



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

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

In Re: 24993035

Date: FEB. 13, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a pianist, 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 the Petitioner met the initial evidence requirements for the classification by establishing her receipt of a major, internationally recognized award or by meeting three of the ten evidentiary criteria at 8 C.F.R. § 204.5(h)(3). The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with 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; who seek to enter the United States to continue work in the area of extraordinary ability; and whose 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 the initial evidence requirements through either a one-time achievement or meeting three lesser 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. *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 is a pianist and contends she has sustained national and international acclaim. Because the Petitioner has not indicated or shown that she received a major, internationally recognized award, she 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 satisfied five of these criteria, summarized below:

- (i), documentation of the individual’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor
- (ii), membership in associations requiring outstanding achievements of their members
- (iii), published material about the individual in professional or major media
- (vii), display of her work in the field at artistic exhibitions or showcases
- (viii), evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation

The Director concluded the Petitioner met two of the criteria, pertaining to the display of her work in the field at artistic exhibitions or showcases and evidence that she performed in a leading or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner asserts that her evidence satisfies the applicable legal requirements to satisfy the other claimed criteria.

We will not disturb the Director’s determinations regarding the Petitioner’s display of her work and performance in a leading or critical role for organizations or establishment that have a distinguished reputation. But for the reasons discussed below, we agree with the Director that the Petitioner has not satisfied the other claimed criterion.

A. 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)

In order to satisfy this criterion, the Petitioner must demonstrate that she has received lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.¹ Relevant

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>.

considerations regarding whether the basis for granting the prizes or awards was for excellence in the field include, but are not limited to: the criteria used to grant the awards or prizes, the national or international significance of the awards or prizes in the field, and the number of awardees or prize recipients as well as any limitations on competitors.²

The Petitioner states that she received the following awards and documented her receipt by submitting copies of her award certificates:

- First Prize, [redacted]
- First Prize [redacted] in the Petitioner's age group, 2020 [redacted]
- First Prize, 2019 [redacted] International Competition Series [redacted]
- First Prize, 2020 [redacted] International Competition Series called [redacted] of Europe"
- Second Prize, 2020 [redacted] International Music Competition
- Second Prize [redacted] 2021 [redacted]
- First Prize, 2020 [redacted] Competition

The Director determined that the Petitioner did not establish that any of the awards qualify as nationally or internationally recognized prizes or awards for excellence in the field. We agree with that determination.

The Petitioner stated that the [redacted] is an international music competition, and the first prize winners perform in the full-length evening concert at [redacted]. As a first-place winner, the Petitioner placed in The [redacted] Debut Concert at [redacted]. However, the record does not contain any additional information or supporting evidence regarding the competition to support the Petitioner's claim that her first prize award should be considered a nationally or internationally award for excellence in the field of classical music. Absent, for example, information regarding the number of competitors in the Petitioner's age category, or evidence of the level of recognition associated with this award, we cannot find that the Petitioner has satisfied each element of the criterion. While the Petitioner provided information of previous winners of this competition, that is not sufficient to satisfy this element of this criterion.

The [redacted] is open to all pianists and participants from all over the world. The Petitioner stated that she was [redacted] participants awarded the first prize out of 90 participants. She also stated she won [redacted] in 2021 in the same competition out of 130 participants. The Petitioner indicated that the competition's YouTube channel has 1,220 subscribers with 158,974 views. The Petitioner submitted a screenshot from the [redacted] website regarding participation rules and general information of the competition. The Petitioner also submitted a letter from the founder and CEO of the [redacted] that stated they have participants from all over the world, and the jury is guided by a grading system. The letter also confirmed the Petitioner was among the winners in 2020 and 2021,

² *Id.* (indicating that an award limited to competitors from a single institution, for example, may have little national or international significance.)

and it listed other previous winners that are professional pianists. The record does not contain official results or other evidence demonstrating the number of entrants in the competition or in the Petitioner's category in the years in which she won. In addition, the Petitioner indicated in the year she was awarded first prize, four other individuals in her age group also were awarded first prize. Finally, the submitted statements indicate that entry to the competition was age-restricted and not open to all musicians who may have been competitive for top prizes.

In addition, although the supporting evidence indicates that the competition seeks and attracts participants from different countries, we note that showing a diverse pool of competitors, without more, does not establish the requisite recognition. While the evidence reflects other winners received some media attention for their awards, the record lacks sufficient evidence verifying that prizes and awards issued by this competition are nationally or internationally recognized awards for excellence in the field, or evidence that the Petitioner herself received any recognition from outside the issuing organization.

The Petitioner stated she was awarded first prize in the 2019 [redacted] International Competition Series [redacted]. She also explained the competition is open to all instrumentalities and singers up to the age of 25, and the applicants are divided into seven age groups. The Petitioner also stated that she won first prize for the 2020 [redacted] International Competition Service called [redacted] which is open to all European instrumentalists and singers up to 25 years of age. As with the other awards the Petitioner received, the record does not contain sufficient evidence regarding the official results, the number of competitors and prize winners in each age and instrument category, or other evidence related to the specific category in which she received an award. We cannot determine that the Petitioner's first prize awards for these two competitions are a nationally or internationally recognized prize or award for excellence.

The Petitioner stated she was awarded second prize overall at the 2020 [redacted] International Music Competition. She stated contestants are divided into four categories based on age. According to the submitted printout from [redacted] website, the competition is open to contestants of all nationalities and countries up to 25 years of age, and the contestants are divided into four age groups. The Petitioner was one of seven contestants that won the second prize in her category of contestants up to the age of 10 years old. The evidence does not document how many contestants participated in the 2020 competition in the Petitioner's age group. In addition, as noted before, the record does not contain sufficient evidence regarding the official results, the number of competitors and prize winners in each age and instrument category, or other evidence related to the specific category in which she received an award. We cannot determine that the Petitioner's first prize awards for these two competitions are a nationally or internationally recognized prize or award for excellence.

The Petitioner stated she won first prize in the 2020 [redacted] Competition. According to the submitted print out from the competition website, it is open to students of educational institutions implementing programs in the field of musical art between the ages of 6 to 18. Further, while these articles confirm that [redacted] drew participants from outside the United States, the evidence does not establish that the competition awards nationally or internationally recognized prizes.

For the reasons stated above, the Petitioner does not meet 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)

This criterion contains several evidentiary elements the Petitioner must satisfy. First, the Petitioner must demonstrate that she is a member of an association in her field. Second, the Petitioner must demonstrate both of the following: (1) the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) the associations use this outstanding determination as a condition of eligibility for prospective membership.

On appeal, the Petitioner contends she is a member of the [REDACTED]. The Petitioner stated that she is a soloist of the performance cantate choir of [REDACTED] and became a member through an audition process. The Petitioner submitted a letter from the co-founder and artistic director of [REDACTED] stating that [REDACTED] is a “unique, inclusive music enrichment program that welcomes a diverse group of children ages 8-18,” and the organization has grown to seven choirs with over 350 singers in its core program, and over 1,000 children in its afterschool program. The Petitioner did not provide sufficient evidence to establish that [REDACTED] is an “association.” In addition, the evidence does not explain how the children are chosen to be in the core program or afterschool program. Without more evidence of the program and the requirements to enter the program, it is impossible to determine if it requires outstanding achievements of their members. Membership requirements based on activity in a given field or knowledge in a given field to be a member do not satisfy this criterion as such requirements do not constitute outstanding achievements. The record does not contain sufficient evidence to support the claim that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts. Accordingly, the Petitioner does not meet this criterion.

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. 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 contends that she satisfies this criterion since she was featured in a television program, the [REDACTED] in a segment that was [REDACTED]. The Petitioner stated that the [REDACTED] website indicated that this program is “popular with up to 12,000 viewers weekly” in the [REDACTED] Florida area. In order to satisfy this criterion, the Petitioner must demonstrate published material about her in professional or major trade publications or other major media, as well as the title, date, and author of the material.³

The Petitioner submitted printouts from the [REDACTED] website indicating that on [REDACTED] 2022, the Petitioner was profiled as a pianist on the [REDACTED] show.

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

However, this evidence was accompanied by the requisite translation. 8 C.F.R. § 103.2(b)(3). Nor did the Petitioner provide sufficient evidence to establish that [redacted] qualifies as a professional or major trade publications or other major media.

The Petitioner submitted information from the [redacted] website stating that the Civic Association started producing a weekly video newscast in the 2017-2018 season with up to 12,000 weekly viewers. However, the Petitioner did not provide any information regarding the current viewership of the show. Although the Petitioner claims that the program is popular in the Town of [redacted] and surrounding areas, she did not provide any further, detailed information showing the status of the television program as a major medium. Accordingly, the Petitioner did not show that she meets 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 lesser criteria. We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20, or render a determination on the issue of whether the Petitioner's entry will substantially benefit prospectively the United States. Accordingly, we reserve these issues.⁴

Nevertheless, we have reviewed the record in the aggregate and concluded 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 those progressing toward the top. *Price*, 20 I&N Dec. at 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021) (determining that EB-1 visas are "reserved for a very small percentage of prospective immigrants"). See also *Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian*, 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown that the significance of her 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 she is one of the small percentage who has risen to the very top of the field of endeavor. See section

⁴ 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, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing that she is among the upper echelon in her field.

For the reasons discussed above, the Petitioner has not demonstrated her 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.