



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

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

In Re: 19589339

Date: FEB. 11, 2022

Appeal of Texas Service Center Decision

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

The Petitioner, an opera singer, 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 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

The Applicant earned a Bachelor of Music degree at the [redacted] in [redacted] [redacted] in his native Russia. A founding member of the [redacted] Choir of [redacted] [redacted], he sang with that organization before moving to Germany to work on his first Master of Music degree, in opera performance, at the [redacted] in [redacted]. He later earned a second master’s degree in choral conducting at [redacted] University in [redacted] [redacted] where he now resides. When he filed the petition, he was studying for a Doctor of Musical Arts Degree from the University [redacted]; he has since earned that degree. The record documents his participation in some high-profile projects, including a Grammy-nominated recording of the opera [redacted] recorded while he was a graduate student in Germany. He is now the musical director of two [redacted] organizations: [redacted] and [redacted] Christian Church [redacted].<sup>1</sup>

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 five of these criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (iii), Published material about the individual in professional or major media;
- (iv), Participation as a judge of the work of others;

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<sup>1</sup> The Petitioner is currently in the United States in O-1 nonimmigrant status. We acknowledge that this status relates to extraordinary ability. Nevertheless, the record of proceeding for the approved nonimmigrant petition is not before us, and we cannot determine whether the facts in that case were the same as those in the present proceeding, or whether the nonimmigrant petition was approved in error. Also, the nonimmigrant and immigrant categories have different definitions and standards for persons of the arts. “Extraordinary ability in the field of arts” in the nonimmigrant O-1 category means distinction. 8 C.F.R. § 214.2(o)(3)(ii). But in the immigrant context, “extraordinary ability” reflects that the individual is among the small percentage at the very top of the field.

- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Petitioner further claimed that his “important place in the growing Russian community in [redacted]” constitutes comparable evidence under 8 C.F.R. § 204.5(h)(4).

The Director concluded that the Petitioner met only two of the claimed criteria, relating to participation as a judge, and artistic display. The Director also determined that the Petitioner had not established that the standard criteria do not readily apply to his occupation, such that he could submit comparable evidence instead.

On appeal, the Petitioner asserts that he meets two further criteria, relating to published material, and leading or critical roles for distinguished organizations.<sup>2</sup> The Petitioner does not contest the Director’s conclusions regarding the criterion pertaining to prizes or awards, or the comparable evidence clause, and therefore we consider those issues to be abandoned.<sup>3</sup>

Upon review of the record, as discussed below, we agree with the Director that the Petitioner has not satisfied the criteria relating to published material and leading or critical roles.

*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).*

To satisfy this criterion, the published material should be about the beneficiary, relating to his or her work in the field, not just about his or her employer or another organization that he or she is associated with. Marketing materials created for the purpose of selling the beneficiary’s products or promoting his or her services are not generally considered to be published material about the beneficiary. 6 USCIS Policy Manual F.2 (appendix), <https://www.uscis.gov/policymanual>.

The Petitioner has submitted several articles from various publications. In denying the petition, the Director concluded that some of the articles are not about the Petitioner, relating to his work in the field, and that others had not been shown to be professional or major trade publications or other major media. On appeal, the Petitioner maintains that qualifying articles appeared in five outlets, described below. The Petitioner maintains that these articles appeared in major media, but review of the record shows that the materials are deficient for other reasons.

A 2017 review of [redacted] an opera in which the Petitioner preformed, in the *Austin Chronicle* mentions the Petitioner only once in the text of the over 500-word article, and once in the caption to a

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<sup>2</sup> Had the decision reached a final merits determination, we would have discussed whether or not the evidence meeting these criteria is consistent with the sustained national or international acclaim that the statute and regulations require.

<sup>3</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).

photograph. Likewise, the *Boston Globe*'s 500-word review of a 2016 performance of the opera [redacted] mentions the Petitioner only once in the text and once in a caption. These articles are not published material about the Petitioner. *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 individual performers in that show).

The *Harvard Crimson*, also reviewing [redacted] mentions the Petitioner by name five times. One of those mentions is to identify the character he played, and another is to clarify that the Petitioner is not related to a cellist with a similar surname. The three substantive mentions of the Petitioner appear in one paragraph of the nine-paragraph, 1165-word review; the Petitioner is not the main subject, or one of several co-equal subjects, of the article.

[redacted] radio station [redacted] ran a feature about the local [redacted], in early 2020. The record indicates that [redacted] is a college radio station "on the University [redacted] campus." The Petitioner notes that [redacted] is affiliated with National Public Radio (NPR)," but the Petitioner does not establish that NPR broadcast the feature on other stations, or that [redacted] by itself, is a qualifying media outlet.

A transcript indicates that the 20-minute segment consisted of interviews, mostly with the founder and director of the concert series, and performances of three songs, two of which featured the Petitioner (one solo, one in a duet); the remaining song was a solo performance by another individual. The Petitioner's own performances are not published material about his work; other regulatory criteria cover artistic performances. Apart from the songs, the transcript indicates that the Petitioner spoke four times over the course of the 20-minute segment. The segment was primarily about the festival, rather than any of the individual participants therein.

Of the articles discussed on appeal, only one focuses on the Petitioner. The *Houston Chronicle* published an article in 2018, previewing a then-upcoming chamber music concert. The article does not identify its author as the regulation requires. The uncredited article is undeniably about the Petitioner, but without further clarification and evidence, it more resembles marketing than journalism and does not meet the regulatory requirements.

The Petitioner has not established that his performances have attracted media attention beyond what appear to be routine local preview publicity and post-performance reviews.

*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 has claimed leading or critical roles at a number of organizations. The Petitioner's arguments on appeal are limited to three of these organizations, discussed below. The Petitioner has not alleged error with regard to two other initially claimed organizations.

From 2000 to 2007, the Petitioner was [redacted] soloist and [redacted] conductor of the [redacted] Choir in [redacted] Russia. In the [redacted] area, the Petitioner has served as the music director of [redacted] since 2015, and of [redacted] since 2016. The Director acknowledged that these roles are, or were, leading or critical, but determined that the Petitioner had not established that these

organizations have a distinguished reputation (or had such a reputation during the Petitioner's involvement).

The relative size or longevity of an organization or establishment is not in and of itself a determining factor. Rather, the organization or establishment must be recognized as having a distinguished reputation. 6 USCIS Policy Manual, *supra*, at F.2 (appendix).

The Petitioner, on appeal, cites previously submitted letters from the general director and principal conductor of the [redacted] Choir (who studied alongside the Petitioner at [redacted] [redacted]); the founder and general director of [redacted] and two officials of [redacted]. While these officials can attest to the nature of the Petitioner's roles within their respective organizations, their unsupported assertions about their own organizations are not sufficient evidence to establish the reputations of those organizations.

The choir director's letter indicates that the [redacted] Choir has toured Europe and recorded, but the record does not establish that these activities are limited to choirs with a distinguished reputation, or that the performances and recordings have themselves brought distinction to the choir. As the Director noted in the denial notice, the record contains recent evidence showing the choir has attracted some attention and recognition, but all of this evidence dates from after the Petitioner left the organization in 2007.

We agree with the Director that the Petitioner has not established that the choir had a distinguished reputation at the time he performed in a leading or critical role there.

The Petitioner cites statistics about the religious denomination to which [redacted] belongs. The Petitioner, however, does not claim a leading or critical role for the entire denomination, and the size or scope of the denomination does not imply that any one church within the denomination has a distinguished reputation.

Regarding [redacted] itself, the Petitioner asserts that "the church is very well known in the community for its strong musical program and concerts." Media stories documented in the record are limited to local coverage, announcing then-upcoming events. The Petitioner has not shown that this coverage is qualitatively or quantitatively different from that afforded to other area churches.

Resubmitted copies of letters from a [redacted] board member and an associate minister show that large portions of the two letters have identical, or very similar, wording, including parts that purport to represent their individual perspectives (for example, "[t]hroughout my career I have seen many Music Directors," and "I had the privilege of first meeting [the Petitioner] when in 2015 he accepted the position of Music Director at [redacted]. The identical language in the submitted letters undermines their probative value. Identical language in letters "suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content." *Hamal v. U.S. Dep't of Homeland Security*, No. 19-2534, slip op. at 8, n.3 (D.D.C. June 8, 2021).

The Petitioner submits copies of *Houston Chronicle* articles about [redacted]. The general focus of these articles is the effect that the COVID-19 pandemic has had on the group's ability to mount productions. The articles do not show that [redacted] has attracted significant recognition beyond the local area, or that it has a distinguished reputation in comparison to other opera companies.

For the above reasons, we agree with the Director that the Petitioner has not established that he has performed in leading or critical roles for organizations with distinguished reputations.

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3).

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 not shown a level of 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). Instead, the record shows a predominantly local reputation. The evidence submitted does not support the claim that the Petitioner has reached the top of that field.

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.