



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

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

In Re: 25675081

Date: MAR. 29, 2023

Appeal of Texas Service Center Decision

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

The Petitioner, a bassoonist in the music field, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the record did not establish 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

Because the Petitioner has not indicated or established that she 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). Before the Director, the Petitioner claimed he met the following categories:

- (i), Lesser nationally or internationally recognized prizes or awards
- (ii), Membership in associations that require outstanding achievements
- (iii), Published material about the individual in professional or major media
- (iv), Participation as a judge of the work of others in the same or allied field
- (v), Original contributions of major significance
- (vii), Display of the alien’s work in the field at artistic exhibitions or showcases
- (viii), Leading or critical role for distinguished organizations or establishments

The Director concluded the Petitioner met the evidentiary criteria relating to judging the work of others in the same or allied field but determined she had not satisfied the remaining categories listed above. On appeal, the Petitioner maintains that she met three evidentiary criteria: published material about the individual in professional or major media; display of work in the field at artistic exhibitions or showcases; and holding a leading role for a distinguished organization. On appeal, the Petitioner does not pursue her initial claims that she meets the criteria relating to lesser awards, membership in associations, and, original contributions, nor does she contest the Director’s conclusions regarding these issues. We therefore consider those issues abandoned.<sup>1</sup>

After reviewing all the evidence in the record, we agree with the Director that the Petitioner has satisfied the judging criteria, but she also satisfies one additional category of evidence by her display of her work in the field at artistic exhibitions or showcases. The Petitioner has therefore satisfied two criteria and must satisfy one more to prevail. As discussed below, we conclude she has not.

### A. Evidentiary Criteria

*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.*

---

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

*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).

To meet this criterion, the published material must be about the Petitioner and related to her specific work in the field for which classification is sought; it must include the title, date, and author of the material and any necessary translation; and the publication must qualify as a professional publication, major trade publication, or major media publication. 8 C.F.R. § 204.5(h)(3)(iii). With the petition, the Petitioner submitted articles from different publications that specifically discussed the Petitioner and her work as a bassoonist in the music industry. Each article included the title, date, and author and the necessary translation. The Petitioner also provided information regarding each publication to include the relevance of the publication, the intended audience, and circulation.

In the Director's decision, he reviewed the articles submitted and found the Petitioner did not provide sufficient evidence to establish the cited sources qualified as professional or major trade publications or other major media.

The Petitioner contends she satisfies this criterion since she was featured in articles published in *Qilu Evening News*; *Morning Post*; *Xiaoxiang Morning Herald*; *Jinan Times*; *New Weekly*; and *Music Weekly*. The Petitioner provided printouts from various websites containing information about these publications. However, the accuracy of the information found on these websites is not clear.

The Petitioner provided circulation data for each publication. The two publications with the highest circulation are *Qilu Evening News* with an average circulation of 1.35 million copies, and *Morning Post* with an average daily circulation of 680,000. The Petitioner did not provide the circulation data of these publications to compare with the circulation statistics of other Chinese newspapers and consequently failed to establish that these publications constitute major media. The record does not contextualize the provided circulation statistics, indicate their significance, or otherwise elaborate on how that information could establish that the publications are the type of major media contemplated by 8 C.F.R. § 204.5(h)(3)(iii).

In addition, while the *Qilu Evening News* and *Morning Post* appear to have the highest circulation of the listed publications, it is not clear whether they are merely regional media for certain areas of China. The documentation stated that *Qilu Evening News* is distributed across 17 cities in China, and according to the World Association of Newspapers, ranks number 37 in circulations among worldwide newspapers. In addition, the documentation indicated *Morning Post* is "one of China's top metropolitan newspapers and one of the Top 100 dailies in the world." But the petitioner still did not provide sufficient information to establish that these publications have national rather than regional reaches within China. Publications with only a regional reach are not considered major media, and the Petitioner has not established that either publication is a professional or major trade publication, as also permitted by the regulation.

After review of the totality of the evidence submitted in support of this criterion, we conclude that the Petitioner has not established that he meets this criterion.

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

The Director determined the Petitioner did not meet the criterion relating to the display of her work at artistic exhibitions or showcases at 8 C.F.R. § 204.5(h)(3)(vi). The regulation requires that the work displayed be a given petitioner's own work product and that the venues at which the work was displayed be artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii). In support of this criterion, the Petitioner provided evidence of having played in several concerts and musical events, and she provided details regarding the venues at which she performed as a bassoonist. We conclude that these musical performances should be considered "artistic exhibitions or showcases" intended to showcase the Petitioner's musical talent as a bassoonist, and that she therefore satisfies the plain language of this criterion. Accordingly, we hereby withdraw the Director's determination that the criterion was not met.

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

To meet the plain language requirements of this criterion, a petitioner must establish that they have performed in either a leading or critical role, and that the role was for an organization or establishment (or a division or department of an organization or establishment) with a distinguished reputation. A leading role should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A title, with appropriate matching duties, can help establish whether a role is or was, in fact, leading. *See generally* 6 USCIS Policy Manual F.2(B)(2)(Appendices), <https://www.uscis.gov/policymanual>. In addition, this criterion requires that the organization or establishment be recognized as having a distinguished reputation. USCIS policy reflects that organizations or establishments that enjoy a distinguished reputation are "marked by eminence, distinction, or excellence." *See generally id.* (citing to the definition of *distinguished*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/distinguished>). The Petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, the Petitioner does not provide additional evidence to overcome the Director's decision and instead provides documentation previously submitted. The Petitioner contends she performed in a leading role as a principal bassoonist in the [REDACTED]

[REDACTED] According to the submitted job duties, it appears the Petitioner led and oversaw the bassoon section for the symphonies. Although the Petitioner held a leading role for the bassoon *section*, she did not provide sufficient documentation to establish she played a leading role in an *organization*. For example, the documentation does not establish that she performed a leading role for the symphonies as a whole, such as by showing she influenced its overall reputation or status, or that she was responsible for the organization's success. The Petitioner did not sufficiently explain or demonstrate that her role as a principal bassoonist for one of the symphony's many sections constitutes a leading role for the overall organization.

Even if the Petitioner had contended her role was a leading role in a division of the organization, which she did not do, we would observe that she had not provided sufficient documentation to establish that

the specific division she had led *itself* maintained a distinguished reputation rather than contributing to the distinguished reputation of the symphony *as a whole*.

In summary, the evidence provided does not sufficiently demonstrate the petitioner performed in a leading role for organizations or establishments that have a distinguished reputation. The Petitioner provided job duties and explained that she led the bassoon section as a principal bassoonist but did not provide sufficient evidence that she led an organization. Merely repeating the language of the statute or regulations does not satisfy the Petitioner's burden of proof. *See 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. At 17.

For these reasons, the Petitioner has not established 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.<sup>2</sup>

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

---

<sup>2</sup> *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).

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). 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.