



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

[REDACTED]

B2

DATE: **APR 23 2012** Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) as a choir singer, solo artist, and choral conductor.¹ The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel states that the petitioner “has satisfied four of the ten requirements to establish extraordinary ability.” More specifically, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (v), and (viii). For the reasons discussed below, the AAO will uphold the director’s decision.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph 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,

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on October 3, 2009 as a B-2 nonimmigrant visitor for pleasure.

(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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Evidentiary Criteria³

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

On appeal, counsel argues that the petitioner's participation in the World Youth Choir is an internationally recognized prize for excellence in choral singing. The petitioner submitted documentation indicating that he was selected to participate in the summer (July 2006) and winter (December 2006 – January 2007) sessions of the World Youth Choir. The petitioner also submitted information from the World Youth Choir's website stating:

Since its creation in 1989, the World Youth Choir (WYC) has established itself as one of the most remarkable musical and intercultural experiences offered to young musicians. Approximately 100 choral singers from around the globe between the ages of 17 and 26, come together each year to represent one of today's most significant youth choirs. As participation increases each year, today, the WYC is composed of more than forty nationalities, representing all continents.

The WYC engages some of the world's most renowned choral conductors to rehearse intensively and prepare an ambitious concert program from various vocal and choral traditions and styles. Thus, the WYC promotes the artistic development of young choral singers, transforming them into professional performing artists.

The artistic scope of the project is in itself a major achievement, facilitating intercultural dialogue through youth exchange. The WYC also represents for its members a unique experience in terms of personal relationships. Regardless of political or cultural differences, young people with a love for singing and choral music share one month of their life together. This allows for work and leisure, conversation and debate, creating lifelong friendships.

Counsel does not explain how the petitioner's participation in the WYC's musical sessions and intercultural experiences equates to the petitioner's receipt of "prizes or awards." Instead, the petitioner's participation reflects his involvement in a developmental and intercultural exchange program organized by the International Federation for Choral Music (IFCM). The AAO notes that participation in the WYC sessions is limited to "young musicians" "between the ages of 17 and 26" and that "the WYC promotes the artistic development of young choral singers, transforming them into professional performing artists." Experienced professionals in the field who have already completed their "artistic development" do not audition for such developmental programs. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the petitioner's receipt of "nationally or internationally recognized *prizes or awards* for

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

excellence in the field of endeavor.” [Emphasis added.] The AAO cannot conclude the petitioner’s participation in the WYC constitutes his receipt of a nationally or internationally recognized “prize” or “award” for excellence in the field of endeavor. Accordingly, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

On appeal, counsel argues that the petitioner “is a member of organizations that clearly demand extraordinary ability in music.” Specifically, counsel points out that the petitioner performed as a member of the Philippine Madrigal Singers (PMS), Los Angeles Master Choral (LAMC), Harana Men’s Chorus (HMC), El Paso Opera and Chorale (EPOC), and the Cathedral of Our Lady of the Angels’ Choir (COLAC) in Los Angeles. Counsel also states that the petitioner is a member of the Philippine Choral Directors Association (PCDA). In response to the director’s request for evidence, the petitioner submitted information from the PCDA’s website stating:

Join PCDA in a few easy steps

We are inviting all choral conductors, directors, leaders and/or managers to join the premier organization of choral artists in the Philippines. Choristers and choral enthusiasts are also welcome.

We have just made it easier for you to join us or renew your membership with the new online application form.

* * *

APPLY ONLINE

1. Pay the membership application fee of P500 at any Banco De Oro Branch. Deposit your payment to Philippine Choral Directors Association Inc. Savings Account Number 1070172934, BDO Visayas Avenue Branch.
2. Fill up the online application form at the bottom of this page.
3. Click “Submit” after supplying all the required information.

The AAO cannot conclude that paying a membership fee and completing an online application are indicative of outstanding achievements. There is no evidence (such as bylaws or rules of admission) showing that the PCDA requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner’s field.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for

admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Regarding the petitioner performing as a member of the PMS, the LAMC, the HMC, the EPOC, and the COLAC, counsel does not explain how these choral groups equate to "associations in the field" such as the PCDA. Further, while the petitioner submitted general information about the preceding choral groups, there is no documentary evidence showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. Demonstrating the necessary vocal talent and music experience in order to secure a position with these choral groups does not rise to the level of "outstanding achievements." Thus, the petitioner has not established that his participation with the preceding choral groups meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Accordingly, the AAO withdraws the director's finding that the petitioner meets this regulatory criterion.

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.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this regulatory criterion.

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.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that he meets this regulatory criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

In the director's decision, she determined that the petitioner failed to establish his eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted the following:

1. A Certificate of Appreciation from the Filipino-American Association of Iowa stating: "Certificate of Appreciation presented to [the petitioner] University of Philippines Madrigal Singers ("U.P. Madz") 'A Choir of International Acclaim and Talent' The Jordan Stage . . . Drake University · Des Moines, Iowa, USA September [REDACTED]";
2. A November [REDACTED] Certificate of Appreciation presented to the petitioner "in grateful appreciation for the valuable support extended to the Project Singing Mindanao MADZ ET AL Choral Cliniquing held from [REDACTED] at [REDACTED] WMSU [Western Mindanao State University]";
3. A Certificate of Appreciation presented to the petitioner by Camarines Sur National High School "in grateful recognition and appreciation for his/her invaluable contribution during the UP CCP Sining Sa Eskwela Regional Training for Teachers, September 7-11, 2004";
4. A February [REDACTED] Certificate of Appreciation presented to the petitioner "for his most valuable contribution to the Music Ministry of the Bukidnon Area Conference of the United Church of Christ of the Philippines through his active support and participation in the advancement of The Builders Symphony Choir";
5. A Certificate of Appreciation presented to the petitioner by the Mayor of Tagum and the Chairperson of the City of Tagum Tourism Council stating: "For your invaluable contribution to the Music and the Arts in the City of Tagum. Given this [REDACTED] day November [REDACTED] during the SING PHILIPPINES Choral Education & Festival MINDANAO Leg in the City of Tagum";
6. A Certificate of Recognition presented to the petitioner "in grateful recognition for serving as lecturer/trainer of the Choral Workshop conducted to MVC [Mountain View College] choral groups on November [REDACTED]";
7. A Certificate from the South Cotabato Music Artists Association presented to the petitioner "for his contribution to the arts through the conduct of SING PHILIPPINES Choral Education & Choral Festival on November [REDACTED]";
8. A Certificate of Appreciation presented to the petitioner "for successfully facilitating the CHORAL TRAINING WORKSHOP conducted for the Payatas Trece Children's Choir . . . held at the [REDACTED] City from August [REDACTED]";
9. A Certificate of Appreciation from the Provincial Government of South Cotabato for the petitioner's services during "the CHOIR COMPETITION in line with the

- celebration of the [REDACTED] National Arts Month held on February [REDACTED] at South Cotabato Gym and Cultural Center”;
10. A Certificate of Appreciation presented to the petitioner for his participation “as resource speaker on the Seminar-Workshop on the Basic Course on Acting, Singing and Dancing held at the Shrine of Our Lady of Manaoag Pilgrim’s Center, Manaoag, Pangasinan on August [REDACTED]
 11. A Certificate of Appreciation presented to the petitioner for his participation as a trainer at the [REDACTED] Hands-On Choral Workshop held at the Cultural Center of the Philippines from [REDACTED]
 12. A Certificate of Appreciation presented to the petition for his participation as a trainer at the [REDACTED] Hands-On Choral Workshop held at the Cultural Center of the Philippines from [REDACTED]
 13. A Certificate of Appreciation presented to the petitioner as a trainer at the [REDACTED] Hands-On Choral Workshop at the Cultural Center of the Philippines from [REDACTED] October [REDACTED]; and
 14. A Certificate of Appreciation presented to the petitioner “for facilitating the [REDACTED] Hands-On Choral Workshop held at the Cultural Center of the Philippines from Octob [REDACTED]

The petitioner submitted four additional certificates issued in the Filipino language, but he failed to submit certified English language translations of the certificates as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. *Id.*

The preceding certificates do not indicate how the petitioner’s contributions as a choral trainer were original, nor do they provide information regarding how the petitioner’s contributions have impacted the field at a level indicative of contributions of “major significance” in the field. There is no documentary evidence demonstrating that the petitioner’s work as a trainer was recognized beyond the preceding events and workshops such that his work constitutes artistic contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s original contributions be “of major significance in the field” rather than limited to a particular educational institution, workshop, or community event. The record lacks documentary evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

The petitioner submitted a letter from Professor [REDACTED] University of Mindanao (UM) Chorale, stating:

With the hope to raise the bars of excellence in this field, the UM Chorale never cease to join choral workshops. To mention the top of the line MADZ ET AL choral workshop where the compelling and very passionate [the petitioner] happens to be one of the invited conductors to do the workshop. In this workshop, we get to experience all the