



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

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

In Re: 7861708

Date: MAR. 24, 2020

Appeal of Texas Service Center Decision

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

The Petitioner, a Contemporary Christian music composer 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 the Petitioner satisfied only one of the ten initial evidentiary criteria, of which he must meet at least three.

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)(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 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 record reflects that between 2009 and 2014, the Petitioner completed the degrees of Bachelor of Science, Master of Arts, Master of Divinity and Doctor of Ministry at [redacted] University in Virginia, where he was also an adjunct instructor of music and worship studies. The Petitioner received O-1 nonimmigrant classification in 2017 and has been employed as the music director for [redacted] in [redacted], Florida [redacted]. The Petitioner previously worked as an assistant music director for [redacted] in [redacted] Canada [redacted].

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). In denying the petition, the Director found that the Petitioner met only one of the evidentiary criteria, judging under 8 C.F.R. § 204.5(h)(3)(iv). The record reflects that the Petitioner participated in judging for the 2019 [redacted] Band Competition. Accordingly, we agree with the Director that the Petitioner fulfilled the judging criterion. On appeal, the Petitioner maintains that he meets six additional criteria, discussed below. We have reviewed all of the evidence in the record and conclude that it does not support a finding that the Petitioner satisfies the requirements of at least three 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 Petitioner maintains that he meets this criterion based on his receipt of the [redacted] Music Award in 2009. 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.¹ Relevant considerations regarding whether the basis for granting the prizes or awards

¹ 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>.

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.²

The Petitioner submitted a photograph of his award plaque reflecting that he received the [redacted] Music Award “[t]o commemorate the track [redacted] on the Christian Music Weekly’s Inspo Songs of 2009 Chart.” The record, however, lacks sufficient objective evidence regarding the [redacted] Music Award to establish that it is a nationally or internationally recognized prize or award for excellence in music or the arts. The Petitioner provided a [redacted] 2009 article titled “[redacted]” published by *Liberty News*. The article indicates that the Petitioner composed the song “[redacted]” the title track on [redacted] CD released in [redacted] 2009 on the [redacted] Music record label. However, the article does not mention the Petitioner’s receipt of the [redacted] Music Award.³

On appeal, the Petitioner provides an undated document with the heading “[redacted] Music Award” that bears the logo of [redacted] Music. According to the information provided, the 2009 [redacted] Music Award is given to a composer based upon “top charting radio airplay, ongoing inclusion in weekly worship services as recognized by [redacted] and inclusion in print/digital download for choir, praise band and orchestra.” The document indicates that the selection criteria include “charting in the ‘Top 10’ on a reputable radio chart (i.e, Billboard, Christian Music Weekly, Neilson),” having been “[r]eleased on a [redacted] Project in the past year and distributed nationwide,” having been “[r]egistered with [redacted] and have ranked within their charts of songs used by churches in North America.” The press release shows that five songs were nominated for the award, and that the winner was to be presented “a commemorative plaque with the highest charting position achieved” at an annual gala. 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.

Although the documentation indicates that the award is given by [redacted] Music to artists working for the record label, the Petitioner did not show that the field recognizes the “[redacted] Music Award” as a national or international award for excellence. 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. Therefore, while the Petitioner documented his receipt of the [redacted] Music Award, the supporting evidence is insufficient to document that this is an nationally or internationally recognized prize or award for excellence in his field.

In light of the above, the Petitioner did not demonstrate that he satisfies this criterion.

² *Id.*

³ The record reflects that the song was in the top ten of Inspirational songs on the Christian Music Weekly radio chart in [redacted] 2009. It appears, therefore, that the *Liberty News* article was published before the Petitioner received the award.

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).

As evidence under this criterion, the Petitioner submitted various letters of support discussing his work as a Contemporary Christian music composer and director.⁴ The Director considered this documentation, but found that it was not sufficient to demonstrate that the Petitioner's work constituted original contributions of major significance in the field. For the reasons discussed below, we agree with that determination.

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish that not only has he made contributions that were original but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have remarkably impacted the field, or have otherwise risen to a level of major significance in the field.

On appeal, the Petitioner asserts that the Director "failed to appreciate the global impact of [redacted] [redacted] as advancing and expanding the reach of the genre of Christian Music" and contends that the song "struck a [chord] with untold numbers of people nationally and abroad." As evidence, the Petitioner points to letters of support from [redacted] the Petitioner's classmate from [redacted] University and the managing partner of the German music publishing company [redacted] [redacted] indicates that [redacted] partners with various music companies, including [redacted] University's [redacted] [redacted] and [redacted] to "[supply] German churches with new songs." Regarding the song [redacted], he states that "when [redacted] [signed] the song, I was asked to work out an official German translation. He further provides that his company has six of the Petitioner's songs in its catalogue and "they are among our best-selling works." These letters do not offer sufficiently detailed information, nor does the record include adequate corroborating documentation, to demonstrate the nature of specific original contributions that the Petitioner has made to the field that have been considered to be of major significance.

As further evidence for this criterion, the Petitioner provides letters of support from several other colleagues and mentors, many from [redacted] University. For example, [redacted] a songwriter, musician, and worship leader, states that the Petitioner's doctoral thesis "was a great help in my own [redacted] University doctoral dissertation" [redacted] Director of Product Development for [redacted], indicates she has worked with the Petitioner for several years in organizing song showcases, where his responsibilities included song selection, working with bands, show direction and production, and personal performance. She credits the Petitioner's expertise as a professional musician and his leadership skills with college students in creating well-organized programs.

In addition, [redacted] a music artist and producer, indicates that the Petitioner was his worship studies professor at [redacted] University and taught him the "foundational principles" of leadership, large group communication, and musical performance. [redacted] the Petitioner's professor at [redacted] University, states that "[w]hile a student and [a]djunct teacher, [the Petitioner] completed several songwriting projects, performed by the Choirs and Orchestra at [redacted] University

⁴ Although we discuss a sampling of letters, we have reviewed and considered each one.

and subsequently published by [redacted]. He emphasizes that the Petitioner's song [redacted] [redacted] was "also performed across the United States, in Europe and Russia." [redacted] an award-winning songwriter, indicates that he has worked with the petitioner on "nationwide events in Canada, and across the United States" and praises his "expertise in songwriting, performing, speaking, and teaching."

While the above-referenced letters praise the Petitioner's skills as a music composer, performer and teacher, they are not sufficient to demonstrate that the Petitioner's contributions as a music composer and director rise to the level of a contribution of major significance in the music field. For instance, the record does not show that his skills in music composition and direction have widely influenced the field beyond the programs where he has participated and taught, or has otherwise risen to the level of contributions of major significance in the field. The language of this regulatory criterion requires that the Petitioner's original contributions be "of major significance in the field" rather than mainly affecting his students and colleagues. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not corroborate her impact in the field as a whole).

Similarly, the record does not demonstrate that the Petitioner's song [redacted] or his other music compositions have widely influenced the work of other Contemporary Christian musicians, that his music compositions are highly renowned by recognized music critics, or that his original work otherwise constitutes contributions of major significance in the field. Without sufficient evidence demonstrating that his work constitutes original contributions of major significance in the field, the Petitioner has not established that he meets this criterion.

For the aforementioned reasons, the Petitioner did not establish that he satisfies this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

The Petitioner submitted evidence showing that his doctoral dissertation titled [redacted] [redacted] was published in [redacted] 2014. The Director determined that the Petitioner does not meet this criterion. In reaching this conclusion, the Director noted that the regulations clearly require evidence of authorship of articles in the field in professional or major trade publications or other major media.⁵

The Petitioner submitted a letter from [redacted] the administrator of [redacted] University's institutional repository, [redacted] [redacted] indicates that "[o]nly works that are created by our students and faculty are permitted to be included in our institutional repository." She provides

⁵ The Director further emphasized that the Petitioner did not provide evidence that his dissertation has been cited by others. The director concluded that "[w]ithout any citation history, it cannot be concluded that it is a scholarly publication." The level of recognition received by the Petitioner's dissertation would be more relevant to an examination of the totality of the evidence. As discussed above, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, 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.

that the Petitioner's dissertation was submitted into [redacted] in [redacted] 2014, after it was defended and approved by the dissertation committee. She emphasizes that works in [redacted] University's institutional repository may be accessed by researchers around the world "through searches in Google, Google Chrome, Google Scholar, and other major search engines."

The publication of the Petitioner's doctoral dissertation on [redacted], the [redacted] University website repository for publication of its student and faculty theses and dissertations, with no apparent selection process for publication, does not amount to the publication of a scholarly article in a professional journal or other major media.

Based on the foregoing, the Petitioner did not demonstrate that he satisfies this criterion.

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.⁶ 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.⁷

On appeal, the Petitioner maintains that he satisfies this criterion as an academic at [redacted] University "assisting in the development of a music program," and as a worship pastor at [redacted] churches in "the selection and performance of Christian music." Although the Petitioner provided letters from representatives of those organizations, they did not describe in sufficient detail what role the Petitioner has played in the organizations' respective activities or how his role has been critical to the outcome of the organizations' activities.⁸

For example, [redacted], a pastor who was the Petitioner's mentor at [redacted] for five years, indicates that as the church's assistant music director the Petitioner formed a choir that assisted in worship services, frequently sang and played keyboards, and assisted in monthly music training nights. [redacted] the lead pastor of [redacted] indicates that the Petitioner "led congregational worship, mentored and trained musicians, [and] chose music for Sunday worship and other special services." Neither the letter of [redacted] nor [redacted] establishes that the Petitioner played a leading or critical role in those churches. [redacted]'s statements that the Petitioner formed a choir that assisted in worship services and [redacted]'s statements that the Petitioner chose music and led congregational worship do not establish how he played a leading or critical role.

⁶ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 10.

⁷ *Id.*, at 10-11.

⁸ *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).

In addition, the broad statements of [redacted] an executive ministry consultant at [redacted], that the Petitioner “has played a critical role by shaping and developing the songwriting and worship culture” at the church are not sufficiently supported in the record and do not establish how the Petitioner played a critical role.

Further, [redacted] an associate professor of songwriting and commercial music at [redacted] University, asserts that the Petitioner “played a leadership role” in helping to establish the songwriting program at [redacted] University through his “curriculum development” and promotion of the program “at Christian events, songwriting workshops and seminars,” and a “key role” in the program’s ‘Principles of Songwriting’ class. However, this broad statement does not contain the detailed and probative information needed to establish, as claimed, that the Petitioner’s participation was of significant importance to the outcome of the university’s activities. Finally, even if the Petitioner played a leading or critical role in their development, a program or a class is not an “organization or establishment” and the Petitioner’s role would not satisfy the plain language of this criterion.

For the reasons discussed above, the Petitioner has shown that he satisfies this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

The Petitioner submitted a copy of his paystub indicating that [redacted] paid him a net biweekly salary of \$2,607 in April 2019, or an annual salary of approximately \$65,175. The Petitioner also provided, as a point of comparison, an O*Net printout from the Department of Labor, Office of Foreign Labor Certification, reflecting that the Level 4 prevailing wage for “Music Directors and Composers” between July 2018 and June 2019 in the Petitioner’s geographic area is \$145,704 per year. Based on the information provided, the Petitioner has not established that he has commanded a high salary or other significantly high remuneration in relation to others in the field.

The Petitioner also provided an O*Net printout reflecting the prevailing wage for “Clergy,” however, because the Petitioner’s field is music composer and director, offering wages for clergy for his geographic area does not provide an appropriate basis for comparison in demonstrating that his earnings constitute a high salary relative to “others in the field.” The Petitioner must present evidence showing that he has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers). The Petitioner has not established that the wage information he presented for clergy constitutes an appropriate basis for comparison.

Based on the foregoing, the Petitioner has not demonstrated that he meets this regulatory criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least two O-1 nonimmigrant visa petitions filed on behalf of the Petitioner, the prior approvals do 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, at *2 (E.D. La. 2000).

III. CONCLUSION

We find that although the Petitioner satisfies the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), he does not meet any additional criteria on appeal relating to nationally or internationally recognized awards, original contributions, scholarly articles, leading or critical roles with organizations, or high salary or other remuneration. While he argues and submits evidence for one additional criterion on appeal, relating to commercial successes in the performing arts at 8 C.F.R. § 204.5(h)(3)(x), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 204.5(h)(3), we reserve this issue.⁹ Accordingly, 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). Although the Petitioner’s work as a Contemporary Christian music composer and director has brought praise for his creativity, experience, and technical skill, the record does not contain sufficient evidence establishing that he is among the upper echelon in his field.

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.

⁹ *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).

ORDER: The appeal is dismissed.