U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 16877892

Date: MAY 14, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a violinist, 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 that the Petitioner meets at least three of the ten initial evidentiary criteria for this classification.

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)(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 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

A. Evidentiary Criteria

The Petitioner is a violinist who has performed with several ensembles and orchestras. Because the Petitioner has not indicated 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 met one of the initial evidentiary criteria, display at 8 C.F.R. § 204.5(h)(3)(vii). The record contains evidence that the Petitioner displayed her work performing at various artistic and musical venues and therefore we agree with the Director that she meets the display criterion.

On appeal, the Petitioner asserts that she meets four additional criteria.[1] After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that she satisfies the requirements of at least three criteria.

> *Documentation of the individual'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).

In order to satisfy this criterion, the Petitioner must demonstrate that she has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.[2] Relevant considerations regarding whether the basis for granting the prizes or awards was for excellence in the field include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize

[1] We note that the Director determined that the Petitioner initially submitted evidence related to the original contributions criterion at 8 C.F.R. § 204.5(h)(3)(v) but did not satisfy this criterion. The Petitioner does not contest this issue on appeal and therefore we deem it to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

[2] *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.

recipients as well as any limitations on competitors.[3] The record contains a letter from the [redacted], a [redacted] from the [redacted] Violin Competition, and an [redacted] award certificate from the Latvian [redacted]

First, the letter from [redacted] "declares that [the Petitioner] has permission to travel with the following instrument: A violin, made by [redacted]" and explains that the foundation "owns a large collection of musical instruments that are given to musicians on a long-term loan basis." The letter from [redacted] is accompanied by a screenshot from the website www.tarisio.com providing the price history for several violins made by [redacted], and a screenshot from the [redacted] website indicating the application process to receive a loaned instrument. However, the documentation submitted does not established that the petitioner's receipt of the aforementioned loaned instrument is a "nationally or internationally recognized prize or award" as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). In response to the Director's request for evidence from the [redacted] of the Petitioner's receipt of an award certificate or prize, the Petitioner did not provide evidence that she received an award or prize from the [redacted] Regardless, the Petitioner has not demonstrated that the criteria used in providing the Petitioner a loaned violin, which the [redacted] website indicates is based on [redacted] residence, regular concert performances, and professional endorsements or competition results and audio/video recording, demonstrate the national or international significance of that claimed recognition.

Further, regarding the [redacted] award certificate, the Petitioner previously submitted the Petitioner's award letter from the [redacted] of the Latvian [redacted] that states that the award is presented annually "to support a Latvian artist and his or her work and presentations" and is accompanied by $1,000 in prize money. The Petitioner further submitted an article from the print publication *Neatkarigas Tukuma Zinas* that states that "The Latvian [redacted] awarded [the Petitioner] an [redacted] Award in 2014 at the Proclamation Day event at the [redacted] Church venue" and that the "[redacted]'s award is [redacted] Latvian culture award which is awarded to talented musicians who perform in [redacted]." This single article does not support the Petitioner's claim that the award she received from The Latvian [redacted] is a nationally or internationally recognized prize or award for excellence in her field.

In addition, the Petitioner provided letters from the Latvian [redacted] and judges of the 2012 [redacted] Violin Competition in Lithuania, explaining why she received their awards. For instance [redacted] of the Latvian [redacted] stated the Petitioner was selected "because of her multiple performances outside of Latvia, and particularly in [redacted] and her recognized talent and skill in the area of Baltic music." [redacted], a judge of the 2012 [redacted] Violin Competition and lecturer at [redacted] University College of Fine Arts, explains that the competition is "part of an International Summer Masterclass program." She stated that the competition "involved 20 participants who had to prepare 'Summer' by Antonio Vivaldi," and that the Petitioner was "a winner because of her impressive stage presence, nuanced tone quality, clear technique and articulation."[4] While [redacted] indicated that the

[3] *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance.)

[4] Although we discuss a sample letter from the judges of the 2012 [redacted] Violin Competition, we have reviewed and considered each one.

masterclass attracted participants from different countries, we note that showing a diverse pool of competitors, without more, does not establish the requisite recognition. The record lacks evidence sufficient to verify that the awards issued by this competition are nationally or internationally recognized awards for excellence in the field, or evidence that the Petitioner herself received any recognition from outside the issuing organization. As discussed previously, in order to meet this criterion, a petitioner must demonstrate that her prizes or awards are nationally or internationally recognized for excellence in the field.[5]

Here, the letters do not show that her awards are nationally or internationally recognized for excellence in the field, nor does the record include other evidence demonstrating such recognition. Without evidence of the entrance requirements and restrictions, information on the number of competitors in the Petitioner's category, or evidence of the level of recognition associated with the awards, we cannot find that the Petitioner has satisfied each element of the criterion.

Accordingly, the Petitioner did not establish that she satisfies 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).

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.[6] On appeal, the Petitioner claims that an article and interview published on www.lsm.lv satisfy this criterion.[7] The record, however, does not reflect that she provided published material about her in professional or major trade publications or other major media, which included the title, date, and author.

The Petitioner provided a screenshot of an article dated [redacted] 2016, titled, [redacted] published on the website www.lsm.lv that announces a concert on that date at [redacted] Museum in [redacted] Latvia by a duo comprised of the Petitioner and flutist [redacted] The article relates that the concert celebrates the [redacted] anniversary of the [redacted]'s restoration and will include Latvian chamber music and works from the classical repertoire. It provides background information for the Petitioner [redacted] and [redacted] Here, this screenshot is about the concert rather than about the Petitioner. Articles that are not about a petitioner do not meet 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). We also

[5] *See* USCIS Policy Memorandum PM-602-0005.1, *supra*, at 6.
[6] *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.
[7] The Petitioner previously claimed that she also meets this criterion based on articles published in the print publications *Neatkarigas Tukuma Zinas*, *LAIKS*, *Draugas*, *Latvija Amerika*, and *Latvijas Avize*, and on the websites www.delfi.lv, www.grani.lv, www.classical-scene.com, www.muzikaspasuale.lv, www.telegram.com, www.daugavpilszinas.lv, www.bostonirish.com, www.ntz.lv, www.muzeji.lv, www.kultura.daugavpils.lv, and www.schmopera.com. On appeal, the Petitioner claims eligibility based on the two published materials mentioned above and does not address these other published materials.

note the screenshot does not include the "author of the material," as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The Petitioner also submitted a screenshot of a video dated [redacted] 2017, from [redacted] posted on the website www.lsm.lv. The Petitioner claims that the video reflected an interview of her broadcasted on the Latvian [redacted] Although the Petitioner provided a transcription of the video, it does not demonstrate published material about her relating to her work. Rather, the video is about the new concert program [redacted] performed by the Petitioner, pianist [redacted], and [redacted] covering compositions by Latvian composers and works from the classical repertoire and premiering on [redacted] 2017, at [redacted] the Petitioner and [redacted] are quoted discussing the composition of the program. Again, articles that are not about a petitioner do not meet 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).

In addition, the record does not establish that www.lsm.lv or [redacted] qualify as major trade media or other major media. The Petitioner provided a screenshot of an article from the website of Lsm.lv that provides that it "is the portal of Latvian Television and Latvian radio [redacted]" and that [redacted] is "[a]n audio and video content player for Latvian Radio and Television, which allows passive consumption of social media content." A screenshot of a press release from the website www.latvijasradio.lsm.lv indicates that Latvian Radio is the "market leader among Latvian broadcasters . . . according to the latest winter-spring [redacted] survey data." USCIS need not rely solely on self-serving assertions.[8] Even if we were to accept the information contained in the press release, it does not does not include the comparative circulation data necessary to establish that it qualifies as major media in Latvia. Further, although the record contains an article from the website www.iauto.lv that indicates that lsm.lv was among the top 10 most visited news portals in Latvia among "the websites that participated in the [redacted] study in September 2017," with 381,946 monthly visitors,"[9] the Petitioner did not show the significance of that one-month visitor statistic and how such data reflects status as a major medium.[10]

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

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.* 8 C.F.R. § 204.5(h)(3)(iv)

The Director concluded that the Petitioner did not meet this criterion. The record supports this finding.

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[8] *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 the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

[9] Although the translated heading of the relevant chart indicates that this figure relates to *daily* visitors the translated body of the article states the figures relate to *monthly* visitors.

[10] *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).

The record includes a letter from [redacted] choir conductor and music director at the Latvian [redacted] and co-founder with the Petitioner of the [redacted], which she describes as monthly concerts at that church featuring "distinguished soloists, chamber music groups and bands," for which the Petitioner is also the artistic director. She asserts that the Petitioner's responsibilities as artistic director of [redacted] include "judging performers' talent in order to select them for specific performances," and claims that the Petitioner "critiques . . . the actual performers who she selects to perform each piece." She further provides "[the Petitioner] is responsible for auditioning, selecting, inviting, and corresponding with all performers. She has ultimate discretion over which artists are selected to perform in the concert series."

The record also includes screen shots of the [redacted] inquiry form on Google that indicates it provides "a short intake form" for interested individuals and ensembles to submit, which "will help [redacted] curators learn about you and best place you within our concert series." The intake form requests such information as ensemble name, musical genre, social media links, performance bio, and preferred month of the 2018-2019 [redacted] The form indicates that "[i]f there is information requested below that you don't have, leave the section blank," and instructs that the completed form should be emailed to the Petitioner.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires evidence demonstrating that the petitioner has participated as "a judge of the *work* of others." The judging activities should be clearly described and well-documented in the record, and the evidence should demonstrate whose work and what type of work the individual judged. In this case, the Petitioner has not done so. Here, the evidence does not demonstrate sufficiently that in the performance of her role as artistic director the Petitioner actually judged the musical work of the artists in making final selections for the concert series, rather than, for example, reviewing qualifications as set forth in the intake sheet, or other general requests for information. For example, in response to an e-mail request dated [redacted] 2019, from musician [redacted] for "information about your selection process for performers for you concert series," the Petitioner responded on [redacted] 2019 that "[w]e have a spot in March if you are available . . . ." Here, the record does not document sufficiently the Petitioner's judging activities for [redacted]

In light of the above, the Petitioner has not established that she meets this regulatory criterion.

B. O-1 Nonimmigrant Status

The record reflects that the Petitioner was 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 standard – statute, regulations, and case law. Furthermore, 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 immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of a one-time achievement. Further, we find that, although the Petitioner met the display criterion at 8 C.F.R. § 204.5(h)(3)(vii), she did not establish that she meets the criteria relating to nationally or internationally recognized awards, published materials, or judging. We acknowledge that the Petitioner claims eligibility under one additional criterion on appeal, relating to leading or critical roles with distinguished organizations or establishments at 8 C.F.R. § 204.5(h)(3)(viii). However, as the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this remaining criterion.[11] In addition, 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). However, 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).

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.

[11] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).