



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

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

MATTER OF L-E-S-L-

DATE: FEB. 15, 2019

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a Latin reggae 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 Texas Service Center denied the Form I-140, Immigrant Petition for Alien Worker, concluding that the Petitioner had satisfied only two of the ten initial evidentiary criteria, of which he must meet at least three.

On appeal, the Petitioner submits additional documentation and a brief, arguing that he meets at least three of the ten criteria.

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 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). If that petitioner does not submit this evidence, then he or she must provide 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). 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 the individual's occupation.

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 record shows that the Petitioner, whose professional name is [REDACTED] or [REDACTED] is a Latin reggae musician who was a founding member, lead singer, composer and percussionist for the Venezuelan reggae band [REDACTED] from 1998 until it disbanded in 2012.¹ [REDACTED] released the albums [REDACTED] (2002), [REDACTED] (2007), and [REDACTED] (2010). After [REDACTED] disbanded the Petitioner formed a new band, [REDACTED] and released the album [REDACTED] (2016).

A. Evidentiary Criteria

As the record does not establish that the Petitioner has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director held that the Petitioner met only two of the initial evidentiary criteria, published material under 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 meets six additional criteria, awards, membership in associations, significant contributions, display, critical or leading role, and commercial success at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v), (vii), (viii) and (x), respectively, and that he is among the small percentage

¹ There is some inconsistency in the record as to when [REDACTED] disbanded. The Petitioner's resume indicates that this event occurred in 2010 while on appeal the Petitioner asserts it was in 2012.

at the very top of the field of endeavor. Here, we find that the record establishes he meets three criteria to warrant a final merits determination.

Specifically, we agree with the Director that the Petitioner meets the criteria for published material and judging. The record contains several published articles that are about the Petitioner, relating to his performances with [REDACTED] and the circulation statistics provided demonstrate that the publications qualify as major media, as required under the regulation.² In addition, the documentary evidence indicates that he served as a judge for the 2012 [REDACTED] awards and as a member of the jury for the 2013 [REDACTED] awards. We also find that the Petitioner has satisfied the display criterion at 8 C.F.R. § 204.5(h)(3)(vii). The evidence submitted of the Petitioner's performance before audiences at concerts and other music events fulfills this criterion. This demonstrates that the Petitioner meets three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). As the Petitioner has satisfied the initial evidentiary requirements, we will evaluate the totality of the evidence, including the documentation relating to other criteria he has claimed, in the context of the final merits determination below.

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether the record demonstrates, by a preponderance of the evidence, that he has sustained national or international acclaim and is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2)-(3); see also *Kazarian*, 596 F.3d at 1119-20. In this matter, we determine that the Petitioner has not established that he has sustained national or international acclaim.

With respect to awards, within its response to the Director's request for evidence (RFE), the Petitioner included documentation that he received the 2011 [REDACTED] award as Singer with the Most Impact of the Year with a Great International Projection.³ He submitted a letter dated 2011 from [REDACTED] president of [REDACTED] who provides general

² For example, reviews and articles about the Beneficiary and his work with [REDACTED] appear to have been published in *Rolling Stone* magazine and in the Venezuelan publication *El Nacional*. Although not addressed by the Director, we note that the Petitioner submitted translations of several other foreign-language articles that do not comply with the regulation, as they clearly omit sentences or passages from the foreign language document. See 8 C.F.R. § 103.2(b)(3). Accordingly, these translations have significantly diminished probative value. Other articles submitted do not meet the plain language requirements of the published material criterion because they do not include the date and author of the material.

³ The record also contains evidence that he received the 2017 [REDACTED] after the date when the petition was filed on October 6, 2016. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Furthermore, the record does not include sufficient evidence to demonstrate that this award is recognized at a level consistent with national or international acclaim.

information about the foundation, and asserts that the [REDACTED] award is “the only award that is certified in the country,” and that it enjoys “the Most Continuous Credibility at a Regional, National, and International level.” He also indicates that the [REDACTED] award is a local event, given in [REDACTED] based upon “the verdict from the people of [REDACTED] according to the results from the polls taken in different communication media, the Mayor’s office . . . walking polls, and other means of information.” On appeal, the Petitioner provides an additional letter from [REDACTED] dated 2018, indicating that the Petitioner was the only artist in the “cultural reggae’ genre” to receive the award for Singer with the Most Impact of the Year with a Great International Projection.⁴ He further explains that the organization does not have established award categories, and “[t]he number of awards changes every year depending on how the market develops.” While the Petitioner’s award shows that he was recognized by the [REDACTED] the Petitioner did not submit evidence of the national or international *recognition* of his [REDACTED] such as national or widespread local coverage of his award in arts, entertainment, or general media, showing that the award was recognized beyond the presenting organization. The Petitioner, therefore, has not shown that his receipt of the [REDACTED] award in 2011 is indicative of the required national or international acclaim in the field.

Regarding the Petitioner’s membership in associations, he contends that his membership in the [REDACTED] demonstrates his “sustained national acclaim.” However, as he acknowledges on appeal, the record indicates his membership in this organization began on March 27, 2018, after the date the petition was filed on October 6, 2016. As stated previously, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Thus, the Petitioner cannot establish that he possessed the required acclaim at the time of filing with membership in an organization that began after that date. Nor has the Petitioner sufficiently documented the significance or prestige of his [REDACTED] membership to demonstrate that it contributes to a finding of sustained national or international acclaim continuing through adjudication.

For published material, the record contains a favorable review of [REDACTED] 2002 debut album [REDACTED] that appears to have been published in a foreign language edition of *Rolling Stone*. An additional article in *El Nacional* announces that album’s release, mentions the participation of notable reggae artists [REDACTED] and [REDACTED] in the recording, and notes the band’s growing popularity in South America and Jamaica. Other articles discuss the success of [REDACTED] between 2003 and 2010, including the positive response to the band’s [REDACTED]. While indicative of [REDACTED] recognition during this period, those materials do not demonstrate that the Petitioner, as an individual, has enjoyed national or international acclaim performing with his new band [REDACTED] between 2012 and October 2016, when he filed the instant petition. On appeal, the Petitioner asserts that although [REDACTED] disbanded in 2012, he “continued to shine and be recognized as a Latin Reggae Artist in his own

⁴ The materials accompanying [REDACTED] letter indicate the organization changed its name in 2016 to [REDACTED]

right.” In support of this contention he cites to his performance in concerts between 2013 and 2015 at “some of [redacted] most famous venues such as [redacted] . . . and [redacted]” and his release of the CD [redacted]. However, the record does not show that the level of success the Petitioner has had from 2012 onward has brought him national or international acclaim in his field. Therefore, the evidence in the record does not demonstrate that the Petitioner has sustained national or international acclaim after his participation in [redacted].

With respect to judging, the two certificates submitted pertain to the Petitioner’s judging experiences for the 2012 [redacted] awards, and as a member of the jury for the 2013 [redacted]. As previously discussed, the above-mentioned letter from [redacted] indicates that the [redacted] award that the Petitioner judged was a local event, given in [redacted] based upon “the verdict from the people of [redacted] according to the results from the polls taken in different communication media, the Mayor’s office walking polls, and other means of information.” A press release describes the [redacted] awards as an annual, two-day Venezuelan music festival that awards the “top acts” from that year’s [redacted] festivals, which are monthly, regional music festivals “in the main squares of Venezuela.” On appeal, the Petitioner provides press releases advertising upcoming [redacted] events in 2011, 2013, 2015 and 2016, published on the websites www.theelitechannel.blogspot.com, www.lapatilla.com, and www.lamegaestacion.com www.el-nacional.com. Without supporting evidence showing, for instance, the level of national or international prestige associated with these competitions, we cannot conclude that serving as a judge for them is commensurate with sustained “national or international acclaim” at the very top of the field. Moreover, we note that the Petitioner has submitted evidence of his participation as a judge for only two competitions, in 2012 and 2013 respectively. The statute and regulations, however, require “extensive documentation,” and for the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv), considered as part of the record as a whole, is not extensive or commensurate with *sustained* national or international acclaim.

On appeal, for the first time, the Petitioner claims that he satisfies the contributions criterion, based on letters of recommendation from his former band members and colleagues in the field. First, he indicates this evidence demonstrates [redacted] acclaim as the first “[redacted] in Venezuela.” [redacted] an Argentine reggae musician self-described as the “founder of cultural reggae in all of Latin America,” describes the Petitioner as “the founder of [redacted] in Venezuela.” [redacted] of the [redacted], calls [redacted] Venezuela’s “[redacted] a reggae musician, indicates that while “there were important reggae bands in Latin America before . . . [redacted] . . . is the first [redacted]”

Next, the Petitioner asserts the letters demonstrate [redacted] impact and influence, especially in being the first reggae band [redacted] bringing “this hallmark of reggae music to Venezuela.” [redacted] a Jamaican-Canadian reggae musician, and [redacted] a Venezuelan reggae musician, credit the band with contributing to the popularity of reggae music in

Venezuela. Letters from [REDACTED] a former member of [REDACTED] claim that the band's [REDACTED] "defined the history of reggae in the country." [REDACTED] another former member of [REDACTED] asserts that the song [REDACTED] from [REDACTED] "was the most played song on the radio at the time." In addition, an undated letter from [REDACTED] with the Venezuelan radio station [REDACTED] indicates that the [REDACTED] theme composed by [the Petitioner] and [REDACTED] . . . is the Venezuelan reggae song with the most rotation in our radio Circuit." However, the Petitioner has not established how the radio play of the song [REDACTED] equates to his sustained national or international acclaim. For example, the record does not include sufficient evidence to corroborate the statements regarding the past radio play of the song, nor does it demonstrate how much current radio play this song receives or to what extent the Petitioner has received acclaim for this from 2012 until October 2016.

Finally, the Petitioner cites to the 2003 article in *El Nacional* titled [REDACTED] [REDACTED] which indicates that at the time of their debut album, the band had already "achieved considerable popularity in South America and Jamaica itself."⁵ We acknowledge the success [REDACTED] had until they disbanded in 2012. Although the evidence submitted shows the Petitioner received recognition from the field as a member of [REDACTED], and that he was an active reggae musician as of the date the petition was filed in October 2016, it does not establish that he has sustained national or international acclaim as a member of [REDACTED] since 2012.

Regarding the showcasing of the Petitioner's music in concerts, the record reflects that he was the lead singer for [REDACTED] between 1998 and 2012, when it disbanded. Between 2013 and October 2016 when the instant petition was filed, the Petitioner performed with his new band, [REDACTED] at venues predominantly in Florida. He has not shown how the concerts he performed with [REDACTED] brought national or international acclaim to him. While frequent performances are inherent to the musical profession, the regulation requires that evidence demonstrate sustained national or international acclaim, and not simply document a petitioner's continued employment or activity in his or her field. In this case, while the record documents the Petitioner's performances at concerts and festivals, the evidence does not establish that the festivals or concerts mentioned in the flyers advertising the events are of such a stature that participation in them might demonstrate national or international acclaim. Therefore, this evidence has not established that the Petitioner has enjoyed sustained acclaim as a result of his performances with [REDACTED]

As to his leading or critical role, the Petitioner asserts that the previously discussed letters, including those from former band members [REDACTED] and [REDACTED]

⁵ The Petitioner also cites to the transcript of an interview he conducted in [REDACTED] 2018 with the Venezuelan radio station Circuito X, in which he discussed his work with [REDACTED] and as a solo artist, as well as upcoming projects. As previously discussed, however, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Thus, the Petitioner cannot establish eligibility with the interview that was published after the filing of the instant petition.

establish the Petitioner played a lead and critical role in [REDACTED] as a founding member, composer, and lead singer. We acknowledge the Petitioner's role as lead singer for [REDACTED] from 1998 to 2012, however, as discussed previously, the record does not demonstrate that he has enjoyed sustained national or international acclaim as a result of his performances with [REDACTED]. The Petitioner also asserts that he played a "leading role in the Latin Rastafarian community as a Latin American ambassador and cultural representative," in helping to "spread the Rastafarian message to Latin America through his reggae music." He cites to his participation in the 2007 [REDACTED] exhibit, as discussed in two letters from [REDACTED] a cultural anthropologist with the [REDACTED]. He also highlights his attendance at the 2005 [REDACTED] in Panama, as mentioned in a letter from [REDACTED] of the [REDACTED]. The Petitioner has not demonstrated, however, how the Latin Rastafarian community constitutes an organization or establishment with a distinguished reputation in the Petitioner's field of reggae music, or otherwise shown how this evidence contributes to a finding of sustained national or international acclaim.

With respect to commercial success, the Petitioner's initial evidence included a letter from [REDACTED] a manager with the [REDACTED] of Venezuela, stating that the Petitioner "with his band [REDACTED] has sold more than 10,000 copies," and describing him as "a renowned singer and songwriter." As noted by the Director, [REDACTED] letter does not specify whether "copies" refers to albums. Assuming that it does, [REDACTED] did not explain what information she used to derive her statement regarding the band's record sales, nor did the Petitioner offer evidence of the band's commercial successes through receipts or sales. The Petitioner also provided documentation for 2009 and 2013 from the [REDACTED] showing international certification levels for album unit sales, indicating that in Venezuela an album that sells 5,000 units will be certified gold, while one that sells 10,000 units will be certified platinum.

In response to the Director's RFE, the Petitioner provided further documentation of [REDACTED] international certification levels for 2007, and the above-referenced letters from [REDACTED] and [REDACTED] asserting that the albums [REDACTED] have been "Gold" albums, each selling more than 5,000 albums. However, the Petitioner did not demonstrate that any of [REDACTED] albums have enjoyed unit sales at levels that reflect commercial successes compared to other musicians. Further, while we acknowledge that those albums have enjoyed a level of commercial success, and the Petitioner's role in the band, the record reflects that the band dissolved in 2012, after which the Petitioner performed on his own. He has not shown that he subsequently enjoyed commercial success in the field with his new band [REDACTED] that resulted in sustained national or international acclaim.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that he is eligible as an individual of extraordinary ability under section 203(b)(1)(A) of the Act.

Matter of L-E-S-L-

ORDER: The appeal is dismissed.

Cite as *Matter of L-E-S-L-*, ID# 2018580 (AAO Feb. 15, 2019)