



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

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

MATTER OF J-T-

DATE: OCT. 1, 2019

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a music composer and trombonist, seeks classification as an individual of extraordinary ability 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 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 asserting that he fulfills 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 the 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

Because the Petitioner has not indicated or established that he 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). In denying the petition, the Director found that the Petitioner met only the judging and artistic display criteria under 8 C.F.R. § 204.5(h)(3)(iv) and (vii), respectively. The record reflects that the Petitioner judged singing competitions and performed at music festivals. Accordingly, we agree with the Director’s decision for these two criteria.

On appeal, the Petitioner maintains that he also satisfies two additional regulatory criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that he satisfies the requirements of at least three criteria.

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 performed in a leading or critical role as a trombonist for the Georgian [REDACTED]. For 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.¹ 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.²

The record includes three letters of support from [redacted] general manager of the Georgia [redacted] stating that the Petitioner "was the solo trombone player" of [redacted] from 2012 until March 2017 and that the orchestra performed his musical arrangements. The Director determined that this information was insufficient to demonstrate that the Petitioner had performed in a leading or critical role for [redacted]

With the appeal, the Petitioner offers additional letters of support from various Georgian musicians discussing his role for [redacted].³ These letters all indicate that the Petitioner performed as solo trombonist for the orchestra from "2014-2017." For instance, the letter from [redacted] professor of classical music at [redacted] Conservatory, noted that the Petitioner "earned his place" with [redacted] in 2014. Regarding the years the Petitioner performed with [redacted] the information in the letters of support presented on appeal contradicts the information in the three letters from [redacted] [redacted] asserting that the Petitioner was a solo trombonist beginning in 2012. The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Here, the Petitioner has not explained or rectified the inconsistency relating to the actual years when he performed for [redacted]

Regardless, the information in the letters of support is not sufficient to show that the Petitioner's role for [redacted] was leading or critical. For example, [redacted] principal composer, chief conductor, and artistic director of [redacted] asserted that the Petitioner "was the only solo trombonist" and "played a crucial role within our organization." While [redacted] further stated that the Petitioner's "technique as a trombonist was unique and allowed us to play works with important solo trombone parts or important trombone parts that we would not have otherwise attempted," he did not sufficiently explain how the Petitioner's position was a leading role to [redacted] overall or of significant importance to the orchestra's success or standing in the field. In addition, [redacted] did not discuss the Petitioner's position within orchestra's organizational hierarchy, and indicate how his role compared to the other musicians (such as concertmaster or other section leaders) to demonstrate that it was a leading one.

Furthermore, [redacted] a solo oboist with the [redacted] State Opera Orchestra," contended that the Petitioner's "role in [redacted] is a critical one." In the same manner as [redacted] [redacted] explained that the Petitioner's role is critical because "the orchestra would likely not perform a number of serious works" without him. The aforementioned letters from [redacted] [redacted] and [redacted] however, do not adequately explain how the Petitioner has influenced the overall reputation or status of [redacted] to show his role was critical. Nor

¹ 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 10* (Dec. 22, 2010), <https://www.uscis.gov/legal-resources/policy-memoranda>.

² *Id.*

³ While we discuss a sampling of these letters, we have reviewed and considered each one.

do any of remaining letters of support provide sufficient information indicating how the Petitioner contributed to that organization's success or standing in the music field so as to demonstrate a critical role. Moreover, while the appellate submission includes promotional material listing the Petitioner as trombonist at various concerts, the record does not show that these performances constituted a leading or critical role for [redacted] overall.

Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organizations or establishments to have a distinguished reputation, which is marked by eminence, distinction, or excellence.⁴ The Petitioner submitted information about [redacted] from its website, but this information is not sufficient to demonstrate that the orchestra has distinguished reputation in the music field. USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). In addition, the appellate submission includes articles and information about Björk, a singer-songwriter from Iceland, in *Vogue*, *Georgia Today*, *Georgian Journal*, IMDb.com, and *Wikipedia*.⁵ The articles in *Vogue*, *Georgia Today*, and *Georgian Journal* briefly mention that Björk performed with [redacted] but they do not discuss the reputation of [redacted] or its eminence in the field. The Petitioner also provides letters of support from various Georgian musicians asserting that [redacted] has a distinguished reputation. For instance, [redacted] chairman of the Georgian [redacted] [redacted] contends that [redacted] is "the most prestigious orchestra in our nation, and indeed, renowned in the world." However, the record does not include sufficient evidence to corroborate the information in the letters of support or otherwise show that [redacted] has distinguished reputation relative to other orchestras. Accordingly, the Petitioner has not demonstrated that he fulfills this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

As documentation for this criterion, the Petitioner presented a June 2015 service agreement from [redacted] [redacted] Musical Studio for providing musical arrangements at three concerts for compensation of 3,500 GEL. In addition, he submitted a June 2014 employment contract from [redacted] [redacted] reflecting a monthly salary of 3,500 GEL for his services as a "music arranger and solo trombone player." On appeal, the Petitioner provides his bank statements reflecting monthly incoming monetary transfers of 3,200 GEL from 2014 – 2017.

The record also includes information from the National Statistics Office of Georgia (NSOG) listing an "average" monthly salary of 624.9 GEL in 2015 for workers grouped in "the National Classification of 'Entertainment Activities.'" This broad category of arts occupations includes "[a]ctivities in the field of performing arts[,] ensembles and theaters, orchestras and musical groups, actors, directors, musicians, authors, conferences, sculptors, artists, cartoonists, engravings, artists, theatrical artists, decorators and actors." The Petitioner, however, must submit evidence showing that he has earned a high salary or other significantly high remuneration relative to others in his field and not just a salary that is above average for artists in the "Entertainment Activities" classification. Because the aforementioned contracts enlisted the Petitioner's services as a music arranger or trombone player, offering salary information for a broad range of occupations in the Georgian entertainment industry does not provide an appropriate basis for

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10-11.

⁵ The information from IMDb.com and *Wikipedia* relates only to Björk and does not mention [redacted]

comparison in demonstrating that his compensation constitutes a high salary relative to “others in the field.”

The Petitioner must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Here, the Petitioner has not established that the salary information he presented from NSOG constitutes an appropriate basis for comparison. Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

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. at 954. Here, the Petitioner has not shown that the significance and recognition of his work are indicative of the required sustained national or international acclaim or that they are 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 he 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 foregoing reasons, the Petitioner has not shown that he qualifies for classification 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. 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 J-T-*, ID# 4312187 (AAO Oct. 1, 2019)