



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

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

In Re: 05214621

Date: DEC. 30, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a reggae guitarist, seeks classification as an alien 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 had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to aliens 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

The Petitioner has worked as a session musician and solo artist. He has also played with various bands. He was musical director of [REDACTED] from 2006 to 2012, and has been the guitarist for [REDACTED] since its formation in 2004. The Petitioner calls himself “one of the greatest reggae guitarists in Latin American history.”

A. Evidentiary Criteria

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 Petitioner claims to have met six criteria, summarized below:

- (i), Lesser nationally or internationally recognized prizes or awards;
- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the alien in professional or major media;
- (v), Original contributions of major significance;
- (vii), Display at artistic exhibitions or showcases; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner met one of the evidentiary criteria, numbered (vii). On appeal, the Petitioner asserts that he also meets the other five claimed evidentiary criteria.

After reviewing all of the evidence in the record, we will not disturb the Director’s determination regarding criterion (vii). As explained below, we have reviewed all of the evidence in the record, and conclude that it does not show that the Petitioner satisfies the requirements of at least three criteria.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner mentions various awards over the course of the proceeding, but not all of them are documented, and the Petitioner discusses only one of them on appeal. We consider the other claims to be abandoned.¹

A printout from the website of [redacted] indicates that [redacted] won an award for Best Ska/Reggae Artist.² The Director concluded that the Petitioner did not show that he personally received the award, because the award went to the group as a whole.

We agree with the Petitioner that, as an integral member of the group named on the award, he is among the award's recipients. But there is a more fundamental issue.

The Petitioner submits no independent evidence to establish the national or international recognition of the award. Self-serving promotional material from the awarding entity's own website does not suffice in this regard, because the entity's opinion or representation of its own awards does not constitute recognition.

For the above reasons, and because the Petitioner makes no other assertions regarding prizes or awards on appeal, we conclude that the Petitioner has not met the requirements of this 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.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner is a member of the Society of Authors and Composers of Venezuela (SACVEN). The record establishes that SACVEN's role is the protection of artists' intellectual property rights (such as copyrights). We agree with the Director's conclusion that the Petitioner did not show that SACVEN requires outstanding achievements of its members, as judged by recognized national or international experts.

On appeal, the Petitioner quotes the Director's decision on this point, but does not address the issue. Instead, the Petitioner maintains that he "provided statements of confirmation of membership," a fact that the Director did not dispute.

The Petitioner has not shown that his membership in SACVEN meets the regulatory requirements.

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.

¹ See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO).

² The Petitioner states that his band won the award in 2016, which is the date shown on the website printout, but photographs show the date "2014" printed on the award statuette.

Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii)

The Petitioner submits English translations of seven online articles. Most of the articles refer to [redacted] collectively, but not the Petitioner individually. The regulation requires “published material about the alien,” rather than about organizations or groups that include him. Also, not all of the submitted translations are complete, as required by the regulation at 8 C.F.R. § 103.2(b)(3). Even then, some of these references to the band appear to be passing mentions. The fragmentary translations do not provide sufficient context in this regard.

The Petitioner’s name appears in only one of the seven articles. A 2014 article from *La Radio del Sur* reported a then-upcoming festival performance by [redacted]. The Spanish-language article has six paragraphs, but the translated excerpt comprises only two sentences, one of which is a list of band members including the Petitioner. His name does not appear elsewhere in the article.

A “Website Analysis Overview Report” for *La Radio del Sur*’s website shows a “Country Rank” of 10,420 and a “News and Media” “Category Rank” of 37,310. The Petitioner does not explain how these rankings meet the regulatory requirements for qualifying media.

On appeal, the Petitioner asserts that articles about [redacted] are effectively about him, because he plays a pivotal role as lead guitarist, but the articles do not single him out either by name or by reference to him as the guitarist.

The Petitioner has not satisfied the requirements of this criterion.

Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

The Petitioner submits photographs and press clippings about [redacted] but does not identify any specific original artistic contributions or establish the significance thereof. The Petitioner claims that [redacted] “is responsible for bringing the genre of reggae to the country of Venezuela,” but the record does not corroborate this assertion. According to one of its founders, [redacted] existed as a reggae band at least five years before [redacted] formed in [redacted]. Furthermore, the Petitioner did not create the reggae genre, and he does not explain how playing an existing style of music in a new location constitutes an original contribution.

One of the news articles about the band states that [redacted] “managed to revolutionize the entire world with a lyrical content that speaks of love and everyday life,” but this assertion, while bold, lacks detail, and the record does not otherwise support it. Even then, the article does not identify any specific contribution by the Petitioner that would satisfy the regulatory requirements.

The Petitioner submits three letters intended to describe his original contributions and their significance. All three letters are from his current or former bandmates. Two of the letters are from other members of [redacted] (neither of whom claim that their band was the first reggae group in Venezuela). The band’s lead singer lists concerts and festivals in which the band has performed, and he states that the

Petitioner played on the singer's first solo album. He does not identify specific contributions or explain their significance.

The band's bassist provides a general assessment of the Petitioner's value to the band, stating: "He is responsible for providing the instrumentals necessary to make a song alive. . . . [His] solo parts made our songs particularly distinguished and more engaging for our listeners." General praise of this kind does not establish how the Petitioner's work amounted to original contributions, nor does it show how those contributions are significant to the field outside of the framework of the band.

The former rhythm guitarist of [redacted] asserts: [redacted]'s second CD is an iconic work of art in the Venezuelan reggae scene, in Venezuela rock and pop music history, and a very important contribution to Latin American culture. This achievement is very much due to [the Petitioner's] work as producer and musician." Like the other letters, this letter indicates that the Petitioner's contributions lay in his work with the band, but does not elaborate or show that this opinion is shared outside of that band.

On appeal, the Petitioner asserts that:

his contribution to the development of [the] reggae field in Venezuela and to the musical culture in Venezuela, South America and Caribbean: (a) has provoked widespread commentary, (b) has received notice/recognition from others working in the field; (c) has been analyzed by experts in the field who have detailed the impact of his contributions on the international arts and culture sector, and (d) has received the highest awards in the field.

The Petitioner, however, does not elaborate upon any of these claims, or cite any record evidence to corroborate them. General praise from bandmates does not satisfy the requirements of this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

In light of the above conclusions, the Petitioner does not meet the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3). Detailed discussion of the remaining criterion at 8 C.F.R. § 204.5(h)(3)(viii) cannot change the outcome of this appeal. Therefore, we reserve the remaining issue.³

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we

³ 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); see also *Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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). Here, the Petitioner has established his membership in bands which appear to have attracted some notice, but the evidence does not show the required sustained national or international acclaim, 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 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 and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons.

ORDER: The appeal is dismissed.