U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42931472

Date: MAY 21, 2026

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

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

The Petitioner, a software automation test engineer, 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 these aliens seek 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 taught German in Russia before working for subsidiaries of [redacted] first as a software test engineer in [redacted] Russia, and then as a test automation engineer in [redacted] Hungary. The Petitioner last entered the United States in January 2025 as a B-2 nonimmigrant visitor. She intends to establish a software company to implement a framework she developed, "designed to tackle the most common and costly testing challenges in complex enterprise systems." The Petitioner filed the present Form I-140 petition in October 2025. Shortly after the filing date, an aerospace company in California offered the Petitioner a position as a software engineer. The Petitioner indicated that she intended to accept this job offer, but that she still intends, in the long term, to establish her own company.

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 seven 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;
- (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 the basic requirements of all seven claimed criteria.

Because USCIS determined that the Petitioner had satisfied three or more initial criteria, USCIS proceeded to a final merits determination to evaluate whether she has demonstrated, by a preponderance of the evidence, sustained national or international acclaim and 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. A final merits determination involves analyzing an alien's accomplishments and weighing the totality of the evidence to determine if his or her 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 agree with USCIS' determination 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 dismissing an appeal. 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.

In its final merits determination, USCIS observed that most of the Petitioner's evidence is from 2024 and 2025, the years immediately preceding the petition's October 2025 filing date. USCIS concluded

therefore that the Petitioner's recognition did not amount to *sustained* acclaim as the statute and regulations require.

On appeal, the Petitioner asserts: "The record shows multiple instances of national or international recognition across several years, including in 2024 and 2025, and no evidence that [her] acclaim has declined or become purely historic." Some of the Petitioner's relevant evidence dates back to 2010.

We agree with the Petitioner that her most recent evidence should be viewed in the context of the entire record, rather than in isolation. But we agree with USCIS that this evidence does not consistently show sustained national or international acclaim at the very top of the field.

USCIS concluded that a "Best Innovation" award that the Petitioner won at an [redacted] 2024 '[redacted]' meets the requirements of 8 C.F.R. § 204.5(h)(3)(i), but does not show that the Petitioner has risen to the very top of her field. On appeal, the Petitioner mentions '[redacted] prizes" as examples of recognition in her field, but she does not discuss this specific issue in depth.

An organizer of the event where the Petitioner won a prize stated in a letter: "The [redacted] is covered by top [Russian] media outlets such as the international edition [of] *Argumenty I Fakty*, the federal magazine *Regions of Russia*, the news agency *Novosti Rossii*, as well as authoritative specialized publications such as *Designers of Russia*." The statements made by witnesses should be corroborated by documentary evidence in the record. *See, generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3). A letter that claims that a particular [redacted] attracts major media coverage does not have the same weight as first-hand documentation of such coverage.

The only submitted evidence of media coverage of the [redacted] 2024 competition is a piece in *Experts-Say*, which appears to be a blog post; links marked "Previous post" and "Next post" appear below the text. The Petitioner submitted readership statistics for several websites, but not for *Experts-Say*.

Novosti Rossii and *Biznes Vremia* published articles about later competitions that took place in 2025. The three published pieces are broadly similar, each of them naming the [redacted] members but not the winners. These materials are not persuasive evidence of the significance and recognition of the Petitioner's prize from the [redacted] 2024 [redacted] The *Experts-Say* blog post indicated that the [redacted] 2024 competition, in which the Petitioner participated, attracted "more than 300 applications." In contrast, *Novosti Rossii* reported that "[t]he organizing committee accepted more than 1650 applications for participation" in the April 2025 competition. The Petitioner has not established that the competition had a significant reputation when she took part in [redacted] 2024, or that prize winners receive publicity commensurate with national or international acclaim.

The record indicates that several different organizations host [redacted] competitions. The Petitioner has not established that the [redacted] 2024 event where she won a prize was an especially significant one, such that winning the competition would tend to indicate that she has earned sustained national or international acclaim and reached the very top of her field.

USCIS acknowledged that the Petitioner wrote scholarly articles, fulfilling the requirements of 8 C.F.R. § 204.5(h)(3)(vi), but "[t]he evidence does not show that the beneficiary consistently published scholarly articles in journals with the highest impact factors within the field, and/or on-line

or in print magazines or editorials which enjoy high circulation among national or international readers." USCIS concluded that the Petitioner had not submitted evidence of the impact of her scholarly articles, such as widespread citation.

On appeal, the Petitioner states that she "[h]as published consistently over many years." The record identifies only three published articles by the Petitioner. The first article appeared in 2010, and the Petitioner apparently did not publish again until 2023, with a third article published in 2025.

The Petitioner claims that USCIS "fails to acknowledge that the beneficiary's articles span 15 years (2010-2025)." But in the denial decision, USCIS specifically stated that the Petitioner's "articles were published in 2010, 2023 and 2025."

The Petitioner acknowledges that these articles did not appear "in 'highest-impact' journals," but asserts nevertheless that "they represent ongoing contributions to the field's knowledge base, especially in an applied domain where practitioners rely on trade-type publications and internal documentation." The Petitioner maintains that, because she does not work in academia, it is unfair and unrealistic to hold her work to the standards of academia, for example by expecting evidence of a high citation rate.

Nevertheless, the Petitioner has not explained and established how these articles have had an impact on her field in a manner that contributed to the acclaim and recognition that the statute and regulations require.

The Petitioner also asserts that USCIS required "forms of evidence that are more typical of pure-research academics than applied-engineering professionals." More specifically, the Petitioner asserts that, in her field, "influence is demonstrated" not through frequent, highly-cited scholarly publications, but rather through "[a]doption of testing frameworks and automation tools," "[r]eduction of defects and release-cycle time," and "[l]eadership in QA [quality assurance] processes for large-scale systems." The Petitioner also asserts that "[f]or software-engineering and QA professionals, impact is often measured by adoption of tools, methodologies, or frameworks."

To the extent that adoption of her methods establishes impact, the Petitioner must show such adoption on a national or international scale, rather than within one company. The Petitioner has detailed her work on specific projects at [redacted], but has not shown that this work has resulted in widespread influence outside of parts of that company.

Also, "influence" and "impact," while important, are not synonymous or interchangeable with "acclaim." The Petitioner must show not only that others have adopted her work, but that she is generally recognized and credited with the work adopted in that way. Impact does not translate into individual acclaim if the Petitioner's name is not associated with the adopted work.

The record shows that the Petitioner's employers have praised her work. For example, a chapter lead for software testing at [redacted] stated that the Petitioner "was central to our corporate infrastructure cloud migration project," and that the Petitioner's "advanced test automation framework . . . became a model later adopted by other engineering groups." This vague statement that unidentified "other . . . groups" adopted the Petitioner's work does not tell us the breadth or depth of the Petitioner's

influence. Absent further evidence, recognition within one company alone, even a large or well-known company, is not sufficient to establish national or international acclaim.

A leading or critical role for an organization with a distinguished reputation can satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(viii). To show her critical role, the Petitioner submitted background information establishing that [redacted] as a whole, is a major multinational organization. But the record is less persuasive in terms of how critical the Petitioner's role was for the organization as a whole. Officials of [redacted] describe her work in the company's "testing Chapter." When a role is leading or critical for a department or division of an organization, rather than for the entire organization, a petitioner must establish the distinguished reputation of that department or division. *See*, *generally*, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1).

The Petitioner submitted a letter from an official of [redacted] who "became acquainted with [the Petitioner] through professional networks and technical communities." This official stated that the Petitioner has earned "recognition among colleagues worldwide" but did not elaborate or cite independent evidence showing such recognition. A letter from an acquaintance is not persuasive evidence of sustained national or international acclaim.

The Petitioner asserts that she "[w]as featured in professional or major trade-type media in 2025, with circulation data showing meaningful readership." USCIS concluded that the submitted articles satisfy the requirements of 8 C.F.R. § 204.5(h)(3)(iii), but that, in the broader context of the record, these articles do not establish sustained national or international acclaim. USCIS also stated that the articles are too recent to show a pattern of *sustained* acclaim.

The Petitioner submitted printouts of three articles, which share the same basic format: discussing an issue relating to computer security, punctuated with quotations from the Petitioner. A [redacted] 2025 article from *Gazeta* quotes the Petitioner's advice about the importance of installing software updates on one's smartphone. A [redacted] 2025 article from *VC* quotes the Petitioner discussing how "a QA engineer works with security." A [redacted] 2025 *HackerNoon* article quotes the Petitioner regarding the use of artificial intelligence in the QA process.

A submitted printout from *HackerNoon*'s website states: "We are an open and international community of 45,000+ contributing writers," and that the site is run by "a small, distributed team of 20-ish people." This information raises questions about the extent of editorial control that *HackerNoon* is able to exercise over submissions.[1] *See Onaghise v. Dep't of Homeland Sec.*, No. 3:20-CV-03033-X, 2022 WL 4073344, at *4 (N.D. Tex. Sept. 2, 2022) (determining that a blog-like forum where community members could post information or articles they have written with limited editorial involvement did not satisfy the "published materials" criterion).

All three articles refer to the Petitioner in the present tense as an engineer with [redacted] in Hungary; the *HackerNoon* article specifically refers to "her current role at [redacted]." But

[1] Two submitted articles also contain other anomalies that an editor ought to have easily intercepted. The *VC* article includes three bullet points about "three levels at which QA engineers work with security." But in the original, Russian-language version of the article, the headings for each of the three bulleted points are in English – "Prevention," "Detection," and "Response." The *HackerNoon* article has two bylines – one crediting the article to '[redacted]' (sic), the other to the Petitioner herself.

the Petitioner had left that company several months before any of the articles appeared. Her own résumé indicates that she left [redacted] in December 2024, and the Petitioner has been in the United States since January 2025. This shared omission raises further questions about the origins of the articles and the circumstances under which they were written and published.

Regarding the Petitioner's assertion regarding "meaningful readership," the *Gazeta* article includes emojis at the end, whereby readers can register their reactions. The printout in the record shows a total of seven reactions. At the end of the *VC* article is an image of an eye next to the number 19, which appears to indicate that 19 people viewed the article. These numbers do not readily indicate that a significant number of people read the articles. This information is directly relevant to the extent of the Petitioner's recognition and acclaim in her field.

The record often lacks sufficient evidence to give needed context to the Petitioner's claims. For example, the Petitioner shows that, in 2024, she earned a high salary in relation to test engineers in Hungary. But, as the Petitioner has emphasized elsewhere, she worked for a major corporation there. If [redacted] generally paid higher salaries than smaller nearby employers, then the Petitioner's high remuneration in 2024 might have had more to do with her employer than with her own individual recognition and acclaim. The record does not address this potentially significant issue. *See Racine v. INS*, No. 94 C 2548, 1995 WL 153319, at *7 (N.D. Ill. Feb. 27, 1995) (holding that the regulations allow comparison of an alien's salary with that of others similarly situated).

Also, the Petitioner provided salary data for only one year, 2024. A single year's (or even a few years') worth of salary data is unlikely to show a consistent history of high remuneration necessary to establish sustained acclaim. *See Jafarov v. USCIS*, No. 23 CIV. 3372 (PAE), 2024 WL 69056, at *9 (S.D.N.Y. Jan. 5, 2024).

The Petitioner served on juries to evaluate "graduate projects" in 2021 and 2023 and at a [redacted] in 2024. USCIS concluded that this judging activity satisfied the requirements of 8 C.F.R. § 204.5(h)(3)(iv), but that the Petitioner had not shown that her judging work showed sustained national or international acclaim at the very top of the field. USCIS also stated: "The evidence does not show that the beneficiary has reviewed a large number of articles for distinguished journals, magazines, or editorials in the beneficiary's same or allied field."

We agree with the Petitioner that USCIS viewed the evidence of judging through an academic lens, and that "[t]he regulation does not require journal-article reviewing." But we are also bound by the *USCIS Policy Manual*, which states:

> Participating in the judging of the work of others in the same or an allied field of specialization alone, regardless of the circumstances, should satisfy the regulatory criteria in the first step of the analysis. However, the second step requires the officer to evaluate the person's participation to determine whether it was indicative of the person being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim.

See, generally, 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1). In this case, the burden is on the Petitioner to establish that her review of student projects and jury service at a [redacted] demonstrate

the required acclaim and recognition. The Petitioner argues on appeal that her judging work is "[c]omparable to peer review of judging of technical work." But not every peer reviewer, or other type of judge, is necessarily at the top of his or her field. The Petitioner has not established how her judging activities show the required level of acclaim and recognition. The burden is on the Petitioner to establish either that she was chosen as a judge because of her existing acclaim, or that her work as a judge resulted in such acclaim. *See Agrawal*, 2025 WL 2879217, at *23 (upholding that plaintiff did not show how she 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 echelon of the field).

The materials from the organizations for which the Petitioner acted as a judge indicate that the Petitioner was invited to serve as a judge owing to her "expertise" and "professional experience." The available evidence does not indicate that the organizations limited their searches to nationally or internationally acclaimed individuals in the Petitioner's field.

The record shows that the Petitioner has been successful and productive in her field, but we agree with USCIS that the Petitioner 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.