



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

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

In Re: 5756471

Date: DEC. 10, 2019

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a violinist, seeks classification as an individual 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 the record did not establish that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) 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).

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).

II. ANALYSIS

The Petitioner is a violinist who performs as a soloist and with several ensembles in the metropolitan area.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that she has received a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Petitioner met two of these evidentiary criteria, relating to judging the work of others in the same field and display of her work in the field at artistic exhibitions or showcases. The Petitioner submitted copies of programs for her performances at concerts and recitals and therefore we agree with the Director that she meets the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). We also find sufficient evidence to establish that she has participated as a judge of the work of other musicians at the International Music Competition and therefore meets the evidentiary criterion at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner asserts that she also meets the evidentiary criteria relating to awards, authorship of scholarly articles, and leading or critical roles.¹ After reviewing all of the evidence in the record, we find that the evidence does not support a finding that the Petitioner satisfies the requirements of at least three 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)

In order to satisfy this criterion, the Petitioner must demonstrate that she has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was for excellence in the

¹ The record reflects that the Petitioner initially claimed that she meets the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii), but she has not pursued this claim on appeal. Accordingly, we will not further address the criterion here.

² *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>.

field include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³

The Petitioner states that she received the following awards and documented her receipt by submitting copies of her award certificates:⁴

- First Prize Ensemble, [redacted] Competition ([redacted] 2017)
- First Prize, [redacted] International Competition (no date)
- Second Prize – [redacted] International Music [redacted] 2016)
- Second Prize, [redacted] International Competition [redacted] 2014)

The Director determined that the Petitioner did not establish that any of the awards qualify as nationally or internationally recognized prizes or awards for excellence in the field. For the reasons discussed below, we agree with that determination.

Counsel stated that the [redacted] Competition is an international music competition open to instrumental, vocal, and ensemble performers and “split into five age groups ranging from ages 5 to 33.” Further, counsel indicated that the grand and first prize winners perform at the “Winner’s Concert” at [redacted] while second and third place winners perform at [redacted]. A letter from pianist [redacted] states that they recruited the Petitioner to play in a quintet which won the first prize ensemble award at this competition and performed in the [redacted] as a reward for their placement.

However, the record does not contain any additional information or supporting evidence regarding the [redacted] Competition to support the Petitioner’s claim that her first prize award is considered a nationally or internationally award for excellence in the field of classical music. Without evidence of the entrance requirements and restrictions, information on the number of competitors in the Petitioner’s age category, or evidence of the level of recognition associated with this award, we cannot find that the Petitioner has satisfied each element of the criterion.

The [redacted] International Competition [redacted] is described in the record as a “distinguished international music competition,” established in 2013, which attracts participants from throughout the United States and across the world. The Petitioner submitted a screenshot of the repertoire and competition rules from the [redacted] website, as well as an advertisement for the competition that appeared in the Korean-language publication “Music Education Newspaper,” which provided information and audition instructions for the [redacted] annual competition held in 2015. The

³ *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance.)

⁴ Subsequent to the filing of the petition, the Petitioner provided a copy of a Certificate of Recognition from [redacted] State Senator [redacted] recognizing her as “Best Teacher” at the [redacted] International Music [redacted] in [redacted] 2018. Because this evidence post-dates the filing of the petition, this evidence cannot be used to satisfy the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). *See* 8 C.F.R. § 103.2(b)(1) (eligibility for the requested benefit must be established “at the time of filing” and “must continue through adjudication”).

advertisement indicates that the age limit for the competition is “pre-K up to age 32,” and notes that grand and first prize winners are given the opportunity to perform at a winners’ recital at [redacted]. The Petitioner also submitted articles indicating that two previous [redacted] winners, a Spanish trombonist and a Taiwanese soprano, had their respective results reported in the media in their home countries.⁵ Finally, she provided a screenshot from the [redacted] website calendar indicating that the latest [redacted] winners’ concert had taken place at [redacted] in [redacted] 2018.

As noted, the Petitioner’s first prize certificate from [redacted] is not dated and is not supported by evidence indicating when she won this award and performed in the winners’ concert. Further, the record does not contain official results or other evidence demonstrating the number of entrants in the competition or in the Petitioner’s category in the year in which she won, or the total number of first prize awards given. Finally, the submitted statements indicate that entry to the competition was age-restricted and limited to musicians aged 32 or younger, and not open to all musicians who may have been competitive for top prizes.

In addition, although the supporting evidence indicates that the competition seeks and attracts participants from different countries, we note that showing a diverse pool of competitors, without more, does not establish the requisite recognition. While the evidence reflects that two other [redacted] winners received some media attention for their awards, the record lacks sufficient evidence verifying that prizes and awards issued by this competition are nationally or internationally recognized awards for excellence in the field, or evidence that the Petitioner herself received any recognition from outside the issuing organization.

Regarding the [redacted] International Competition [redacted], where the Petitioner received a second prize award in 2014, the Petitioner submitted: an article titled [redacted] which appeared in the [redacted] 2015 edition of a Korean-language magazine called *Auditorium*; an review titled [redacted] which appeared in *La Musica*, a Korean-language magazine published by [redacted] the Petitioner’s O-1 employer and also a sponsor or partner of [redacted] a screenshot of the “Rules and Repertoire” requirements from the [redacted] website; and a screenshot from the [redacted] website indicating that an [redacted] winners’ concert was on the recital hall’s calendar for [redacted] 2017.

While the articles in *Auditorium* and *La Musica* provide additional background information regarding [redacted], they do not support the Petitioner’s claim that her second prize award at the inaugural [redacted] competition in 2014 qualifies as a nationally or internationally recognized prize or award. The article in *Auditorium* notes that [redacted] is open to musicians from elementary school to age 33, is judged by music faculty at [redacted]’s best music schools, and indicates that Korean students did well in the competition’s inaugural year. The article from *La Musica* indicates that the second annual [redacted] competition held in 2015 drew over 200 video auditions from musicians in the United States, Korea and Europe. The article also highlights several Korean violinists who received first or grand prizes during the first two [redacted] competitions, but does not mention the Petitioner or her second place finish in the 2014 [redacted] competition. Further, while these articles confirm that [redacted] drew participants from

⁵ The articles appeared on the websites caudetedigital.com and taiwantoday.tw. According to the submitted web traffic statistics from the website SimilarWeb, the former is ranked 14,576 in Spain and the latter ranked 21,835 in Taiwan.

outside the United States, the evidence does not establish that the competition awards nationally or internationally recognized prizes.

As with the other awards the Petitioner received, the record does not contain sufficient evidence regarding the official results, the number of competitors and prize winners in each age and instrument category, or other evidence related to the specific category in which she received an award. We cannot determine that the Petitioner's second prize award is a nationally or internationally recognized prize or award for excellence.

Finally, with respect to her second prize finish at the [redacted] International Music [redacted] [redacted], the submitted evidence is limited to a copy of the award certificate, and a brief description of the competition in counsel's cover letter in support of the petition. While the Petitioner submitted additional evidence related to her other awards in response to a request for evidence, she provided no further evidence related to this award and therefore did not meet her burden to establish that the award meets each element of this evidentiary criterion.⁶

For the foregoing reasons, the Petitioner did not establish that she meets this criterion.

Evidence of the individual's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi)

The Petitioner provided evidence that she authored four articles which appeared in *La Musica* magazine, as well as an article that appeared in the Korean publication *Mom & I*, which she describes as a "lifestyle magazine."

We note that, in fields outside of the academic arena, a scholarly article should be written for learned persons in the field.⁷ Each of the articles the Petitioner wrote for *La Musica*, is about a particular piece of classical music. For example, in the article [redacted], the Petitioner writes about Brahms' Piano Quartet No. 3 in C minor, discussing Brahms' inspiration for this work, the history of its composition, details regarding its publication, the mood of the piece, and some recommended recordings. The Petitioner did not establish that the intended audience of this and other articles published in *La Musica* is learned persons in the field of music. Further, the record does not contain evidence that *La Musica*, which appears to be published independently by [redacted] [redacted] an artist management company, is a professional publication, a major trade publication, or other major medium. For similar reasons, the Petitioner has not demonstrated that her article for the lifestyle magazine *Mom & I* satisfies both elements of this evidentiary criterion. Accordingly, we agree with the Director's determination that this criterion was not met.

⁶ In addition, we note that the Petitioner's [redacted] award certificate is dated [redacted] 2015, but the Petitioner also submitted certificates from [redacted] indicating that she served as a judge at this event annually. Her judging certificates are dated [redacted] 2015, [redacted] 2016, [redacted] 2017, and [redacted] 2018. If the competition is held in [redacted], it is unclear why her award certificate as a participant would be dated in [redacted] 2015.

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 9 (defining "learned" as "having or demonstrating profound knowledge or scholarship").

Evidence that the individual 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 asserts that she meets this criterion because “she has performed the most leading roles a violinist can attain including as concertmaster, assistant concertmaster, principal second violin and as soloist for multiple distinguished organizations.”

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.⁸ 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.⁹ A distinguished organization is one that is “marked by eminence, distinction, or excellence.”¹⁰

On appeal, the Petitioner highlights her roles with the following organizations:

- [redacted] Philharmonic Orchestra (Principal Violin II)
- [redacted] Classical Symphony Orchestra (Assistant Concertmaster and soloist)
- [redacted] Quintet Ensemble (member)

The Director determined that there was insufficient evidence that the Petitioner has held a leading or critical role with these or other organizations, but did not address whether the evidence demonstrated that she has worked with distinguished organizations or establishments.

With respect to the Petitioner’s role with the [redacted] Philharmonic, we note that her initial submission contained no mention or evidence related to this orchestra or her claimed leadership position within it. The Petitioner later provided a letter from [redacted] the orchestra’s president, who states that the Petitioner joined the [redacted] Philharmonic in January 2016, noting that “she was able to come in to perform and also coach her colleagues in both the violin sections.” [redacted] indicates that the Petitioner commenced her position as Principal Violin II in November 2017, and is responsible for leading her section. Finally, [redacted] writes that “most recently” the Petitioner was nominated to the Board of Directors as a Trustee. The [redacted] Philharmonic’s music director and conductor, [redacted] states that the Petitioner “has played a critical and leading role” for the orchestra and “has been promoted to the principal position of the violin section.” He also states that the Petitioner has been a member of the orchestra’s board since May 2017, and notes that her “resources and ideas have proven essential to the growth of the organization.”

While the Petitioner’s Principal Violin II position may be considered leading or critical to the orchestra, the record does not establish that the [redacted] Philharmonic has a distinguished reputation. The Petitioner provided a *New York Times* article from 1987 titled [redacted]

⁸ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

⁹ *Id.*

¹⁰ *Id.*

[redacted] published in the [redacted] region section of the paper. The article discusses the history of the ensemble (which is based in [redacted] New Jersey), as it prepared to open its 50th anniversary season. The article also describes its membership noting that “[d]octors, lawyers, housewives and saleswomen sit side by side in the orchestra with retired members of groups like the [redacted] Philharmonic.” The article mentions previous guest artists and discusses the upcoming season. The Petitioner did not submit any other media coverage of the orchestra or other evidence in support of its claim that it currently enjoys a distinguished reputation. Based on the limited evidence, the organization seems to be noted for its longevity, which is not in and of itself a determining factor when considering whether a given organization or establishment has a distinguished reputation for purposes of this criterion.

Regarding the [redacted] Classical Symphony Orchestra [redacted], the Petitioner submitted an undated letter from [redacted], its conductor and musical director. [redacted] states that [redacted] was founded in 2011 and states that it “has quickly been established as a cultural icon” in [redacted] and “around the world.” He notes several instances in which the Petitioner was featured as a violin soloist, and mentions the Petitioner’s role as director of the [redacted]’s sister organization, the [redacted] Classical Youth Orchestra [redacted]. [redacted] does not, however, indicate that the Petitioner is the assistant concertmaster for the [redacted] although we note her role is mentioned in an [redacted] program. The Petitioner also submitted several articles that describe leadership positions within an orchestra’s violin section. While this evidence indicates that an assistant concertmaster position is generally considered leading or critical, the record does not establish that [redacted] or its sister youth orchestra have a reputation that is recognized as distinguished. The Petitioner provided little independent evidence regarding these organizations and their standing among professional and youth orchestras. Counsel’s assertion that the [redacted] “has been highly praised by the press and public in the United States, Korea and German” is not substantiated. Assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988) (citing *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)).

With respect to the Petitioner’s membership in the [redacted] Quintet, the record does not establish that this small ensemble is an “organization or establishment” as required by the regulatory language. [redacted] states that the Petitioner was a “key and essential member of the quintet” and mentions that the ensemble won first prize at the 2017 [redacted] Competition, but the record does not document any other performances by the quintet. Further, the Petitioner did not submit evidence demonstrating that this quintet enjoyed a distinguished reputation.

The Petitioner also submitted a letter from [redacted] music director of the [redacted] Orchestra, who states that he recruited the Petitioner to join the orchestra as assistant concertmaster and promoted her to concertmaster in 2015, noting that this is a critical role which is essential to the orchestra’s mission. The record also contains a program from a 2015 concert at a church in [redacted] New Jersey, which lists the Petitioner as concert master. However, other than [redacted]’s letter, the Petitioner did not submit any evidence related to this ensemble and therefore she did not establish that it has a distinguished reputation.

The Petitioner further asserts that the record contains evidence that she “performed leading roles that were incredibly valuable” to [redacted] [redacted] Baroque Chamber Hall, The [redacted] International Summer Music Academy Orchestra, Ensemble [redacted], the [redacted] School of Music and

Art, and *La Musica* magazine. The record includes a program indicating that the Petitioner performed a recital in the [] Baroque Chamber Hall's debut concert series in 2012, but this evidence does not establish her leading or critical role with an "organization or establishment." Similarly, the Petitioner provided a program from a performance of The [] International Summer Music Academy Orchestra held in [] in 2006, in which she is listed as a member of the first violin section. The record does not reflect that this was a leading or critical role, nor does it contain any additional evidence regarding her performance with this ensemble.

With respect to Ensemble [] the Petitioner provided a letter from the ensemble's founder and artistic director, [] who notes the Petitioner's "performance as an orchestral member" of the ensemble, but did not further discuss her role. As a result, the letter was insufficient to meet the Petitioner's burden to establish that her role for this ensemble was leading or critical. The record also contains a program from one Ensemble [] performance in which the Petitioner is listed as a member of the violin section. However, the record lacks evidence of Ensemble []'s distinguished reputation to support counsel's assertion that the group "is making a tremendous impact in []'s classical music scene" and "redefining the role of the 21st century chamber orchestra."

Finally, with respect to her roles with [], *La Musica*, and the [] School of Music and Art, the record does not contain letters from these organizations describing her roles and responsibilities and therefore does not support a finding that she meets this criterion based on those roles. The record reflects that the Petitioner has performed in concerts and recitals sponsored by [], in faculty concerts of [] and as [] of *La Musica*, but this evidence alone is insufficient to meet her burden to demonstrate how her role was leading or critical to these organizations. Further, the Petitioner did not submit evidence demonstrating that any of these organizations enjoy a distinguished reputation. Accordingly, we agree with the Director's determination that this criterion was not met.

B. O-1 Nonimmigrant Status

The record reflects that the Petitioner was granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

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. As a result, we need not provide the type of final merits determination referenced in *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 acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994). Here, the Petitioner has not shown that the significance of her work is indicative of the required sustained national or international acclaim or that it is consistent with a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated her eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.