



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

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

MATTER OF J-W-

DATE: OCT. 17, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a violinist, seeks classification as an individual of extraordinary ability in the arts. *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 that the Petitioner had satisfied only two of the regulatory criteria, of which she must meet at least three.

The matter is now before us on appeal. In her appeal, the Petitioner submits a brief, stating that she meets at least three criteria.

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

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 implementing 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 or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then he or she must provide sufficient qualifying 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).

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 Petitioner is a student at [REDACTED] seeking a master's degree in stringed instruments. As the Petitioner has not indicated or established that she has 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).

### A. Evidentiary Criteria

The Director found that the Petitioner met the awards criterion under 8 C.F.R. § 204.5(h)(3)(i) based on her third place finish at the 2015 [REDACTED] and her award for excellence at the 2007 [REDACTED]. In addition, the Director determined that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv) based on her participation at the 2013 [REDACTED]. The Petitioner has also demonstrated that her performances meet the criterion for display at artistic exhibitions or showcases under 8 C.F.R. § 204.5(h)(3)(vii). For instance, the Petitioner has appeared on stage as a

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member of the orchestra for the [REDACTED] and the [REDACTED]. Accordingly, she has met at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3).

#### B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether she has demonstrated, by a preponderance of the evidence, that she has sustained national or international acclaim, and that her achievements have been recognized in the field through extensive documentation, making her one of the small percentage who has risen to the very top of the field of endeavor. In a final merits determination, we analyze the Petitioner's accomplishments and weigh the totality of the evidence to determine if her successes are sufficient to demonstrate that she has 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. In this matter, we determine that the Petitioner has not shown her eligibility.

The record indicates that the Petitioner attended the [REDACTED] and the [REDACTED] for [REDACTED] in China. The Petitioner was then admitted into the United States to study at the [REDACTED] bachelor's degree program for violin performance and is currently seeking a master's degree in stringed instruments at [REDACTED]. As discussed further below, the Petitioner's personal achievements mainly surround her student activities and studies rather than indicating a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The awards claimed under 8 C.F.R. § 204.5(h)(3)(i) do not indicate national or international acclaim for the Petitioner, nor establish a high level of recognition for her work. Several of the awards in the record are student awards. Academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic awards and honors received while preparing for a vocation fall short of demonstrating the required acclaim. For example, the Petitioner offered several "professional excellence prizes" for her successful semester completions at the [REDACTED]. In addition, the Petitioner supplemented the record with numerous awards received at youth and student competitions. For instance, the Petitioner received first place in the [REDACTED] division at the [REDACTED] and third place at the [REDACTED] held by the [REDACTED]. Further, the record indicates that the Petitioner won the [REDACTED] however this contest was "open to undergraduate and graduate students." The Petitioner competed against other students rather than against nationally or internationally recognized violinists. Awards won in competitions that were limited by student status do not indicate that the Petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Similarly, although the Petitioner placed third at the [REDACTED] the eligibility requirements restrict the applicants to non-professionals and ages 18-28.

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While not a student award, these restrictions indicate she did not compete against professional and renowned musical artists. Moreover, while the Petitioner received a 2007 [REDACTED] an award that was newly created, she did not show the level of competition reflecting that she has risen to the very top of her field of endeavor.

Under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii), the Petitioner documented her membership with the [REDACTED] and [REDACTED]. The record reflects that membership in each of these organizations requires a candidate to agree to the association's articles, receive two recommendation letters from members, and attain a certain level of achievement such as winning a music competition. The Petitioner, however, did not demonstrate that the membership requirements are tantamount to outstanding achievements, so as to reflect that "her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Regarding the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner established her one-time participation as a judge for the [REDACTED]. Specifically, the Petitioner evaluated 97 students to determine whether they passed examinations. An evaluation of the significance of the Petitioner's judging experience is acceptable under *Kazarian*, 596 F. 3d at 1121-11, to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. Without evidence that sets the Petitioner apart from others in her field, such as evidence that she has served as a judge of acclaimed violinists or of a national or international competition rather than aspiring students or amateurs, the record does not demonstrate that she "is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

Although the Petitioner did not meet the original contributions criterion under 8 C.F.R. § 204.5(h)(3)(v), she provided recommendation letters as evidence of her eligibility under that criterion. The letters discuss the Petitioner's skills as a violinist but do not identify original contributions of major significance in the field.<sup>1</sup> For instance, [REDACTED] conductor and [REDACTED] winner, indicated that the Petitioner "has cleverly use[d] eye contact, facial expression, and body movement to better her communication during performance and rehearsals." [REDACTED] did not explain how the Petitioner's techniques are considered original and of major significance. Similarly, [REDACTED] Concertmaster of the [REDACTED] stated that the Petitioner's sight-reading ability is "rare and very desirable." [REDACTED] however, did not show that this ability constitutes a contribution to the field.

The Petitioner provided evidence satisfying the display criterion under 8 C.F.R. § 204.5(h)(3)(vii). As it is expected that a violinist, such as the Petitioner, would perform in a musical setting at concerts and recitals, we will evaluate the extent to which the display of her work is reflective of acclaim consistent with this highly restrictive classification. Although the Petitioner's documentary evidence reflects a few of her performances at prestigious venues, such as [REDACTED] and [REDACTED]

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<sup>1</sup> We discuss only a sampling of these letters, but have reviewed and considered each one.

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she participated at those events as an orchestral member with [REDACTED] and [REDACTED]. Moreover, the majority of her concerts took place at her academic institutions. In addition, the Petitioner did not establish that her performances, for instance, garnered attention in a manner consistent with sustained national or international acclaim. Further, the petitioner did not demonstrate that her concerts brought critical acclaim, drew record crowds, or raised attendance. The record does not indicate that the Petitioner received top billing or was otherwise personally featured at the venues. Without evidence distinguishing the Petitioner's concerts and performances from others in her field, she has not shown that she has risen to the very top of the field.

With regard to the Petitioner's performances in a leading or critical role for organizations with a distinguished reputation under 8 C.F.R. § 204.5(h)(3)(viii), the appeal brief mentions her leading role as concertmaster with the [REDACTED] and [REDACTED]. While a concertmaster serves as first violinist and assistant conductor to the orchestra, the Petitioner has not established that holding this role for ensembles composed of students is indicative that she is one of "that small percentage of individuals that have risen to the very top of their field of endeavor." The submitted evidence for the Petitioner's roles and organizations does not substantiate her sustained national or international acclaim.

Finally, although not mentioned on appeal, the Petitioner previously claimed eligibility for the commercial successes criterion under 8 C.F.R. § 204.5(h)(3)(x) based on her collaboration on a video compact disc (VCD) entitled, [REDACTED]. The record indicates that the Petitioner provided [REDACTED] musical numbers to the VCD. The Petitioner, however, did not establish that the VCD garnered critical acclaim or favorable press reviews or otherwise drew a significant level of sales in a manner consistent with sustained national or international acclaim. Furthermore, the Petitioner did not demonstrate that she maintained high box office receipts showing her recognition in the field.

In summary, the Petitioner's achievements in the aggregate confirm that she is a talented violinist. She has performed in front of audiences and gained the respect of her educators, students, and other musicians, who believe she is capable of contributing to the U.S. music industry. Her achievements at this stage of her career, however, do not demonstrate that she has sustained national or international acclaim or that she is already one of the small percentage at the very top of her field of endeavor.

### III. CONCLUSION

The Petitioner has not demonstrated by a preponderance of the evidence that she is an individual of extraordinary ability. A review of the record in the aggregate does not confirm that she has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. She, therefore, has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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For the above reasons, the Petitioner has not met her burden to establish 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).

**ORDER:** The appeal is dismissed.

Cite as *Matter of J-W-*, ID# 12090 (AAO Oct. 17, 2016)