3)(ix). Accordingly, we conclude that she has not met this criterion.

[5] The Petitioner attributed this information to [redacted] but the printout did not include a URL address or otherwise identify the source of the data.

B. Summary and Reserved Issue

The Petitioner must demonstrate that she meets at least three criteria at 8 C.F.R. § 204.5(h)(i)-(x) to satisfy the initial evidence requirement for this classification. She claims that she can meet five of these ten criteria. However, the record does not establish that the Petitioner meets any of the three evidentiary criteria discussed above. Because the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), detailed discussion of the remaining two claimed criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (v), cannot change the outcome of the appeal. Therefore, we will reserve these criteria for future consideration if the need arises. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate and conclude that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of her work in the human resources profession is indicative of the required sustained national or international acclaim or that it is consistent with 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 has garnered sustained national or international acclaim in the field, and that she 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). In fact, the record does not contain evidence that she has worked in her field since 2016.

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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.