



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

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

In Re: 6830071

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a musician, 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 Petitioner established that he met only two of the initial evidentiary criteria for this classification, of which he must meet at least three.

On appeal, the Petitioner maintains that he submitted evidence that satisfies four of the evidentiary criteria and is otherwise qualified for the benefit sought.

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, a guitarist and composer, has been a member of several Colombian bands, including [redacted] [redacted], and [redacted]

A. Evidentiary Criteria

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).

The Petitioner claims that he meets four of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).¹ The Director determined that the Petitioner met two of these criteria, relating to leading or critical roles with organizations that have a distinguished reputation, and commercial success in the performing arts. *See* 8 C.F.R. 204.5(h)(3)(viii) and (x). However, the Director determined that the Petitioner did not submit evidence to satisfy the two remaining claimed criteria, relating to published material about him and his work in major media, and display of his work at artistic exhibitions or showcases. *See* 8 C.F.R. 204.5(h)(3)(iii) and (vii).

After reviewing all of the evidence in the record, we conclude that the Petitioner did not establish that he meets at least three evidentiary criteria.

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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)

The Director determined that the articles the Petitioner submitted did not satisfy this criterion because they only briefly mentioned him or his musical groups and were not about him and his work in the

¹ The Petitioner has not claimed that he meets any of the evidentiary criteria not discussed in this decision.

field. On appeal, the Petitioner claims that he meets this criterion based on articles published by *El Espectador*, *El Tiempo*, and *Remezcla*.

With regard to the article published by *El Espectador*, the Petitioner submitted the article in English and it was not accompanied by the Spanish-language original, nor does the translation contain a statement from a translator attesting to its accuracy and completeness. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Here, the Petitioner submitted a single blanket “Certificate of Accuracy” from a translator who does not identify the documents she translated. Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner’s claims.

In any event, the Petitioner did not submit sufficient evidence to establish that *El Espectador* qualifies as a major trade publication, professional publication or other major media.² The Petitioner relies on a screenshot from the website SimilarWeb which indicates that *El Espectador* has a global rank of 3,298, a country rank of 27, and a category rank of 551. The Petitioner, however, did not demonstrate the significance of the Internet rankings and viewing statistics or explain how such information reflects the publication’s status as major media.

With respect to the article from *El Tiempo*, which was published in its print edition, the Petitioner submitted only a partial English translation of an article titled ‘[REDACTED]’. The translated portion includes only three paragraphs of a lengthy article, in which the members of the group [REDACTED] are introduced. In total, there are two sentences about the Petitioner and we agree with the Director’s determination that the article is not about him. In addition to the insufficient translation, we note that the article does not identify the author of the material. While the record reflects that *El Tiempo* likely qualifies as major media in Colombia, the evidence submitted does not satisfy all elements of the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Finally, we agree with the Petitioner that the article published by online publication *Remezcla*, titled [REDACTED], contains sufficient references to and quotes from the Petitioner to qualify as published material about him and his work. However, the Petitioner did not establish that *Remezcla*, which is described as a [REDACTED] “Latino independent cultural publication,” qualifies as major media. The Petitioner submitted an article about the publication which mentions the size of its online audience but he did not provide comparative circulation statistics or rankings.

Accordingly, the Petitioner did not establish that he satisfies this criterion.

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 7* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

The Director determined that the Petitioner did not meet this criterion based on his live performances as a musician, emphasizing that this criterion is “limited to the visual arts.” We disagree with the Director’s interpretation that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner’s own work product and that the venues at which the individual’s work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).³

As certain exhibitions or showcases featuring performing artists meet the plain language of this regulation, the Director should not have summarily disregarded the Petitioner’s evidence. Here, for example, the Petitioner provided evidence that his bands have performed at music festivals, and at various Colombian arts and cultural events. Accordingly, we conclude that the submitted evidence satisfies the plain language of this criterion.

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 Director determined that the Petitioner met this criterion. Upon review, the Petitioner has submitted sufficient evidence to demonstrate that he served in a critical role as lead guitarist and co-writer for [REDACTED]. Further, he has established that the group, which was nominated for at least one Latin Grammy Award, received significant media coverage, toured nationally and internationally, and enjoyed a distinguished reputation in Colombia.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x)

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 adequately documented the sales of his recorded music. Therefore, we will withdraw the Director’s determination that this criterion was met.

This criterion focuses on volume of sales as a measure of an individual’s commercial success in the performing arts. The evidence must show that the volume of sales reflects the individual’s success relative to others involved in similar pursuits in the performing arts.⁴

To satisfy this criterion, the Petitioner provided evidence relating to one of his bands, [REDACTED], including: (1) screenshots from YouTube providing viewing data for several of the group’s music videos; (2) a screenshot of an article from the website los40.com.co which mentions that the group received a [REDACTED] for selling 10,000 copies of [REDACTED] in Colombia; (3) a

³ See also USCIS Policy Memorandum PM 602-0005.1, *supra* at 9-10. (stating that officers should use the common dictionary definitions of “exhibition” and “showcase” in evaluating this criterion).

⁴ *Id.* at 11-12.

screenshot of an article from *El Espectador* which mentions that the band's [redacted] debut album achieved "double platinum" status; and (4) a partial *Wikipedia* article listing music recording certification thresholds in different countries along with the name of each country's certifying authority.

The information provided regarding the band's YouTube views does not satisfy the plain language of this regulation as it does not relate to [redacted]'s sales of recorded music or video sales. Further, the band's achievement of gold and platinum record status is not sufficiently documented in the record. The Petitioner has relied solely on English translations of Spanish-language media articles to corroborate his band's achievement of these sales milestones. As noted, any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.*

Here, the Petitioner did not provide copies of the original articles in Spanish, nor did he provide a properly certified English translation of foreign-language documents. Rather the Petitioner submitted a single, blanket certification that did not accompany or refer to any specific document. This "Certificate of Accuracy" includes the translator's name and states that she is "fluent in English and Spanish and the above translation is accurate to the best of my ability and knowledge." Because the Petitioner did not submit a properly certified English language translation of the articles that mention the band's sales certifications, we cannot determine whether the translated material is accurate and thus supports the Petitioner's claim.

Even if the articles that mention [redacted]'s gold and platinum record certifications were properly translated, the record does not contain primary evidence of the band's receipt of these certifications, or evidence of its total sales relative to that of other musical groups. The Petitioner did not, for example, provide evidence from the industry's certifying body, or from [redacted] (the band's record label), confirming the group's gold and platinum records and the sales achieved to obtain them.

For these reasons, we withdraw the Director's determination that the Petitioner satisfied this 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. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has not shown that the significance of his 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 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 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.