



**U.S. Citizenship
and Immigration
Services**

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

MATTER OF R-Y-

DATE: DEC. 23, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an opera singer, seeks classification as an individual "of extraordinary ability" in the arts. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals 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 determined that the Petitioner had not satisfied the initial evidentiary requirements of either 1) a one-time major achievement, or 2) documentation that meets at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner submits a brief. For the reasons discussed below, the appeal will be dismissed.

I. LAW

Section 203(b) of the Act states in pertinent part:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

- (i) the alien has 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,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

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- (iii) 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 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 his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this documentation, then he must provide sufficient qualifying evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

Satisfaction of the initial evidentiary requirements does not, however, in and of itself establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming U.S. Citizenship and Immigration Services' (USCIS) proper application of *Kazarian*), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that we examine "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria

The Director found that the Petitioner did not provide a one-time achievement or documentation satisfying at least three of the ten evidentiary categories listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Below we will address four criteria the Petitioner either asserts he meets or for which he has submitted potentially relevant and probative material.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The Petitioner provided evidence that he received the following prizes or awards:

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¹ Prior to this appeal, the Petitioner did not indicate that he met specific criteria. On appeal, he states that he has offered evidence of his receipt of nationally or internationally recognized prizes or awards, display of his work at artistic exhibitions or showcases, and performing in a leading or critical role for an organization or establishment with a distinguished reputation.

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The Director acknowledged these awards, but noted that the Petitioner did not provide evidence to show they are nationally or internationally recognized for excellence in his field of endeavor. Although some of the competition names include the word “nationwide” or “international,” these titles alone are insufficient to establish the level of recognition for the prizes or awards. The Petitioner did not submit sufficient background information on the events, the entities hosting the competitions, or other material to demonstrate that the prizes or awards are nationally or internationally recognized. An online article, entitled [REDACTED] discussed the Petitioner’s receipt of a [REDACTED] Foundation grant. The article indicated that the foundation “discovers and encourages young classical singers” through its grants. The online material did not state or demonstrate that the grants are nationally or internationally recognized. In addition, the foundation’s grants are available to “young” singers, excluding established singers from consideration. While an age limitation does not preclude a finding that the prize or award is national or internationally recognized, it is the Petitioner’s burden to show that it is so recognized. The online article appeared on the website [REDACTED]. The record contains no information about the reach or other significance of this website such that the Petitioner has established coverage on it is indicative of the national or international recognition of the award.

Finally, on appeal, the Petitioner does not provide any legal authority in support of his assertion that the Director erred in his decision. Instead, he states, in a conclusory manner, that he “documented the reception [*sic*] of various awards and prizes of an international nature in his field.” Statements made without supporting documentation have limited probative value and are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (*citing Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Due to the lack of supporting evidence, the Petitioner has not satisfied the plain language of this criterion.

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. Such evidence shall include the title, date, and author of the material, and any necessary translation.

Although the Petitioner did not explicitly assert that he met this criterion, he did submit some published material, including the following articles:

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This criterion requires the Petitioner to demonstrate that the material is published in a professional or major trade publication or other major media. In this case, the Petitioner did not submit any information about the publishers or websites that published the articles, such as the nature of the publishers or websites, or their reach or readership level. Without such evidence, the Petitioner has not shown that the articles are published in qualifying publications or major media. As a result, he has not satisfied the plain language of this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Various forms of artistic display may satisfy this criterion. As a result, we evaluate the nature of the display to determine if the Petitioner has met this criterion. According to the plain language of the regulation, the exhibitions or showcases must be artistic in nature. The arts may include visual art, performing art, music, graphic art, and other examples of the fine arts. On appeal, the Petitioner asserts that he has performed in a number of venues, including the "National Opera Halls in the [REDACTED] Albania." The evidence indicates that he has displayed his work as a tenor at shows, including the Dam Festival, Chopin Kosova's [REDACTED] Anniversary of Verdi Show, a recital concert at the National Theater of Kosovo, a charity concert at the Kosovo Philharmonics, a concert at the Dam Festival, and an Opera Showcase at Carnegie Hall. Although not every performing artist's show is necessarily an artistic exhibition, these events featured the Petitioner and a few select performers. Given the format and content of at least some of these performances, and the nature of the promotional material for those events, we find that they constitute a display of the Petitioner's work in artistic exhibitions or showcases. As a result, the Petitioner has satisfied the plain language of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

On appeal, the Petitioner asserts that he has met this criterion by virtue of his [REDACTED] performance at Carnegie Hall. He states that he has "submitted several documents establishing that he has performed his skills at distinguished institutions. We agree with the Petitioner that Carnegie Hall has a distinguished reputation. However, the Petitioner must establish he has performed in a "leading or critical role" for an organization or establishment as whole, which encompasses more than one show. A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. Similarly, a critical role is evidence from its overall impact on the organization or establishment. In this case, the Petitioner performed at Carnegie Hall on a single occasion in [REDACTED]. This level of involvement is not consistent with a finding that he has performed a leading or critical role for Carnegie Hall as a whole. The Petitioner has not filed documentation indicating that his association with Carnegie Hall extends beyond this single event. The Petitioner has also not pointed to any other evidence in the record demonstrating that he meets this criterion based on his association with other organizations or establishments. For these reasons, the Petitioner has not satisfied the plain language of this criterion.

B. Intention to Continue Working in the Area of Extraordinary Ability

In addition to the requirement that he demonstrates extraordinary ability, the Petitioner must show that he seeks to enter the United States in order to work in the field of his extraordinary ability. § 203(b)(1)(A)(ii) of the Act. The corresponding regulation requires "clear evidence that the [foreign national] is coming to the United States to continue to work in the area of expertise." 8 C.F.R. § 204.5(h)(5). The regulation goes on to state: "Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." *Id.*

On the Form I-140, the Petitioner provided that his proposed employment in the United States is an opera singer. Although the Petitioner need not have a job offer, the record must establish his intent to work in his area of expertise. The record lacks documentation of his plan in the United States, such as a statement detailing how he intends to continue his work as an opera singer. In his request for evidence (RFE), the Director asked for proof of the Petitioner's intent to continue his work in the United States. The Director also indicated in his decision that the petition was denied, in part, on the lack of showing of the Petitioner's intent. On appeal, the Petitioner has not addressed this issue or submitted material demonstrating his intent to continue to work in his area of expertise in the United States. As a result, the Petitioner has not met section 203(b)(1)(A)(ii) of the Act.

C. Summary

The Petitioner has not asserted or shown that he is the recipient of a qualifying award at a level similar to that of the Nobel Prize. Moreover, he has satisfied only one of the four criteria for which he submitted relevant and probative material. Based on the record, and for the reasons discussed above, we agree with the Director that the Petitioner has not established the requisite initial evidence of a one-time achievement or that satisfies at least three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must show that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor. Had the Petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers the entire record in the context of whether or not the Petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) that the foreign national "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the Petitioner has not done so, the proper conclusion is that the Petitioner has not satisfied the antecedent regulatory requirement of presenting items that meet the initial requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in

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Kazarian, a review of the evidence in the aggregate supports a finding that the Petitioner has not shown the level of expertise required for the classification sought.²

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. § 291 of the Act, 8 U.S.C. § 1361. Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of R-Y-*, ID# 14864 (AAO Dec. 23, 2015)

² We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).