



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

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

In Re: 6943427

Date: JULY 23, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, an entertainment and production company, seeks to classify the Beneficiary, a conga player, 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 Beneficiary had satisfied one of the 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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) (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).

II. ANALYSIS

The Petitioner currently manages the Beneficiary, a conga player and percussionist for the band

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, the Petitioner must establish that he satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director found that the Beneficiary met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to judging the work of others.¹ The record reflects that the Beneficiary served as on a jury panel for qualifiers for the 2015 and 2016 [redacted] Awards. We therefore agree with the Director that the Beneficiary meets the criterion for judging at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner asserts that the Beneficiary meets the evidentiary criteria relating to awards, published material, membership, and leading or critical roles.² It further notes that the Director “did not discuss that the beneficiary presented evidence that he has performed in a leading role for establishments that has a distinguished reputation and satisfies 8 C.F.R. 204.5(h)(3)(vii) [*sic*].”

¹ The Director also found that the Beneficiary did not meet the criterion for original contribution at 8 C.F.R. § 204.5(h)(3)(v). We note that the Petitioner did not claim the Beneficiary met this criterion. Regardless, as the Petitioner did not contest the Director’s finding on appeal, we consider this matter waived and will not address it in our analysis.

² It first argues that “[t]he denial alleged that the Petitioner did not identify which of the regulatory criteria he was attempting to meet and that for this reason the Service could not assess the evidence as meeting any of the criteria.” It points to letters accompanying the initial filing and its RFE clearly identifying the criteria it claimed on the Beneficiary’s behalf. While the Director incorrectly stated that the record does not identify the claimed criteria, with the exception of the leading or critical criterion, the record reflects that the Director assessed the majority of evidence submitted by the Petitioner.

For the following reasons we agree with the Director that the Petitioner has not established the Beneficiary's eligibility for the published material and membership criteria. However, we also find that the Director did not address all of the evidence in the record with respect to the lesser awards criterion and did not address the Petitioner's claim that the Beneficiary meets the leading or critical role criterion. We will withdraw the Director's decision for the latter reasons and remand it to him for a new decision consistent with our analysis of those matters.

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 the Beneficiary's eligibility for this criterion through his membership in the Latin Academy of Recording Arts & Sciences (LARAS), and the Society of Authors and Composers of Venezuela (SACVEN). It provides an e-mail confirmation of the Beneficiary's voting membership in LARAS, a document titled "About LARAS," and a document titled "The Latin Recording Academy Membership Registration." The Petitioner also submits a certificate of registration confirming his membership in SACVEN, a printout from the SACVEN website about its history, the SACVEN membership requirements, and a document titled "About Us" from the SACVEN website, and a notice from SACVEN's Instagram page advising members that it would not hold its "Assembly Ordinary of Partners" scheduled for March.

The e-mail and certificate of registration are sufficient to establish that the Beneficiary is a member of LARAS and of SACVEN, respectively. However, the remainder of the documentation submitted by the Petitioner does not establish that these associations require outstanding achievements of their members, as judged by internationally or nationally recognized experts in the field of music.

As it relates to LARAS, the "About LARAS" document provides that the organization "requires outstanding achievements as condition for membership." However, the Petitioner does not provide corroborating evidence, such as the by-laws, membership selection process, or other relevant materials, to support this assertion. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

In addition, the membership registration document provides that "[t]o qualify for Voting Membership you must have at least 12 commercially released recordings in Spanish or Portugese [*sic*] as an artist" and that "album credits require that 51% of the album is in Spanish or Portugese [*sic*]." The Petitioner does not provide, nor does the record contain, additional documentation demonstrating that releasing 12 commercial recordings equates to an outstanding achievement in the field of music.

Additionally, the membership registration states that "all application [*sic*] will be evaluated by a panel of experts who will judge the artistic, technical and professional quality of each entry." However, the Petitioner does not submit materials about this panel which might establish that it is comprised of persons who are nationally or internationally recognized in the Beneficiary's field of endeavor. For

these reasons, the Petitioner has not demonstrated that the Beneficiary's LARAS membership meets this criterion.

Regarding the Beneficiary's SACVEN membership, the membership requirements in the record state that the applicant must provide, among other items, a nomination letter written by two SACVEN members and at least one piece of "work of his/her own creation pursuant to chapter 3, Article 7 of the Company's bylaws."³ The "About Us" overview provides in addition, that in order to be accepted as an affiliate, the candidate must "have no less than 20 works (compositions, or songs) in public execution in the domestic or international market (edited, published, recorded, etc.)." The document asserts that 20 is "a number considered a significant achievement in the world of music in Venezuela." The Petitioner does not provide documentation showing that either the nomination letter or the Beneficiary's work are the equivalent of outstanding achievements in the field of music. Further, it does not submit evidence establishing that having at least 20 pieces of work in the public domain is considered to be a significant achievement as judged by nationally or internationally recognized experts in the field.

The "About Us" overview document for SACVEN further notes that approval of applicants for membership is made by a review committee made up of association members who "belong to the exclusive group of personages who have reached the pinnacle of their career, as evidenced by the fact of having been recognized with major national and international awards in the industry of music." However, the Petitioner does not provide additional information describing the panel's selection process, or other evidence establishing that membership approval is based upon outstanding achievements. Further, the Petitioner does not submit documentation about this review committee to corroborate SACVEN's assertion that it is composed of internationally or nationally recognized experts. Without additional documentation showing that LARAS or SACVEN require outstanding achievements of their members as judged by internationally or nationally recognized experts, the Petitioner has not shown that the Beneficiary meets this criterion.

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)

The Petitioner submits published material about the Beneficiary related to his work as a musician appearing online at panorama.com.ve, laverdad.com, sunoticiario.com, enpauta.com.ve, enmaracaibo.com, arepafrita.com, noticiaaldia.com, biendateao.com, Noticias Digital 58, and in the newspaper *Versión Final*. We note that the articles appearing at laverdad.com, enmaracaibo.com, enpauta.com.ve, noticiaaldia.com, and biendateao.com do not include the author of the material, as required per 8 C.F.R. § 204.5(h)(3)(iii) and cannot establish eligibility under this criterion.

³ The document states that candidates should also submit a recent photo, copy of identify card, copy of the Tax Registration Number, and a sworn bank statement with the application. It also includes a provision explaining how underage authors can obtain membership.

With regard to the articles appearing at panorama.com.ve,⁴ sunoticiario.com, arepafrita.com, Noticias Digital 58, the Petitioner does not submit evidence, such as the circulation statistics (either on-line or in print), for these publications and their intended audience, that might establish that these websites are major media or professional or major trade publications.⁵ Similarly, while the Petitioner provides circulation statistics *Versión Final* and information about the newspaper's audience, it does not provide comparative circulation statistics for other newspapers or media to demonstrate that *Versión Final's* circulation statistics are high relative others such that it rises to the level of major media. For these reasons the Petitioner has not submitted documentation sufficient to establish that the Beneficiary meets this criterion.

As discussed above, we find that the Petitioner has not established that the Beneficiary meets the membership and published material criteria found at 8 C.F.R. § 204.5(h)(3)(ii) and (iii). However, upon review we also find reason to remand the decision in its entirety to the Director for a new decision consistent with the following analysis.

First, we find that the Director did not address its claim that the Beneficiary met the criterion for leading or critical role found at 8 C.F.R. § 204.5(h)(3)(viii), as noted by the Petitioner on appeal. In the brief accompanying its initial filing, the Petitioner argues that the Beneficiary met the criterion for leading or critical role found at 8 C.F.R. § 204.5(h)(3)(viii) because he was an original member and lead percussionist of the band [redacted] a music professor participating in a master class of the [redacted] of Venezuela, and a percussionist for the musical celebration of the newspaper *Panorama's* [redacted] anniversary in [redacted]. As the Director did not address this in his decision, we will remand the matter for him to analyze the evidence submitted under this criterion.

In addition, the Director concluded that the Beneficiary had not met the lesser awards criterion at 8 C.F.R. § 204.5(h)(3)(i). He found that, while the Petitioner established that the Beneficiary received the 2014 [redacted] Venezuela award for [redacted]⁶ it “failed to submit national or international media coverage showing that [the Beneficiary’s] award is nationally or internationally recognized... in the field of endeavor.” The Director further determined that the Petitioner had not provided documentation of, among other things, “criteria used to give the prizes or awards” and the “reputation of the organization granting the prizes or awards.”

Upon *de novo* review, we find that the record contains media articles about the [redacted] Venezuela awards and the ceremony during which they are granted, some of which were

⁴ The Petitioner asserts on appeal that it also submitted a media kit for *Panorama*, but the record does not support this claim.

⁵ 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> (noting that evidence of published material in professional or major trade publications or in other major media publications about the alien 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.)

⁶ Documentation in the record also refers to this award as the [redacted] the [redacted] and the [redacted] of Venezuela.

acknowledged by the Director in his decision.⁷ The record also contains additional articles and documentation related to the award and the award's sponsoring organization not referenced in the Director's decision. Therefore, we also remand this decision for the Director to determine whether this documentation in the record is sufficient to establish the Beneficiary's eligibility for the lesser awards criterion.

If the Director determines that the Beneficiary satisfies at least two additional criteria beyond the one already met, his decision should include an analysis of the totality of the record evaluating whether the Petitioner has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and whether the record demonstrates that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.⁸

III. CONCLUSION

The appeal will be remanded to the Director for further action in accordance with this decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis which, if adverse, shall be certified to us for review.

⁷The Director listed a series of foreign language media articles about the award published online at [zulia.com](#), [sunoticiario.com](#), and [versionfinal.com](#) in his decision. He also indicated that the record contained the referenced letter from [redacted] president of [redacted] of Venezuela, a screenshot from [redacted] [venezuela.com](#), a screenshot from [bing.com](#), and a photo of the Beneficiary holding the award.

⁸ *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4 (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).