



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

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

In Re: 14444775

Date: APR. 15, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a songwriter, musician, and producer, 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 met the initial evidence requirements through either receipt of a major, internationally recognized award or meeting at least three of the evidentiary criteria under 8 C.F.R. § 204.5(h)(3).

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

international 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 criteria 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 is a songwriter, musician and producer for the [redacted] and [redacted] record labels, and is credited on songs by artists such as [redacted], [redacted], [redacted], and [redacted], who performs under the pseudonym [redacted]. He has also contributed to songs by [redacted] and others as a session guitarist. He states that he intends to continue working in the United States as a songwriter and producer.¹

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 two of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to a high salary in relation to others in his field and commercial success in the performing arts. On appeal, the Petitioner asserts that he also meets the evidentiary criteria relating to lesser nationally or internationally recognized awards and a leading or critical role for organizations having a distinguished reputation.² After reviewing all of the evidence in the record, we agree that the Petitioner meets the two criteria granted by the Director, but find that he does not meet the initial evidentiary requirement for this classification of at least three criteria.

¹ The record shows that he has been working in the United States for several years prior to the filing of this petition pursuant to O-1 nonimmigrant status.

² Although the Petitioner initially claimed to also meet the criteria at 8 C.F.R. §§ 204.5(h)(3)(iii) and (v) relating to published material about him and contributions to the field of major significance, he does not contest the Director's decision relating to these criteria on appeal or otherwise refer to them in his appeal brief. We will therefore consider these issues to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n. 2 (BIA 2009).

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 includes evidence of the Petitioner's receipt (along with two others) of the Society of Composers, Authors, and Music Publishers (SOCAN) Songwriting Prize in [] for his work on the song [] performed by []. The evidence indicates that the award includes a \$10,000 cash prize, a keyboard, and a \$500 gift card. In addition, the official rules for the prize state that the song must be original, and created by songwriters who are Canadian citizens, landed immigrants or legal residents, and who have not been nominated for a Grammy award or are a previous winner of the SOCAN Songwriting Prize.

The Director noted in his decision that the prize is described as honoring "emerging Canadian songwriters," and therefore excludes those "who have already achieved excellence in the field..." rendering this evidence less than probative. On appeal, the Petitioner argues that the plain language of this criterion does not preclude an award from meeting the requirements simply because it is granted to "emerging" artists, or because it is awarded based in part upon public voting.

We agree with the Director that limitations on the scope of potential awardees may be taken into consideration when determining whether an award is granted for "excellence in the field of endeavor," since that phrase includes all of those engaged in the field of endeavor, not just the pool of nominees for a particular award.³ Here, the exclusion of those who have been nominated for a Grammy award removes from the pool of potential awardees those who have already been judged to have demonstrated excellence in the field of songwriting. In addition, while the official rules state that the short list of ten finalists is nominated by an independent panel of experts "on the basis of artistic merit," the award itself is determined by public vote. Therefore, we also agree with the Director that the rules do not establish that the winner of the SOCAN Songwriting Prize is awarded for excellence in songwriting as opposed to popularity.

Further, the evidence does not establish that the SOCAN Songwriting Prize is nationally or internationally recognized. The Petitioner initially submitted evidence that the press release from SOCAN about his receipt of the award was posted on the website *businessinsider.com*, as well as on the organization's own website. This evidence does not show recognition in the field beyond the awarding entity. Other media about the Petitioner's and his co-writers' receipt of this award included articles posted on the websites *fyimusicnews.com* and *indie88.com*. However, the information about these media outlets from their own websites is insufficient to show that these articles constitute national or international recognition in the music industry.

In response to the Director's request for evidence (RFE), the Petitioner submitted additional evidence about the SOCAN Songwriting Prize, the organization, and previous winners of the award. We note that much of this evidence refers not to the songwriting prize, but to the "SOCAN Awards," which are granted at a highly publicized event and include awards in a large number of categories including

³ See USCIS Policy Memorandum PM 602-0005.1, *Evaluation of Evidence Submitted With Certain I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14*. Pg. 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>, noting that limitations on competitors is a relevant consideration when determining whether an award was granted on the basis of excellence in the field.

“Songwriters of the Year.” That award was given to other songwriters in [redacted] not the Petitioner and his collaborators. This evidence does not demonstrate that the SOCAN Songwriting Prize receives the same level of recognition, either from the general public or in the field. Accordingly, we agree with the Director and conclude that the Petitioner does not meet 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)

In order to meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that that role has been for an organization or establishment having a distinguished reputation. If a leading role, the evidence must establish that the petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. If a critical role, the evidence must establish that the petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities.

Here, the Petitioner asserts that he has played a leading or critical role for companies such as [redacted] the [redacted]), and [redacted] dba [redacted] [redacted] as well as for individual artists who, he asserts, operated as “going business concerns” which qualify as organizations. In his response to the Director’s RFE, for example, he states that his “critical role with [redacted] contributed to multiple billboard charting songs and RIAA certifications for artists such as [redacted], [redacted], and [redacted]” A letter from [redacted] [redacted] SVP of A&R at [redacted] verifies that the Petitioner “has signed a publishing deal” and is employed as a songwriter, producer, and musician, and that his “writing and productions have led to multiple billboard charting songs...” A similar letter from [redacted] a music publisher at [redacted] and co-founder of [redacted] states that he has been collaborating with the Petitioner since signing him in 2010, and that the Petitioner “has surpassed all our collective expectations.” And in a third letter, [redacted], Vice President of A&R at [redacted] notes that the Petitioner continues to work closely with [redacted], an artist that he signed. All of these letters are supported by evidence from websites such as discogs.com and allmusic.com showing that the Petitioner is credited as a composer, producer, and musician on songs performed by the artists listed above as well as others, and also by copies of contracts he signed with [redacted] This evidence does not, however, show that he has played either a leading or critical role for any of the companies with which he has been employed.

First, regarding the Petitioner’s role for [redacted] the record does not include evidence which suggests that he has served in a leadership position or otherwise acted as a leader for the company. As for a critical role, the above evidence demonstrates that he has worked as a composer, producer, and musician on several songs for well-known artists which have been commercial successes. However, as noted by the Director in his decision, [redacted] is a large, multinational company which touts itself as [redacted] in the website materials submitted. Although the evidence shows that the Petitioner has contributed to several commercially successful songs, it does not show that these results were of significant importance to [redacted]’s overall activities, which according to its own marketing materials includes ownership of [redacted] songs from well-known artists past and present.

Second, the evidence about the role the Petitioner has served for [redacted] concerns only his involvement as a songwriter, producer, and musician with [redacted]. The letter from [redacted] credits him with helping to create the artist's "signature sound," and states that he is involved on a daily basis with the creation of a new album. But neither the letter nor other evidence in the record about [redacted] indicates that he has played a leading or critical role for the company, which is a part of [redacted] and includes several record labels and represents many popular artists.

Third, the Petitioner claims in his response to the Director's RFE that he is a co-founder of [redacted] and refers to the letter from [redacted] as verification of this status. However, the letter mentions only that [redacted] has been collaborating with the Petitioner since meeting him in 2010, and that he and his partners "immediately signed him to an exclusive publishing deal." As with [redacted] and [redacted] the evidence indicates only that the Petitioner was an employee, and does not suggest that he served in a leadership role or that he was a critical part of any success enjoyed by the company. Further, as the Director found in his decision, the evidence does not demonstrate that [redacted] has a distinguished reputation.

Finally, the Petitioner asserts that the term "organization" is defined as "an administrative and functional structure (such as a business...)" and that individual artists constitute "going business concerns" and should therefore be considered as organizations. Although this definition, obtained from the website merriam-webster.com, uses a business as an example of an organization, it does not suggest that all businesses are organizations. Notably, the two examples found on this website refer to a formal structure, which the Petitioner has not shown to present in the case of the individual artists with whom we has worked. Further, in the cases of [redacted], [redacted], and [redacted] the evidence shows that he was one of many artists who contributed to individual songs on a particular album, and was not a part of any formal structure. And although the evidence establishes that he has a close working relationship with [redacted], again there is no evidence of a formal administrative or functional structure of which the Petitioner can claim to be a member. In addition, as noted by the Director in his decision, even if [redacted] was considered to be an organization as opposed to an individual artist, the record does not sufficiently establish that [redacted] has a distinguished reputation.

For the reasons detailed above, we agree with the Director and conclude that the Petitioner has not established that he meets 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.

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 that 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.