



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

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

MATTER OF C-D-M-

DATE: AUG. 11, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a pop singer, 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 Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner did not establish that he received a major, internationally recognized award or that he had satisfied any of the initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits documentation and a brief, stating that he received a major award and meets at least three criteria.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to qualified immigrants with extraordinary ability 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 implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate 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 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 individual 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle 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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner is a pop singer who performed with the group, [REDACTED]. On appeal, the Petitioner maintains that he won a major, internationally recognized award under 8 C.F.R. § 204.5(h)(3) and that he also satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). Specifically, the Petitioner indicates that he meets the following criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), membership under 8 C.F.R. § 2204.5(h)(3)(ii), published material under 8 C.F.R. § 204.5(h)(3)(iii), original contributions under 8 C.F.R. § 204.5(h)(3)(v), artistic display under 8 C.F.R. § 204.5(h)(3)(vii), leading or critical role under 8 C.F.R. § 204.5(h)(3)(viii), high salary under 8 C.F.R. § 204.5(h)(3)(ix), and commercial successes under 8 C.F.R. § 204.5(h)(3)(x). We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner has a one-time achievement or fulfills the plain language requirements of at least three criteria. In addition, the Petitioner argues that another singer in his group has been granted extraordinary ability status, which is further proof of his eligibility. However, the Petitioner’s extraordinary ability petition is reviewed on its own merits.¹

¹ Further, we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

A. One-Time Achievement

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement; other examples which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, reflects a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the field as one of the top awards.

The Petitioner argues that his first place finish for [REDACTED] at the 2010 [REDACTED] in [REDACTED] Bulgaria, satisfies the one-time achievement requirement. According to screenshots from the festival's website that was submitted by the Petitioner, the pop contest has been held since 1992, is the only international festival in Bulgaria, and attracts singers and composers from 42 countries.

The regulation at 8 C.F.R. § 204.5(h)(3) requires the one-time achievement to be "a major, international[ly] recognized award." The documentation, however, does not discuss the festival's awards or otherwise indicate that they are recognized as major, international awards. The Petitioner did not present, for example, evidence that the competition or prize is widely reported by international media comparable to other major, globally recognized awards such as Oscar or Olympic medal winners. Accordingly, the Petitioner has not demonstrated that he meets the requirements of a one-time achievement.

B. Evidentiary Criteria

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The record indicates that the Petitioner received the following: 1) a certificate for a [REDACTED] for the [REDACTED] at the 2011 [REDACTED] 2) a certificate of appreciation from the [REDACTED] for "the [REDACTED]" 3) a certificate of appreciation from the 2015 [REDACTED] for [REDACTED] and 4) a certificate from the [REDACTED] from [REDACTED] Canada, for [REDACTED] in Canada." Although the Petitioner provided evidence showing his receipt of certificates, the

Petitioner did not submit supporting documentation evidencing that the certificates are nationally or internationally recognized prizes or awards for excellence in the field.

Further, the Petitioner offered evidence of his previously discussed award from the 2010 [REDACTED] as well as the following: 1) a diploma for [REDACTED] prize at the 2014 [REDACTED] 2) a certificate for ‘ [REDACTED] ’ at the [REDACTED] by the [REDACTED] 3) a certificate of appreciation “for [REDACTED] in Canada and worldwide” by [REDACTED] 4) a certificate for an ‘ [REDACTED] ’ by the [REDACTED] 5) a diploma of appreciation for [REDACTED] at the [REDACTED] and 6) a certificate of appreciation “for [REDACTED] in the world” by the [REDACTED]

For each of these prizes, the Petitioner provided documentation regarding the awarding entities but did not establish that the awards constitute nationally or internationally recognized prizes or awards for excellence. For instance, the Petitioner submitted information about the [REDACTED] including its history and past performers.² The evidence, however, does not indicate that the prizes or awards from the [REDACTED] are nationally or internationally recognized for excellence. In fact, there is no mention of the awards garnered from the festival. Moreover, the Petitioner offered a screenshot relating to the [REDACTED] that lists and explains each award. The Petitioner, however, did not show that the awards are nationally or internationally recognized, such as by providing evidence of major media coverage. Accordingly, the Petitioner has not demonstrated that he meets this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner argues that because [REDACTED] is registered with the [REDACTED] he is also a member of the [REDACTED] and the [REDACTED]. Although he provided a certificate verifying [REDACTED] trademark registration, he did not establish that membership with [REDACTED] or [REDACTED] meets this criterion.

Regarding [REDACTED] the Petitioner submitted screenshots of [REDACTED] website reflecting a statement from [REDACTED] president, attesting to the importance of the association to Romanian composers and musicians. In addition, the Petitioner presented screenshots from *Wikipedia* regarding the background and history of [REDACTED]. While the Petitioner established that [REDACTED] is a member of the organization, the Petitioner did not demonstrate that [REDACTED]

² Although we discuss a sampling of the awards, we have reviewed and considered each one.

requires outstanding achievements, as judged by recognized national or international experts, as a condition for membership. The Petitioner, for example, did not submit [REDACTED] bylaws, showing that membership is restricted to those who have outstanding achievements rather than open to all Romanian composers and musicians.

As it pertains to [REDACTED] the Petitioner provided a screenshot from [REDACTED] website indicating that it was established by law under the [REDACTED] to develop and strengthen intellectual property rights. Further, the Petitioner offers documents regarding [REDACTED] decision to apply tariffs and calculate remunerations. The Petitioner, however, did not show that he or [REDACTED] is a member of [REDACTED]. The record does not support the Petitioner's contention that registration with [REDACTED] also confers membership with [REDACTED]. Moreover, the Petitioner did not establish that membership with [REDACTED] requires outstanding achievements of its members, let alone that [REDACTED] is an association that accepts individuals or groups for membership.

Relating to [REDACTED] the Petitioner offers documentation reflecting that it is a non-profit association to collect and distribute money due to Romanian and foreign performers. In addition, the Petitioner submitted a certificate indicating that he is member of the association. The Petitioner, however, did not present documentation, such as the bylaws, establishing the membership requirements for [REDACTED]. Here, the Petitioner did not demonstrate that membership with [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts, consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(ii). For the reasons discussed, the Petitioner did not show that he satisfies 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. 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner submitted a screenshot from [REDACTED] relating to the Petitioner's admission to the hospital for a medical problem. Although the article is about the Petitioner, it does not relate to his field of music for which he seeks classification. Moreover, on appeal, the Petitioner provides a screenshot from [REDACTED]. The screenshot, however, is in a foreign language, and the Petitioner did not present the required certified English language translation.³ Further, the Petitioner offers a screenshot from www.facebook.com reflecting [REDACTED] contact information. The screenshot does not indicate the website's popularity or otherwise show that it is considered a professional or major trade publication or other major medium.

In addition, the Petitioner provided a screenshot from [REDACTED] reflecting published material about the Petitioner relating to his field. The Petitioner, however, did not include the date of the article as required by this regulatory criterion. Moreover, Petitioner submits a screenshot from

³ Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3).

██████████ that appears to relate to contact information for the website; however the Petitioner did not present the required English language translation. Further, the Petitioner did not establish that ██████████ is a professional or major trade publication or other major medium.

Further, as indicated in the Director's decision, the Petitioner presented a copy of the front page of the ██████████. The record does not contain a certified translation of the newspaper page, and the Petitioner did not include the title, date, and author of the material. On appeal, the Petitioner submits a screenshot from *Wikipedia* regarding ██████████ but does not provide a translation of an article from the publication. Without a properly certified English language translation of the article, we cannot determine that it reflects published material about him relating to his work. In addition, the *Wikipedia* screenshot is in a foreign language, and the Petitioner did not offer a certified English language translation. Accordingly, the Petitioner did not establish that ██████████ is a professional or major trade publication or other major medium.

Moreover, the Petitioner submitted a screenshot from ██████████ reflecting an interview with ██████████ the other member of ██████████. The interview constitutes published material about ██████████ rather than the Petitioner, who is mentioned only once. In addition, the Petitioner did not include the required author of the article or present evidence demonstrating that ██████████ is a professional or major trade publication or other major medium.

The Petitioner also offered a screenshot from ██████████ that includes an interview with both members of ██████████. While this evidence reflects published material about the Petitioner relating to his work, it does not include the required author, and he did not provide supporting evidence showing that the website is a professional or major trade publication or other major medium.

The Petitioner also argues that ██████████ was invited to appear on "famous" television shows and submitted photographs of the performances. However, he did not provide sufficient evidence to establish that the programs in which he appeared constitute "major media," nor did he include all required information such as the title, date, and author of the material." Accordingly, the Petitioner did not establish that he fulfills this regulatory criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that his submission of diplomas, photographs, concert posters, and television appearances satisfies this criterion. Although the Petitioner's documentation reflects ██████████ performances, he did not show how they represent original contributions of major significance in his field. For example, the Petitioner provided a certificate from the mayor of ██████████ Romania to ██████████ "for their support in organizing the exhibition events dedicated to ██████████ – ██████████ 2007," and a certificate from the mayor of ██████████ Romania "as a sign of gratitude and thankfulness for participation at festivities." However, the Petitioner did not demonstrate how ██████████ concerts or music impacted or influenced the pop music field beyond

the venues in which it performed. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole). While the Petitioner contends on appeal that his music group, [REDACTED] was one of the first to adopt and popularize the “[REDACTED]” style of music, the record does not include sufficient documentation to support this statement or to demonstrate the significance of this claimed contribution.

The record also contains eight letters regarding [REDACTED] performances on television shows. Each of the letters state, in part:

[REDACTED] and [the Petitioner], members of [REDACTED] proved to be extremely talented artists, with strong artistic qualities, two unique voices [sic] in the music interpreted by them and promoted not only in Romania but also in different countries in the world [sic].

We recommend the two artists [REDACTED] and [the Petitioner], members of [REDACTED], as serious and talented people, suitable to successfully represent Romanian music abroad [sic].

These letters do not show how the Petitioner’s contributions have been significant. For example, the letters do not explain how the Petitioner’s “extreme talents,” “strong artistic qualities,” and “unique voices” are considered of major significance to pop music or his field. Ultimately, letters that repeat the regulatory language but do not explain how a petitioner’s contributions have already influenced the field are insufficient to establish original contributions of major significance in the field. *Kazarian*, 580 F.3d at 1036, *aff’d in part*, 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that U.S. Citizenship and Immigration Services’ (USCIS’) conclusion that the “letters from physics professors attesting to [the petitioner’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122. The letters considered above primarily contain attestations of the Petitioner’s status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att’y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990). Accordingly, the Petitioner has not met his burden of showing that he has made original contributions of major significance in the field.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases.
8 C.F.R. § 204.5(h)(3)(vii).

As discussed above, the Petitioner has displayed his work at festivals and concerts, such as the 2010 [REDACTED] in [REDACTED] Bulgaria. Therefore, the Petitioner satisfies this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

As part of the singing duo for [REDACTED] the Petitioner has established that he performed in a leading or critical role. The regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires the role to be “for organizations or establishments that have a distinguished reputation.” On appeal, the Petitioner does not argue or refer to evidence indicating that [REDACTED] has a distinguished reputation. Moreover, the record does not reflect that [REDACTED] enjoys such status. For example, the Petitioner did not show that [REDACTED] has received significant awards or garnered critical acclaim. Because he did not establish that [REDACTED] has a distinguished reputation, the Petitioner does not meet this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner contends that he received top remuneration for star singers at his concerts and television appearances. He also claims that he provided “copies of some of the receipts with English translations for the money received for the concerts” indicating that he commands \$10,000 per concert in Romania. The record, however, includes invoices for recitals and shows ranging from 600 euros to 5,000 euros. Moreover, neither the Petitioner’s name nor [REDACTED] is listed on the invoices establishing that the Petitioner commanded the earnings.

Notwithstanding the above, this regulatory criterion requires the Petitioner to demonstrate that he commands a high salary or other significantly high remuneration for services “in relation to others in the field.” Here, the Petitioner did not present evidence comparing his salary or remuneration to other singers to show that he earned a high salary or significantly high remuneration for services. Accordingly, the Petitioner did not establish that satisfies this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk or video sales. 8 C.F.R. § 204.5(h)(3)(x).

The Petitioner states that he submitted copies of his compact discs and concert flyers showing that [REDACTED] had nine successful albums and extensively aired music videos. The regulation at 8 C.F.R. § 204.5(h)(3)(x) requires evidence of commercial successes in the form of “receipts” or “sales.” Here, the Petitioner did not provide evidence of [REDACTED] box office receipts or music sales. The submission of samples of the Petitioner’s music or evidence of his performances is insufficient to meet this regulatory criterion. For these reasons, the Petitioner did not demonstrate that he fulfills this criterion.

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

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that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the level of expertise required for the classification sought. Further, as the Petitioner has not established his extraordinary ability under section 203(b)(1)(A)(i) of the Act, we need not determine whether he is coming to “continue work in the area of extraordinary ability” under section 203(b)(1)(A)(ii).

ORDER: The appeal is dismissed.

Cite as *Matter of C-D-M-*, ID# 452807 (AAO Aug. 11, 2017)