



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

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

In Re: 23372895

Date: JAN. 3, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, an event producer, 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 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. On appeal, the Petitioner submits a brief and contends that the Director did not conduct a proper final merits determination.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *See* Section 291 of the Act; *Matter of Chawathe*, 25 I&N Dec. 369, 375 (AAO 2010). We review the questions in this matter *de novo*. *See 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) 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

### A. Evidentiary Criteria

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 the Petitioner in professional or major trade publications or other major media, his participation as a judge of the work of others in the same or allied field, and his performance in a leading or critical role for organizations or establishments that have a distinguished reputation. We agree that the Petitioner has met the initial evidentiary requirements for this classification.

### B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated by a preponderance of the evidence that he 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 a final merits determination, we analyze a petitioner’s accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor.<sup>1</sup> In this matter, we determine that the Petitioner has not shown his eligibility.

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<sup>1</sup> *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119–20. *See also* U.S. Citizenship and Immigration Services (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 4* (Dec. 22, 2010) (Policy Memo), <https://www.uscis.gov/legal-resources/policy-memoranda> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

The Petitioner asserted that he has received attention from major media publications, which discuss him and his work as an event producer. The Director acknowledged that the Petitioner has submitted some articles that appeared in publications, such as *El Universo*, *El Comercio*, and *El Telegrafo*, but determined that the Petitioner has not demonstrated that the level of media attention he received is indicative of his status of as one of the very top event producers in the country.

On appeal, the Petitioner contends that the Director erred in denying the petition by generally asserting that the evidence does not demonstrate that the level of media attention he received is indicative of his status as one of the very top event producers in the country. The Petitioner submitted 18 articles in which he is briefly quoted in publications. 17 of these 18 articles only cite, quote, or reference the Petitioner and do not discuss the Petitioner and his work as an event producer. These articles are about music concerts or live performance events, which were organized or produced by the production company where the Petitioner previously worked, and about singers, bands, or other musical groups to be performed at such concerts or events. Some of these articles also discuss ticket price, ticket sales location, and ticket sales dates, and these articles appear to be marketing or promotional materials for such concerts or events. In addition, 13 of these 18 articles do not provide the author(s) of these articles. These articles were published by *El Universo*, *RPP*, *El Comercio*, *Metro Ecuador*, *El Telegrafo*, *Mariela TV*, *Taringa*, *Ecuador Times*, and *Expresiones*. While the Petitioner submitted documentation showing that *RPP*, *El Comercio*, *Metro Ecuador*, and *El Telegrafo* are major media, the Petitioner did not submit sufficient evidence to show that *El Universo*, *Mariela TV*, *Taringa*, *Ecuador Times*, and *Expresiones* are professional publications, major trade publications, or other major media. Only 1 of these 18 articles, which was submitted in response to the request for evidence, discusses the Petitioner and his work as a media director, this article was published in *El Comercio*, which was shown to be major media, and this article includes the author. The article mentions the Petitioner as a media director of a production company who brought the [redacted] to a stage in [redacted] Ecuador. The article further states that the Petitioner was hired by the production company when he was 22 years old because he “talked concentrated,” “had a virtue,” and “knew how to listen.” This article does not demonstrate that the Petitioner was hired by the production company because he is known to be an outstanding event producer or because of his status as one of the very top event producers in Ecuador. We conclude that the publication of a single article in major media, which discusses the Petitioner as a media director who brought a popular American [redacted] to a stage in a city in Ecuador, does not indicate that the Petitioner has achieved national or international acclaim in the entertainment industry as an event producer and is one of the small percentage who has risen to the very top of the field.

The Petitioner asserted that he previously participated as a judge of the work of others in the same or allied field. To support this claim, the Petitioner submitted two letters from [redacted] Extra Radio S.A., which state that the Petitioner served as a jury that selects an artist to receive an award for musical career at the sixth edition of the [redacted] Awards in 2019. The letters also state that the [redacted] Awards have been held since 2014 and that it is an event that rewards the talent of the Ecuadorian performers. The Director determined that although the Petitioner has acted as a judge, the record did not demonstrate that the Petitioner’s sustained national or international acclaim resulted in his selection to serve as a judge of the work of others in the field. The Director added that it is not unusual for professionals to serve on various panels.

On appeal, the Petitioner asserts that he had to follow a specific criterion to select the winner, including years in the industry, career achievements, stage presence, and music tracks released. The Petitioner further asserts that he was chosen due to his professional career and achievements. However, the Petitioner has not shown that a single instance of selecting the winner to receive the award for musical career at the [ ] Awards ceremony reflects sustained acclaim at the national or international level or elevates his standing as one of few top event producers in the field.

The Petitioner asserted that he has displayed his work at live events and productions in Ecuador and Latin America. To support this claim, the Petitioner submitted copies of about 48 access/backstage badges showing the production company or authorized personnel for different music concerts and promotional materials for such concerts. The Director noted that only two of these badges show the Petitioner's name. The Petitioner also submitted two letters of support from the Director of a radio station and the Director of a promotion, marketing, and advertising company. One letter states that the Petitioner developed or worked together with various national artists, produced international shows and important events, and made a great contribution in the field of entertainment. The other letter states that the Petitioner worked in partnership with a promotion company, which produces the tours of prominent artists, and that the Petitioner displayed his professionalism and knowledge while producing each concert. The Director acknowledged that the Petitioner has produced events for musical groups for their stage performances but found that while these events may be considered artistic showcases, they displayed the artist's work, not the event producer's work. As such, the Director determined that the evidence is not sufficient to demonstrate a level of distinction that sets the Petitioner apart from others in his field.

On appeal, the Petitioner asserts that the fact that the Petitioner has been selected to produce distinguished productions and organizations indicates that not just any event producer could have performed this work and he was, therefore, selected in recognition of his superior standing in the field. However, the record does not contain sufficient evidence to support this claim. As noted above, the Petitioner provided various articles about music concerts or live performance events that were organized by a production company for which he worked as an event producer. The Petitioner submitted an article, which was published in *El Comercio* and mentions the Petitioner as a media director of the production company who brought a popular American [ ] to a stage in [ ] Ecuador. The article states that the Petitioner was hired by the production company when he was 22 years old because of his virtue, focus, and listening skills. This article does not demonstrate that the Petitioner was hired by the production company because of his superior standing in the field or his status as one of the very top event producers in Ecuador.

On appeal, the Petitioner also contends that because the Director did not consider the evidence related to the display, the decision did not sufficiently address why the Petitioner has not demonstrated that he is an individual of extraordinary ability. In the request for evidence, the Director acknowledged that the Petitioner submitted copies of over 40 access/backstage badges showing the production company or authorized personnel for different artists or concerts and two letters of support as evidence of the display of his work at artistic exhibitions or showcases. As noted above, in his decision, the Director acknowledged that the Petitioner has produced events for musical groups for their stage performances but determined that these events displayed the artist's work, not the event producer's work. The Petitioner has not demonstrated that he displayed his work as an event producer at various concerts or events. The Petitioner organized concerts or events for musicians and musical groups, and

the work of these musicians and musical groups was displayed at the concerts or events. The Petitioner did not show that he displayed his producing skills rather than overseeing the work of others. The Petitioner did not show that his producing contributions resulted in his work being displayed at concerts or events rather than musical talents and performance skills of musicians and musical groups resulted in their work being displayed at their concerts or events.

The Petitioner asserted that he has performed in a leading or critical role for [redacted] and the Municipal District of [redacted]. The Petitioner submitted a letter from a singer, producer, director, and musical composer of [redacted], promotional materials showing the Petitioner's role with [redacted] [redacted] from 1993 to 2006, and materials about [redacted] reputation. The Director noted that the Petitioner's many roles demonstrated his experience and skills as an event producer but determined that the Petitioner has not showed that his work is of such significance that it led to the successes of various productions and musical groups.

On appeal, the Petitioner contends that the Director did not directly address the reasons for his conclusion that the Petitioner's leading or critical role does not support an overall finding of sustained national or international acclaim and that he is one of the very top event producers from his home country of Ecuador. It appears that the Petitioner was the manager of [redacted] a popular Ecuadorian [redacted] which was formed in [redacted] Ecuador, in [redacted]. Although the record shows that the Petitioner performed in a critical role for the success of the Ecuadorian [redacted] [redacted] which won several awards for its popularity and excellence in the music entertainment industry from 1999 to 2008, the record does not show that the Petitioner continues to maintain a comparable level of acclaim in the field as a manager.

Regarding his leading role for the Municipal District of [redacted] the Petitioner submitted published materials about various cultural events, festivals, and activities held in [redacted], and an alliance between [redacted] and a cultural institute to strengthen the topic of culture in [redacted]. These articles reference the Petitioner as the Secretary of Culture of the Municipality. While these articles show that the Petitioner performed in a leading role for the Municipal District of [redacted] as the Secretary of Culture to promote culture within the district, the record does not contain sufficient evidence to demonstrate that [redacted] has a distinguished reputation. The Petitioner asserts that the position of the Secretary of Culture for the Municipal District of [redacted] is comparative to being the Cultural Director of [redacted] being the center of the arts and culture of the United States. However, the Petitioner did not supplement the record with independent, objective evidence showing that [redacted] garnered an excellent reputation as the center of the arts and culture of Ecuador. The Petitioner did not present sufficient documentation to establish the standings or statures of [redacted].

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for those progressing toward that goal. 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). It appears that the Petitioner has extensive experience and skills as an event producer, a media director, a manager of a [redacted] and the Secretary of Culture of the Municipal District of [redacted]. As an event producer, the Petitioner has produced many concerts for various musicians or musical groups in Ecuador. As the Secretary of Culture of the Municipal District of [redacted] the Petitioner organized various cultural events for [redacted]. However, the Petitioner has not shown that the

significance of his work as an event producer in the entertainment industry 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). Moreover, the Petitioner has not shown that he 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; 8 C.F.R. § 204.5(h)(2).

### III. CONCLUSION

The Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the reasons stated above. In visa petition proceedings, it is a petitioner’s burden to establish eligibility for the immigration benefit sought. Here, the Petitioner has not met this burden.

**ORDER:** The appeal is dismissed.