



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 15820657

Date: MAR. 26, 2021

Appeal of Texas 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 Texas Service Center denied the petition, concluding that the record did not establish, as required, that the Petitioner satisfies 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. See Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we conclude that the Petitioner has not met this burden. Accordingly, 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 a percussionist, describes himself as “one of [redacted] Latin America’s most respected musicians.” Early in his career, he was a founding member of the [redacted] band [redacted]. The record reflects that the Petitioner has accompanied various Latin American artists in the recording studio and in live performances. He highlights his work on two albums by [redacted] that were nominated for Latin Grammy Awards in the [redacted] “Album” category and his role as the lead percussionist and band coordinator for singer [redacted].

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 Petitioner claims that he can meet five of these ten criteria, summarized below:

- ∑ (ii), Memberships in associations that require outstanding achievements;
- ∑ (iii), Published materials in major media;
- ∑ (iv), Judging the work of others in the same field or an allied field;
- ∑ (vii), Display of work at artistic exhibitions or showcases; and
- ∑ (vii), Leading or critical roles for organizations that have a distinguished reputation.

The Director determined that the Petitioner met two of these evidentiary criteria, relating to judging the work of others at 8 C.F.R. § 204.5(h)(3)(iv) and display of his work at artistic showcases or exhibitions at 8 C.F.R. § 204.5(h)(3)(vii). The record reflects that the Petitioner has served as a member of the judging panel in three music competitions and has performed live at [redacted] festivals as a founding member of [redacted]. Accordingly, the evidence supports the Director’s conclusion that he has satisfied two of the initial evidentiary criteria.

On appeal, the Petitioner asserts that he established by a preponderance of the evidence that he meets the three remaining claimed criteria and is otherwise qualified for classification as an individual of extraordinary ability.

We have reviewed all of the evidence in the record, and conclude, for the reasons discussed below, that the Petitioner has not met at least three of the initial evidentiary criteria.

Documentation of the individual's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner provided evidence that he is a voting member of the Latin Academy of Recording Arts and Sciences (LARAS), as well as a copy of the LARAS membership application, information regarding membership from the LARAS website, and excerpts from the bylaws of the National Academy of Recording Arts & Sciences, Inc.

The information from the LARAS website states that the "voting member" classification is for "creative or technical professionals" involved in recording music. Prospective voting members are required to provide evidence of at least six credits (songs), supported by verifiable documentation of release within the last five years. There is also a requirement that at least 51% of the recordings are in the Spanish or Portuguese language. Applicants are encouraged to "send in as much information as possible" including their biographies and any media about them, and LARAS "reserves the Right of Admission and approves membership according to the evaluation of the materials submitted." We note that the Petitioner did not submit the portion of the organization's bylaws that addresses membership types, the application for membership, or the academy's processes or standards for granting voting membership.

The Director determined that the evidence did not establish that LARAS requires outstanding achievements as an essential condition for membership, or that the association relies on recognized national or international experts to determine which individuals qualify for membership. The Petitioner argues that voting membership is the highest level of membership in LARAS, that voting members must meet "stringent requirements," and that "common activity in the music industry alone does not bestow voting membership." He also emphasizes on appeal that LARAS is an internationally recognized organization with a distinguished reputation, and that its bylaws establish that some of the most senior trustees of the academy serve on its membership committee.

While the record reflects that prospective voting members of LARAS must meet a minimum threshold of six verifiable song credits within a five year period, the evidence submitted does not support a conclusion that this level of professional activity in the recording industry is intrinsically an "outstanding achievement" or that LARAS views it in this light. Further, while the submitted excerpts from the academy's bylaws indicate that high-ranking trustees of the recording academy serve on the membership committee, the full composition of that committee is not described in the record. Finally, as noted, the Petitioner did not submit all relevant portions of the academy's bylaws, including those portions that address membership requirements and the membership application review process. While it appears that there is a discretionary component to granting voting membership, the record does not support a

conclusion that only those individuals who provide evidence of “outstanding achievements” above and beyond the six required song credits are eligible for such membership.

Accordingly, the Petitioner has not established that voting membership in LARAS requires outstanding achievements as judged by recognized national or international experts.

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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’s initial evidence included copies of four print articles from the [redacted] newspapers El Tiempo and El Norte. All four articles are about the Petitioner and relate to his work as a musician and three of them include the required title, date, and author of the material.¹

The Petitioner initially claimed that both newspapers qualify as major media in [redacted]. He submitted a “Media Factsheet Detail” published by NewBase, which identifies El Tiempo as an “eastern regional newspaper [redacted] . . . with local and national news” and indicates that it changed from a daily to a weekly circulation in 2018. The same document indicates that the newspaper has a daily (Monday-Saturday) circulation of 75,000 copies based on “unaudited figures.” With respect to El Norte, the supporting evidence included an excerpt from the publication’s media kit indicating an “ordinary print run” of 122,135 copies. In a request for evidence (RFE), the Director advised the Petitioner that additional evidence would be required to demonstrate that either newspaper is a qualifying major media publication.

In a letter submitted in response to the RFE, the Petitioner stated that his work “has received significant national and international media coverage” and that his performances “have been discussed at length and lauded by major music magazines.” However, he did not submit additional evidence showing that he and his work has been covered by major music magazines or international media. The only article he specifically addressed in the response letter is the article from El Tiempo, which was accompanied by the same “Media Factsheet Detail” obtained from NewBase.² The Petitioner also submitted a website traffic overview for El Tiempo (eltiempo.com.ve) from SimilarWeb, indicating that it has a country ranking of 667 in [redacted] and a ranking of 13,214 in the “news and media” category.

The Director concluded that the Petitioner did not meet his burden to establish that El Tiempo is a major media publication or other qualifying publication. The Director acknowledged that the Petitioner provided past unaudited circulation figures for the newspaper from NewBase but determined that this evidence was not probative, noting that he did not provide a basis for comparison of those figures to other publications.

¹ The fourth article, which was published in the May 17, 2013 edition of El Norte, does not include a byline identifying the author.

² The record reflects that, in response to the RFE, the Petitioner re-submitted the articles from El Norte in support of the leading or critical roles criterion at 8 C.F.R. § 204.5(h)(3)(viii), but he did not pursue his initial claim that these articles satisfied the published materials criterion, nor does he do so on appeal. Based on the initial evidence submitted, we conclude that he did not establish that El Norte qualifies as a professional or major trade publication or other major medium.

On appeal, the Petitioner asserts that NewBase is “an independent media company associated with Publicitas Media,” and provides additional background information from the websites of these companies in support of his claim that “the readership/circulation figures for El Tiempo” are from “an objective, independent and credible source.” He also claims that he has submitted articles from “trade journals” in the music industry, but as noted, the evidence submitted in support of this criterion was solely from the newspapers El Tiempo and El Norte.

The Petitioner does not address the primary deficiency observed by the Director, which is the lack of evidence comparing the circulation figures of these publications to those of other similar publications. With respect to the probative value of the unaudited daily circulation figures provided by NewBase, we note that the “Media Factsheet Detail” included daily figures for a newspaper that was being published on a weekly basis at the time NewBase issued its factsheet. In addition to observing this apparent discrepancy, we agree with the Director that the newspaper circulation figures alone are insufficient to establish that a given publication qualifies as major media in its market.³ Here, the information from NewBase also identifies El Tiempo as a “regional newspaper” and comparative rankings or circulation data would be needed to establish that it can be classified as major media in [redacted]

For the reasons discussed, the Petitioner has not established that he satisfies the published materials criterion at 8 C.F.R. § 204.5(h)(3)(iii).

Evidence that the individual 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 contends that he meets this criterion based on services he has provided to music groups and other music industry organizations that have a distinguished reputation. As it relates to a leading role, the evidence must establish that a 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. Regarding 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.⁴

On appeal, the Petitioner specifically emphasizes the services he has provided to singers [redacted] [redacted] and [redacted] as a member of their studio and touring bands, his role as an artist endorser for percussion instrument manufacturer [redacted] and in-ear monitor manufacturer [redacted] and his role as a founding member of the band [redacted].

First, he addresses his role as “a Musician for the [redacted]” noting that the leading or critical nature of this role “is documented with the receipt of two Latin Grammy

³ 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> (providing 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 and show the intended audience).

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

nominations for his role in two separate music products with [REDACTED]. The Petitioner maintains that if his role was not leading or critical, he would not have received these Latin Grammy nominations.

As noted, the Petitioner performed on two albums by [REDACTED] that were nominated for Latin Grammy Awards in the [REDACTED] Album” category. Translated certificates from LARAS show the Petitioner’s name “in recognition of his participation as a musician” on the nominated recordings. Album credits for one of the nominated albums indicate that the Petitioner played “minor percussion and Congas in [REDACTED].” Acknowledgment of his participation as a musician on a nominated album does not lead to a conclusion that the Petitioner performed in a leading or critical role, nor has he established that either the albums or [REDACTED] a singer-songwriter, qualify as an “organization or establishment.” The record also contains evidence that the Petitioner has performed with [REDACTED] as a member of his touring band, but overall, the evidence related to his services to [REDACTED] does not establish how his role as one of the singer’s percussionists is a leading role or one that is critical to the outcome of the singer’s activities.

The Petitioner also claims that he has served in “a lead/critical role” for [REDACTED] music organization,” stating that as one of the singer’s “main musicians” he “has been instrumental to [REDACTED] [REDACTED] in both recorded productions and live concerts.” Initially, he pointed to the published materials about him in the record, noting that all four of the submitted articles from El Tiempo and El Norte mention his role as percussionist and/or band coordinator for [REDACTED] a Puerto Rican salsa singer. He also submitted a 2016 Billboard magazine article about [REDACTED]’s record-setting success on the [REDACTED] Albums chart as evidence of his reputation in the industry.

Subsequently, in response to the Director’s RFE, the Petitioner provided a letter from [REDACTED] who describes the Petitioner as “a fundamental piece in my artistic career since 2009, as coordinator of my orchestra in [REDACTED] and as a principal percussionist in the presentations of my orchestra in [REDACTED].” He also discusses the Petitioner’s role as coordinator for a 2010 [REDACTED] tour, and notes that, in subsequent years, he has worked “in different concerts both in [REDACTED] and internationally.” He describes the Petitioner as “the professional responsible for all the work of coordination, conducting of rehearsals and musical performance as percussionist in [REDACTED] and other countries.” [REDACTED] [REDACTED] concludes by stating that the Petitioner “has been a key figure in my organization for almost a decade.”

The record establishes that [REDACTED] enjoys a distinguished reputation as a recording artist. However, the Petitioner has not shown that the singer’s touring band or orchestra is an “organization or establishment.” Further, the record does not demonstrate that the Petitioner, as a band coordinator and percussionist for certain live performances and tours, has been critical to the outcome of [REDACTED]’s touring activities or overall success. The record does not contain, for example, articles about [REDACTED] [REDACTED] that mention his band members generally or the Petitioner specifically. While [REDACTED]’s letter establishes that the Petitioner contributed to the concerts in which he participated, tickets for those concerts appear to have sold on the strength of the singer’s existing reputation, rather than on the Petitioner’s role in coordinating the band’s preparation for the performances and his services as a percussionist.

As noted, the Petitioner also submits evidence relating to his endorsement agreements with two manufacturers of musical instruments and equipment. Under the terms of his agreement with percussion instrument manufacturer [redacted], the company agreed to assist the Petitioner with his instrument needs by providing significant discounts on its products, to promote him as a [redacted] endorser and artist on its website and social media, and to provide him with an artist pass at trade shows where it exhibits its products. The Petitioner, in turn, agreed to use [redacted] products, to promote [redacted] on his website and social media accounts, and to keep [redacted] updated on his career and performance schedule. The record reflects that the Petitioner's biography appears on [redacted]'s website and includes evidence that he attended the 2018 National Association of Music Merchants (NAMM) show as an "Exhibitor Artist" for [redacted]. The Petitioner also submitted a letter from [redacted]'s Artist Relations Manager, who confirms the company's relationship with him. The company representative does not, however, explain how being a "[redacted]" involves the Petitioner's performance in a role that is leading or critical to the organization.

The Petitioner also submitted a letter confirming that he is a participant in [redacted]'s Artist Endorsement Program. As a participant, he receives discounted customized [redacted] discounts on the company's other products, and dedicated support and repair service. He agreed to credit or mention [redacted] whenever possible and to tag the company on social media, to provide two photographs of himself [redacted], to provide two quotes about the products, and to grant [redacted] the permission to use his name, quotes and likeness in its promotional materials. The Petitioner's name appears alongside more than 700 other groups and musicians on the [redacted] website's "Artist Page" and he emphasizes the company's distinguished reputation and the fact that many of the listed artists are well known figures in the music industry. However, the record does not support his claim that participation in [redacted]'s artist endorsement program involves serving in a leading or critical role for the company, nor has he established that he has personally contributed in a way that is of significant importance to the outcome of the organization's activities.

Finally, the Petitioner has provided evidence relating to his role in the [redacted] ensemble [redacted]. We find sufficient evidence in the record to establish that he held a critical role in the group as one of the founding members who helped shape its sound. However, the Petitioner has not established that [redacted] enjoyed a distinguished reputation.

The Petitioner states that the group's productions and performances have been covered by major media publications that "praised the group's unique style and discussed its success in the field." He also emphasizes that the group "embarked on several national tours around [redacted]" and performed at the "most prestigious venues." Finally, he claims that one of the co-founders of [redacted], [redacted], is "one of the most accomplished musicians in [redacted]" noting that he later worked on a Grammy nominated album by [redacted].

Most of the information regarding the group's touring and recording activities, and its related critical and commercial achievements, is provided in a letter from [redacted]. The record corroborates the information he provides about [redacted]'s performances at [redacted] festivals in [redacted] and, as noted, we determined that these activities satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii), relating to the display of the Petitioner's work at artistic showcases.

[redacted] states that the band's first album, [redacted] achieved a gold record based on 5000 units sold in [redacted] was distributed in several countries, and had five songs receive strong radio play in [redacted] and internationally. However, his statements regarding the band's sales and radio play are not supported by other evidence in the record. The Petitioner has submitted some promotional materials and media articles that promoted the band's early festival performances, but in some cases has not provided copies of the articles from their original source. Accordingly, there is insufficient evidence to establish that the band received major media attention.

The term "distinguished" necessarily implies a comparison. However, the record does not contain evidence that would allow a comparison between [redacted]'s critical or commercial achievements relative to similar artists. The Petitioner has not established, for instance, that the level or type of media coverage it received set the band apart from other artists in its genre, nor documented that it achieved significant sales or critical acclaim. Overall, the record does not contain sufficient supporting documentation to show that [redacted] has a distinguished reputation, marked by eminence, distinction, or excellence.⁵

Accordingly, for the reasons discussed above, the Petitioner did not show that he satisfies this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different statute, regulations, and case law. Further, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); see also *Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Finally, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another petition. See *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

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.

⁵ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10-11.

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, while the Petitioner has worked with acclaimed artists, he has not shown that he himself has earned the required sustained national or international acclaim or established 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. The record reflects that the Petitioner enjoys a successful career as a respected professional musician and has earned various forms of recognition in his industry. However, the evidence does not support a determination 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.