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

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

MATTER OF P-P-V-

DATE: AUG. 26, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a music producer, seeks classification as an individual of extraordinary ability in the arts.¹ Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This classification 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, Nebraska Service Center, denied the petition. The Director determined that the Petitioner did not satisfy the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which necessitates either 1) documentation of a one-time major achievement, or 2) materials that meet at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). While the Director found that the Petitioner met the leading and critical role criterion and the commercial successes criterion under 8 C.F.R. § 204.5(h)(3)(viii) and (x), he concluded that the Petitioner did not present evidence meeting an additional criterion.

The matter is before us on appeal.² In support of his appeal, the Petitioner submits additional materials, and maintains that the Director erred in concluding that he did not meet at least three of the ten regulatory criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). He also states that he has demonstrated his extraordinary ability in the musical field as a “producer and artist.”

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Petitioner may establish his eligibility by demonstrating extraordinary ability through sustained national or international acclaim and achievements that have been recognized in the field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act states, in pertinent part:

¹ In his initial filing, the Petitioner indicated that he was a music “producer, promotor, arranger and performer.”

² After the Director denied the petition, but before the Petitioner filed this appeal, he submitted a second immigrant petition, seeking an extraordinary ability classification in the arts [REDACTED]. This decision relates only to the Petitioner’s appeal of his first petition [REDACTED].

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

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

Satisfaction of at least three criteria, however, does not, 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 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), *aff'd*, 683 F.3d 1030 (9th Cir. 2012); *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 U.S. Citizenship and Immigration Services (USCIS) examines "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"). Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The record does not include "evidence of a one-time achievement." The Petitioner, however, has met the initial evidence requirements by presenting materials satisfying at least three of the ten types of documentation listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). Notwithstanding this finding, we conclude that he has not demonstrated, by a preponderance of the evidence, sustained national or international acclaim and that the field has recognized his achievements. Accordingly, he has not established his eligibility for the classification.

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A. One-Time Achievement

Under the regulation at 8 C.F.R. § 204.5(h)(3), a petitioner, as initial evidence, may present confirmation of a one-time achievement that is a major, internationally recognized award. The Petitioner submitted a certificate from the [REDACTED] verifying that he served as a producer for his father's album, [REDACTED] which received a nomination in the [REDACTED] category.³ The Petitioner also produced his father's earlier album, [REDACTED] which also garnered a [REDACTED] nomination in the same category. While the Petitioner acknowledged that neither album ultimately won a [REDACTED] he stated that each nomination qualified as a one-time achievement in the arts under 8 C.F.R. § 204.5(h)(3).

The plain language of the regulation requires "evidence of a one-time achievement (that is, a major, international recognized award)." Nomination for an award reflects that the nominee is in the running for the recognition and that he has a chance of receiving the award. According to a letter from [REDACTED] the president and chief executive officer of the [REDACTED] the [REDACTED] selection process includes "entering, screening, nomination and 2 rounds of voting." [REDACTED] website noted that names of the winners remain unknown until they "are revealed during the [REDACTED] telecast." Without his actual receipt of a [REDACTED] the Petitioner has not offered "evidence of a one-time achievement" as defined by the regulation. Significantly, the Petitioner has not presented any legal authority in support of his position that a nomination, without actual receipt of an award, meets the plain language requirements under 8 C.F.R. § 204.5(h)(3).

B. Evidentiary Criteria

The Director concluded that the Petitioner met the criteria pertaining to performing a leading and critical role, and commercial successes in the performing arts. *See* 8 C.F.R. § 204.5(h)(3)(viii), (x). The record includes evidence relating to these criteria. For example, the Petitioner, along with a team of musicians, produced [REDACTED] The Petitioner was in charge of production and musical direction. His father stated that the Petitioner contributed to the record's modern sound. [REDACTED] received a [REDACTED] nomination and some media attention. The documentation demonstrates that the Petitioner has performed in a leading or critical role for an organization that has a distinguished reputation.⁴ He thus satisfies the criterion under 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner offered evidence of the commercial successes of his work. According to [REDACTED] of [REDACTED] the Petitioner produced profitable tours. [REDACTED] presented a spreadsheet entitled [REDACTED] indicating that the multi-country tour had a gross value of over \$10 million. This figure, however, assumes that every performance was a sold-out one. The record

³ The Petitioner's father is [REDACTED]

⁴ The statutory definition for an "organization" includes "a group of persons, whether or not incorporated, permanently or temporarily associated together with joint action on any subject or subjects." Section 101(a)(28) of the Act; 8 U.S.C. § 1101(a)(28). The team that created [REDACTED] thus constituted an organization under the Act.

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does not specify if such was the case. Regardless, in light of the documentation, we will not disturb the Director's finding that the Petitioner has filed proof of commercial successes in the performing arts, under 8 C.F.R. § 204.5(h)(3)(x).

In addition, the Petitioner meets the display at artistic exhibitions or showcases criterion. See 8 C.F.R. § 204.5(h)(3)(vii). According to [REDACTED] a "producer must organize the creation of entirely new arrangements of songs" for live performances, and he must then "select a tour band to play with the artist in the performances." [REDACTED] stated that the Petitioner "designed [a 2012] tour around a motif of loneliness, and chose songs that would help to communicate the alienation of the performer." He further noted that the Petitioner "chose to take the production in a minimalistic direction that would highlight the isolation of the artist." [REDACTED] the president of [REDACTED] indicated that during the [REDACTED] tour, the Petitioner was responsible for scenography and stage design. [REDACTED] and [REDACTED] letters, along with other evidence, verified that the Petitioner took charge of the theme, musical arrangements, and stage design of at least one tour. The performances during the tour, thus, constituted display of the Petitioner's work in the field at artistic exhibitions or showcases. The Petitioner satisfies the criterion under 8 C.F.R. § 204.5(h)(3)(vii).

While the Petitioner has shown that he meets at least three of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), he has not demonstrated his eligibility for the extraordinary ability classification. Specifically, as discussed below, he has not established, by a preponderance of the evidence, his national or international acclaim and that the field recognizes his achievements.

B. Final Merits Determination

In the final merits determination, we consider the totality of the record to determine if a petitioner has demonstrated, by a preponderance of the evidence, that he has sustained national or international acclaim,⁵ and his achievements have been recognized in the field through extensive documentation,⁶ making him one of the small percentage who has risen to the very top of the field of endeavor. If so, he has met the requisite burden of proof and established eligibility for visa classification as an individual of "extraordinary ability." 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.

The documents we consider in the final merits analysis may include achievements that were not directly applicable to one of the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x), and comparable evidence under 8 C.F.R. § 204.5(h)(4). Also, a petitioner may request that submissions that do not meet any of

⁵ "Sustained" means to support or maintain, especially over a long period. *Black's Law Dictionary* 1585 (9th ed. 2009). Therefore, the foreign national must have maintained the national or international acclaim over a period of time through the date of filing to demonstrate his eligibility.

⁶ While the statute requires extensive documentation, eligibility is to be determined not by the quantity of the filings alone but by their quality. *Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-*, 20 I&N Dec. 77, 80 (Comm'r 1989)). We "examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence." *Id.*

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the enumerated criteria, and do not qualify as comparable, be considered within a final merits analysis. In a final merits analysis, we first discuss and analyze the foreign national's accomplishments to provide a framework to perform an overall, final determination. We then weigh all of the filings together to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the respective 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.

At the time the Petitioner filed the petition, he was a student at the [REDACTED] in [REDACTED] MA, pursuing a professional diploma in music. A service contract showed that he worked for [REDACTED] a business located in [REDACTED] Spain, providing services in "musical production consultancy and management of musical productions and organization of musical events." He served as an album producer for two musicians: his father and [REDACTED] the chairperson and chief executive officer of [REDACTED] and other documentation, confirmed that the Petitioner produced the [REDACTED] and [REDACTED] albums. A certificate from the [REDACTED] also noted that he produced [REDACTED] which garnered a nomination in the [REDACTED] category. In addition, the Petitioner had been involved in [REDACTED] live events and international tours. [REDACTED] stated that the Petitioner was also a manager at [REDACTED] a recording studio in [REDACTED] Spain, and was in charge of studio operations for [REDACTED] projects.

While the Petitioner has illustrated that as a musical producer, he has received recognition within his circle of collaborators and associates, he has not demonstrated his sustained national or international acclaim or established his status as one of the small percentage who is at the top of his field. The references praised the Petitioner's creativity, abilities and professionalism, but they did not sufficiently show his eligibility for this classification. For example, [REDACTED] a senior vice president of [REDACTED] region at [REDACTED] stated that the Petitioner "exemplifies the modern music producer, an individual with the significant creative and managerial skills to guide the production of popular records." [REDACTED] provided that the Petitioner has the "ability to balance the multi-faceted responsibilities of a producer" and is "a member of a community of successful producers in Spain."

Although [REDACTED] letter showed that the Petitioner is an effective producer, who has achieved some level of success, it did not support a finding that he has reached the very top of the field as a music producer. Neither the letter nor other documentation substantiated [REDACTED] opinion that the Petitioner is "an extraordinary producer" who qualifies for the classification. His letter did not compare the Petitioner to others in the field, or demonstrate that the Petitioner's recognition in the field was at a level indicative of his national or international acclaim. Repeating the language of the statute or regulations does not satisfy a petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *1, 5 (S.D.N.Y. Apr. 18, 1997). In addition, USCIS need not accept primarily conclusory statements. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

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Similarly, a number of the references, with whom the Petitioner had collaborated, commented on the Petitioner's qualifications to be a musical producer, but did not point to specific evidence demonstrating his sustained national or international acclaim. [REDACTED] indicated that the Petitioner is "absolutely qualified to work as a music producer in the US." [REDACTED] the director of [REDACTED] in Spain, stated that the Petitioner was "a world class music producer, capable of managing any major production, either local or international." [REDACTED] the musical director of [REDACTED] in [REDACTED] Spain, provided that the Petitioner was "highly qualified to produce music in a variety of styles from pop to jazz." [REDACTED] the founder, music director and recording producer of the [REDACTED] said that the Petitioner is of "extraordinary professionalism" and is "highly qualified to produce music of the highest international level." These letters, and other submitted materials, illustrated that people who have worked with the Petitioner hold a high opinion of his professionalism and abilities. The record, however, lacks sufficient documentation verifying that in the field of countless music producers, the Petitioner has risen to its highest echelon.

Some of the references made unsubstantiated declarations. For example, [REDACTED] indicated that the Petitioner's work has "had a notorious impact in the industry." [REDACTED] however, did not specify how the Petitioner had influenced the field, or whether the impact was at such a high level that it would support a finding that the Petitioner has reached the very top of his field amongst all other music producers. Similarly, [REDACTED] provided that the Petitioner was "one of the most talented young producers at the moment in Spain, having the extraordinary ability to produce recordings of the highest level of exigency either in Spain or abroad." [REDACTED] did not offer information on other producers in Spain or point to specific evidence confirming that the Petitioner is a top music producer in Spain. [REDACTED] the president of [REDACTED] called the Petitioner "an internationally acclaimed music producer." [REDACTED] however, presented nothing to indicate that the Petitioner is well recognized beyond those who have worked or collaborated with him. As noted, unsupported statements from the references that repeat the statutory or regulatory language do not establish a petitioner's eligibility. See *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Ayvr Associates, Inc.*, 1997 WL 188942 at *5; *1756, Inc.*, 745 F. Supp. at 17.

Significantly, the Petitioner has not received any significant awards within the music industry or garnered extensive media coverage nationally or internationally. Two of the albums that the Petitioner worked on received [REDACTED] nominations. The Petitioner, however, has not shown that either record actually won an award of national or international recognition. While [REDACTED] nominations might illustrate that the field has taken notice of his work, the Petitioner has not established that the achievement was indicative of his extraordinary ability in a field of music producers.

According to some reference letters, the Petitioner has the potential to achieve great success in his field. For example, [REDACTED] stated that the Petitioner "will certainly be an asset to the music community." [REDACTED] an executive vice president of [REDACTED] indicated that the Petitioner's "presence in the Music community will not only benefit [REDACTED] work, but will be a huge asset to the music industry as a whole." [REDACTED] provided that "[i]f granted permission to work in the United States, . . . [the Petitioner] will make significant contributions to [the American] culture and economy." To qualify for this classification, the Petitioner

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must present documentation showing that he has already attained sustained national or international acclaim. His potential to reach the top of the field is insufficient to demonstrate eligibility.

The Petitioner has not shown that he has sustained national or international acclaim as a music producer. The Petitioner's father is a musician with more than [redacted] years of experience, who has released at least [redacted] albums. The Petitioner produced three of his father's albums: [redacted] and [redacted] and was involved with their promotional tours. While these facts illustrate that the Petitioner is effective and skillful as a music producer, they do not establish the Petitioner's status as a top music producer in the field.

Notably, the record lacks evidence showing that people outside of the Petitioner's circle of collaborators and associates recognized him as a top music producer in the field. While the Petitioner received some media attention, its limited nature is insufficient to demonstrate his national or international acclaim. The record includes an article from [redacted] that discussed the Petitioner's work at [redacted] and his development of [redacted] album, [redacted]. In his initial filing, the Petitioner maintained that [redacted] was "a leading Spanish music industry publication." He, however, did not submit materials substantiating this statement. Articles posted on [redacted] and the [redacted] website mentioned the Petitioner once, indicating that he produced s [redacted] with a modern sound. Similarly, pieces posted on [redacted] and [redacted] focused on the Petitioner's father's music and included a brief discussion of the Petitioner's involvement in the [redacted] album. An article on [redacted] referred to the Petitioner once, confirming that he produced [redacted]. The limited media coverage on the Petitioner – including one article about him and other articles mentioning him in passing – is not indicative of his top music producer status in the field.

The record has some financial information on the tours that the Petitioner produced . [redacted] stated that the Petitioner "organized successful tours in the past and his ability to excel in this area of the producing world is well documented." While the letter indicated that the tours were commercial successes, neither [redacted] nor the Petitioner presented sufficient materials demonstrating the level of the successes. [redacted] offered a chart, entitled [redacted] reflecting that the gross value of a tour was over \$10 million. This figure assumed that each performance filled every seat in a venue. The Petitioner has not submitted information on the number of tickets actually sold per show or the expenses of the tour. Without additional documentation, the Petitioner has not illustrated the level of the commercial successes or that the magnitude of the successes is indicative of his sustained national or international acclaim.

The Petitioner also produced the album, [redacted]. The record lacks evidence relating to album sales, if the record achieved commercial successes or garnered recognition in the field. Without additional materials, the Petitioner's involvement in this album is insufficient to show his national or international acclaim in the field.

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Finally, evidence relating to the Petitioner's income does not verify that he is a music producer of extraordinary ability. According to documents from his employer, [REDACTED] for January 2015, the Petitioner's gross income was €3,813.14, which was approximately \$4,301; and his income after deductions was €2,028.02, which was approximately \$2,287.⁷ The Petitioner has not presented materials reflecting that his earnings illustrated his national or international acclaim or his status of being at the very top of the field.

In this case, the Petitioner's accomplishments in the aggregate include his academic pursuit, professional and employment experience, involvement in album and tour productions, contribution to two [REDACTED] nominated records, and production of [REDACTED]. These achievements confirm that he is a productive and skillful music producer who has gained the respect of his circle of colleagues, and garnered some attention in the field. They do not, however, demonstrate that he has sustained national or international acclaim and that the field has recognized his achievements.

B. Summary

For the reasons discussed above, the full measure of the Petitioner's accomplishments, including his academic pursuit, professional experience, production ability and activities, the level of his national or international acclaim, and the extent the field has recognized his achievements, are not indicative of a record of sustained acclaim. Also, he has not submitted extensive documentation exhibiting that he has attained a level of expertise placing him among that small percentage who has risen to the very top of the field of endeavor.

III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that he is an individual of extraordinary ability. A review of the record in the aggregate does not confirm that he has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim. The documentation does not prove that the Petitioner's achievements set him significantly above almost all others in his field at a national or international level. The Petitioner, therefore, has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. The burden is on the Petitioner to show eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The Petitioner in this case has not established that he is an individual of extraordinary ability. Accordingly, we will dismiss the appeal.

⁷ <https://www.oanda.com/currency/converter/>, accessed on July 19, 2016, and incorporated into the record of proceedings.

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ORDER: The appeal is dismissed.

Cite as *Matter of P-P-V-*, ID# 17866 (AAO Aug. 26, 2016)