



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

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

In Re: 5056436

Date: JAN. 17, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a clarinetist, 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 Petitioner had not established that he satisfied any of the ten initial evidentiary criteria, of which he 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 is a clarinetist who has performed with orchestras and choirs in Kosovo.

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 Director found that the Petitioner met none of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the Petitioner asserts that he meets the evidentiary criteria relating to awards, membership, critical or leading role, and commercial success. After reviewing all of the evidence in the record, we find that the Petitioner has not demonstrated that he meets at least three of the ten criteria, as required.

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 record reflects that the Petitioner has been acknowledged by Radio Television [redacted] the Cultural-Artistic Association [redacted] The [redacted] Cultural and Artistic Society [redacted] [redacted], and the Municipality of [redacted] Department for Culture-Youth, and Sport for his participation in events or contributions to culture. For example, the certificate from Radio Television [redacted] awards the Petitioner an “acknowledgement” of his “contribution on accomplishment of the New Year Festive Program 2010/2011,”¹ while the certificate from [redacted] awards the Petitioner an acknowledgement for his “given contribution to The Culture of [redacted] through the Years.”

The Director determined that this documentation was not sufficient to establish that the Petitioner met this criterion as it did not show his receipt of lesser national or international awards for excellence in his field of endeavor.

On appeal, the Petitioner now asserts that he meets this criterion through his receipt of two additional awards: the Grand Prix award at the International [redacted] [redacted] in Kosovo and an

¹ The record also includes a letter of reference from [redacted] music editor at TV [redacted] confirming the Petitioner's participation in “New-Year festive programs.” However, this letter does not indicate that the organization granted the Petitioner an award or prize for his participation.

award from the [redacted] cultural center for “performance of high artistic level in international competition” ([redacted] award). He provides certificates, a news article about the 2018 [redacted] a document listing the competitive categories for the [redacted] competition and the prizes and awards conferred thereby, and an untitled document describing the [redacted] cultural center and competition. However, the Petitioner does not explain why he did not provide this previously available evidence with his initial submission or in his response to the Director’s request for evidence (RFE), or why none of the previously submitted evidence, including his own statement, mentions either award.

Regarding the certificate submitted referencing the Petitioner as a “Grand Prix Winner” at the 2014 [redacted] we note that it is written only partially in English, and is not accompanied by a certified translation as required under 8 C.F.R. § 103.2(b)(3). Any document in a foreign language must be accompanied by a full English language translation. 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.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the certificate supports the Petitioner’s claims. Furthermore, he has not provided evidence that corroborates his receipt of the “Grand Prix” award at the 2014 [redacted] nor does the record include evidence regarding the 2014 [redacted] or any awards granted during this festival.²

On appeal, the Petitioner also provides a certificate indicating that he received first prize in “Discipline Clarinet [redacted] at the 15th [redacted] competition in 2016. The aforementioned document describing this competition, which indicates that it pertains to the 2018 edition of the competition, states that [redacted] is “for those born in the years 1999-2000-2001,” or for those aged 17 to 19 at the time of the competition. However, we note that the record shows that the Petitioner was born in 1993, and thus would not have been eligible to receive this award in that category in 2016, since he would have been 22 years old at the time. The Petitioner must resolve this inconsistency 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).

Finally, the Petitioner claims on appeal that the “numerous acknowledgements” of his work establish that he meets this criterion, as in Kosovo these “acknowledgements rise to the level of national recognized awards.” As noted by the Director, these certificates do not indicate that they were given to the Petitioner for excellence as a clarinet player. Rather, they acknowledge his participation in various cultural programs and events. Further, the record lacks evidence corroborating the Petitioner’s assertion regarding the certificates’ national recognition. Therefore, while the record demonstrates that the Petitioner was recognized for his participation in these programs, it does not support a conclusion that he has received nationally or internationally recognized awards for excellence as a clarinet player.

For the foregoing reasons, the Petitioner has not established his eligibility for 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

² The news article submitted by the Petitioner on appeal describes the 2018 [redacted] rather than the 2014 event.

judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner claims eligibility for this criterion through his membership in the [redacted] Cultural and Artistic Society [redacted] and in the [redacted] Choir. The record includes, among other evidence, certified translations of correspondence claimed to be from [redacted] [redacted]'s president, confirming the Petitioner's membership and discussing the organization's membership requirements.³ The Petitioner also provides documentation confirming his membership in the [redacted] Choir, correspondence from [redacted] president of the choir and a letter of recommendation from [redacted] a composer and orchestra conductor.⁴

As it relates to [redacted]'s letters, we note that the record lacks the original untranslated documents corresponding to these materials. It is the Petitioner's burden to establish eligibility for the benefit sought through submission of all required initial evidence. *See* 8 C.F.R. § 103.2(b)(1). Regarding the submission of foreign language documents, the regulation provides that the Petitioner shall submit such documents accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). It does not indicate that English language translations may be provided in lieu of foreign language documents. As the record does not include the foreign language documents, we are unable confirm the authenticity of the English translations, and therefore cannot consider them.

In addition, we note that even if we were to consider the translated correspondence claimed to be from [redacted] these documents contain inconsistencies related to the membership criteria for [redacted] [redacted]. For example, one of the translations provides that the criteria used for his selection as a member were the Petitioner's "professional musical skills" and "passing of the tests through the [redacted]" However, another translation provides alternate membership criteria for [redacted] [redacted], stating that candidates must "show extraordinary skills during the presentation in the audition" and are selected for membership "with the proposal of the Professional Evaluation Commission."⁵ The Petitioner must resolve this inconsistency in the record with independent, objective evidence pointing to where the truth lies. *Ho*, 19 I&N Dec. 582, 591-92. As the Petitioner has not submitted verifiable and consistent evidence of [redacted]'s membership requirements, he has not established that the group requires outstanding achievement of its members.

The Petitioner also argues on appeal that his membership on the [redacted] Choir establishes that he meets this criterion. Here, the record reflects that the Petitioner was an active participant in the [redacted] Choir as both [redacted] and [redacted] confirm that the Petitioner was active in this organization as both as a choir member and a clarinetist. However, the record does not demonstrate that this organization requires outstanding achievements of its members, as judged by national or international experts in the field. Neither [redacted] nor [redacted] provide information on the selection process for members of the choir, and the record lacks other documentation of this process, such as the choir's bylaws, organizational documents, or other

³ The record also contains documentation confirming the Petitioner's collaboration and performance with [redacted] and other materials that we have reviewed but do not discuss here.

⁴ The Petitioner also provides information about the choir's participation in the International Festival of World Choirs, held in [redacted] France.

⁵ We note that the record lacks evidence establishing that the Professional Evaluation Committee is comprised of nationally or internationally recognized experts in the field, as required by this criterion.

evidence, showing that it requires outstanding achievements of its members as judged by nationally or internationally recognized experts in the field.

For the reasons discussed above, the Petitioner has not demonstrated that he meets this criterion.

As discussed above, we find that the Petitioner does not satisfy the criteria relating to awards, or membership. Although on appeal the Petitioner also claims that he meets the criteria related to leading or critical role, and commercial success, we need not reach these issues. We reserve them as the Petitioner cannot meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). 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 each); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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.