



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

Non-Precedent Decision of the  
Administrative Appeals Office

In Re: 6548360

Date: APR. 23, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a recording engineer, seeks classification 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 Texas Service Center denied the petition, concluding that the record did not establish that the Petitioner had established sustained acclaim through a major, one-time achievement as claimed. The matter is now before us on appeal.

On the appeal form, the Petitioner indicated that he would submit a brief within 30 days. Ten months later, the record contains no further submission from the Petitioner. We consider the record to be complete as it now stands.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. 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)(A) of the Act makes immigrant visas available to aliens 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 their 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 they 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 seeks to continue working as a mixing and recording engineer (and bassist) for [redacted] [redacted] for which he has already worked on several past projects.

The Petitioner served as a recording engineer and post-production engineer on [redacted] by [redacted]. The Petitioner contends that he received a major, internationally recognized award because [redacted] won a Grammy Award for Best [redacted] Music Performance/Song. He does not claim, in the alternative, to have satisfied at least three of the lesser criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). Therefore, we will not discuss those lesser criteria in this decision.

The Petitioner did serve as an engineer on a Grammy-winning project, but the record does not show that he received a Grammy Award. Rather, he received a certificate from the National Academy of Recording Arts and Sciences (NARAS) "in recognition of [his] participation as Engineer on the GRAMMY Award-winning recording." NARAS' logo depicts the distinctive statuette presented to Grammy winners, but he did not receive such a statuette.

An email message from NARAS to [redacted] Publishing states: "The winner certificate . . . is given to Producers and Engineers that had less than 51% of time on the album. So while they don't get statues, the [Petitioner and three others] are listed to receive winner certificates from us!" The three other named individuals had various production and engineering roles.

The Director denied the petition, stating that the Petitioner did not document that he personally received the Grammy Award.

On appeal, the Petitioner states:

The petitioner is a winner of the [redacted] Grammy award in the Best [redacted] Music Performance/Song category. As is common in the music industry, the petitioner shared the award with several others involved in the production. . . . [T]he Center Director denied the petition on the grounds that . . . the petitioner was not the sole winner of the Grammy award . . . . The Center Director's decision is arbitrary and capricious because no statute, regulation, or precedential decision mandates that a petitioner must be the sole recipient of a major, international award.

The Petitioner, here, misstates the grounds for denial. The Director did not deny the petition because "the petitioner was not the sole winner," nor did the Director require that "a petitioner must be the sole recipient of a major, international award." We recognize that certain awards or prizes, such as Nobel Prizes, can go to joint winners. Rather, the Director found that the Petitioner did not document his receipt of a Grammy Award, or show that a "winner certificate" relating to a Grammy Award has recognition comparable to the award itself.

The Petitioner did not establish that NARAS either (1) gave the Petitioner a Grammy award, (2) identified him as a Grammy winner (rather than as a participant in a Grammy-winning project), or (3) acknowledged that the award was the result of the Petitioner's engineering work. The name of the category highlights the "Performance" and "Song," rather than the recording or the engineering thereof, and NARAS has not indicated that the quality or technical aspects of the engineering helped to determine the outcome of the award. The Petitioner acknowledges that NARAS does award Grammys specifically for engineering work, but the Petitioner does not claim to have received such an award.

The Petitioner has not submitted the required initial evidence of a one-time achievement, and has not claimed to meet at least three of the ten lesser 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.

### III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.