



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

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

MATTER OF A-I-P-

DATE: FEB. 23, 2017

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a violist, seeks classification as an “alien 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, Texas Service Center, denied the petition. The Director concluded that the Petitioner did not satisfy any initial evidence criteria, when evidence meeting at least three criteria is required.

On appeal, the Petitioner submits additional evidence and a brief. She indicates that she has provided material for at least three initial evidence criteria and has shown her extraordinary ability as a violist.

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

I. LAW

The Petitioner may demonstrate her extraordinary ability through sustained national or international acclaim and achievements that have been recognized in her field through extensive documentation. Specifically, section 203(b)(1)(A) of the Act notes that an alien qualifies for an extraordinary ability visa 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.

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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 the 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).

Satisfaction of at least three criteria, however, does not, in and of itself, establish eligibility for this classification. If a petitioner meets three criteria, we then examine the evidence of record in the context of a final merits decision. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review); *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); *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

The Director found the Petitioner did not submit the necessary initial evidence of her extraordinary ability as a violist because she did not demonstrate her receipt of a major, internationally recognized award or provide documentation satisfying at least three of the criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). Upon review, we find that the Petitioner has submitted sufficient initial evidence to meet only one of the necessary three criteria, as further explained below.

A. Evidentiary Criteria

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

On appeal the Petitioner references several honors she received related to her role as violist. She provided a copy of an undated [REDACTED] she received from the [REDACTED]. The certificate states it was awarded to the Petitioner for her performances with the group from 2012 to 2015 and is signed by [REDACTED] the group’s artistic director and conductor. The Petitioner provided documentation regarding the accomplishments of [REDACTED] as well as those of [REDACTED]. However, the Petitioner did not provide evidence to show that the certificate constitutes a nationally or internationally recognized prize or award. As noted, the certificate is undated. She did not provide information regarding the history of such certificates issued by [REDACTED]. There is no indication of how many certificates are awarded each year or the criteria for selection of recipients.

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The Petitioner also provided evidence indicating that she received the [REDACTED] award 2014 [REDACTED]. The Petitioner provided a photograph of an engraved trophy. Again, however, the Petitioner did not provide information regarding the award itself. As a result, she has not shown that it has national or international recognition for excellence in the field of endeavor.

Lastly, the Petitioner indicates that she received a full scholarship to study viola performance for a Master's degree in music at the [REDACTED] in Pennsylvania. The Petitioner did not provide evidence from the university regarding such a scholarship. The only references to a scholarship are in two letters from individuals without a [REDACTED] affiliation. Regardless, even if the Petitioner had demonstrated her receipt of the scholarship, she has not provided evidence in support of characterizing it as a nationally or internationally recognized prize or award for excellence in the field of endeavor. As a result, she has not satisfied this criterion.

Documentation of the individual'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.

The Petitioner notes her membership in four organizations: the [REDACTED] the [REDACTED] the [REDACTED] and the [REDACTED]. For each of these organizations, however, the Petitioner did not provide documentation to show that they require outstanding achievements of their members. Similarly, she did not submit information for any of the organizations showing that the outstanding achievements of prospective members are chosen by recognized national or international experts in their disciplines or fields. The Petitioner provided the following information about the groups:

- [REDACTED] The Petitioner provided two 2014 performance reviews about the [REDACTED] indicating that orchestra was formed recently. According to one review, the new orchestra had the dual mission of providing "high-quality orchestral performances for audiences of all ages and the presentation in schools of music education concerts, initially for grades 5-8."
- [REDACTED] The Petitioner provided a letter from the concertmaster violinist with the orchestra. The letter states that the Petitioner "volunteered her time to help to further the development of a local orchestra, [REDACTED]"

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- [REDACTED] The record shows that the Petitioner was a violist with the [REDACTED] from 2012 to 2015. On appeal, the Petitioner references honors lauded on the group's conductor. She notes that the group has made numerous CD recordings and has performances that are widely attended.
- [REDACTED] Lastly, the Petitioner has provided evidence that she is member of the [REDACTED]. On appeal, she emphasizes numerous organizations that "partner" with the quartet.

As noted above, the Petitioner did not provide evidence regarding requirements for membership in any of these organizations. She did not provide information regarding the selection process, or details regarding the individuals responsible for making member selections. As a result, the Petitioner has not satisfied this evidentiary criterion.

Evidence of the individual's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The Petitioner provided a letter from the director of the [REDACTED] located in [REDACTED] Romania, indicating that the Petitioner "was an honorary member of the jury at the [REDACTED] edition of the [REDACTED] in 2013." This letter demonstrates the Petitioner judged the work of others in an allied field. As a result, the Petitioner has satisfied the plain language of this criterion.

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

In her initial submission, the Petitioner indicated that, "As the leading viola performer in the [REDACTED] and as the leading viola performer in the [REDACTED] [the Petitioner] has led the viola section of world renowned classical music groups." Upon review, we find that the record does not support this statement. The Petitioner noted that she went from [REDACTED] chair to [REDACTED] chair viola of the [REDACTED].¹ As the [REDACTED] out of [REDACTED] violas playing with [REDACTED] the Petitioner does not offer evidence to show she is the leader of the section. In addition, the Petitioner has not provided support of her membership in the [REDACTED]. Evidence provided shows that she played with the [REDACTED]. Whereas the [REDACTED] is traditionally referred to as one of the top orchestras in the United States,² the [REDACTED] is a newly formed orchestra, as

¹ Although the brief submitted with the petition states that she is "now sharing the [REDACTED] viola chair in the [REDACTED]" the record does not support this characterization. The Petitioner is listed [REDACTED] on all [REDACTED] programs and she is otherwise referred to as the "assistant principal violist."

² Although the [REDACTED] moniker is now criticized, the [REDACTED] has been a traditional member. See [REDACTED] (last visited Feb. 9, 2017).

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indicated in the performance reviews referenced in the analysis for the preceding criteria. In the [REDACTED] programs, the Petitioner is listed as [REDACTED] or [REDACTED] chair in the viola section. As a result, the record does not support the statement that the Petitioner “has led the viola section of world renowned classical music groups.”

In his denial, the Director addressed the Petitioner’s arguments regarding the importance of the viola in an orchestra, stating that, “Within any organization, every role is critical on some level or the organization could not function. This does not establish that every role is ‘critical’ within the meaning of this regulation.” On appeal, the Petitioner urges that violas are a critical part of any orchestra, and that she has therefore performed in a critical role as an orchestra violist. She states that, although the Director’s logic may be accurate of some organizations, orchestras and classical music generally are different.

We accept that performing as part of an orchestra necessarily means each performer, to some degree, plays a critical role. The evidentiary criteria listed are meant to indicate an individual’s extraordinary ability. The interpretation urged by the Petitioner, where participation is sufficient to demonstrate a critical role, would not further the purpose of determining whether an individual possesses extraordinary ability. For this reason, the Petitioner has not satisfied this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

As evidence of her commercial success, the Petitioner notes that [REDACTED] has recorded on several labels. She provided copies of the group’s CD covers to support this statement. Although the Petitioner indicates that the group has commercially released [REDACTED] albums, the documentation provided shows that the Petitioner participated in the recording of [REDACTED] albums. However, the Petitioner did not provide information regarding record sales. In addition, the Petitioner did not submit evidence regarding box office receipts for the group’s performances or any other indicator of its commercial success. Lastly, even if the Petitioner had demonstrated the commercial success of [REDACTED] she does not provide persuasive reasoning to be able to claim the success of the group as her own. As a result, she has not satisfied this evidentiary criterion.

III. CONCLUSION

The Petitioner has provided evidence that satisfies only one of the evidentiary criteria listed in the regulations, when evidence satisfying at least three criteria is required. As a result, the Petitioner has not demonstrated eligibility for the benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of A-I-P-*, ID# 115735 (AAO Feb. 23, 2017)