



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

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

In Re: 6711634

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a musician specialized in the “jinghu” musical instrument, 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 the Petitioner met only one of the ten initial evidentiary criteria for this classification, of which he must satisfy 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)(A) 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 performs on the jinghu, a Chinese bowed string instrument, and has played it in several concerts involving Chinese Opera (also referred to in the record as [redacted] Opera) in China and the United States.¹ 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).

In denying the petition, the Director determined that the Petitioner fulfilled one of the initial evidentiary criteria, published material at 8 C.F.R. § 204.5(h)(3)(iii). The record reflects that the Petitioner was featured in an article published in the newspaper *The China Press* and therefore we agree with the Director's determination that the evidence satisfies the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the Petitioner asserts that he meets three additional criteria.² After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that he satisfies the requirements of at least three criteria.

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)

As evidence under this criterion, the Petitioner submitted a number of reference letters discussing his work as a jinghu performer, including those from musicians who have worked with him, who know his work.³ The Director considered this documentation but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

¹ The records of U.S. Citizenship and Immigration Services (USCIS) show that since 2009 the Petitioner has been studying and working in the United States in the field of mechanical and aerospace engineering while in F-1 and H-1B nonimmigrant classifications.

² The Director determined that the Petitioner initially submitted evidence related to the artistic display criterion at 8 C.F.R. § 204.5(h)(3)(vii) but did not satisfy this criterion. The Petitioner does not contest this issue on appeal and therefore we deem it to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

³ We note that although the Petitioner's appeal brief refers to letters previously submitted from [redacted], [redacted] and [redacted] the record before us does not contain letters from those individuals.

In order to satisfy this criterion a petitioner must establish that not only has he made contributions that were original but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner points to several letters of support from colleagues in the field, including fellow jinghu performers, which he claims indicate that he is “recognized on a worldwide basis as one of the foremost Jinghu players who has made original, significant contributions to the field.” However, as discussed below, these letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific original contributions that the Petitioner has made to the field that have been considered to be of major significance.

For example, [redacted] a jinghu performer, states that the Petitioner “has demonstrated his unsurpassed expertise and strong passion to Jinghu” and has performed at “the highest level . . . on par with the foremost professional players.” [redacted], a jinghu performer, describes the Petitioner as “a great Jinghu player especially marvelous at rhythm” whose work “is a unique combination of sound, tempo and emotion.” [redacted] and [redacted] of the [redacted] [redacted] describe the Petitioner, respectively, as “among a handful of the finest Jinghu players in the entire industry in [redacted] . . . whose contributions are widely recognized in the realm of Chinese Opera Community,” and “one of the best Jinghu players in the United States.” [redacted] of the [redacted]) calls the Petitioner “one of [the] leading contemporary Chinese Jinghu players” and “among the most distinguished Jinghu artists in the industry.” While those authors praise the Petitioner’s skills as a jinghu performer the letters are not sufficient to demonstrate that the Petitioner’s contributions as a music performer rise to the level of a contribution of major significance in the field. Letters that specifically articulate how a petitioner’s contributions are of major significance to the field and its impact on subsequent work add value.⁴ 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.⁵

Likewise, [redacted] a musician and the [redacted] of the China Oriental Performing Group, states that he practices jinghu weekly with the Petitioner and praises his “outstanding performance skills” and “unique performing style.” He provides that the Petitioner is “exceptionally talented in improvisation” and a “tremendous talent.” He claims that the Petitioner’s performance in 2018 at the [redacted] Theater in [redacted] held in the United States,” and highlights several of the Petitioner’s original works, such as [redacted] and his arrangement, for Chinese Opera instruments, of the popular song “[redacted] [redacted], the [redacted] of the Chinese Opera Club of [redacted], indicates that the Petitioner is the organization’s music director and asserts that the Petitioner’s “[redacted]” arrangement “for the first time in history infused Chinese Opera music to a Hollywood masterpiece.” The letters of [redacted] and [redacted]

⁴ 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 8-9* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

⁵ *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).

[redacted] however, are not sufficient to demonstrate that the Petitioner's work rises to the level of a contribution of major significance in the music field. For instance, the record does not show that the Petitioner's compositions, arrangements, or his aforementioned 2018 concert performance have widely influenced others in the field of jinghu performance, that his works are highly renowned by recognized music critics, or that his original work otherwise constitutes contributions of major significance in the field. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (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).

Further, [redacted] of [redacted] University provides that the Petitioner's jinghu performance is "virtuosic." [redacted] asserts that the Petitioner is knowledgeable in the musical techniques of Peking Opera. [redacted] of University of [redacted] calls the Petitioner "one of the best Jinghu players in the world." However, the Petitioner has not shown that [redacted] a art professor whose background is the visual arts, [redacted], a composer and lyricist for the American musical theater, and [redacted], a professor of music practice, are recognized experts in the field of jinghu performance.

Finally, the record contains concert programs that mention the Petitioner by name and show that he has been a featured performer and ensemble member in several concerts between 2014 and the date when the petition was filed in September 2018, including a 2014 performance in China, a 2015 [redacted] concert, the 2016 *Anniversary Celebration* at the [redacted] Culture Art Center, the 2017 *Mid-Autumn Festival Concert* at the University of [redacted] and the aforementioned 2018 concert at the [redacted]. However, as discussed previously, the Petitioner has not explained or documented the scope and significance of his performance at those events and that it represents a contribution of major significance in the field of jinghu performance.

In light of the above, the Petitioner did not show he meets this criterion.

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 that he has performed a critical role for two organizations, [redacted] and [redacted]. As it relates to 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 organization's 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.⁶

The Petitioner provided letters from three representatives of [redacted]. In her aforementioned letter, [redacted] the organization's chairperson, asserts that the Petitioner joined [redacted] in 2015, is on the organization's 15-member board of directors, and is the music director of the organization's Youth Troupe. She relates that he has performed in opera productions including [redacted], [redacted], and [redacted]. In his above-referenced letter, [redacted] the general manager of [redacted] states that the Petitioner is "extremely critical" to the organization as its "chief jinghu player" who "plays the leading role in most of our performances." [redacted], the past president and founder of [redacted] and the Petitioner's mentor,

⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

asserts that the Petitioner instituted the organization's year-end shows and co-founded the [redacted] Youth Troupe, performing with them in stage performances in [redacted] universities and community festivals.

The Petitioner also submitted two letters from [redacted] the president of [redacted], who states that the Petitioner has been the organization's "musical advisor" since 2016, providing children weekly instruction in jinghu and other string instruments, and asserts the Petitioner's work is "of vital importance for [redacted]." He indicates that the Petitioner has performed Chinese opera arias including [redacted], [redacted], and [redacted].

Although the Petitioner references recommendation letters which confirm his work with those organizations, the letters do not contain detailed information demonstrating that he performed in a critical role as a whole.⁷ For instance, the letters did not explain how performing the role "chief" jinghu player and youth troupe musical director for [redacted] or children's music instructor for [redacted] resulted in the success or standing of the organizations or otherwise reflected the Petitioner's critical role to the organizations. In addition, although [redacted] asserts as a board member "[the Petitioner's] decisions directly determined the development of [redacted]" he did not elaborate how such position elevated the organization's status. Here, the lack of specific information does not provide probative information to demonstrate the Petitioner's critical roles for the organizations.

Further, the Petitioner did not establish that either of those organizations enjoy a distinguished reputation.⁸ Although the recommendation letters provided brief background information, the Petitioner did not offer any supporting documentation to corroborate the claims. For example, [redacted] indicated it is a non-profit organization founded in 2006 to introduce and promote Chinese traditional opera, it has "organized/hosted a variety of cultural events including public performances, community activities and workshops," and is "the most influential Asian culture society" with "the best team of professional musicians of Peking Opera in all of the United States." Moreover, [redacted] asserted that it was established in 1999 as a non-profit organization promoting and preserving "Chinese Opera through performances, educational activities and touring engagements." Again, the Petitioner did not submit corroborating evidence, nor did he demonstrate the significance of the statements. 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 he satisfies this criterion.

⁷ 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 specifically addresses how the alien's role for the organization or establishment was leading or critical).

⁸ 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).

III. CONCLUSION

We find that that, although the Petitioner met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), he did not establish that he meets the criteria relating to original contributions and leading or critical role. We acknowledge that the Petitioner claims eligibility under one additional criterion on appeal, relating to scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve that issue.⁹ 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.

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). Although the Petitioner has been a jinghu instructor and performer in several concerts in China and the United States, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

⁹ *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).