



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

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

MATTER OF D-O-G-

DATE: MAY 3, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a musician, 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 Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner only satisfied one of the initial evidentiary criteria, while the regulation requires that he meet at least three.

On appeal, the Petitioner submits additional evidence and asserts that he has shown how he qualifies for this immigrant classification.

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
- (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 it fulfills the required number of criteria, is 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 presents his occupation as an artist, musician, and music teacher. As he has not established that he has received a major, internationally recognized award, the Petitioner must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). In denying the petition, the Director found that the Petitioner met the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv). On appeal, the Petitioner maintains that he also meets the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii), the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii), and the commercial success criterion at 8 C.F.R. § 204.5(h)(3)(x). The Petitioner further argues that he has demonstrated his sustained national or international acclaim. We have reviewed all of the evidence in the record of proceedings, and it does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

A. 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 Petitioner claimed he received a prize or award at the [REDACTED] in [REDACTED] Netherlands, in 1981. He provided jury reports from this competition, which show the scores for the performance of the [REDACTED]. They do not, however, name the Petitioner. The record does not otherwise show that the Petitioner played in or was affiliated with the [REDACTED]. Consequently, the record does not establish that the Petitioner himself received an award. Furthermore, the jury reports indicate "Prize: [REDACTED]" but do not otherwise provide detail regarding an award received. Without additional information, the Petitioner has not established that the award identified was nationally or internationally recognized for excellence in the field. As a result, the Petitioner has not submitted evidence that meets 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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner claims eligibility for this criterion based on press releases for performances that appeared in Germany. The Petitioner has not offered probative evidence under this criterion, however, because he did not provide copies of the original foreign language press releases. Although he provided English language translations, the original German text is merely presented typed on a blank page. The regulations indicate that a petitioner may provide original or photocopied versions of the documents required to support any benefit request. 8 C.F.R. § 103.2(b)(ii)(4). Without a copy of the original work, the Petitioner has not provided acceptable documentation as specified in the regulation. As a result, the Petitioner's assertions regarding the contents of the press releases are of limited probative value and insufficient to satisfy his burden of proof. Furthermore, the Petitioner did not demonstrate that the sources identified are professional or major trade publications, or other major media. Finally, while the Petitioner included the title of the articles, he did not include the date and author for each piece. Consequently, he has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien'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. 8 C.F.R. § 204.5(h)(3)(iv).

The Petitioner provided a letter from [REDACTED] Regional Director of [REDACTED] reflecting that the Petitioner served as an adjudicator at the 2007 [REDACTED]. The Director determined that the Petitioner submitted evidence that met the requirements of this

criterion. We agree that this evidence is sufficient to demonstrate the Petitioner's judging experience.

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 did not describe his significant contributions in the field, nor did he detail how he has impacted the field through his work before the Director. On appeal, the Petitioner only identifies a previously submitted letter from [REDACTED] Professor of [REDACTED] at [REDACTED] as evidence under this criterion. The Petitioner indicates that the letter from [REDACTED] "establishes the petitioner's/beneficiary's eligibility for the benefit requested."

The reference letters on record do not identify contributions in the Petitioner's field that qualify as original contributions of major significance in the field. Within his letter, [REDACTED] indicated that the Petitioner made a significant contribution to the university's orchestra. However, the plain language of this regulatory criterion requires that contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. *See Visin'scaia v. Beers*, 4 F. Supp. 3d at 135-136. Although he stated that the Petitioner "is one of the [sought] after music teachers and performers in Germany," he did not explain how the Petitioner has made an impact in the field as a whole.

The remaining letters on record are essentially references that do not specify significant contributions the Petitioner has effected in his field of endeavor. The letters show that the Petitioner has earned admiration for his talent and experience, but this is not sufficient to meet his burden of proof. For example, the record does not indicate the Petitioner's influence on other musicians in the field, nor does it show that the field has significantly changed as a result of his work. Consequently, the Petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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).

The Petitioner's appeal brief highlights his orchestral performances at [REDACTED] as qualifying under this criterion. He references, for example, the letter from [REDACTED] that describes the Petitioner's performances as [REDACTED] violin in the university's orchestra. This evidence is sufficient to meet 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. 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner claimed he met this criterion through his services as a leader for the [REDACTED] from 1989 to 1996. As evidence of this

service, the Petitioner provided a press release and a 1994 letter from [REDACTED] Lecturer in Conducting Orchestras at the [REDACTED]. The letter from [REDACTED] indicates that he knew the Petitioner as the [REDACTED] of the [REDACTED].

The record does not, however, contain information establishing [REDACTED] as an organization or establishment with a distinguished reputation. In support of such a finding, the Petitioner makes the following statement on appeal:

The [REDACTED] is] headed by [REDACTED] Director of the [REDACTED] [REDACTED] as an independent joint venture of the [REDACTED] and of the [REDACTED] enjoys a distinguished reputation in the field that reaches far beyond regional borders.

The Petitioner included additional facts regarding the long history of the [REDACTED] but did not otherwise provide documentation to support the characterization of [REDACTED] as an entity that “enjoys a distinguished reputation in the field that reaches far beyond regional borders.” In addition, the Petitioner’s indication that [REDACTED] leads [REDACTED] contradicts evidence that refers to the Petitioner in such a position. In light of the above, the Petitioner has not submitted qualifying evidence that meets the plain language requirements of 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).

On appeal, the Petitioner states his previous evidence that refers to “employment that stretches out over a period from 1986 to 2011, and which, in a comparable manner, proves a sustained commercial success in the performing arts and in education.” As the Petitioner has not offered box office receipts or sales materials, we will construe his appellate statement as a request to consider the material as comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation.

In this case, however, the Petitioner has not shown that the commercial success criterion is not readily applicable to his field. On the contrary, the Petitioner’s claim relates to participation in orchestras, which generally engage in commercial activities, demonstrable through box office results and ticket sales. Therefore, it appears that this criterion is directly applicable to his occupation. As a result, the Petitioner has not submitted evidence that satisfies this criterion, nor has he established eligibility by relying on comparable evidence, in accordance with 8 C.F.R. § 204.5(h)(4).

III. CONCLUSION

As discussed above, the record only satisfies two of the regulatory criteria. As a result, 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 listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Had the Petitioner

submitted the requisite evidence under at least three evidentiary categories, the next step would be a final merits determination that considers all of the evidence 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. Although we do not need to provide the type of final merits determination referenced in *Kazarian*, a review of the record in the aggregate supports a finding that the Petitioner has not established the level of expertise required for the classification sought.

ORDER: The appeal is dismissed.

Cite as *Matter of D-O-G-*, ID# 307205 (AAO May 3, 2017)