



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

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

In Re: 8641102

Date: MAY 29, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a pianist, 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 had satisfied only one of the ten 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 indicates employment as a music director for [redacted] in [redacted] New York. Because the Petitioner has not claimed 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 fulfilled only one of the initial evidentiary criteria, judging at 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner judged a student musical competition. Accordingly, we agree with the Director that the Petitioner satisfied the judging criterion.

On appeal, the Petitioner asserts that she meets four additional criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish that she fulfills 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 first prize at the [redacted] New York International Artists Association Piano Competition (NYIAAPC) and an award from the [redacted] IBLA Grand Prize International Competition (IBLAGPIC). 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

As it relates to NYIAAPC, the Petitioner submitted screenshots from nyiaa.org regarding background information and rules and regulations for the competition. In addition, the Petitioner presented a letter from [redacted] of NYIAA, who indicated that NYIAA “is a non-profit organization

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.*

established in 2010 with the mission to provide fertile ground for professional musicians from around the globe to realize their goals through healthy competition.” Further, [redacted] stated that the piano competition “is rigorous and requires that candidates show substantial works by maestros” and “competed with exceptionally talented pianists from all over the world, of 18-35 ages.” Moreover, [redacted] claimed that “[r]eceiving the 1st prize in the [NYIAAPC] is a major achievement for any professional pianist since the standards, as mentioned above, are extremely high.”

The evidence, however, does not demonstrate that the NYIAAPC first prize is nationally or internationally recognized for excellence in the field. Although the nyiaa.org screenshots reflect information about the competition, they do not contain sufficient material evidencing the national or international significance of the prize. Furthermore, the screenshots indicate that the competition is restricted by age and first prize receives \$1,000. Here, the Petitioner did not show that such limited age requirements and minor prize money are characteristic of a nationally or internationally recognized prize for excellence in the field. In addition, while [redacted] opined that NYIAAPC “is a major achievement,” she did not support her assertion with detailed, specific, and objective information explaining how the overall field views the prize beyond NYIAA.

Regarding IBLAGPIC, the Petitioner provided a certificate of recognition and screenshots from ibla.org reflecting the [redacted] “IBLA Grand Prize Awards” (Top Winners), “Outstanding Musicians” (Honorary Awards and Special Mention Winners), “Most Distinguished Musicians” (Honorary Awards and Special Mention Winners), and “Distinguished Musicians.” Further, she offered additional screenshots from ibla.org relating to the competition. Moreover, she presented an article posted on iitaly.org announcing the 2014 IBLAGPIC that “featur[es] World Class Performers from Europe, Russia, Asia and the U.S.” In addition, she submitted a letter from [redacted] [redacted] of IBLA Foundation, who stated that IBLAGPIC “is an annual competition open to all instruments, vocalists, and composers with a focus on classical music” and named several former New York politicians who “officially commended” the awards. [redacted] also indicated that IBLAGPIC “is unique in that there are no rounds or prizes such as first and second prize, and competitors are judged against the international standard of high-quality performances rather than competing against each other.”

The Petitioner, however, did not demonstrate which award she received from the competition. According to the certificate of recognition, the Petitioner received a “9.00 Outstanding Musician + Haendel Special Mention.” On the other hand, according to the ibla.org screenshots, the Petitioner received an “8.90 Most Distinguished Musician + Haendel Special Mention.”³ Moreover, the ibla.org screenshots list only two individuals receiving the “Outstanding Musician,” none of whom are the Petitioner.⁴ Further, although [redacted] indicated that the Petitioner’s performances “won her the highest points from the judges and Ha[e]ndel honors,” he did not clarify whether she received an “Outstanding Musician” or a “Most Distinguished Musician.” Inconsistencies in the record must be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

³ The ibla.org screenshots reflect that scores from 9.50 to 10.00 plus special awards are “Top Winners,” scores from 9.00 to 9.50 plus special mention are “Outstanding Musicians,” scores from 8.00 to 8.90 plus special mention are “Most Distinguished Musicians,” and scores from 7.00 to 7.90 plus special mention are “Distinguished Musicians.”

⁴ We also note that there were 2 “Top Winners,” 43 “Most Distinguished Musicians,” and 11 “Distinguished Musicians.”

Notwithstanding the above, the Petitioner did not establish that an IBLAGPIC “Outstanding Musician” and “Most Distinguished Musician,” as well as any of the other awards, are nationally or internationally recognized for excellence in the field. While the ibla.org screenshots contain “Frequently Asked Questions” and information about the competition, they do not show the national or international significance of the awards in the field. Moreover, the Petitioner did not demonstrate how an article covering the [redacted] competition reflects a level of press coverage consistent with nationally or internationally recognized awards for excellence in the field. In addition, the Petitioner did not establish that a competition that issues almost 60 awards, including 43 for “Most Distinguished Musician,” is commensurate with nationally or internationally recognized awards for excellence. Furthermore, although [redacted] indicated that New York politicians have commended the awards, he did not indicate the national or international recognition of the awards in the overall field beyond New York politicians.

Finally, the Petitioner provided evidence that she received a silver award from the [redacted] International Music Competition. However, we will not consider this eligibility claim and evidence as the award occurred after she filed 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); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

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.

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 contends that she satisfies this criterion based on articles published in *Music Review* and *Music Journal*. 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.⁵

The record reflects that the Petitioner submitted an article from *Music Review* and an article from *Music Journal* indicating published material about her relating to her work and containing the required title, date, author, and translation.⁶ However, the Petitioner did not demonstrate that *Music Review* or *Music Journal* represents a professional or major trade publication or other major medium.

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>.

⁶ The Petitioner provided a second article from *Music Review*; however, the article reflects a critique of an orchestra rather than published material about her and her work. Articles that are not about an alien do not fulfill this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

On appeal, the Petitioner emphasizes that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires professional or major trade publications. Moreover, she contends that she “has been featured several times in two professional trade publications in South Korea.” Further, she argues that “there is significant material published in trade journals about [her] and her work.” The Petitioner, however, has not established whether she claims eligibility based on material occurring in professional publications, major trade publications, or both. Regardless, she did not demonstrate that *Music Review* or *Music Journal* qualifies as a professional publication or as a major trade publication.

Regarding *Music Review*, the Petitioner submitted subscription information and a letter from [redacted] [redacted] who indicated that “Music Review is a periodical magazine that was launched in April 2016 (published every month of 4,800 copies) that delivers vivid news from all classical music circles in Korea.” In addition, target readers include “[a]rtists who play music, music lovers such as classical U.S. musicals, and regular readers.” As it relates to *Music Journal*, the Petitioner presented subscription and background information, including evidence that it received a distinction award from the Korean government in 1997, and a letter from [redacted] who stated that “this magazine serves as a record writer in the music industry” and “focuses on the interests of musicians, music lovers, music academies, and parents with children who want to major in music.”

Here, the Petitioner’s evidence does not sufficiently show that *Music Review* or *Music Journal* is a professional or major trade publication. Neither publication is geared towards a specific professional occupation or distributed by a professional association to be classified as a professional publication.⁷ Further, the magazines do not appear to share information between people within a specific industry in order to improve their business or field to keep up-to-date on market trends to be considered a trade publication.⁸ Even if they are trade publications, the Petitioner did not demonstrate that a circulation of 4,800 copies per month for *Music Review* or receiving a government award for *Music Journal* reflects the magazine’s major status. The Petitioner, for instance, did not explain the significance of the circulation figures or establish the relevance of the 1997 government award in establishing the standing of a major medium.⁹ Moreover, the Petitioner did not submit independent, probative evidence to support the magazine letters’ claims. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C.D. CA July 6, 2007) *aff’d* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine’s status is not reliant evidence of a major medium).

The Petitioner also argues that Korean Broadcasting System (KBS) conducted a radio interview of her on KBS Classic 1 FM and televised a performance on KBS 1TV. She submitted a letter from [redacted] [redacted], who stated that KBS Classic 1 FM interviewed the Petitioner for its “Cultural Commonground” segment. Moreover, she presented a letter from [redacted] who indicated that KBS 1TV broadcasted the Petitioner’s performance with [redacted]

⁷ Section 101(a)(32) of the Act provides that “[t]he term ‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academics, or seminaries. Further, the regulation at 8 C.F.R. § 204.5(k)(2) states that “[p]rofession means one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry in the occupation.

⁸ *See* libguides.seminolestate.edu, accessed on May 26, 2020, providing characteristics of trade publications.

⁹ *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).

[redacted] on its “the KBS Culture Anchor Desk” program. Although she provided a “Confirmation Form” showing that she was hired for a radio interview and a screenshot from YouTube for the television performance, the Petitioner did not provide a transcription of the interview or performance establishing published material about her relating to her work. Further, the Petitioner did not include the required author and title for the radio interview and the author for the television performance. In addition, based on [redacted]’s letter, the television broadcasted the [redacted] [redacted] performance rather than published material about the Petitioner relating to her work. *See, e.g., Negro-Plumpe*, 2:07-CV-820-ECR-RJJ at*7 (upholding a finding that articles regarding a show are not about the actor).

Furthermore, the Petitioner did not demonstrate that the radio or television programs represent major media. Although [redacted] claimed that the radio station’s “Cultural Commonground” program is a “highly popular segment,” he did not provide any further, detailed information showing the status of the radio program as a major medium. Moreover, the Petitioner did not offer any independent, objective evidence to support [redacted]’s claims. Relating to the television station’s “Culture Anchor Desk” program, the Petitioner submitted evidence from Nielson Korea reflecting that the program received 0.4% share of the audience and was ranked 301st.¹⁰ The Petitioner, however, did not establish that such figures are indicative of a major medium.

Accordingly, the Petitioner did not show that she meets this criterion.

Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

In order to demonstrate eligibility for this criterion, a petitioner must show that her work was on display, and the venues were artistic exhibitions or showcases.¹¹ Here, the record contains evidence that Petitioner displayed her work performing at various artistic, musical venues. Accordingly, the Petitioner demonstrated that she satisfies 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 she serves in “a critical and irreplaceable role” for the [redacted] chapter of [redacted] “a non-profit organization founded in 2006 to help the disabled, hospitalized, and disadvantaged by enriching their lives with high quality entertainment events and programs.”¹² As it relates to a critical role, the evidence must establish that the alien has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.¹³ It is not the title of the alien’s role, but rather the alien’s performance in the role that determines whether the role is, or was, critical.¹⁴

¹⁰ In contrast, the evidence shows that the program “Curious Story Y” had 10.8% share of the audience and was ranked first.

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

¹² The Petitioner does not claim, nor does record reflect, that she performed in a leading role for [redacted]

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

¹⁴ *Id.*

She references a letter from [REDACTED], who claimed that the Petitioner “is one of the most engaged, talented musicians we have had the pleasure of bringing into [REDACTED] and that makes her participation critical to [REDACTED]’s various events.” Moreover, [REDACTED] indicated that the Petitioner conducted a choir program for children, held outreach concerts at hospitals, and served as the choir director and pianist for children diagnosed with attention deficit hyperactivity disorder. Further, [REDACTED] opined that the Petitioner’s “playing is of such a quality that even our most discerning patrons are left in awe,” and her “skill as a pianist are therefore also essential to the annual fundraising efforts of [REDACTED] and to the continued success of the organization.”

The letter, however, does not contain detailed information demonstrating that the Petitioner performed in a critical role for [REDACTED].¹⁵ [REDACTED] for example, did not elaborate and explain how the Petitioner’s role contributed to the successes of [REDACTED] overall rather than generally indicating various events she participated. Moreover, [REDACTED] did not articulate how the Petitioner’s involvement with conducting a choir program, holding outreach concerts at hospitals, and serving as the choir director and pianist resulted in important outcomes for [REDACTED]’s activities. In addition, [REDACTED] did not expound upon how the Petitioner’s skills impacted or influenced [REDACTED]’s fundraising activities at a critical or essential level.

Furthermore, the Petitioner did not establish that [REDACTED] enjoys a distinguished reputation.¹⁶ The record reflects that the Petitioner submitted screenshots from enob.org relating to [REDACTED]’s mission, background information, and activities. Moreover, she presented three articles posted on koreadaily.com and three articles posted on koreatimes.com indicating that [REDACTED] held free concerts and events for patients and children. Although [REDACTED]’s non-profitable and charitable contributions are admirable, the Petitioner did not demonstrate that [REDACTED] garners an eminent reputation. Here, the Petitioner did not show that six articles from two websites reflects a level of media coverage consistent with an organization that has a distinguished reputation. The Petitioner did not include evidence, for example, showing the public’s view of the organization or the receipt of critical acclaim or bestowed honors, signifying a distinguished reputation consistent with this regulatory criterion.

For these reasons, the Petitioner did not establish that she satisfies this criterion.

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.

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 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).

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 judged students and performed 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.