



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

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

In Re: 17773598

Date: AUG. 26, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a musician, composer, and music producer, 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, as required, that the Petitioner had satisfied at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit by a preponderance of the evidence. *See* section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). Upon *de novo* review, we will sustain 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 international recognition of his or her achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the 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 singer, songwriter, musician, and music producer. He has released five solo albums, toured internationally, and collaborated as a co-producer, co-writer and musician on the albums and singles of other recording artists. The Petitioner has also contributed original music to commercial campaigns and television soundtracks and served as the composer for the [redacted] series [redacted]. He states that he intends to continue working in the United States as a songwriter, composer, 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 concluded that he met two of the ten criteria. Specifically, the Director determined that the Petitioner had established his receipt of nationally or internationally recognized prizes or awards and provided evidence of published material about him, and therefore satisfied the criteria at 8 C.F.R. § 204.5(h)(3)(i) and (iii).

On appeal, the Petitioner maintains that he meets up to four additional criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) and is otherwise eligible for classification as an individual of extraordinary ability. After reviewing all the evidence in the record, we conclude that the Petitioner meets two additional criteria, relating to judging the work of others in his field and commercial success in the performing arts. *See* 8 C.F.R. § 204.5(h)(3)(iv) and (x).

With respect to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), the Petitioner provided evidence that he has been a voting member of The Recording Academy since 2015, in which capacity he votes among the nominees for the annual Grammy Awards. By having some influence over the selection of

¹ The record shows that the Petitioner was working in the United States for several years prior to the filing of this petition pursuant to E-2 nonimmigrant status. He is the owner of [redacted], a music production company.

award winners, the Petitioner participates as a judge as described in the regulation. He has documented his participation in voting for three editions of the Grammy Awards and therefore satisfies this criterion.

The criterion at 8 C.F.R. § 204.5(h)(3)(x) focuses on volume of sales and box office receipts in relation to others as a measure of an individual's commercial success in the performing arts. The Petitioner claims eligibility under this criterion based on the commercial success of [redacted]'s 2007 album [redacted] on which he served as a co-producer and co-writer. He provided evidence that the album was certified Gold by the [redacted] in 2009 (based on sales of more than 500,000 in the United States) and certified Double Platinum by [redacted] (based on sales of more than 200,000 units in Canada). The Director acknowledged this evidence but determined the criterion had not been met. In reaching this determination, the Director emphasized that the Petitioner claimed eligibility for this classification "as a producer, not a performing artist," that he did not "provide evidence of sales or box office receipts," and that he did not provide evidence that he "is featured in any promotional material that may lend credence that the success of a particular production in which [he] performed can be attributed to [him]."

The evidence establishes that both the [redacted]'s and [redacted]'s certification programs require record labels to submit proof of commercial sales that is subject to audit and that they are recognized industry wide as indicators of commercial success. The Petitioner also provided evidence that he was personally presented with a "[redacted]" plaque from [redacted] based on his contributions to the album [redacted], and that he is mentioned as [redacted]'s co-producer and close collaborator in the many submitted reviews and media articles about the album. We conclude that the Petitioner established his contributions to the album's commercial success, and that he has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(x).

Based on the foregoing, the Petitioner has demonstrated that he meets the initial evidence requirements for this classification by satisfying at least three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

B. Final Merits Determination

As the Petitioner submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and that he is among the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation. In a final merits determination, we analyze a petitioner's accomplishments and weigh the totality of the evidence to determine if their successes are sufficient to demonstrate that they have extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. Here, we conclude that the Petitioner has demonstrated his eligibility for the benefit sought.

The record reflects that the Petitioner has received international acclaim for his work as a music producer and collaborator with other artists, including [redacted] and [redacted] singer-songwriter [redacted] among others. As noted, the Petitioner was credited as a co-writer, co-producer, and musician on [redacted]'s album [redacted] which received [redacted] Grammy Award nominations in 2008 and [redacted] Awards from the [redacted] Academy of Recording Arts and Sciences. The album also enjoyed

noteworthy critical acclaim and extensive media coverage as evidenced by reviews and articles in mainstream and music industry publications including *New York Times*, *NPR*, *People*, *Spin*, *Rolling Stone*, and many others. Further, the album achieved commercial success as evidenced by its Gold and [redacted] from the [redacted] and [redacted]. The album's success resulted in live performances at the Grammy Awards, *Saturday Night Live*, and other major televised broadcasts, including the [redacted] Olympics, for which the Petitioner served as [redacted]'s musical director. As mentioned above, the Petitioner's contributions to these achievements are acknowledged in the many submitted reviews, articles, and interviews about the album, and are confirmed in letters from [redacted]'s management and others in the industry.

The record reflects that the Petitioner has since received sustained recognition in the industry as [redacted]'s long-time close collaborator and is well-known for his contributions as a co-writer and co-producer on [redacted]'s critically acclaimed follow-ups to [redacted]. These albums include [redacted] (2011) which was certified platinum in [redacted], reached [redacted] on the *Billboard 200* chart and earned a [redacted] Award nomination and a [redacted] Music Prize. In 2017, the Petitioner again collaborated with [redacted] as a writer and producer on her studio album [redacted], which reached the *Billboard* [redacted] Top 10 and achieved critical acclaim as evidenced by its inclusion on many year-end best album lists in major media. In addition to his work with [redacted], the Petitioner co-wrote and co-produced the [redacted] [redacted] single [redacted] which received the [redacted] prize at the 2013 [redacted] Awards and was certified triple platinum by the [redacted] Recording Industry Association. The Petitioner's contributions to this song and other recordings by [redacted] and other artists are highlighted in the submitted media articles and earned him additional acclaim as a songwriter and producer. [redacted] [redacted], an A&R Manager at [redacted] states that he has "watched [the Petitioner's] career skyrocket with outstanding work on his productions with [redacted], [redacted], [redacted], [redacted] and more."

In addition to his work as a producer and co-writer for other artists, the Petitioner has released five solo albums and three EPs since 2002 and has toured in North America, Europe, and Japan. Feature stories, articles, interviews, and reviews focusing on the Petitioner and his work have appeared in media outlets such as *BBC*, *NPR*, *Pitchfork*, *Wired*, *Fader*, *Vice* and *Bandcamp*, as well as Canadian national newspapers *The Globe and Mail* and the *National Post*. Overall, the Petitioner has submitted significant press coverage of his career spanning a period of 15 years. The Petitioner's acclaim in the field is further evidenced by the inclusion of his songs on soundtracks for television shows including [redacted], [redacted], [redacted], [redacted] and [redacted], as well as soundtracks for several feature films, including [redacted], [redacted], and [redacted].

As a composer, the Petitioner has contributed original music to commercial campaigns for major brands including Apple, Adidas, and Porsche. He has also achieved acclaim for his work as the composer for the [redacted] show [redacted], which earned him a [redacted] [redacted] award at the 2020 [redacted] Awards sponsored by [redacted], an [redacted] distributor and streaming service described as "the world's most popular [redacted] brand."

Based on this evidence of his achievements and earned recognition, as well as other evidence not discussed above, the Petitioner has demonstrated his extraordinary ability as a musician and producer and established that he has a "career of acclaimed work in the field" as contemplated by Congress.

H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The totality of the evidence establishes that the Petitioner possesses a level of expertise that is consistent with a finding that he is one of a small percentage at the very top of the field of endeavor and that he has the required sustained acclaim. *See* section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *Kazarian*, 596 F.3d at 1119-20.

III. CONCLUSION

The Petitioner has established that he meets at least three of the evidentiary criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). He has also demonstrated sustained national and international acclaim and that his achievements have been recognized through extensive documentation. Lastly, the Petitioner has shown that he intends to continue working in his area of expertise and that his work will substantially benefit prospectively the United States. He therefore qualifies for classification as an individual of extraordinary ability.

ORDER: The appeal is sustained.