



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

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

In Re: 20930606

Date: AUG. 19, 2022

Appeal of Nebraska Service Center Decision

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

The Petitioner, a jazz percussionist and music instructor, 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 although the Petitioner met the initial evidence requirement for this classification, the record did not establish that he has national or international acclaim and is one of the small percentage at the very top of his field of endeavor.

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 percussionist who has performed with the band [REDACTED] for several years and has been involved with music festivals in his native Georgia. He states that he intends to continue to perform and record as a jazz percussionist in the United States while also instructing other percussionists.

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 three of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to published material about him, his participation as a judge of the work of others, and the display of his work at artistic showcases. We agree that the Petitioner has met the initial evidentiary requirements for this classification.

B. Final Merits Determination

When conducting a final merits determination, we examine and weigh the totality of the evidence to determine whether the Petitioner has sustained national or international acclaim and is one of 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 his final merits determination, the Director concluded that the Petitioner had not established his national or international acclaim and that he was one of the small percentage at the very top of his field. He also concluded that the Petitioner had not submitted clear evidence that he was coming to the United States to work in his field of expertise per the requirement at section 203(b)(1)(ii) of the Act, and that his entry would substantially benefit prospectively the United States. On appeal, the Petitioner asserts that the Director erred in his final merits determination and did not consider the entirety of the record. After reviewing all of the evidence in the record, we agree that the Director failed to consider the totality of the evidence in his final merits determination, focusing instead only

on evidence submitted in support of qualifying criteria. We will therefore review the record *de novo* and consider whether the entirety of the record demonstrates the Petitioner's eligibility as a person of extraordinary ability.

As noted in the Director's decision, the Petitioner submitted evidence of an article about him and his work as a drummer which was published on the website of the Georgian version of [redacted] magazine in 2020. The article describes his career across different musical genres and his plans for working in the United States. Also submitted were other published materials, including a biography of [redacted] the singer who performs with [redacted] on the website of audio equipment manufacturer [redacted] (presumably as a sponsored artist), and a review of [redacted] album [redacted] published on the website www.pennyblackmusic.com.uk. While the Petitioner is mentioned as the drummer for [redacted] in these articles, their main focus is on the performance of [redacted] and they do not single out the Petitioner for his expertise or skill as a percussionist as they do for her as a singer. We note that the Petitioner criticizes the Director's analyses of this evidence, arguing that the INA's requirement of "extensive documentation" in support of this classification is not merely a numerical standard but also one of quality. USCIS policy is clear in stating that both the quantity and quality of evidence in the record is considered in the final merits determination. See 6 USCIS Policy Manual F.2(B)(2). But the Petitioner has not shown that articles that merely mention his name and are published on websites about which no information is provided are of sufficient quality to support his claim of eligibility.

Another item discussed in the Director's decision but not in the final merits determination was his receipt of an award, the [redacted] 2018" for "Best Drummer." The evidence of this award includes a certificate, identifying the awarding organization as [redacted] in [redacted] Russia and a photograph of a statuette with an illegible plaque. A letter from [redacted] who names himself as the General Director of [redacted] Company, describes the genesis of a music award related to the [redacted] Club in [redacted] which he states the Petitioner received in 2018, but he does not name the title of the award or the award category, nor does he claim to have any relationship with the [redacted] or [redacted] Club. In addition, a page from the website www.minikult.com presents a description of the [redacted] and its relationship with [redacted] Club but makes no mention of the [redacted] or any other award. This evidence casts doubt upon the Petitioner's receipt of the claimed award, and even if he did receive it, does not indicate that it represents acclaim for his musicianship beyond a single music club.

[redacted] also wrote an additional letter in which he claims that [redacted] published 6 albums for [redacted] and "held more than 700 concerts in Russia" from 2006 to 2017. He provides a list of royalties for the Petitioner for each of these albums, ranging from \$30,000 to \$40,000, and also states that in concert performances from 2013 to 2017, he earned between \$65,000 and \$90,000 per year. As the record is otherwise absent of any information regarding [redacted] or [redacted] let alone his first-hand knowledge of the Petitioner's earnings, this information is insufficient to demonstrate the level of the Petitioner's earnings. While the evidence also includes copies of four agreements between the Petitioner and the [redacted] in 2018 and 2019 for concerts in which the Petitioner was to have been paid between \$1800 and \$2200, this evidence does not show his total earnings over a specific period of time. Further, without evidence which puts the Petitioner's earnings in context with that of other musicians, the record does not demonstrate that his earnings are indicative of acclaim or put him among the few at the top of his field.

Additional reference letters in the record include one written by [redacted], Artistic Director of the [redacted] Theater. He states that he met the Petitioner in 2007 at the [redacted] Jazz Festival, where he “performed at the [redacted] [redacted] describes two projects on which he collaborated with the Petitioner: the [redacted] film award presentation, and [redacted] as part of the World Economic Forum in [redacted] Switzerland. Although [redacted] makes clear that the Petitioner performed as a drummer at these events, the role he played beyond that is vaguely described. For instance, for the [redacted] award he states that he collaborated with the Petitioner “on linking effectively various musicians, singers, songwriters, lyricists, composers, and their fan-bases together, which enabled us to successfully work toward a common production goal.” In addition, neither description specifies when these collaborations happened, or whether they happened more than once. Reference letters such as this which lack details and make general and expansive statements about a petitioner’s accomplishments, and are not supported by documentary evidence, are not persuasive. See 6 USCIS Policy Manual F.2(B)(1), <https://www.uscis.gov/policy-manual/volume-6-part-f-chapter-2>.

Two more reference letters describe the Petitioner’s role in music festivals. [redacted] Director of the [redacted] states that the Petitioner has been involved with the [redacted] Festival in Georgia since 2004, helping to identify those who have preserved Georgian folk music and bringing the music to the attention of a national audience. [redacted] also writes that the Petitioner has created the music which accompanies the Festival’s advertisements aired in Georgia and abroad, and has voluntarily provided music instruction for underprivileged children. In addition, the record includes a certificate given to the Petitioner by [redacted] in 2019 “for his outstanding contribution to the development of the festival.”

Similarly, [redacted] of the [redacted] Jazz Festival in Russia states that from 2004 to 2020, the Petitioner participated in the festival as a drummer as well as an event planner and artist relations coordinator. She explains that in these roles, he helped the festival gain media exposure and secured master classes and jam sessions for the festival. As with [redacted] letter, the information about the festivals described in these letters, such as their attendance and importance in the world of music, is not supported by documentary evidence in the record. Although they indicate that the Petitioner’s participation in them has been important to the festival organizers, they do not establish that it has led to national or international acclaim for him.

The totality of the evidence, including reference letters, website information, contracts, photographs and others, shows that the Petitioner’s work as a percussionist has been displayed at many live performances over his career, most notably with [redacted]. The evidence indicates that these performances have occurred primarily in Georgia and Russia, but also in neighboring countries and in the United States. However, the record does not show that these performances have been noted in media, received critical acclaim, resulted in commercial success, or otherwise garnered sustained national or international acclaim for the Petitioner. Although the number and period over which these performances have taken place indicate that he has had a long and active career as a percussionist, the act of performing is inherent to the musical profession, and the record does not demonstrate that either the quantity or quality of these performances place the Petitioner as one of the very few at the top of this field.

Finally, as noted in the Director's decision, the Petitioner has submitted evidence of having served as a judge of other drummers for a single event, the 2011 [redacted] which took place in [redacted] in 2011. The record indicates that this was a student drumming competition, with the focus on using items found in a classroom instead of traditional instruments, and culminated in an international tournament in Brazil. As with the evidence relating to his media attention, the Petitioner has not shown that a single instance of evaluating the performance of non-professionals reflects sustained acclaim at the national or international level or elevates his standing as one of few top percussionists in his field.

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).

C. Coming to Work and Substantial Prospective Benefit

In addition to concluding that the Petitioner had not established his sustained national or international acclaim as a jazz percussionist and instructor, the Director also determined that he had not established that he is coming to the United States to continue working in his field, or that his presence would substantially benefit prospectively the United States. As the Petitioner has not established his sustained national or international acclaim or standing as one of the few at the top of his field, and thus is not eligible for the requested classification, we reserve these issues.¹

III. CONCLUSION

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.

¹ *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).