



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

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

MATTER OF E-J-B-P-

DATE: AUG. 8, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a musician, seeks classification as an alien of extraordinary ability. *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 record did not establish, as required, that the Petitioner has received a major, internationally recognized award or met the requirements of at least three of ten evidentiary criteria.

On appeal, the Petitioner submits additional evidence and asserts that he meets the requirements of two evidentiary criteria in addition to the two that the Director found that he meets.

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

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to 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 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 Director found that the Petitioner meets two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)(x), those relating to judging the work of others and playing a leading or critical role for organizations with a distinguished reputation. We agree with the Director. On appeal, the Petitioner asserts that he also meets the criteria for lesser nationally or internationally recognized awards and material about him in professional or major media. After reviewing all of the evidence in the record, we find that the Petitioner does not meet the requisite three evidentiary criteria.

Documentation of the individual’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 submitted evidence that he received a [REDACTED] award in [REDACTED] 2014 from the [REDACTED]. Additional evidence indicates that the winners of this award are selected by the [REDACTED] state of [REDACTED] and the [REDACTED] chapter of this organization, and that the award given to the Petitioner is for “honorific mention” in recognition of “15 years of Extraordinary Professional Activity.” Unlike an “honorable mention,” which is sometimes used to name the runners-up to a prize, the honorific mention in this case refers to a special category of award for career achievement. In any case, while we acknowledge the Petitioner’s receipt of this award, we agree with the Director that the evidence does not establish that it is nationally or internationally recognized.

In response to the Director's request for evidence (RFE), the Petitioner submitted an undated article from the website of [REDACTED], a major Venezuelan newspaper, which discusses the 50th anniversary of the [REDACTED] award. Since other evidence in the record states that the award has been in existence for 62 years, this single article in major media does not establish that the award is recognized in Venezuela or elsewhere. Another recent article was submitted from the website www.[REDACTED], but this article focuses on the first edition of this award presentation in [REDACTED] in 2016, and additional information about the reach or scope of this website was not submitted. On appeal, the Petitioner submits additional information from the [REDACTED] website, which includes a list of entertainment figures who have received an award from the organization. Although some of the names on this list include internationally known entertainers, the website does not indicate which of these individuals received the award for "honorific mention," and thus does not add evidence to establish the national or international recognition of the award received by the Petitioner. Accordingly, the evidence does not establish that the Petitioner meets this criterion.

Published material about the individual 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 initially submitted evidence of articles about him and his work that were published on the websites of three Venezuelan publications. In his decision, the Director noted that the evidence of website statistics was insufficient to establish that these websites qualify as professional or major trade publications or other major media. On appeal, the Petitioner has submitted more complete information about each of the media outlets and their websites. However, as discussed below none of them qualify as professional or major trade publications.

While each of the articles submitted are about the Petitioner and his work as a musician, the article published in print and on the website of [REDACTED] appears to be a paid advertisement, and does not list the author of the material as required. Notably, review of the copy of the print edition submitted on appeal reveals that the article is printed in a different font than the other two articles on the same page, includes the Petitioner's website address and social media information at the bottom, and lists an attorney's name and information below that. This type of promotional material cannot be considered under this criterion, which is intended to gauge the interest in the Petitioner's work and acclaim received from others in the field, as well as the general public.

The other two articles initially submitted by the Petitioner, published on the websites of [REDACTED] and [REDACTED], are clearly about him and his work, and include information about the author and date as required. However, the evidence does not establish that these publications, and their related websites, are major media. This evidence includes more complete reports of web analytics than had been initially submitted, online articles about each newspaper, letters from the newspapers, and information from their websites. The information about [REDACTED] indicates that it is published in the city of [REDACTED] and distributed throughout the state of [REDACTED] and its website ranks 68th in

Venezuela according to [REDACTED]. Similarly, the information about [REDACTED] indicates that is also a local or regional newspaper with circulation in the Venezuelan state of [REDACTED] with a country rank of 288 for its website according to [REDACTED]. Unlike [REDACTED] the evidence of the limited reach of these publications does not establish that they and their associated websites can be considered major media.

The Petitioner has also submitted copies of Spanish-language articles on appeal, which include his name and photograph and were published in magazines. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims.

For all of the reasons stated above, the evidence does not establish that the Petitioner meets this criterion.

III. CONCLUSION

The Petitioner is not eligible because he 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). Thus, we need not fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise 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.

ORDER: The appeal is dismissed.

Cite as *Matter of E-J-B-P-*, ID# 1398530 (AAO Aug. 8, 2018)