



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

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

In Re: 16402460

Date: APR. 16, 2021

Appeal of Texas Service Center Decision

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

The Petitioner, a musician, 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 record did not establish, as required, that the Petitioner has satisfied at least three of the ten initial evidentiary criteria for this classification. The matter is now before us on appeal.

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 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 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, a trumpet player, is currently a member of the [REDACTED]. In addition, the record reflects that the Petitioner has recorded studio albums and toured as a member of the [REDACTED] and has performed as a guest artist on the studio albums of other musicians.

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 that he can satisfy five of the ten criteria, summarized below:

- (i), Lesser nationally or international recognized awards;
- (ii), Membership in organizations that require outstanding achievements;
- (iv), Judging the work of others in the field;
- (vii), Display of work in artistic exhibitions or showcases; and
- (viii), Performing in a leading/critical role for organizations with a distinguished reputation.

The Director determined that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), relating to judging. The Petitioner provided evidence that he has participated in the nomination process for the Latin Grammy awards as a voting member of the Latin Academy of Recording Arts & Sciences (LARAS). The record also reflects that he was a member of a jury that evaluated brass section auditions for youth and pre-professional orchestras in the state of [REDACTED] and for the [REDACTED] Symphony Orchestra. Accordingly, the record supports the Director's conclusion that the Petitioner satisfied the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv).

On appeal, the Petitioner claims that he meets the four remaining criteria discussed above. He asserts that, with respect to the awards, display and leading or critical roles criteria at 8 C.F.R. § 204.5(h)(3)(i), (vii), and (viii), the Director's decision does not address most of the evidence he provided and therefore

does not fully explain why that evidence was insufficient to satisfy these criteria. The Petitioner requests that the matter be remanded to the Director for further review if we cannot sustain his appeal.

We agree with the Director's determination that the Petitioner has not established his eligibility under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). The Petitioner provided evidence that he is a voting member of LARAS. The limited evidence provided regarding LARAS' membership requirements indicates that creative or technical professionals involved in recording music will be considered for voting membership if they can document that they have at least six song credits on commercially released recordings within five years of applying. As noted by the Director, being credited on six commercially released recordings is a professional achievement, but the evidence does not support a finding that this level of activity is an "outstanding achievement" or that LARAS views it in this light.

The Petitioner emphasizes that the LARAS membership committee also reviews supporting documentation such as media coverage and social media, but the record does not establish that this type of documentation is required by LARAS or that voting membership is only available to those whose achievements have received a certain amount or type of media coverage. The application review process is not sufficiently documented in the record, as the Petitioner did not provide the section of the academy bylaws that discusses the classes of membership, their respective requirements, or the factors evaluated by the membership committee. Additional evidence would be required to support the Petitioner's claim that he was admitted to LARAS based on his "outstanding achievements," or that LARAS only admits "the most successful musicians" as voting members.

However, after reviewing the Director's decision and the evidence in the record, we agree with the Petitioner's assertion that the decision did not adequately address his claims or evidence with respect to the lesser awards, display, and leading or critical roles 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). Accordingly, we will withdraw the Director's decision and remand this matter for a new decision consistent with the following analysis.

*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 provided two "Silver Medal" certificates awarded by the Global Music Awards in 2018.<sup>1</sup> In determining that the Petitioner did not satisfy this criterion, the Director concluded that the awards "appear to have been conferred to the group [redacted] rather than to him as an individual. The Director further noted that the awards "appear to be local or regional in nature," and stated that the Petitioner did not submit "evidence to show the awards are internationally recognized."

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<sup>1</sup> In response to the Director's request for evidence (RFE), the Petitioner provided a list of winners from a more recent edition of the Global Music Awards, indicating that [redacted] and its individual members were awarded Silver Medals for the album [redacted]. The Petitioner did not provide his award certificate or a letter from the awarding entity corroborating his receipt of this award, which appears to have been issued in early 2020.

We note that one of the Global Music Award certificates was awarded to [redacted] in the category [redacted] for its album [redacted]. The other certificate was awarded to the Petitioner, as an individual, in the [redacted] category for the same album. Further, the evidence submitted reflects that the Global Music Awards competition does not place geographic limitations on competitors and appears to be international in scope, rather than limited to a specific region or locality. The Petitioner submitted copies of media articles intended to support his claim that the Global Music Award is a nationally or internationally recognized prize in his field. Finally, the record also contains additional articles and documentation related to the award and the award's sponsoring organization not referenced in the Director's decision. The Director's brief analysis of this criterion and the conclusions he reached do not reflect that he considered the evidence referenced above.

In addition, we emphasize that not every awards program that draws from a national or international field automatically qualifies as one that is a nationally or internationally recognized prize or award for excellence in a given field. 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.<sup>2</sup> Therefore, in evaluating this criterion on remand, the Director should also consider evidence in the record that addresses the entry requirements for the Global Music Awards, the number of awards or prizes given, the contest's different levels of recognition, and the criteria applied by the judges of the competition.

*Evidence of the display of the individual's work in the field at artistic exhibitions or showcases.* 8 C.F.R. § 204.5(h)(3)(vii)

In determining that the Petitioner did not satisfy this criterion, the Director acknowledged that the Petitioner "was part of a music group that performed at concerts," but appears to have based his adverse conclusion on evidence that was submitted to demonstrate that the Petitioner has also worked as an arranger, specifically, copies of sheet music that identify him as such. For example, the Director stated that "the copies of the music provided do not show the music was displayed at artistic exhibitions, [as] these documents did not contain a date or a place of an event." The Petitioner did not claim eligibility under this criterion based on his work as a music arranger. As the matter will be remanded, the Director should evaluate the evidence related to the Petitioner's live performances as a musician, which includes promotional materials for performances, media articles, concert programs and other evidence.

*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)

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<sup>2</sup> 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>.

The Petitioner consistently claimed that he can satisfy this criterion based on his roles with [redacted], [redacted] and [redacted]. The Petitioner argues on appeal that the Director's analysis of this criterion does not address evidence related to his role as a founding member of [redacted]. The denial decision reflects that the Director concluded "the evidence does not indicate that the role the petitioner has performed for [redacted] and the [redacted] were/are leading critical." However, the Petitioner correctly notes that the decision does not appear to reach any conclusion with respect to his role with [redacted].

The Petitioner emphasizes his critical role as a founder of the ensemble, and states that its distinguished reputation is evidenced by its receipt of a Global Music Award, by its international performances in Austria, Italy, Venezuela, Germany and the United States, and by evidence that its "international presence" has been recognized by "major media organizations." On remand, the Director should evaluate the evidence submitted regarding the Petitioner's role with this ensemble and evidence of the group's reputation to determine whether he satisfies this criterion.

For the foregoing reasons, we withdraw the Director's decision and remand the matter for further review and entry of a new decision. If the Director determines that the Petitioner satisfies at least two additional criteria beyond the one already met, his decision should include an analysis of the totality of the record evaluating whether the Petitioner 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.<sup>3</sup>

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

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<sup>3</sup> *See* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 4 (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).