



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

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

MATTER OF H-L-E-

DATE: AUG. 7, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a jazz pianist, 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 the Petitioner had satisfied two of the ten initial evidentiary criteria, of which he must meet at least three. On appeal, the Petitioner submits a brief and asserts that he meets at least three of the ten criteria.

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 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). Alternatively, he or she must provide documentation that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x) (including items such as awards, memberships, and published material in certain media).

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 jazz pianist who has performed individually and with multiple ensembles. As the Petitioner has not established that he has received a major, internationally recognized award, he must satisfy at least three of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner had met only two of the initial evidentiary criteria; published material at 8 C.F.R. § 204.5(h)(3)(iii) and judging under 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner maintains that he fulfills five criteria. Upon review of all of the evidence, we conclude that it does not support a finding that the Petitioner meets the requirements of at least three 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 contends that his receipt of the third prize in the 2016 [redacted] competition as a member of the [redacted] and second prize at the 2004 [redacted] national piano competition meets this criterion. In order to satisfy this criterion, a petitioner must demonstrate that his prizes or awards are nationally or internationally recognized for excellence in the field.<sup>1</sup> In regard to his third prize award in the [redacted] competition, the Petitioner provided a press release regarding his

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<sup>1</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator’s Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

ensemble's receipt of the 2016 award, three articles from the *Detroit Free Press*, *Houston Press*, and National Public Radio's [redacted], and a letter from the University of [redacted] School of Music dean discussing the competition. Although the Petitioner provided three articles referring to the grand prize, he did not submit documentation to establish that a third place prize at the [redacted] Competition is nationally or internationally recognized for excellence in the field.<sup>2</sup>

Concerning the second prize at the 2004 [redacted] national piano competition, the Petitioner submitted a letter from the artistic and musical director for the 2004 competition and a picture of a trophy labeled "II Festival [redacted] 2 Lugar Nacional." While the letter from [redacted] discusses the Petitioner's receipt of the award and the competition's prestige, the record does not establish that his 2004 second prize award received national or international recognition for excellence in the field. For example, the record does not contain evidence that the second place prize garnered media attention or is otherwise nationally or internationally recognized for excellence in the field.

Accordingly, the Petitioner did not demonstrate that he fulfills 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).*

We note that the Director's decision states without explanation that the Petitioner provided sufficient documentation to satisfy this criterion. As explained below, upon *de novo* review of the record, we find the Petitioner has not provided published material about him in professional or major trade publications or other major media, which included the title, date, and author.<sup>3</sup> Therefore, he has not satisfied its requirements.

The Petitioner provided articles and album reviews from various publications, such as *Epoch Times* and *Downbeat*. Though the [redacted] article and [redacted] album review are about the Petitioner, the evidence does not demonstrate the publications qualify as major media. The Petitioner offered printouts from Similar Web regarding the publications' rankings and "traffic overview." Similar Web reflects that the websites range from a global ranking of 8,052 to 900,667; a country ranking of 251 to 308,276; and total visits of 13,090,000 to 64,430. The Petitioner, however, did not demonstrate the significance of the Internet rankings and viewing statistics or explain how such information reflects status as major media.

While the articles and album reviews from *London Jazz News*, *Jazz Trail*, *Jazz Weekly*, *Jay Harvey Upstage*, *The Phillipian*, and *Jazz da Gama* are about the Petitioner, the record does not include evidence regarding the qualifying nature of the publications. Further, the *Latin Beat Magazine* article, "Annual Panama Jazz Fest Puts Accent on Education," was not specifically about the Petitioner. Rather, it was about a jazz festival in which he participated, only briefly mentioning him as one of the

<sup>2</sup> We note that the [redacted] competition only began in 2016 and has since been terminated. See [redacted] Chamber Music Competition, [http://\[redacted\].edu/index.html#about](http://[redacted].edu/index.html#about) (last accessed on July 30, 2019, and incorporated into the record).

<sup>3</sup> See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

musicians. Articles that are not about a petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor). In addition, the *Jazz Chill* article does not include the author of the material, as required by 8 C.F.R. § 204.5(h)(3)(iii), and the Petitioner did not submit evidence demonstrating it is a qualifying publication.<sup>4</sup>

Accordingly, the Petitioner did not show that he fulfills the 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 record contains evidence showing that the Petitioner participated as a judge of musicians at jazz festivals. Therefore, the Petitioner has demonstrated that he satisfies 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 submitted evidence showing that he performed before audiences at concerts and other music events. As such, the Petitioner has established that he fulfills the requirements 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 contends that he “has played a leading and critical role” with the [redacted] [redacted], and [redacted]. As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.<sup>5</sup> Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical.<sup>6</sup>

Regarding the Petitioner’s claim that he performed a critical role for the [redacted] from 2017 to present as the “only faculty member responsible for the [redacted] Jazz Ensemble,” he refers to letters from various individuals, including [redacted] Jazz Department faculty member, and [redacted] a jazz pianist and [redacted] educator.<sup>7</sup> [redacted] states that the Petitioner’s “abilities as a jazz pianist are unmatched within our industry,” “his abilities as a composer and jazz educator are also unrivaled,” and he “serves in a critical role as a faculty member for the success of the [redacted] Jazz Department.” [redacted] indicates that the Petitioner “is a remarkable jazz pianist” and is “without question one of the finest jazz pianists” he has worked with. While the authors speak positively of the Petitioner’s

<sup>4</sup> *Id.*

<sup>5</sup> *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>6</sup> *Id.*

<sup>7</sup> While we discuss a sampling of the recommendation letters, we have reviewed and considered each one.

talents as an educator and musician, they lack detailed and probative information about the Petitioner's role and its impact on the organization to determine that it was critical.<sup>8</sup>

The Petitioner also contends that his experience as a founding member, the only pianist, and one of two South American musicians constitutes a critical role for the [redacted]. The record contains documentation confirming [redacted]'s third prize award in the 2016 [redacted] competition and his role as its only pianist. In addition, the Petitioner provided a concert program regarding the ensemble's performance at [redacted] that discusses his contributions as the group's Brazilian pianist.

Similarly, the Petitioner asserts that he played a critical and leading role as the only pianist with the [redacted] ensemble. He submitted documentation reflecting [redacted]' invitation to perform at the [redacted] Festival and several articles that discuss the event and its participants. For example, the *San Diego Tribune* article, [redacted] noted [redacted] with the Petitioner as the ensemble's pianist, will perform at the festival.

While the Petitioner has established that he played a critical role in the [redacted] and the [redacted], the record does not contain supporting documentation to show that the groups have a distinguished reputation, marked by eminence, distinction, or excellence.<sup>9</sup> Without sufficient corroborative documentation, the Petitioner has not established that the ensembles enjoy distinguished reputations, as required by the regulation.

Accordingly, the Petitioner did not show that he fulfills this criterion.

### III. CONCLUSION

The Petitioner is not eligible because he has failed to submit the required initial evidence of either a qualifying 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 do not need to fully address the totality of the materials in a final merits determination. *Kazarian*, 596 F.3d at 119-20. 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. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of H-L-E-*, ID# 3680190 (AAO Aug.7, 2019)

<sup>8</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

<sup>9</sup> See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11.