



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

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

In Re: 7375471

Date: FEB. 11, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a folk singer, 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 Nebraska Service Center denied the petition, concluding that the Petitioner did not satisfy any of the initial evidentiary criteria, of which she must meet at least three.

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 sings Serbian folk music. 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).

In denying the petition, the Director determined that the Petitioner did not fulfill any of the initial evidentiary criteria. On appeal, the Petitioner submits a brief claiming to meet seven criteria. After reviewing all of the evidence, we conclude that the record does not support a finding that the Petitioner satisfies the requirements of at least three criteria.

Documentation of the alien'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).

The Petitioner argues that she meets this criterion based on her receipt of a “Silver Album” award from Radio Television [redacted] a “Plaque” from the Association of Performing Arts (APA), and a “Trophy Award” from Hit Parade ‘85. In order to fulfill this criterion, the Petitioner must demonstrate that she received the prizes or awards, and they are nationally or internationally recognized for excellence in the field of endeavor.¹ Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

The record reflects that the Petitioner presented evidence of her receipt of the awards. Although the Petitioner explains why she received the awards, she does not demonstrate their national or international recognition for excellence in the field. For instance, the Petitioner claims that the Silver Album “is for the sale of 25,000 albums which is a substantial number of albums for a country the size of Serbia.” While the Petitioner references a letter from [redacted] who claimed that the album sold “12,500 pieces” and not 25,000, the letter only confirms the receipt of the award without showing the field’s view as a nationally or internationally recognized award for excellence.

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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

² *Id.*

Furthermore, the Petitioner asserts that the APA Plaque “was awarded by the biggest association for performing arts,” and the Trophy Award “was given to the most popular singers in former Yugoslavia.” However, the record does not contain, nor the Petitioner reference, any corroborating evidence to support her claims. Moreover, the Petitioner did not show that the APA Plaque and Trophy Award are nationally or internationally recognized for excellence in the field.

Because the Petitioner did not demonstrate that she received nationally or internationally recognized prizes or awards for excellence in the field, she did not establish that she meets this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner asserts eligibility for this criterion based on membership with Maestro International (MI). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.³

At the outset, the Petitioner did not claim eligibility for this criterion at initial filing. However, in response to the Director’s request for evidence (RFE), the Petitioner indicated membership with Maestro International and provided a letter from [redacted] who confirmed the Petitioner’s membership since 2014. In denying the petition, the Director found that the Petitioner did not submit evidence that the association requires outstanding achievements of its members, as judged by recognized national or international experts. Moreover, the Director indicated that the Petitioner did not provide the association’s constitution or bylaws. On appeal, the Petitioner contends that “USCIS never sought this information in their Request for Evidence and it is therefore unfair for them to partially base their decision on the fact that this evidence was not included.” However, as the Petitioner did not initially claim eligibility for this criterion, she did not explain how the Director could have known to request specific evidence for Maestro International.

Notwithstanding the above, according to [redacted] the Petitioner competed in the festival, [redacted] 2014,” and the jury determined her composition “[a]s the most successful.” Therefore, the Petitioner “earned the right of membership.” However, the Petitioner did not demonstrate that winning a folk festival contest is tantamount to an outstanding achievement consistent with this regulatory criterion. In addition, as indicated, the Petitioner did not provide supporting documentation, such as the bylaws of Maestro International, to corroborate the claims of [redacted] and establish the membership requirements. Moreover, the Petitioner did not show that membership is judged by recognized national or international experts.

For these reasons, the Petitioner did not demonstrate that she fulfills this criterion.

³ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

Published material about the alien in professional or major trade publications or other major media, relating to the alien'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).

In order to satisfy this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁴ At initial filing, the Petitioner submitted translations of articles from *Commonalty*, *magazinetrendy.net* (2), *svet.rs*, *expresstabloid.ba*, *Sezam Magazine*, and *serbiamirror.com* reflecting published material about her and her work.⁵ However, with the exception of the articles from *Commonalty* and *serbiamirror.com*, the Petitioner's translations did not include the required dates and/or authors of the material. In addition, the Petitioner provided the translations of two articles from unidentified publications, which also did not include the required dates and authors.

Moreover, in response to the Director's RFE, the Petitioner submitted translations of articles from *grand.online* and *svetaustralia.com* (2). We note, however, that the translation for the article from *grand.online* did not contain the required author of the material. Furthermore, the articles were published after the filing of her petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, we will not consider this evidence to determine the Petitioner's eligibility in this proceeding.

In addition, although the Petitioner asserts that "the articles submitted should be viewed in a favorable light since they are from publications that have significant national or international distribution," the record does not contain evidence to support this assertion, nor does she reference any documentation. Further, the Petitioner argues that the Director erroneously determined that she "should have included sufficient supporting documentation, such as circulation statistics for other publications to establish that the web portals are professional or major trade publications or other major medias [*sic*] when they never asked for such documentation in their Request for Evidence."⁶ Moreover, she claims that she "was not aware that the USCIS required this documentation and was put in an unfair position." On the contrary, a review of the Director's RFE reflects that he specifically indicated:

To assist in determining that the publications qualify as professional or major trade publications or other major media, you may submit evidence indicating:

- [T]he title, date, and author of the published material.
- [T]he circulation (online and/or in print).

⁴ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁵ The Petitioner also submitted partial foreign language articles without any English language translations. Any document in a foreign language must be accompanied by a full English, certified language translation. *See* 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii).

⁶ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7 (indicating that evidence of published material in professional or major trade publications 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 who the intended audience of the publication is, as well as the title, date, and author of the material).

- [C]omparative circulation data of major publications in the field.
- [T]he intended audience of the publication.

Although she submitted two articles reflecting published material about her relating to her work in the field, which include the required title, date, and author, the Petitioner did not demonstrate that *Commonalty* and *serbiamirror.com* are professional or major trade publications or other major media.⁷ Accordingly, the Petitioner did not establish that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

The Petitioner contends that she submitted recommendation letters reflecting her contributions of major significance in the field. In order to meet the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has she made original contributions but that they have been of major significance in the field.⁸ For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

The record reflects that the Petitioner's recommendation letters confirm her performances and recordings. For instance, the letters state that: "[the Petitioner's] compositions are broadcasted daily on radio and television programs" [redacted], "[the Petitioner] recorded three albums for the production company gramophone long plays" (Radio Television of Serbia), "[the Petitioner] produced two CDs" and "performed at more than 500 musical concerts through [sic] out the [redacted] and Europe" (Grand Production), and "[the Petitioner] has recorded numerous [a]lbums," "recorded with some of the biggest recording studios in Serbia," and "has 9 recorded albums" (the Association of Performing Artists and Performers of Serbia).⁹ However, the letters do not establish how the Petitioner's performances and recordings are viewed by the field as original contributions of major significance in the field. The letters, for instance, do not explain how the Petitioner has significantly impacted the field in a major way consistent with this regulatory criterion.

Moreover, the letters praise the Petitioner's skills and talents. For example, "[o]ne of the most emotional singers of country and folk music on our program is [the Petitioner]" ([redacted] Production), "all her songs are of exceptional quality and sought after" and "[the Petitioner] has great vocal skills and ranked among the best singers" (Serbian Radio Hour), "[the Petitioner is] a superior singer that has lasted for years, [and] until today, her songs are sought out and listened both in Serbia and in America" (*Serbian Mirror*), "[the Petitioner] is widely renowned for her exquisitely expressive voice and deep stylistic understanding of various regional styles of the folk music of the Balkans" [redacted], and "[the Petitioner's] expressive voice, high aesthetic standards, wide repertoire, and professionalism as a performer make her a central figure in the musical life of the Serbian-American community" [redacted]. Having a diverse, unique, or special skill set, however, is not

⁷ The Petitioner also did not provide evidence establishing that *grand.online* and *svetaustralia* qualify as professional or major trade publications or other major media.

⁸ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9 (finding that although funded and published work may be "original," this fact alone is not sufficient to establish that the work is of major significance).

⁹ Although we discuss a sampling of letters, we have reviewed and considered each one.

a contribution of major significance in-and-of-itself. Further, the record must be supported by evidence that the Petitioner has already used those skills and talents to impact the field at a significant level, which she has not shown. In addition, the letters do not demonstrate how the Petitioner's talents and skills have been a major influence in the overall field.¹⁰

Here, the Petitioner's letters do not contain specific, detailed information identifying her original contributions and explaining the unusual influence her musical work has had on the overall field. Letters that specifically articulate how a petitioner's contributions are of major significance in the field and its impact on subsequent work add value.¹¹ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.¹² Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

For the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that she has made original contributions of major significance in the field.

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 argues eligibility for this criterion based on her roles with Maestro International, Grand Production, [redacted] Production, and Radio [redacted]. 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.¹³ 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 organizations 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.¹⁴

On appeal, the Petitioner contends that she: "has performed for [Maestro International]," "was a special guest on the tour of several artists and that together they have done over 500 concerts in former Yugoslavia and Europe" and "recorded two compact discs" for Grand Production, "led [redacted] [redacted]'s] New Year musical show in [redacted]" and "gain[ed] the coveted position of soloist on Radio [redacted]" Although the Petitioner references recommendation letters, previously discussed above, which confirm her performances and recordings, the letters do not contain detailed information demonstrating that she performed in a leading or critical role as a whole.¹⁵

¹⁰ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9; see also *Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

¹¹ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

¹² *Id.* at 9. See also *Kazarian*, 580 F.3d at 1036, *aff'd* in part 596 F.3d at 1115 (holding that letters that repeat the regulatory language but do not explain how an individual's contributions have already influenced the field are insufficient to establish original contributions of major significance in the field).

¹³ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹⁴ *Id.*

¹⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10 (providing that this is one criterion where letters from individuals with personal knowledge of the significance of the alien's leading or critical role can be particularly helpful to USCIS officers in making this determination as long as the letters contain detailed and probative information that

For instance, the letters from Maestro International and [redacted] Production did not explain how performing at a single event, either at a festival or at a New Year's program, reflected the Petitioner's overall leading or critical role to the organizations. Moreover, the letter from Grand Production did not establish how her role as a special guest at concerts represented a leading role or resulted in the success or standing of the organization. Further, the letter from Radio [redacted] did not elaborate regarding the Petitioner's "soloist status" and how such position indicated a leading role to the station overall or elevated the station's status. Here, the lack of specific information does not provide probative information to demonstrate the Petitioner's leading or critical roles for the organizations.

Furthermore, the Petitioner did not establish that any of these organizations enjoy a distinguished reputation.¹⁶ Although each recommendation letter provided brief background information, the Petitioner did not offer any supporting documentation to corroborate the claims. For example, Maestro International indicated that it was "established on 2005 – year as a non-partisan, non-profit association, and to achieve the objectives in the field of musical creativity and interpretation." Moreover, Grand Production asserted that it "is established in 1988 – year the most prestigious production company in the Balkans" and "it's viewed [by] over 7,000,000 million [*sic*] people." Further, [redacted] Production claimed that "[o]ne can boast that a number of TV shows were produced and broadcasted on numerous stations across the region . . . as well as many records released with a very popular local performers of folk music." In addition, Radio [redacted] stated that "the [r]adio and the [t]elevision, are broadcasting in 15 different languages" and the programs are watched and listened by 14 million people. Again, the Petitioner did not submit corroborating evidence, nor did she demonstrate the significance of the statements or figures. Here, the Petitioner did not include evidence, for example, showing the field's view of the organizations, how their reputations compare to similar establishments, or how their successes or accomplishments relate to others, signifying a distinguished reputation consistent with the regulatory criterion.

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

III. CONCLUSION

We find that the Petitioner does not satisfy the criteria relating to awards, memberships, published material, original contributions, and leading or critical role. Although she submits evidence for two additional criteria on appeal, relating to judging at 8 C.F.R. § 204.5(h)(3)(iv) and artistic display at 8 C.F.R. § 204.5(h)(3)(vii), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve these issues.¹⁷ Accordingly, 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.

specifically addresses how the alien's role for the organization or establishment was leading or critical).

¹⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11 (defining *Merriam-Webster's Dictionary* definition of "distinguished" as marked by eminence, distinction, or excellence).

¹⁷ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).

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). Although the Petitioner has sung and performed Serbia folk music, the record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

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.