



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF W-O-D-M-C-

DATE: APR. 26, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a music center, seeks to classify the Beneficiary, a violinist, as an individual of extraordinary ability in the arts. *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 Form I-140, Immigrant Petition for Alien Worker, concluding that although the Beneficiary satisfied three of the regulatory criteria, as required, the Petitioner did not show the Beneficiary's sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner submits additional documentation and a brief, arguing that the Beneficiary has sustained the required acclaim and has risen to the very top of his field.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) 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 two options for satisfying this classification’s initial evidence requirements. First, a petitioner can demonstrate 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 documentation that meets at least three of the ten categories 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). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chavathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Beneficiary is a violinist who has performed in Iran, the United Arab Emirates, and the United States. As the Petitioner has not established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

A. Evidentiary Criteria

The Director found that the Beneficiary met the following three criteria: awards under 8 C.F.R. § 204.5(h)(3)(i), published material under 8 C.F.R. § 204.5(h)(3)(iii), and judging under 8 C.F.R. § 204.5(h)(3)(iv). Although the record does not support the Director’s determination regarding the awards criterion, we find the Petitioner has fulfilled three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). Specifically, the Petitioner’s documentary evidence indicates that the Beneficiary served on a jury panel for a festival at the [REDACTED] satisfying the judging criterion. In addition, [REDACTED] featured the Beneficiary meeting the published material criterion. Further, the record contains evidence showing that the Beneficiary performed at festivals, such as the [REDACTED] [REDACTED] establishing eligibility for the artistic display criterion at 8 C.F.R.

§ 204.5(h)(3)(vii). Accordingly, we will evaluate the totality of the evidence in the context of the final merits determination below.¹

B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether it has demonstrated, by a preponderance of the evidence, the Beneficiary's sustained national or international acclaim and that he 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 beneficiary'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. *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. In this matter, we determine that the Petitioner has not shown the Beneficiary's eligibility.

According to the Beneficiary's Form G-325A, Biographic Information, he was a self-employed musician for approximately 15 years and has recently performed with [REDACTED] for the past two years. As mentioned above, the Petitioner appeared on a television station, judged a competition, and performed at festivals and shows. The record, however, does not demonstrate that his achievements are reflective of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The Petitioner argues that the Beneficiary's certificate by [REDACTED] for the fastest violinist who played [REDACTED] in 2013, is a major, internationally recognized award, as well as a lesser nationally or internationally recognized prize or award for excellence in the field. First, the Petitioner has not shown that this [REDACTED] qualifies as a major, internationally recognized award, such as an Oscar, Grammy, Pulitzer Prize, Olympic Medal, or Nobel Prize. Further, the Petitioner has not offered support for its assertion that the [REDACTED] for speed in playing a particular song is nationally or internationally recognized as a prize or award "for excellence" in the Beneficiary's field. Finally, the Petitioner did not establish that the Beneficiary's [REDACTED] has garnered him sustained national or international acclaim or places him among that small percentage at the very top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(2) and (3).

The record also reflects that the Beneficiary received first place at the [REDACTED] a competition for Persian vocalists and instrumentalists. In addition, the Beneficiary won second place at the [REDACTED]. The Petitioner, however, did not demonstrate that these awards are nationally or internationally recognized for excellence in the field of endeavor or that they indicate he "is one of that small percentage who [has] risen to the very top of the field of

¹ We note the Petitioner contends on appeal that the Beneficiary received a major, internationally recognized award and met three additional criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x). While we do not find the record supports these assertions, we will consider all of the documentation in the aggregate as part of our final merits determination.

endeavor.” See 8 C.F.R. § 204.5(h)(2). The Petitioner did not document, for instance, that the competitions included accomplished artists and musicians from throughout the Petitioner’s field reflecting that he received awards against acclaimed competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994).

The Petitioner also presented evidence of the Beneficiary’s membership with the [REDACTED]. However, the Petitioner did not establish that the Beneficiary’s membership requires outstanding achievements, as judged by recognized national or international experts.² Further, as it has not shown, for example, that the Beneficiary is a member of associations that limit membership to musicians or violinists with renowned endeavors, his membership evidence does not contribute to a finding that he has sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

The record contains an appearance by the Beneficiary on [REDACTED] in 2014 covering his [REDACTED]. While the Petitioner provided the title, date, and author for this material, the majority of the remaining screenshots, articles, and radio and television appearances in the record do not identify the publication or broadcast in which the material appeared or only mention the Beneficiary as one of the performers without a discussion about him. In addition, besides the appearance on [REDACTED] the Petitioner did not demonstrate that his evidence reflects published material about the Beneficiary regarding his work in professional or major trade publications or other major media. Here, the Petitioner did not establish that a single television appearance on a major medium three years ago is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. See section 203(b)(1)(A) of the Act. Even considering the totality of the other evidence, the Petitioner has not shown that the Beneficiary’s press coverage is indicative of a level of success consistent with being among “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Regarding the Beneficiary’s judging service, an evaluation of the significance of his experience is appropriate to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. See *Kazarian*, 596 F. 3d at 1121-22. The record reflects that the Beneficiary served on a jury panel for a festival at the [REDACTED] in 2014. However, the Petitioner did not demonstrate that this competition is considered prestigious or attracts significant attention by the field. Accordingly, the Petitioner did not establish that the Beneficiary’s single instance of judging this festival, approximately three years ago, is indicative of the required sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act. Without evidence that sets the Beneficiary apart from others in his field, such as documentation that he has served as a judge of renowned musicians or violinists rather than aspiring artists, the record does not

² The Petitioner provided the bylaws showing that membership requires a clean criminal record, military completion, “being famous,” education, and experience, which are not consistent with a level of outstanding achievements.

show that his judging places him in that small percentage at the very top of his field. *See* 8 C.F.R. § 204.5(h)(2).

With respect to his contributions to the field, the Petitioner submitted letters confirming the Beneficiary's appearances at musical events. For example, the letters include statements such as: "[the Beneficiary] is one of the most talented young violinist in Iran and he has made appearances with many Persian musicians on stage in and outside of Iran," "[u]pon seeing [the Beneficiary] playing the violin I offered to book him for 3 events in New York and one in [redacted] and "I use [the Beneficiary] in my orchestra as a lead violinist and plan to continue using him for many upcoming shows."³ While the letters generally confirm the Beneficiary's performances and praise him for his work, they do not show that he has significantly influenced the field placing him in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

In addition, the Petitioner offered evidence claiming that the Beneficiary authored two scholarly articles in [redacted] in 2017. A scholarly article should be written for "learned" persons in the field. "Learned" is defined as having or demonstrating profound knowledge or scholarship. Learned persons include all persons having profound knowledge of a field.⁴ Here, the record does not show that the Beneficiary's articles are scholarly in nature. In addition, the Petitioner did not demonstrate that the magazines are professional or major trade publications or other major media. Moreover, the Petitioner did not establish that the Beneficiary's publication record of two articles within a month of the filing of the petition sets him apart through a "career of acclaimed work." The statute requires the Petitioner to submit "extensive documentation" of the Beneficiary's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Further, Petitioner did not establish that the articles have been cited, nor did it otherwise demonstrate a level of interest in the Beneficiary's work commensurate with sustained national or international acclaim at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Regarding the display of the Beneficiary's work, the Petitioner presented evidence showing that he performed at various venues in Iran, United Arab Emirates, and the United States. As it is expected that a violinist, such as the Beneficiary, would exhibit his artistic work in front of an audience, we will evaluate the extent to which the display of his work is reflective of acclaim consistent with this classification. As discussed above, the Beneficiary performed on television and radio stations, such as [redacted] and [redacted]. In addition, the Petitioner played at theaters and other concert venues, such as [redacted] for the [redacted] competition in

³ Although we discuss a sampling of letters, we have reviewed and considered each one.

⁴ *See* 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 9* (Dec. 22, 2010), <https://www.uscis.gov/sites/default/files/ocomm/ilink/0-0-0-6423.html>.

California; Iran for the and the in Iran. However, the evidence is not sufficient to show, for example, that his performances brought praise from critics, drew notable crowds, raised attendance, or were responsible for the success or standing of the event. The submitted evidence does not distinguish the Beneficiary's performances from others in his field or demonstrate that it reflects a "career of acclaimed work in the field." H.R. Rep. No. 101-723 at 59.

The record as a whole, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields. As noted above, 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. at 954. While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field. See section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

The record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established the Beneficiary's eligibility as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

Cite as *Matter of W-O-D-M-C-*, ID# 1264406 (AAO Apr. 26, 2018)