



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

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

In Re: 7722140

Date: MAR. 11, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a violinist, 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 record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

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 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 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 has been the concertmaster (first violin) for the since 2009. The Petitioner has not stated specific plans for employment in the United States.

Before proceeding to specific evidentiary issues, we note the Director’s finding that translations submitted by the Petitioner were not properly certified. The regulation at 8 C.F.R. § 103.2(b)(3) requires every submitted foreign language document to include a full English language translation which the translator has certified as complete and accurate, and the translator’s certification that he or she is competent to translate from the foreign language into English. The Director stated that “[t]he submitted translation[s] are not properly certified,” but did not specify how they are deficient.

The translator claimed fluency in English and Chinese, and certified that “all of the documents that are translated from Chinese to English attached herein are true and accurate.” The Petitioner asserts that the certification meets all material requirements. In reviewing the Director’s decision, the Director did not identify any specific translations that would have had greater weight if the translator’s certification had been worded differently. The Director did not deny any regulatory criterion based solely on the certification of the translations. Therefore, even if the Director required too strict a standard for the wording of the certifications, this issue did not change the outcome of the decision.

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 initially claims to have met seven criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in the performing arts.

The Director found that the Petitioner did not meet any of the evidentiary criteria. On appeal, the Petitioner no longer claims commercial success in the performing arts,¹ but asserts that he meets the other six claimed criteria. After reviewing all of the evidence in the record, we find that the Petitioner has met two of the criteria (the fourth and the eighth).

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 states that an album of his music “received the [redacted] Albums of the Year Award,’ an award organized by the [redacted] Musicians Association. . . . It is a recognized, authoritative award in the music industry.” The Director determined that “this appears to be a local award.”

The Petitioner, on appeal, asserts that the award is not local, but rather an “international prize” available to “ethnic Chinese world-wide.” The Petitioner cites two examples of claimed international winners, but neither example is persuasive. One winner “is a Taiwanese singer-songwriter.” The People’s Republic of China does not recognize Taiwan as an independent nation,² and therefore the eligibility of a Taiwanese musician for a Chinese award is not evidence of the award’s international character. The second example cited on appeal is “of Mongolian ethnicity,” but the Petitioner had previously identified this same performer as “a Chinese singer, songwriter and composer of Mongolian ethnicity.”

The Petitioner does not cite any evidence that shows the award is nationally or internationally recognized. A list of winners does not establish the required recognition. Furthermore, the Petitioner has not provided information from the awarding entity to show the criteria for the award.

The Petitioner has not established that he won a nationally or internationally recognized prize or award for excellence in his field.

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 initially claimed membership in two associations: the [redacted] [redacted] and the Chinese Musicians Association, but on appeal he does not pursue any claim about the latter membership. Therefore, we will only discuss the Petitioner’s claim with respect to [redacted]

¹ Because the Petitioner does not contest this issue on appeal, we consider it to be abandoned. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *see also, Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

² *See* <https://www.state.gov/u-s-relations-with-taiwan/> (last visited Feb. 26, 2020)

According to a translated printout from the organization’s website, a musician seeking to join the [redacted] must reside in [redacted] and meet one of the following requirements:³

Top three winners of major professional competitions held at or above the provincial and municipal levels (including winners of international professional competitions and the winners of third-class or above national professional competitions).

[H]ave had a concert of individual works sponsored by a provincial or municipal level or above and received favorable comments.

Amateur music workers and folk artists (including music intangible cultural heritage inheritors) with high artistic level and cultivation, who are recognized by the society and are representative.

Music professionals with a bachelor’s degree or above or an intermediate level or above, and having certain influence in relevant professional fields in [redacted]

The Director concluded that the Petitioner had not established that the [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts. The Director stated that the Petitioner relied on “material . . . from Wikipedia and web portals or domains, which has no probative value in this proceedings [*sic*],” and on “improperly translated documents.”

While user-edited sites such as *Wikipedia* are not reliable as primary sources of information, this is not a blanket disqualification of all web-based information and evidence. An organization’s own website is generally a reliable source for information about that organization’s membership requirements, unless there are specific reasons to doubt the information on that website. And the Director did not specify what documents were “improperly translated,” or identify specific shortcomings in the translations.

Nevertheless, the Petitioner’s appeal relies on an incomplete and selective reading of the [redacted]’s membership requirements. The Petitioner, on appeal, quotes from the requirements, but omits the information showing that the [redacted] is a local organization. Also, throughout the proceeding, the Petitioner has worded one of the membership criteria as follows:

Possess music-related bachelor’s degree and have practiced music professionally for more than 5 years (or work at a mid-level music job) and has great influences in the musical field.

The printout from [redacted]’s website, however, does not show such a requirement. The closest thing to that passage is as follows:

Music professionals with a bachelor’s degree or above or an intermediate level or above, and having certain influence in relevant professional fields in [redacted]

³ Other requirements apply to non-performers employed in music-related fields, such as composers, educators, and recording engineers.

“Certain influence” is not synonymous with “great influences.” There are several different ways to qualify for [redacted] membership, and they require different levels of achievement and distinction. It is therefore significant that the Petitioner has not established which of these qualifications he met in order to join the [redacted]

Also, the Petitioner did not establish that recognized national or international experts judge the qualifications of candidates for [redacted] membership. The requirement that members reside in [redacted] points strongly to the [redacted] being a local organization rather than one with national or international reach.

The Petitioner has not established membership in an association in the field which requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

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 submitted 18 articles published either in print or online between 2011 and 2018. The Director concluded that these articles do not meet the regulatory requirements for four reasons:

- Some of the articles mention the Petitioner but are not *about* him and his work;
- The publications are not professional or major trade publications or other major media;
- The material appeared online rather than in print; and
- The submission included “improperly translated documents.”

On appeal, the Petitioner asserts that it is “unsupported, arbitrary and unwarranted” to compare online news articles to user-edited sites such as *Wikipedia*. As noted above, the regulations do not give preference to printed material over online sources. Many respected publications have an online presence, and many print publications do not count as major trade publications or other major media.

Notwithstanding the issue of online publications, the submitted articles are deficient for various reasons. For example, several articles have no credited author as required. Also, the Director was correct that a number of articles are not about the Petitioner. A *Broadway World* article from 2017 discusses the [redacted] [redacted] The 749-word article mentions the Petitioner only once, identifying him as one of two concertmasters who will “co-present a lecture on the role of the concertmaster.” This single mention does not mean that the article is about the Petitioner as required.

But the overarching issue with all the articles is that the Petitioner did not submit evidence to show that the publications are professional or major trade publications or other major media. The Petitioner only submitted the articles themselves (with translations where necessary), which cannot suffice to show that any of the source publications meet the regulatory requirements.

Without evidence that the publications are professional or major trade publications or other major media, the Petitioner has not satisfied the requirements of this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought. 8 C.F.R. § 204.5(h)(3)(iv)

The Petitioner initially cited his participation in various juries and competitions. The Director found the Petitioner's evidence deficient for various reasons. On appeal, the Petitioner does not dispute all of the Director's findings under this criterion, but contends that he performed qualifying judging work for a competition and through his duties as concertmaster.

The Petitioner asserts that "the Director's denial ignored the [Petitioner's] participation as a juror for the 10th [redacted]s, also known as the Chinese [redacted] Award for Music, Violin Competition, one of four nationally important art awards." The record documents the Petitioner's participation as a judge, which is sufficient to meet the requirements of the criterion. The significance of the judging activity would be a matter for discussion in the final merits determination, had the case proceeded that far.

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)

Initially, the Petitioner claimed to have made a number of contributions through exchange programs, educational efforts, and collaborations with other musicians. In response to the request for evidence, he added more performances and educational efforts, plus a recording contract between the [redacted] and [redacted]. In the denial notice, the Director found that the Petitioner had not established the major significance of any specific contributions.

On appeal, the Petitioner does not revisit most of the previous specific claims. Instead, the Petitioner states:

The Director's denial failed to take into account that [the Petitioner], as Concert Master First Violinist, will be leading the [redacted] to elevate and alter classical music to a whole new international level in combining Chinese and European classical music. This endeavor is an original artistic contribution of major significance in the world of classical music. Additionally, guiding the [redacted] in an effort to attract audiences world-wide is significant. Toward this goal, [redacted] and [redacted] [sic] have entered into a groundbreaking venture to have [redacted] record for world-wide distribution. This is the first global record deal for a Chinese Orchestra ever. . . .

[The Petitioner] will be the very first Concert master to lead [redacted] in such a venture. The blending of Chinese and European classical music will be the first major significant venture ever taken.

Published material in the record documents the contract between [] and the [], and confirms that it is the “first global label deal for a Chinese orchestra.” However, this coverage does not mention the Petitioner, either by name or by his title as concertmaster. Instead, the articles discuss the []’s conductor (who, with other orchestras, has previously recorded for []). The record does not establish that the []’s record deal with [] is an original contribution by, or attributable to, the Petitioner, or that the Petitioner is individually a party to the contract. Furthermore, the record does not show that the Petitioner, rather than the conductor, is responsible for the creative direction of the orchestra.

As shown above, the Petitioner refers to the impact of the recording contract in the future tense. It does not appear that [] had issued any [] recordings at the time of filing. Therefore, whatever expectations the Petitioner may have regarding the recording contract, it is premature to attribute major significance to recordings that have not yet been issued, and possibly not yet recorded.

Furthermore, the anticipated contributions are contingent on the Petitioner’s continued involvement with an orchestra in [] which presumably would end if the Petitioner were to succeed in his intention to emigrate from China.

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 submitted information about the role of the concertmaster in a symphony orchestra, and about concerts and festivals in which he performed. The Director determined that the Petitioner had not satisfied this criterion, because “the conductor, directors, executives, and so on” outrank the concertmaster, and because concerts and festivals are not organizations or establishments. On appeal, the Petitioner contends that the Director understated the Petitioner’s role and responsibilities.

An individual need not be the single highest-ranking member of an organization to play a leading or, especially, critical role. The record sufficiently establishes that concertmasters in general, and the Petitioner in particular, influence the sound of a given orchestra, particularly the string section. Such a role is more limited and technical than that of the conductor or musical director, but it is critical nevertheless. (One must actually perform these functions, rather than simply hold the title of concertmaster, but this is not an issue in this case.)

The Director correctly determined that individual performances and events are not, in themselves, organizations or establishments with a distinguished reputation, but the record supports a finding that the [] has a distinguished reputation. Materials in the record credit the []’s current conductor, rather than its concertmaster, with raising the organization’s profile in recent years, but the regulations do not require the Petitioner to be personally responsible for an organization’s reputation.

Therefore, the Petitioner has established that he has performed in a critical role with an organization with a distinguished reputation.

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 has had the opportunity to perform with prestigious institutions and prominent musicians, but the record does not show that the Petitioner himself has risen to that same level of recognition, and the regulations do not provide for acclaim by association.

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.