



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

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

In Re: 34870784

Date: DEC. 23, 2024

Appeal of Texas Service Center Decision

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

The Petitioner is a musician who seeks first preference immigrant 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 qualifies as an individual of extraordinary ability either as the recipient of a one-time achievement that is a major, internationally recognized award, or as someone who initially satisfied at least three of the ten required regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). The Director determined that of the eight criteria that the Petitioner claimed, he satisfied only one criterion. The matter is now before us on appeal pursuant to 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 because the Petitioner did not establish that he meets the criteria at 8 C.F.R. § 204.5(h)(3)(i)–(iii), (vi), (viii) and (x).

The Petitioner has maintained and continues to do so on appeal that he meets the criterion at 8 C.F.R. § 204.5(h)(3)(v), which relates to original contributions of major significance. However, as discussed below, the Petitioner would not establish that he met three out of ten criteria even if he established that he met this criterion. As such, we need not address this criterion, nor do we need to provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we will reserve these issues. *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).

I. LAW

To qualify as a noncitizen with extraordinary ability, a petitioner must demonstrate that:

- They have “extraordinary ability in the sciences, arts, education, business, or athletics;”
- They seek to continue work in their field of expertise in the United States; and
- Their work would substantially benefit the country.

Section 203(b)(1)(A)(i)-(iii) of the Act.

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 a beneficiary’s achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary 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 demonstrates that the beneficiary 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 Brazilian bass player who also composes and arranges music and makes instructional videos on bass playing techniques. Because the Petitioner does not claim or submit evidence to show that he received a major, internationally recognized award, he must provide evidence showing that he satisfies at least three of the alternate regulatory criteria listed at 8 C.F.R. § 204.5(h)(3)(i) – (x).

The Petitioner claims that he meets the eight criteria that are summarized below:

- (i), Recipient of lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the Petitioner;
- (v), Original contributions of major significance;
- (vi), Authorship of scholarly articles;
- (vii), Display of the Petitioner’s work at artistic exhibitions;
- (viii), Performance in a leading or critical role for distinguished organizations or establishments; and
- (x), Commercial success in performing arts as shown by box office receipts or record sales.

The Petitioner submitted evidence showing that his musical performances were featured at various venues. We therefore agree with the Director's determination that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(vii). Notwithstanding this favorable determination on one criterion, the Director determined that the Petitioner did not satisfy any of the remaining seven criteria claimed.

Accordingly, we will address six of the seven remaining criteria in the discussion to follow, starting with the criterion at 8 C.F.R. § 204.5(h)(3)(i), which requires evidence that the Petitioner received a prize or award with national or international recognition for excellence in his field.

The record contains evidence that the Petitioner was the winner of the [redacted] [redacted] Award in 2017 where he was first selected as one of ten finalists and then went on to win the contest after receiving the greatest number of popular votes among the finalists. Although the Director acknowledged the Petitioner's win and corresponding cash prize, she determined that the level of media coverage the Petitioner received as the award winner was not commensurate with national or international recognition. The Director noted that evidence of a press conference and two brief articles did not indicate national or international recognition; she further found that a short story mentioning the Petitioner on TV Globo was also insufficient because it did not mention the award in question and focused only on announcing the Petitioner's participation at a future event.

On appeal, the Petitioner does not address the deficiencies discussed at length in the Director's decision; instead, he asserts that winning the [redacted] award "clearly demonstrates the high level of national and international recognition." We disagree. To satisfy this criterion, the Petitioner must not only provide evidence that he won an award, but also that the award he won has national or international recognition. Thus, merely winning the award is not enough. Here, in addition to underscoring that he won the [redacted] award, the Petitioner highlights the benefits he received as the award winner, such as the cash prize and opportunity to work with a "winning conductor," and he points out that the contest has corporate backing from [redacted] and national backing from Brazil's Ministry of Culture. However, while these factors indicate that there is value and distinction for the award winner, they are not sufficient evidence that the [redacted] [redacted] Award garnered national or international recognition. Because the Petitioner has not addressed the Director's concerns or provided sufficient evidence of his award's national or international recognition, he has not established that he met this criterion.

Next, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which pertains to membership in professional associations. To meet this criterion, the Petitioner must show that he is or was a member in an association in his field, that the association requires outstanding achievements of its members, and that this requirement is judged by national or international experts in the field. The Petitioner's claim concerning this criterion hinges on his membership in ABRAMUS ("Associação Brasileira de Música e Artes"), a copyright association, OMB ("Ordem dos Músicos do Brasil"), a regulatory body for Brazilian musicians, and the Latin Recording Academy. The Director quoted portions of the ABRAMUS bylaws and discussed documents pertaining to OMB members and determined that neither contains evidence indicating that outstanding achievement is required of its members. Likewise, after reviewing a letter from a voting member of the Latin Recording Academy and the conditions for membership, the Director determined that requiring prospective members to be involved in the Latin music industry and to have a certain number of releases is not sufficient to establish that outstanding achievement is a prerequisite for attaining a voting membership in the academy.

On appeal, the Petitioner discusses all three memberships. First, he highlights ABRAMUS's "role in protecting the rights of artists" and its "dedication to promoting value and representing the interests of its members through effective copyright." He then points out that the Latin Recording Academy is a "prestigious organization" that is internationally recognized for producing the Latin Grammy Awards and claims that "[t]he criteria for becoming a voting member include the demonstration of extraordinary abilities." The Petitioner does not, however, specify what those "extraordinary abilities" are or point to evidence, such as the organization's bylaws, that supports his claim. As acknowledged by the Director, the Latin Recording Academy's voting member requirements, which are listed on a printout from the organization's website, include a certain number of released singles. The Petitioner has not provided evidence that meeting this requirement connotes "extraordinary abilities" or outstanding achievements, the latter of which is an element of the criterion in question. Further, the Petitioner's reliance on support letters from two "respected figures in the music industry" is misplaced as neither individual's praise of the Petitioner's "talent and professionalism" nor vague references to the "rigorous criteria" for membership and "critical role of the academy" constitutes sufficient evidence that the Latin Recording Academy's voting membership is conditional upon a showing of the prospective member's outstanding achievements. Accordingly, the Petitioner has not established that he satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(ii) through his membership in ABRAMUS, OMB, or in the Latin Recording Academy.

Next, the criterion to be discussed, 8 C.F.R. § 204.5(h)(3)(iii), requires evidence of published material, which "shall include the title, date, and author of the material," about the Petitioner and his work and was published in a professional or major trade publication or other major media.

In the denial, the Director identified a total of 31 articles, including one from *RollingStone Brasil*, that could not be considered because they lacked a required regulatory element, such as a title, date, or author. Although the Director considered the Petitioner's claim that articles are often authored by editorial boards or groups of staff writers, she explained that an author and date are both required, not optional elements for meeting this criterion, and she pointed out that the media outlets' specific staff writers were not identified. The Director went on to address submitted screenshots from the Globo Television Channel, pointing out that they do not include discussions about the Petitioner or his work, but rather they only referenced him or included his photograph. The Director also listed seven articles sourced from the online publication *No Treble*, finding that the write-ups consisted of primarily short introductions of the music and band members and did not discuss the Petitioner or his work. The Director then listed four YouTube videos from Sesc Brasil, observing that all four appear to be guitar lessons and programs rather than published material about the Petitioner. And lastly, the Director acknowledged the Petitioner's submission of certain viewer metrics, such as the number of *No Treble* "sessions" that were viewed in a 12-year period and statistics from *semrush.com* about two of the publications. However, the Director pointed to the lack of context for the submitted metrics and determined that they did not offer a meaningful way of gauging whether something is a professional or major trade publication or other major media. The Director also commented on the lack of circulation statistics for three other publications – *Viver&*, *Segs*, and *Recanto Adormecido* – and further noted a lack of information about the intended audience. In sum, the Director determined that the Petitioner did not provide any submissions that fully met this criterion.

On appeal, the Petitioner asserts that his “media presence is extensive” and that his talents “have been recognized in well-known publications.” He then specifies three online magazines – *Bass Player Magazine*, *No Treble*, and *Sea of Tranquility* – which he claims are “esteemed information outlets within the music community” and are “celebrated for their thorough and influential contributions to the music industry,” but he does not point to evidence in the record that specifically addresses the considerable deficiencies listed in the denial. And although the Petitioner underscores that he was featured “in credible and well-regarded media platforms,” we disagree with his reasoning, which relies primarily on the perceived reputation of the publications to the exclusion of adequate consideration of the specific regulatory requirements pertaining to this criterion. In fact, the Petitioner did not address any of the deficiencies catalogued at length in the denial, where the Director explained in detail how the Petitioner’s submissions fell short of meeting this criterion, such as lack of adequate viewership metrics or the absence of an article’s date or author. As such, the Petitioner has not overcome the adverse determination regarding the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

We now turn to the criterion at 8 C.F.R. § 204.5(h)(3)(vi), which requires evidence of the Petitioner’s authorship of scholarly articles in professional or major trade journals or other major media. The Director found that while the evidence shows that the Petitioner worked with the magazine [REDACTED] [REDACTED] the transcribed musical composition and corresponding Petitioner biography submitted as supporting evidence does not show that the Petitioner actually authored any articles. Nor does the evidence show that the published material was scholarly and that [REDACTED] where the material was published, can be deemed a professional or major trade journal. And because the Director found that the Petitioner did not provide circulation statistics or other circulation data, she determined that there was insufficient evidence that [REDACTED] falls within the category of major media.

On appeal, the Petitioner argues that he submitted evidence from [REDACTED] website, which lists him as “a contributor” and states that his “association with” the online publication “further emphasizes [his] standing as a noteworthy figure in the field.” He also contends that his collaboration with [REDACTED] [REDACTED] “suggests that his work is both substantial and influential.” However, the factors that the Petitioner highlights are not in question, nor are they relevant for the purpose of meeting the requirements of this criterion. As a threshold matter, the Petitioner claims that he has contributed and collaborated with [REDACTED] but he does not claim or provide evidence that he was the author of any articles. As all elements of a criterion must be met to satisfy a criterion, the determination that the Petitioner did not author any articles is alone sufficient to preclude him from satisfying the criterion at 8 C.F.R. § 204.5(h)(3)(vi). That said, the Director went on to conclude that [REDACTED] does not qualify as major media, pointing to the lack of supporting evidence, such as [REDACTED] circulation statistics or other comparative circulation data. Regardless, because the Petitioner has not submitted evidence to establish published articles, he has not met the criterion at 8 C.F.R. § 204.5(h)(3)(vi), and he has not overcome the Director’s adverse determination with regard thereto.

Next, we will discuss the criterion at 8 C.F.R. § 204.5(h)(3)(viii), which requires evidence that the Petitioner performed in a leading or critical role for a distinguished organization. In addressing this criterion, the Director listed five recommendation letters from individuals who discussed the Petitioner’s endorsement and promotion of their respective products. The Director discussed the contents of each letter, quoting certain statements made by each individual about the Petitioner’s role with respect to their products. The Director acknowledged that while each individual is

complementary of the Petitioner's musical talent and marketing work, no one provided details explaining how his role was leading or critical within their respective organizations.

On appeal, the Petitioner addresses three of the previously provided recommendation letters. He asserts that in one letter, the CEO of [redacted] stated that the Petitioner made "critical contributions" that impacted the company's product development and marketing strategies and that by offering clinics and demonstrations at industry events he had a "pivotal role in promoting and refining the company's offerings." The Petitioner also discusses the letter from [redacted] which he claims "reinforces [his] significance as a top-level bass player for [redacted] and the letter from [redacted] [redacted] which he claims "highlights [his] engagement since 2020 as an endorsed artist who has been instrumental in their marketing campaigns and product demonstrations worldwide." While these recommendation letters show that the Petitioner benefited the organizations whose products he endorsed and promoted, they lack detailed and probative information that specifically addresses how the Petitioner's contributions were of significant importance to the organization. *See* 6 USCIS Policy Manual, F.2(B)(1), <https://www.uscis.gov/policy-manual>. The Petitioner therefore has not established that his role in any of the noted organizations was either leading or critical.

Lastly, we will address the criterion at 8 C.F.R. § 204.5(h)(3)(x). As noted by the Director, this criterion focuses on sales volume and box office receipts as a measure of commercial success, which is the key element of this criterion. Although the Director acknowledged the submission of evidence, such as Paypal payments and Hotmart sales reports, she found that the total revenue balances sourced from these platforms did not offer context to determine that the generated funds reflect commercial success as contemplated by this criterion. The Director also determined that evidence from the website MyEduzz, which shows that the Petitioner generated revenue from giving courses in bass, is distinct from evidence of revenue generated from audio or video sales and does not reflect commercial success sufficient to meet this criterion. And while the Director acknowledged evidence of the Petitioner's followers on various social media platforms such as Instagram, as well as streams and videos on streaming and viewing platforms like Spotify and YouTube, she determined that without a basis for comparison such evidence has limited evidentiary weight; she further noted that the Petitioner has not established that a certain number of streams or views is adequate to gauge commercial success, nor did he offer evidence showing that his presence on these platforms resulted in a volume of sales reflecting commercial success as compared to other musicians.

On appeal, the Petitioner underscores the number of views he received on YouTube, asserting that "900,000 views . . . demonstrate[es] substantial listener engagement and popularity." We find, however, that while listener engagement and popularity may lead to commercial success, these factors in and of themselves are not conclusive evidence thereof. The Petitioner also highlights his "ability to mobilize his audience for philanthropic efforts," pointing out that he performed at a charity fundraising event that resulted in BRL \$1,239,000. However, despite the Petitioner's performance being a likely contributing factor in raising these funds, nothing shows that his performance, to the exclusion of other factors, such as the philanthropic cause itself, was solely responsible for the funds that were generated. In other words, the funds generated for a charitable cause cannot be solely attributed to the Petitioner's performance and thus the funds are not sufficient evidence of his commercial success.

We further note that the Petitioner continues to highlight earnings he made from selling his bass courses, despite the Director's finding that funds generated from sales of his music, rather than those derived from lessons, are reflective of commercial success. In addition, the Petitioner points to courses he developed between May 2023 and February 2024, thus assigning evidentiary value to events that occurred after this petition's March 2023 filing date and therefore would not be sufficient to establish eligibility at the time of filing. *See* 8 C.F.R. § 103.2(b)(1).

In light of the deficiencies described above, the Petitioner has not established that he has satisfied the criterion at 8 C.F.R. § 204.5(h)(3)(x).

III. CONCLUSION

Given the deficiencies described above regarding six of the eight claimed criteria, we need not determine whether the Petitioner meets the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(v), and we will reserve this issue. *See INS v. Bagamasbad*, 429 U.S. at 25-26.

In sum, the Petitioner has not shown that he met either a one-time award, or three of ten initial criteria. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 have 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).

ORDER: The appeal is dismissed.