



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

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

MATTER OF W-O-D-M-C-

DATE: DEC. 20, 2018

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a music school, seeks to classify the Beneficiary, a violinist, 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 Nebraska Service Center denied the petition, concluding that while the Beneficiary satisfied three of the regulatory criteria, as required, the Petitioner did not establish the Beneficiary's sustained national or international acclaim in his field, and that he is among the very small percentage at the top of his field. The Petitioner then appealed the matter to our office. While we disagreed with the Director's decision regarding specific criteria, we found that while the Beneficiary met the requisite three criteria, the Petitioner had not demonstrated that he has the necessary acclaim and standing in his field to qualify for this highly restrictive classification.¹

On motion, the Petitioner asserts that the Beneficiary meets additional criteria, and presents many of the same arguments made in its response to the Director's request for evidence (RFE) as well as on appeal, including that the Beneficiary holds a major, internationally recognized award.

Upon *de novo* review, we will deny the motion.

I. LAW

A motion to reconsider must establish that our decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3).

A motion to reconsider must be supported by a pertinent precedent or adopted decision, statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services (USCIS) or Department of Homeland Security policy.

¹ *See Matter of W-O-D-M-C-*, ID# 1264406 (AAO Apr. 26, 2018)

II. ANALYSIS

In our previous decision, we agreed with the Director that the Petitioner established that the Beneficiary meets the criterion relating to published material about him, and his service as a judge of the work of others. However, we disagreed that the evidence showed that he had received lesser nationally or internationally recognized awards, but found that his work had been displayed in artistic exhibitions or showcases. In addition, we found that the Beneficiary's performance of [REDACTED] which was recognized as the fastest such performance at the time by [REDACTED] did not qualify as a major, internationally recognized award. Upon review of the totality of the evidence, we also agreed with the Director's determination that the Petitioner had not established the Beneficiary's sustained national or international acclaim, or that he is among the very small percentage of violinists at the top of his field.

On motion, the Petitioner presents many of the same arguments, and references the same evidence, as it did on appeal and in response to the Director's RFE. Regarding its assertion that the Beneficiary's [REDACTED] as the fastest violinist qualifies as a major, internationally recognized award, the Petitioner again points to the referencing of the [REDACTED] franchise in several major media articles as evidence of the recognition of the Beneficiary's award. It also references a single article about the previous holder of this record in support of the assertion that it is based upon excellence in the field of endeavor. However, the Petitioner has not stated that our finding that his Beneficiary's [REDACTED] does not qualify as a major, internationally recognized award was based upon an incorrect application of law or policy, and it does not identify a pertinent decision, statute, regulation or policy which would support such an assertion.

The Petitioner's brief also focuses on several of the individual criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x), asserting that the Beneficiary qualifies under those criteria in addition to those that we already he determined he has met. However, when conducting a final merits determination once we've determined that the three required criteria have been met, the focus of our analysis shifts to whether the entire record establishes that the individual has shown sustained national or international acclaim, or is one of the very few at the very top of his or her field. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010).

The Petitioner asserts that our previous decision regarding the Beneficiary's service as a judge of the work of others introduced a heightened standard by considering requirements not present in the plain language of that evidentiary criterion. As explained above, having already concluded that the Beneficiary had met the required three evidentiary criteria, including the plain language of the criterion relating to his service as a judge at 8 C.F.R. § 204.5(h)(3)(iv), we then reviewed this evidence as part of the final merits determination to assess whether it demonstrates sustained national or international acclaim and that he is one of the small percentage of violinists at the very top of his field. Our analysis of the prestige and frequency of the Beneficiary's judging activity, and determination that it was not consistent with sustained national or international acclaim, was properly conducted within the *Kazarian* framework.

Regarding the criterion relating to the Beneficiary's membership in an association which requires outstanding achievements, the Petitioner asserts that we did not consider all of the membership requirements. In footnote 2 of our previous decision, we noted that the bylaws of the [REDACTED] of which the Beneficiary is a member, lists several membership requirements. On motion, the Petitioner points out that this footnote did not list the requirements of recommendation by five permanent members of the organization, and "active and brilliant participation and presence in music society in national and international scale." However, although the Petitioner stresses that this organization is led by one of the most famous musicians in Iran, it has not established that membership as a permanent member places him at the very top of his field, or that our previous decision was based upon an incorrect application of law or policy.

In addition, the Petitioner refers to letters from Persian language media outlets including Broadcast Middle East FZ-LLC (Farsi1 television), Los Angeles radio station KIRN, and satellite broadcaster TIN TV Int'l., which indicate that they have aired performances by and interviews of the Beneficiary. It claims that, contrary to a statement in our previous decision which references a single broadcast on Farsi1, material about the Beneficiary and his work has been broadcast on many occasions, and seen or heard by millions.

As noted in our prior decision, much of the evidence submitted in support of these letters is either incomplete or not about the Beneficiary. The record does include a screenshot and description of a television show which aired on Farsi1 in which the Beneficiary is interviewed and performs, which is sufficient to meet the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii) relating to published material about him and his work. However, the letter from Farsi1 indicating that "one of the exceptional works" of the Beneficiary was "exhibited" and repeated more than ten times per month for nearly three years does not sufficiently identify what was "exhibited" or in what manner to determine whether it was this show. Similarly, the letters from KIRN and TIN TV also state that they exhibited or showcased the Beneficiary's work, and broadcast interviews of him, but do not specify dates or the subject matter. In addition, no evidence of these broadcasts, such as transcripts or broadcast schedules, appears in the record and, thus, do not demonstrate acclaim. The Petitioner has submitted other evidence, such as webpages that mention the Beneficiary as a member of a musical group or a contestant in a competition. However, while these tangential references show the Beneficiary has received some acclaim, they do not demonstrate that he is among the very small percentage of violinists at the top of his field. Accordingly, the Petitioner has not demonstrated that our finding that this evidence did not show the type of sustained and widespread media attention that is indicative of a violinist at the top of his or her field was incorrect based upon the record at the time of the decision.

III. CONCLUSION

In light of the above, while the Petitioner requests that we reconsider our previous decision dismissing its appeal, it has not demonstrated that we incorrectly applied any law or policy, or that

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we erred in our determination based on the record at the time. Nor are its assertions supported by pertinent legal precedent or other legal authority.

ORDER: The motion to reconsider is denied.

Cite as *Matter of W-O-D-M-C-*, ID# 1815867 (AAO Dec. 20, 2018)