



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

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

In Re: 6057007

Date: DEC. 23, 2019

Appeal of Nebraska Service Center Decision

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

The Petitioner, a lead singer and songwriter, 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 Petitioner had satisfied only one of the ten initial evidentiary criteria for this classification, of which he must meet at least three.

On appeal, the Petitioner submits a brief and additional evidence, and asserts that he meets at least three of the ten criteria and is eligible for the benefit sought.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will withdraw the Director's decision and remand the matter for the entry of a new decision consistent with the following analysis.

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 sustained acclaim and the 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 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).

II. ANALYSIS

The Petitioner is the founder, lead singer, and songwriter for [redacted] an Armenian [redacted] band. Because the Petitioner has not indicated or established that he has 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 Director found that the Petitioner met only one of the ten initial evidentiary criteria, relating to his receipt of lesser nationally or internationally recognized prizes or awards for excellence in his field. *See* 8 C.F.R. § 204.5(h)(3)(i). Evidence in the record establishes that the Petitioner has received more than 15 music awards in Armenia between 2008 and 2018. These awards include Best [redacted] and [redacted] at the National Music Awards, Best [redacted] and [redacted] at the Armenian Music Awards, and various national awards sponsored by major radio and television networks in Armenia, among others. The Petitioner’s documentation of his awards was accompanied by evidence, including media coverage from several sources, demonstrating that the awards themselves are nationally recognized, and evidence from the sponsoring organizations confirming that the Petitioner, as [redacted]’s songwriter and lead singer, was the individual recipient of most of these awards. Therefore, we agree with the Director’s determination that this criterion has been met.

On appeal, the Petitioner asserts that the Director erred in his assessment of evidence submitted with respect to several other alternate regulatory criteria found at 8 C.F.R. § 204.5(h)(3). Upon review, we agree with this assertion, as the Director’s decision was lacking a detailed analysis of the evidence submitted in support of his petition with respect to certain criteria. An officer must fully explain the reasons for denying a visa petition in order to allow the Petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(1)(i); see also *Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal).

First, the Director concluded that the Petitioner had not met the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii). The Petitioner submitted published materials about him and his work as a musician which appeared in newspapers, magazines, and on-line media, such as news and entertainment

websites, along with evidence from independent sources providing background information on Armenian print publications and digital media. The Petitioner submitted more than 20 articles under this criterion. However, the Director did not specifically reference any one publication or article in his analysis of the evidence, nor did he reference the supporting evidence submitted with respect to the circulation statistics for the publications that have covered the Petitioner's career as a musician. Rather, the Director's decision references "websites, blogs, and social media," includes a general analysis of the probative value of material published on the Internet, and concludes that "the information submitted from the bulk of blogs and websites have little probative value for meeting this criterion."

The Director's suggestion that all of the submitted evidence was derived from "websites, blogs and social media" is erroneous, and we agree with the Petitioner that the Director did not adequately review the submitted evidence. Accordingly, we will remand this matter for the Director to re-examine the evidence submitted under this criterion, which included both print media and articles published by legitimate online news media.

Next, the Director concluded that the Petitioner had not provided sufficient evidence that he participated, either individually or as a member of a panel, as a judge of the work of others in the same or an allied field. *See* 8 C.F.R. § 204.5(h)(3)(iv). The Director acknowledged the Petitioner's claim that he served as a member of a panel of judges for the "[redacted]" International Music Contest in 2014, but referenced only two of more than ten evidentiary exhibits submitted by the Petitioner in determining that he did not meet this criterion. The Director also noted that "the regulation [at 8 C.F.R. § 204.5(h)(3)(iv)] cannot be read to include every informal instance of evaluating subordinate employees," an observation that appears to be unrelated to the evidence the Petitioner submitted related to his judging of an international music competition. Accordingly, we agree with the Petitioner's claim on appeal that the Director did not fully consider the submitted evidence and instruct him to re-examine this criterion on remand.

We further note that the Director declined to review the evidence the Petitioner submitted to satisfy the criterion at 8 C.F.R. § 204.5(h)(3)(vii), which relates to the display of the individual's work at artistic exhibitions or showcases. The Director emphasized that this criterion is "limited to the visual arts." We disagree with the Director's determination that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner's own work product and that the venues at which the individual's work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii); *see also* 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 9-10* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that officers should use the common dictionary definitions of "exhibition" and "showcase" in evaluating this criterion). As certain exhibitions or showcases featuring performing artists meet the plain language of this regulation, the Director should not have summarily disregarded the Petitioner's evidence and should re-examine this criterion on remand.

Finally, the Petitioner asserts that the Director erred in determining that the Petitioner could not satisfy the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii). The Director noted that the Petitioner had submitted evidence that he is the founder and lead singer of the band [redacted] but

determined that a band “is not an organization or establishment” and thus the evidence has no probative value for purposes of this criterion. Here, we are unable to determine whether the Director considered evidence the Petitioner provided in response to a request for evidence (RFE). This evidence included documentation related to the company [redacted]” as well as a charitable foundation that was established by the Petitioner, and was intended to establish that he played a leading or critical role for these organizations, rather than simply for the band itself. The Director’s analysis suggests that he considered only the initial evidence submitted in support of this criterion, and for this additional reason, we will remand the matter to the Director.

If the Director determines that the Petitioner satisfies at least two additional criterion beyond the two already met, his decision should include an analysis of the totality of the record evaluating whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and whether the record demonstrates 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. *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 1119-20.¹

Finally, although not addressed in the Director’s RFE or denial decision, the record as presently constituted does not contain sufficient evidence that the Petitioner is coming to the United States to continue work in his area of expertise. Pursuant to the regulation at 8 C.F.R. § 204.5(h)(5), such evidence may include letters from prospective employers, evidence of pre-arranged commitments such as contracts, or a statement from the petitioner detailing plans on they intend to continue their work in the United States. At the time of filing, the Petitioner submitted a “statement of intent” indicating that he “will continue to work in the United States as a singer.” However, this brief and general statement does not detail his plans for continuing his work consistent with the regulatory requirements. For this additional reason, we will remand the matter to the Director.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

¹ *See* USCIS Policy Memorandum PM 602-0005.1, *supra* at 4 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (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).