



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

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

In Re: 15738320

Date: APR. 16, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a musician, 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 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 individuals 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). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if they are able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i)–(x) do not readily apply to the individual’s occupation.

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

At the time of filing, the Petitioner was studying for a doctorate in musical arts at the [redacted] New York [redacted]. The Petitioner is a collaborative pianist, who routinely performs with singers or other musicians. Before he entered the United States as a student, the Petitioner performed with the [redacted] first as a singer, then as a rehearsal pianist and later as its “principal concert piano accompanist.”

### A. Evidentiary Criteria

Because the Petitioner has not indicated or shown that he 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 claimed to have satisfied nine of these 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 individual in professional or major media;
- (iv), Participation as a judge of the work of others;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in the performing arts.

The Director concluded that the Petitioner met two criteria, numbered (iv) and (vii). We will not disturb these conclusions.

On appeal, the Petitioner asserts that he also meets two other criteria, numbered (v) and (viii). The Petitioner does not directly contest the Director's conclusions regarding the other five previously claimed criteria, and therefore we consider those issues to be abandoned.<sup>1</sup> The Petitioner also states that his "qualifications should also be analyzed under the comparable evidence standard of 8 C.F.R. § 204.5(h)(4)" but does not elaborate.<sup>2</sup> This general assertion does not specifically identify an erroneous conclusion of fact or law as required by 8 C.F.R. § 103.3(a)(1)(v).

Upon review of the record, we conclude, as discussed below, that the Petitioner has not met the requirements of the two claimed criteria discussed on appeal.

*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)*

Several individuals provide letters praising the Petitioner's work with the [redacted] and elsewhere, but praise for the Petitioner's abilities does not establish major significance in the field. The president and conductor of the [redacted] asserts that [redacted] an album that the Petitioner recorded with the [redacted], "was awarded as the Best [redacted] Album by the Top Ten Most Popular CD Albums of the Year 2010," but the record contains no evidence to support this assertion. The Petitioner submits a printout of an Amazon listing for the album, which shows much lower sales rankings:

#1,287,308 in CDs & Vinyl  
#14,332 in [redacted] Music  
#53,675 in Opera & Vocal (CDs & Vinyl)  
#191,512 in Classical (CDs & Vinyl)

Furthermore, the Petitioner has not explained how his accompaniment of [redacted] on the album amounts to a contribution of major significance not only to the production of that album, but in the field overall.

The principal of [redacted] Music School states that the school hosts an annual "educational lecture and [redacted] recital." In 2014, when the Petitioner spoke and performed, the school "estimated around 350-400 attendees for that night," but ultimately sold 576 tickets. The principal does not explain how this event was of major significance in the field.

The Petitioner has not established any original contribution that has had an identifiable impact beyond the occasions where he performed and the institutions hosting or sponsoring those performances. Therefore, the Petitioner has not met the requirements of this regulatory criterion.

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<sup>1</sup> See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

<sup>2</sup> The Petitioner cites an unpublished appellate decision from 2018, in which we referred to comparable evidence when determining that a musician had satisfied the "display" criterion at 8 C.F.R. § 204.5(h)(3)(vii). In the present case, the Director already took that reasoning into account, concluding that the Petitioner had satisfied the "display" criterion. Having initially claimed to satisfy nine of the ten regulatory criteria, the Petitioner does not explain on appeal which criteria do not readily apply to his occupation.

*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 asserts that he performed in a critical role when he accompanied the [redacted] on occasions such as the live performance released as the album [redacted] and rehearsals for the 2004 [redacted] Olympics. The evidence submitted, however, is not sufficient to show that the [redacted] has a distinguished reputation.

As noted above, the record does not corroborate the claim that [redacted]'s album is an award-winning bestseller. Regarding the [redacted] Olympics, the [redacted] asserts that the [redacted] won *the silver medal*," but a submitted printout from the event's website indicates that the [redacted] was one of 17 [redacted] that won silver medals during a qualifying round. There is no indication that the [redacted] won a medal in the final round of competition.

Also noted above, the Petitioner spoke and performed at [redacted] Music School. While the Petitioner's lecture and performance sold more tickets than anticipated, the Petitioner has not established that this one-night appearance constituted a critical role for the school, or that the school has a distinguished reputation.

The Petitioner asserts that he also performed in a critical role for the [redacted], which consists of graduate students at the school where the Petitioner studied. A professor emeritus at the university states that the Petitioner was "one of the regular accompanists for our [redacted] program," participating in rehearsals and [redacted] "degree recitals." He does not claim that the Petitioner's involvement was critical to the [redacted] program, and the Petitioner does not establish that [redacted] program has a distinguished reputation relative to other academic [redacted] programs.

The Petitioner played piano on [redacted] an extended play record (EP) by violist [redacted] [redacted]. The album's producer and engineer states that the Petitioner's involvement was an important participant in the recording. The Petitioner does not identify the organization or establishment for which his participation amounted to a leading or critical role. The recording was produced and issued by [redacted] [redacted] but the record does not establish the reputation of that company. (Reputation is a matter of outside perception, and the company's own promotional materials are not first-hand evidence of how others regard the company.) The record indicates that the EP won two bronze medals from the [redacted] Music Awards, but the record does not establish the significance of those awards or provide any information about the awarding entity or its nomination/award selection process.<sup>3</sup> Therefore, the awards do not establish the distinguished reputation of any entity involved with the EP.

The Petitioner has not established that he performed in a leading or critical role for organizations or establishments with a distinguished reputation.

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<sup>3</sup> We note that the award letter misspells the violist's name as [redacted] and does not indicate that any medals were actually furnished with the award. Instead, the letter invites the awardee to purchase "the very special [redacted] Music Awards medallion" if she wishes "to make [her] achievement visible to others."

### 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 lesser 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 conclusion 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. U.S. Citizenship and Immigration Services 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 established that individuals who have worked with him have great respect for his talents and his ability, but he has not shown that this reputation extends beyond those who have worked directly with him in this way. The Petitioner has not demonstrated recognition indicative of the required sustained national or international acclaim, or which demonstrates 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 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).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

**ORDER:** The appeal is dismissed.