



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

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

In Re: 25516529

Date: FEB. 23, 2023

Appeal of Nebraska Service Center Decision

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

The Petitioner, a musician and maker of musical instruments, 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 that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The Director also concluded that the Petitioner had not shown that he seeks to enter the United States to continue working in his area of expertise. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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 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. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit 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 their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence 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. If those standards

do not readily apply to the individual's occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we 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 indicates that he has participated in musical performances and competitions since 2012, when he was 14 years old, and that he owns a business in Thailand making musical instruments including the phin, an instrument similar to a guitar. The Petitioner studied folk music at [redacted] University in Thailand, graduating with a bachelor's degree in 2020. The Petitioner entered the United States in 2021 as a B-1 nonimmigrant visitor for business, in order to volunteer as a musician and music teacher for a Buddhist temple in [redacted]. The Petitioner stated that, since his arrival in the United States, he has "been giving free music lessons and traveling to perform." The Petitioner has also performed at other cultural events in the United States, including a performance at the University of [redacted] where he also worked with students. The Petitioner states that he "would like to build a guitar shop . . . and a music school," while also continuing to volunteer with cultural organizations.

A. Evidentiary Criteria

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 submitted a list of ten claims. These claims did not directly correlate to the wording of the regulatory criteria, but the Director concluded that the Petitioner's claims fell within seven of the 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;
- (vii), Display at artistic exhibitions or showcases;
- (viii), Leading or critical role for distinguished organizations or establishments;
- (ix), High remuneration for services; and
- (x), Commercial success in the performing arts.

In a request for evidence (RFE), the Director stated that the Petitioner did not appear to have made claims under the remaining three criteria. The Petitioner did not dispute this conclusion.

The Director denied the petition, concluding that the Petitioner had not met any of the ten regulatory criteria. On appeal, the Petitioner does not contest the Director's conclusions regarding remuneration and commercial success, but he maintains that he satisfies the other five claimed criteria.

Upon review of the record, we conclude that the Petitioner has satisfied one criterion, relating to artistic display, at 8 C.F.R. § 204.5(h)(3)(vii). We will discuss the other claimed criteria below.

Documentation of the alien'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).

When determining whether an individual has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor, we consider factors such as:

- 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 recipients, as well as any limitations on competitors.

See generally 6 USCIS Policy Manual F.2 appendix, <https://www.uscis.gov/policymanual>.

The Petitioner has submitted copies of certificates and letters indicating that he has won prizes at various musical competitions in Thailand. Many of these competitions appear to have been local or regional, but the Petitioner indicates that at least three of these competitions, in the pong lang form of folk music, were at a national level:

- Second place, [redacted] Competition, 2018;
- First place, [redacted] Competition, 2019; and
- Third place, [redacted] Competition, 2019.

The Petitioner submitted photographs of himself holding trophies and certificates, and other photographs showing performances, musicians, and award ceremonies. The Petitioner also submitted photocopies of several certificates, along with what appear to be English translations. Any document containing foreign language must be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. 8 C.F.R. § 103.2(b)(3). The translations submitted initially do not include the required certifications.

In the RFE, the Director informed the Petitioner of the requirements for certified translations. The Petitioner's response included submitted new translations of some documents, stamped "Certified Correct Translation." This summary declaration does not meet the regulatory requirements listed above.

In his response to the RFE, the Petitioner stated that his "highest honor" was when he "won the Thailand [redacted]" He also asserted that his first prize in the Thailand [redacted] Championship "was the highest award in Thailand in terms of the [redacted] competition." The Petitioner did not submit objective information about the awards to establish the extent of their national or international recognition.

In the denial notice, the Director concluded that the submitted evidence did not establish that the prizes are nationally or internationally recognized.

On appeal, the Petitioner submits properly certified translations of some prize certificates, most of them from regional or provincial events. The highest-level certificate indicates that the Petitioner was the runner-up in a [redacted] Several other certificates relate to student competitions. The Petitioner did not submit sufficient objective documentary evidence to show that the prizes are nationally or internationally recognized. Evidence of national or international recognition can take different forms. For example, the awarding of a particular prize might attract media coverage or notice throughout the field. Without evidence of that recognition, assertions about an award's significance will not suffice to meet the requirements in the regulations.

The head of the Undergraduate Program at [redacted] University College of Music stated that the [redacted] contests were "operated by the Department of Physical Education Ministry of Tourism and Sports," but the record does not contain evidence from the awarding entity to provide key information about the competitions and prizes. The prizes are from a government entity, and they are named after Thai royalty, but without further context and documentation, these factors alone do not establish the recognition level of the prizes.

The Petitioner has not established that the prizes he received were nationally or internationally recognized.

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).

The Petitioner stated that he received coverage from a newspaper in [redacted] In the denial notice, the Director stated that the Petitioner had not submitted a copy of the material. The Petitioner had, however, submitted printed screen captures of online articles from *Thai [redacted] Newspaper*. To this extent, we disagree with the Director's conclusion. Nevertheless, the Petitioner did not establish that *Thai [redacted] Newspaper* is a professional or major trade publication or other major media. From the material submitted, the intended readership appears to be narrowly focused on Thai-language speakers in the [redacted] area. Also, the submitted printouts do not identify dates or authors as required by the regulations.

Furthermore, the Petitioner did not submit complete, certified translations of the articles, as required by 8 C.F.R. § 103.2(b)(3). The Petitioner only submitted translations of the captions to the photographs accompanying the articles. The translated captions identify the Petitioner as a volunteer at religious and cultural organizations in California and focus on projects he undertook there, including non-musical tasks such as building fences.

On appeal, the Petitioner acknowledges that the articles are "not related to [his] expertise," but he asserts that the articles have nevertheless "contributed to the benefit of the public" by drawing attention to the temple where he has worked as a volunteer. Whatever secondary effect the articles may have had, the Petitioner has not shown that they relate to his work in the field and otherwise meet the regulatory requirements. The "extraordinary ability" classification requires a high level of recognition, not shown in the submitted published materials.

The Petitioner also submitted screen capture images from several YouTube and Facebook videos. The Petitioner did not submit transcripts and any necessary English translations, and therefore the evidence submitted does not show that the videos are published material about the Petitioner, relating to his work in the field for which he seeks classification. Also, he did not submit evidence such as view counts to establish that the YouTube channels and Facebook pages that carried the videos qualify as professional or major trade publications or other major media.

The published material should be about the person, relating to the person's work in the field, not just about the person's employer or another organization that the person is associated with. Evidence of published material should establish that the online or print circulation or viewership is high compared to other statistics and show who the intended audience is, as well as the title, date, and author of the material. *See generally 6 USCIS Policy Manual, supra*, at F.2 appendix.

We note that the screen capture printout from one Facebook video is stamped "Certified Complete Translation," with no indication of what has been translated. The screen image shows no text except for a logo, and the English-language passage below the image is a description of the interview rather than a transcript.

The Petitioner has not established that he has been the subject of published material in professional or major trade publications or other major media.

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 Petitioner initially stated that he satisfies this criterion because his handmade instruments "are being used in regional, national and international [redacted] music concerts," and because he is "recognized as a top 5" musician. The Petitioner did not explain how this information shows that he has participated as a judge of the work of others. The Petitioner also stated: "I have evaluate[d] my work as national level quality according [to] national competition standards." However, the regulation refers to judging the work of others, rather than evaluating one's own work.

In the RFE, the Director stated that the Petitioner had not identified any qualifying judging activity. The Petitioner's response to the RFE did not address this issue. As a result, the Director concluded that the Petitioner had not submitted evidence of his participation as a judge of the work of others.

On appeal, the Petitioner states "I agree with this verdict, but I appeal that I have been invited to serve as a folk music specialist, performer and educator for [redacted] students . . . and able to control a band." The Petitioner cites a letter from an adjunct assistant professor at [redacted] who stated that the Petitioner "can direct a traditional ensemble of instruments." The letter does not indicate that the Petitioner acted as a judge, for the purpose of evaluation, rather than as a conductor whose function was to lead the performers.

We agree with the Director that the Petitioner has not submitted evidence of his participation as a judge of the work of others.

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).

Letters from employers, attesting to an employee's role in the organization, must contain detailed and probative information that specifically addresses how the person's role for the organization or establishment was leading or critical. *See generally* 6 USCIS Policy Manual, *supra*, at F.2 appendix.

The Petitioner initially stated that he "was a team manager in the [redacted] Organization," where his "roles include[d] performing, designing and building [the] stage for the artists of the [redacted] Concert," as well as fund raising. The Petitioner did not submit evidence to establish the distinguished reputation of the organization.

In the RFE, the Director requested further evidence to establish both the leading or critical nature of the Petitioner's roles with various organizations, and the distinguished reputations of those organizations. The Petitioner's response included letters and photographs relating to his various past activities, but the Petitioner did not explain how these materials meet the regulatory requirements. The Director therefore concluded that the Petitioner had not satisfied the criterion.

On appeal, the Petitioner states that he has "worked with large organizations, including [redacted]" The size alone of the organization, however, does not demonstrate the Petitioner worked in a leading or critical role for an organization with a distinguished reputation. Using the Petitioner's work at [redacted] as an example, the record indicates that he taught students as a guest instructor and performed with music students. The Petitioner does not explain how these activities amounted to a leading or critical role for [redacted] and he does not establish that an individual class or musical ensemble at [redacted] is, itself, an organization or establishment with a distinguished reputation. *See generally* 6 USCIS Policy Manual, *supra*, at F.2 appendix, which indicates that, when an individual's role is not leading or critical for an entire organization, we must consider whether "the department or division for which the person holds or held a leading or critical role, has a distinguished reputation."

The Petitioner has not met his burden of proof to show that he has performed in leading or critical roles for organizations or establishments that have a distinguished reputation.

We agree with the Director's conclusion that the Petitioner has not met at least three of the required criteria. This conclusion determines the outcome of the appeal. Therefore, we reserve consideration of the separate question of whether the Petitioner has submitted clear evidence that he is coming to the United States to continue work in the area of expertise as required by 8 C.F.R. § 204.5(h)(5). *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); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

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 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 have

reviewed all the evidence in the record, and 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. Here, the Petitioner has not submitted extensive documentation, showing recognition of his work at the level of sustained national or international acclaim. 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).

The record contains information about the Petitioner's education in Thailand and his volunteer work and involvement with cultural efforts in the United States. But the record does not show that the Petitioner is recognized for his work at a national or international level. The Petitioner's evidence does not meet the very high standards described in section 203(b)(1)(A) of the Act and the regulations at 8 C.F.R. § 204.5(h)(3).

The Petitioner has won prizes in national-level competitions, but the record does not provide enough information about those competitions and prizes. We take note of "limitations on competitors"; see generally *6 USCIS Policy Manual, supra*, at F.2 appendix, because those limitations may exclude the most acclaimed figures in a given field. Fully-trained and accomplished musicians with long-established careers are, by definition, excluded from competitions limited to students and young adults. Also, from the limited information provided, it appears that the prizes were awarded to entire bands or orchestras. Such recognition does not necessarily translate into acclaim for individual members of the performing group. The statute requires "extensive documentation," and the regulations call for a diverse variety of evidence.

Events other than competitions can contribute to national or international acclaim, but the information presented to us lacks context. For example, the Petitioner indicates that he appeared on television in Thailand, portraying a musician, but he did not establish the nature or extent of this appearance. The record does not show whether he was the principal character, or performing in the background because a particular scene was set at an event with live music, such as a party. Also, he did not show that the programs' producers selected him because he was a recognized musician, or that his television appearances resulted in demonstrable acclaim or recognition afterwards.

The Petitioner asserts "there are few people" who have reached his level of expertise. The record lacks sufficient evidence to support this conclusion; it provides no basis for comparison between the Petitioner and others in the same field. Furthermore, the statute requires sustained national or international acclaim, rather than attaining a particular level of skill, ability, or talent. The Petitioner has submitted letters from individuals close to him, praising his skills and achievements, but he has not shown that these opinions represent a wider consensus in the field, amounting to sustained national or international acclaim.

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.