



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

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

In Re: 7030770

Date: JAN. 22, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a musician, arranger, and director, 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 Texas Service Center denied the petition, concluding that although the Petitioner submitted evidence that satisfies four of the initial evidentiary criteria for this classification, the totality of the evidence did not demonstrate his sustained national or international acclaim or that he is among the small percentage at the very top of his field of endeavor.

On appeal, the Petitioner contends that the Director failed to apply the preponderance of the evidence standard to the facts presented, misinterpreted the law, and did not consider all submitted evidence.

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 dismiss the appeal.

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) (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).

II. ANALYSIS

The Petitioner is a trombonist, arranger, and musical director who has performed and recorded with various ensembles and Latin musicians in his native country of Venezuela and internationally.

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 Director found that the Petitioner met four of the evidentiary criteria at 8 C.F.R. 204.3(h)(3)(i)-(x). Specifically, the Director found that the Petitioner satisfied the criteria for lesser nationally or internationally recognized awards or prizes under 8 C.F.R. § 204.5(h)(3)(i), published material in professional publications or major media under 8 C.F.R. § 204.5(h)(3)(iii), judging under 8 C.F.R. § 204.5(h)(3)(iv), and authorship of scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

The record reflects that the Petitioner participated in voting for the 2016 Latin [redacted] Awards. In addition, the Petitioner provided evidence that he has authored and published two books: [redacted] and [redacted]. [redacted] Accordingly, we agree with the Director that the Petitioner fulfilled the judging and scholarly articles criteria.

However, for the reasons discussed below, we do not concur with the Director’s finding that the Petitioner satisfied the awards and published materials criteria. Further, we agree with the Director’s determination that although the Petitioner also claimed to meet the criteria relating to membership in associations requiring outstanding achievements of its members, and leading or critical roles for organizations or establishments that have a distinguished reputation, the Petitioner did not submit sufficient evidence to establish that he meets these criteria. Accordingly, after reviewing all of the evidence in the record, we find that the Petitioner meets only two of the ten initial evidentiary criteria.

Documentation of the individual'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 Director determined that the Petitioner met this criterion based on his receipt of two [redacted] awards in 2014 and 2015, respectively. In order to fulfill this criterion, the Petitioner must demonstrate that he received the prizes or awards, and that they are nationally or internationally recognized for excellence in the field of endeavor.² Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.³ Because the record does not reflect that the Petitioner established eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i), we will withdraw the findings of the Director for this criterion.

The Petitioner submitted photographs of his award plaques reflecting that he received the [redacted] [redacted] for “Trombonist of the Year” in 2015 and the [redacted] for “Producer of the Year” in 2014. However, the record lacks sufficient objective evidence regarding the [redacted] to establish that it is a nationally or internationally recognized prize or award for excellence in music or the arts.

The Petitioner submitted an undated document with the heading “[redacted] Award” that bears the logo of [redacted] Organization. According to the information provided, the [redacted] is “the most prestigious, respected and coveted Award in Venezuela, given annually by the foundation [redacted] of Venezuela and [redacted] Organization.” The document indicates that the award “is granted by the Voting Committee to reward excellence and encourage the work of artists,” and notes that the awards are granted at a televised ceremony that is “emphasized by all mass media in Venezuela.” However, this document is not a letter and is not attributed to or signed by a responsible authority for that organization. As a result, we cannot determine the actual source of the information contained therein, which limits the probative value of this evidence.

The Petitioner also submitted articles from the websites *La Tertulia* (latertuliafm.com), *Version Final* (versionfinal.com.ve), and *Biendateao* (biendateao.com). The article from *La Tertulia* (which is not dated) provides a preview of the “59th [redacted] Venezuela” gala, indicates the day and time of the ceremony, mentions that a special tribute and [redacted] would be given to a singer, and includes a quote from the producer of the event, who states that the contest had changed and it would be recognizing talent at the “regional, national and international level.” Another article, titled [redacted] [redacted] (versionfinal.com) is very brief at four sentences in length. It notes that the [redacted] Awards 60th ceremony would be held on [redacted] 2015, and will “exalt the cultural, artistic and social values of the personalities that make life in the nation.” The article also names previous winners, noting that they have included “national and international artists such as [redacted] [redacted] and [redacted].” Finally, the article titled “[redacted] [redacted] (biendateao.com), states that [redacted] will become for one

¹ This award is also referred to in the record as the [redacted] and [redacted] award.

² 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 6* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html>.

³ *Id.*

night the epicenter of the best and most outstanding of the national entertainment industry,” noting that “sixty recognitions will be awarded in the categories gold, platinum, diamond and double diamond.”

The limited evidence of the award’s media coverage is insufficient to establish the level of national or international recognition associated with the [REDACTED]. Rather, all three articles are brief announcements of the respective annual award ceremonies held in 2014, 2016 and 2017, and they do not support the claim, made in the above referenced “[REDACTED] Award” background document, that the ceremony is nationally televised and receives “major mass media” coverage. The submitted evidence does not demonstrate, for example, that the award winners receive a level of media coverage associated with a nationally or internationally recognized award in the entertainment industry. Further, the articles do not provide clear or consistent information regarding the number of award categories, the various levels of awards given, the criteria used to grant awards, or even whether all of the awards are deemed national in scope. Finally, none of the media articles mention the Petitioner or his receipt of these awards.

Therefore, while the Petitioner documented his receipt of two [REDACTED] awards, the supporting evidence is insufficient to document that these are nationally or internationally recognized prizes or awards for excellence in his field.

Documentation of the individual’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 claims that he meets this criterion based on his membership in both the Latin Academy of Recording Arts & Sciences (LARAS) and the Venezuelan Association of Performers and Producers of Phonograms (AVINPRO). In order to satisfy this criterion, the Petitioner must show that membership in the association is based on being judged by recognized national or international experts as having outstanding achievements in the field for which classification is sought.⁴

The Petitioner provided a copy of his LARAS membership and what appears to be correspondence he received from the organization. It lists the following requirements for voting membership:

- At least 12 commercially released recordings in Spanish or Portuguese as an artist, writer, composer, arranger, music producer or music video producer, including proof of technical or creative participation;
- Recordings must be commercially released in North America, Central America, South America, the Caribbean nations, Spain or Portugal.

⁴ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 6 (providing an example of admission to membership in the National Academy of Sciences as a Foreign Associate that requires individuals to be nominated by an academy member, and membership is ultimately granted based upon recognition of the individual’s distinguished achievements in original research).

The provided “membership registration” document indicates that “All application [sic] will be evaluated by a panel of experts who will judge the artistic, technical and professional quality of each entry.”

However, the evidence submitted does not establish that LARAS requires its voting members to have “outstanding achievements” as a condition for membership, as it is unclear what standard is applied to the evaluation of membership applications. Additional information from the organization would be required to determine that a voting membership in LARAS qualifies under this criterion; simply documenting that applicants’ recordings are evaluated for “quality” is not sufficient.

With respect to his membership in AVINPRO, the Petitioner submitted a document that bears the organization’s logo and the heading “What is AVINPRO?”. The document is not a letter and is not signed by a representative of the organization, and therefore its source is unknown. It states that membership in the association is “reserved only for those artists and/or musicians who are known personalities in the artistic field,” who “have recorded a minimum of 50 musical productions in force in the market at the time of enrollment,” and who are introduced and endorsed by a member of AVINPRO’s board. It also mentions that, “according to the standards of the music industry,” this volume of productions “is by itself an outstanding achievement for applicants who possess them.” Finally, the “What is AVINPRO?” document states that “according to article 1 of Chapter 2 of our regulations, the committee in charge of the review [of membership applications] is made up of recognized figures in the music industry that have managed to be among those few who reached the top in their field.”

This evidence alone is insufficient to establish that AVINPRO requires its members to have outstanding achievements judged by national or international experts, as it is unclear whether it actually came from the organization itself. Further, it does not sufficiently detail on what basis membership applications are evaluated. For example, it is unclear how an applicant would demonstrate that he or she is a “known personality” in the field, nor does it describe what other factors are considered once an applicant has been endorsed by a board member and provided proof of participation in 50 or more recordings. While this evidence indicates that the organization is governed by regulations, the portion of the regulations governing membership application and selection was not submitted for review.

For these reasons, we agree with the Director’s finding that the Petitioner did not establish that he meets this criterion.

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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. 8 C.F.R. § 204.5(h)(3)(iii)

The Director determined that the Petitioner submitted evidence that satisfies this criterion. We disagree and will withdraw that finding. Specifically, the Petitioner did not demonstrate published

material about him in professional or major trade publications or other major media, including the author of the material and any necessary translation.⁵

The Petitioner submitted copies of articles about him and his work in the field which appeared online on the websites of *El Universal*, *Globovision*, and *Diario la Nacion*, all of which were accompanied by a screenshot from rank2traffic.com which provides each website's [] Rank and traffic history for 7 years." None of these articles includes the author of the material, and the article from *El Universal* is also missing the date of publication. Accordingly these published materials do not satisfy all requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Even if these required elements were present, we note that the Petitioner did not submit sufficient evidence that these articles were published in professional or major trade publications or other major media.⁶ The Petitioner submitted general background and historical information for these media outlets. The accompanying [] rank and traffic history" provided for each website shows that ElUniversal.com has an [] Rank" of 9732, Globovision.com has a rank of 17,807, and LaNacion.com has a ranking of 38,871. However, the web analytics report lacks relevant information such as the ranking of these websites compared to other websites in Venezuela, and therefore the evidence is insufficient to establish that these publications and their websites qualify as major media.

The Petitioner also submitted print articles from the Venezuelan newspapers *Notitarde*, and *Carabobeño* (two articles). All three articles provide coverage of the [] tour of France in [] 2009. The Petitioner, who was a member of the ensemble, is identified in captions accompanying photographs of the group, and each article briefly mentions that he played one or more solos. However, the articles are about the group and its tour, and are not about the Petitioner. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). In addition, the Petitioner provided insufficient evidence to establish that either newspaper is considered to be major media in Venezuela. For example, the Petitioner provided background information regarding *Notitarde* (which appears that it may be copied from its website) indicating that it is a national tabloid publication that was ranked second in Venezuela in terms of circulation by two advertising associations in 2008. However, it also submitted a profile for *Notitarde* from Publicitas (www.publicitas.com), which describe it as a regional, rather than national, daily newspaper. The Petitioner did not submit independent evidence of these publications' circulation data or rankings demonstrating that either is considered major media based on their high circulation.

The Petitioner provided an article titled "[]" from the website *El Caribeño Radio* (elcaribenoradio.net), but the article does not identify an author and the record does not include any information regarding this media outlet. The English translation that accompanies the article appears to contain some errors and is difficult to comprehend. However, it seems to indicate that the [] Orchestra and [] Orchestra were working on a joint

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 7.

⁶ *Id.* (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

recording project. The Petitioner is included in an accompanying photograph and identified as “trombonist” but the article is not about him.

Finally, the record contains two more recent online articles regarding the ensemble called [redacted] [redacted] or [redacted] *Orquesta*, published on the websites of *Capitalino Errante* (capitalinoerrante.com) and *La Patilla* (lapatilla.com). Neither article mentions the Petitioner or identifies him as a current member of the group. The latter article indicates that five new members have formed a “new generation” of the ensemble. The record also lacks circulation statistics for these media outlets and therefore does not demonstrate that either is a major trade publication or other major medium.

Accordingly, the Petitioner has not established that he meets the published materials criterion and we will withdraw the Director’s finding that this criterion was met.

Evidence that the individual 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)

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading.⁷ Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organization or establishment’s activities. It is not the title of a petitioner’s role, but rather the performance in the role that determines whether the role is or was critical. In addition, this criterion requires that the organizations or establishments must be recognized as having a distinguished reputation, which is marked by eminence, distinction, or excellence.⁸

The Petitioner claims that he meets this criterion, in part, based on his role as a musician and arranger for successful Venezuelan singers, including [redacted] [redacted] and [redacted] [redacted]. However, none of these individual performers is an “organization or establishment.” In addition, although the Petitioner provided letters from these individuals, they did not describe in detail what role the Petitioner has played in their respective activities or how his role has been critical to the outcome of their activities.⁹ For example, [redacted] states that he has “engaged [the Petitioner’s] musical advice” to help him define his sound, and notes that the Petitioner acts as his trombonist and musical director for his concerts and shows when he is available. Similarly, [redacted] states that the Petitioner “brings his unique style to my music to create and shape my particular sound” and [redacted] [redacted] generally states that “[the Petitioner’s] talent has been fundamental to my musical projects.”

We acknowledge that the Petitioner provided evidence that he is credited as the arranger, musical director and first trombonist on [redacted]’s [redacted] album. Even if the Petitioner played a critical role in the production of the recording, an album is also not an “organization or establishment”

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

⁸ *Id.*, at 10-11.

⁹ *Id.* at 10 (stating that letters from individuals with personal knowledge of the significance of a petitioner’s leading or critical role can be particularly helpful in making this determination as long as the letters contain detailed and probative information that specifically addresses how the role for the organization or establishment was leading or critical).

and the Petitioner's role would not satisfy the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

The Petitioner also claims that he meets this criterion based on his role in the bands [redacted] Ensemble and [redacted] Orchestra, and based on services he has provided to [redacted]. The Petitioner submitted a letter from [redacted] director of the [redacted] Ensemble, who states that the Petitioner joined the ensemble in 2008 and was given the responsibility of being a soloist during several seasons. [redacted] states that the Petitioner's "brilliant performance" at festivals in France and Spain "contributed to the success of our concerts strengthening our reputation as one Venezuela's best [redacted] ensembles." However, this broad statement does not contain the detailed and probative information needed to establish that the Petitioner's participation was of significant importance to the outcome of the ensemble's activities.

Moreover, the Petitioner has not submitted independent evidence sufficient to establish that the [redacted] Ensemble has a distinguished reputation, as required. As noted above, the record reflects that the group's participation in the [redacted] Festival in France received some media coverage from the newspapers *Notitarde* and *Caribobeño* in [redacted] 2009, but this evidence, which appears to be local or regional media coverage, is insufficient to demonstrate that the ensemble is recognized as having a reputation marked by eminence, distinction or excellence.

With respect to the Petitioner's role in the [redacted]'s Orchestra, the Petitioner submitted a letter from [redacted] its director, who states that the group is considered to be "Venezuela's most [redacted] orchestra" and that it "sustains its prestige in the quality and musical skill of its members." [redacted] states that the Petitioner joined the group in 2005 and indicates that his skills as a trombonist, arranger and director "give shape to the particular sound that characterizes our Orchestra." He further describes the Petitioner's talent as "one of the secrets of our success over the years."

The Petitioner submitted an "overview" of [redacted]'s Orchestra from an unidentified source which describes the background of the ensemble, indicating that it was established in 1995 as a band formed by young adults between 18 and 26 years old. This overview of the band's history describes its chart successes dating back to 1996, provides a list of awards won by the band over the years, indicates that the band has toured four continents, and states that its 2015 [redacted] album enjoyed three number one songs on the Venezuelan [redacted] charts with one song [redacted] reaching the top 100 on the overall Venezuelan charts.

While the Petitioner submitted supporting evidence establishing that the group enjoys a distinguished reputation in the [redacted] music field, neither [redacted]'s letter nor the supporting evidence establishes that the Petitioner played a leading or critical role in the group. [redacted]'s broad statements that the Petitioner helped to shape the band's sound or is a "secret to [the] success" of the band are not sufficiently supported in the record and do not establish how he played a critical role. The Petitioner provided the liner notes for the album [redacted] which credit him as one of several musicians who played on all or most of the songs, and as the string arranger for the song [redacted], which, according to other evidence, was written by [redacted]. While the record contains several articles about the group, none of them mention the Petitioner or suggest that he had a critical role in his success.

Finally, the record contains two letters from [redacted] a musician and producer, on the letterhead of [redacted] [redacted] states that he is “constantly carrying out several musical projects that have positioned [his] name as a producer company for successful events in the United States and abroad.” He indicates that the Petitioner “outstands as member of my professional work team, who in his role as first trombone, arranger and musical director is part of some of my projects counting amongst them the [redacted] Band and the band that accompanies [redacted] [redacted] contributing with his talent to the musical and artistic success of his show.” The record contains sufficient evidence to establish [redacted]’s distinguished reputation in the industry, but his statement does not contain sufficient probative details to establish that the Petitioner plays a leading or critical role for his production company such that he has a significant impact on the company’s success. Rather, [redacted]’s letter suggests that the Petitioner contributes as a band member for individual artists who work with the company rather than for the company as a whole.

For the reasons discussed above, the Petitioner has not provided evidence establishing his eligibility for this criterion.

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 have reviewed the record in the aggregate, concluding that it does not support a finding 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. 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 he 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, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.