U.S. Citizenship and Immigration Services

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

In Re: 40159251

Date: JAN. 22, 2026

Motion on Administrative Appeals Office Decision

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

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

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner had not established he had a major, internationally recognized award, or that he met at least three of the ten regulatory criteria. We dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

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). Upon review, we will dismiss the motions.

## I. LAW

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit.[1]

[1] *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

## II. ANALYSIS

### A. Relevant Procedural History

The Petitioner did not claim that he satisfied the classification's initial evidence requirements with a one-time achievement. *See* 8 C.F.R. § 204.5(h)(3) (setting forth two options for satisfying the initial evidence requirements for extraordinary ability). Rather, he asserted that he met the classification's requirements in the alternative by satisfying at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x). More specifically, he claimed he received a lesser internationally recognized prize or award, was a member in associations in the field, had material published about him in major media, made contributions of major significance, authored scholarly articles, and had his work displayed, satisfying 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (v), (vi), and (vii) respectively. SCOPS issued a request for evidence and upon review determined the Petitioner had abandoned his claim under 8 C.F.R. § 204.5(h)(3)(iii) and had not established any of the remaining claimed criteria.

On appeal, the Petitioner asserted that he submitted evidence establishing 8 C.F.R. § 204.5(h)(3)(i), (ii), (iii), (iv), (v), (vii) and (ix). Our appeal decision limited our analysis to the arguments and documents submitted in support of 8 C.F.R. § 204.5(h)(3)(i) and (ii), reserving the two criteria at 8 C.F.R. § 204.5(h)(3)(v) and (vii). However, our analysis in the appeal did not explain why we did not address the other criteria the Petitioner claimed to have established. The Petitioner summarily stated in the appeal that he established 8 C.F.R. § 204.5(h)(3)(iii) but provided no explanation for how he met this criterion and how he overcame the issues raised in SCOPS' analysis, including that he abandoned this criterion. The Petitioner also claimed for the first time on appeal that he judged the work of others and commanded a high salary and thereby satisfied the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (ix) but provided no evidence in support.[2] Further, he did not contest SCOPS determination that his evidence did not support that he authored scholarly articles under 8 C.F.R. § 204.5(h)(3)(vi).

### B. Criteria Waived

On combined motions the Petitioner asserts his eligibility under 8 C.F.R. § 204.5(h)(3)(i), (iv), (vii), (viii), and (x). As a result we deem the Petitioner has waived his eligibility for the criterion at 8 C.F.R. § 204.5(h)(3)(ii), which requires evidence of his membership in associations in the field for which classification is sought; 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published material about the alien in professional or major trade publications or other major media; 8 C.F.R. § 204.5(h)(3)(vi), which requires evidence of his authorship of scholarly articles in the field, in professional or major trade publications or other major media; and 8 C.F.R. § 204.5(h)(3)(ix), which requires evidence he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

[2] On appeal, the Petitioner referred us to exhibits without explaining what the exhibits contained and the relevance of the exhibits for the criteria at 8 C.F.R. § 204.5(h)(3)(iii), (iv), and (ix). The exhibits were not contained in the appeal and the corresponding exhibit numbers in Petitioner's response to the RFE did not provide evidence in support of these criterion.

C. Eligibility Analysis

1. Lesser Nationally or Internationally Recognized Prize or Award

On motions, the Petitioner asserts he established that he received a lesser nationally or internationally recognized prize or award for excellence in his field of endeavor, as required under 8 C.F.R. § 204.5(h)(3)(i), because he was recognized for his "participation as a musician on the Latin GRAMMY Award-winning recording [redacted]" in the year 2020. Our decision on appeal noted that the supporting evidence explained what supporting categories received trophies and winner certificates for the Grammy award and musicians were not listed as a category that received trophies or winner certificates. We therefore explained that the Petitioner did not establish that his certificate designating his "participation" amounted to a prize or award to meet the plain language of the criterion. We further noted that even if the Petitioner had established that he won the Latin Grammy award as a musician, this award would not relate to his field of endeavor as a musical director. *See Mussarova v. Garland,* 562 F. Supp. 3d 837, 844 (C.D. Cal. 2022) (finding evidence of awards as a water polo player did not demonstrate an award for excellence in the field of water polo coaching). On combined motions, the Petitioner does not address these issues or assert that we erred in our analysis. Rather, his arguments and documents related to the acclaim associated with a Latin Grammy award, which is not at issue here.

The Petitioner also argues that he was a musician on two Latin Grammy nominated recordings in 2021. However, a recording's nomination does not meet the plain language of the criterion, which requires the petitioner's *receipt* of a prize or award *and* that the prize or award be in the petitioner's *field of endeavor*. *See* 8 C.F.R. § 204.5(h)(3)(i) (emphasis added). As a result, the Petitioner has not established that we erred as a matter of law or policy based on the record at the time of our appeal decision or that the evidence submitted on motion establishes his eligibility for this criterion.

2. Evidence of Participation as a Judge

The Petitioner claimed on appeal for the first time, with no evidence, that he demonstrated his participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought under 8 C.F.R. § 204.5(h)(3)(iv). We reserved this issue on appeal. On motions, the Petitioner asserts in his brief that he served as a judge on a panel for a national Christian music competition called [redacted] in 2019. In support, he submits a letter dated July 2025 which provides that the Petitioner judged a competition titled, [redacted]" which took place in December 2022. The author of the letter is the founder of the record label sponsoring the competition. The Petitioner also includes a second letter, undated, by the same author stating the Petitioner was a judge in the competition [redacted] in December 2019. The Petitioner does not explain the discrepancy in the dates for the competition, which should be resolved with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Further, the record does not include corroboration for these letters, such as, information corroborating the identity of the author of the letter, information about the competition, an invitation to the Petitioner sent by the organizers of the competition, documents describing the candidates and judging criteria, and evidence of the Petitioner's participation. *See generally* 6 *USCIS Policy Manual* F.2(B), www.uscis.gov/policy-manual (providing, as guidance, petitioners must show not only that they have been invited to judge the work of others, but also that they actually participated in the

judging of the work of others in the same or allied field of specialization). While we acknowledge that the Petitioner included an image of himself playing the guitar under the title '[redacted]' the printout has no other information, does not identify the source of the image or printout, and does not state he was a judge. The Petitioner has therefore not established this criterion.

3. Evidence of Contributions of Major Significance

The Petitioner asserted in the record below and on appeal that he provided evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field pursuant to 8 C.F.R. § 204.5(h)(3)(v). We reserved this issue on appeal. The Petitioner did not raise new arguments regarding this criterion on motion. On appeal, he asserted that he has released 302 phonograms, which he described as recordings made available to the public and claimed the phonograms demonstrate his contributions as an author, performing musician, and phonographic producer. However, the Petitioner does not provide context for how having 302 phonograms compares to others in the field to demonstrate this contribution is of major significance. *See Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134 (D.D.C. 2013) ("[T]he regulatory requirement that the petitioner demonstrate the 'major significance' of any original contributions means that the petitioner's work must significantly affect [his] field of endeavor"). Nor did he explain how this contribution relates to his field of music direction. *See e.g.*, *Kinuthia v. Rosenberg*, No. CV 17-10255-LTS, 2018 WL 1243955, at *5 (D. Mass. Mar. 8, 2018), *aff'd sub nom.*, *Kinuthia v. Velarde*, No. 18-1244, 2019 WL 11671989 (1st Cir. July 3, 2019), *cert. denied*, 140 S. Ct. 2643, 206 L. Ed. 2d 714 (2020) (upholding petitioner's authorship of a religious book did not relate to his field of engineering).

He also highlighted his letters of recommendation, the authors of which are highly complimentary of the Petitioner, explaining his skills and talents and contributions to their music, teams, and projects. However, the authors do not discuss how the Petitioner's contributions are of major significance to the field of musical directing. For example, one author stated the Petitioner collaborated with him, playing the role of audio engineer and editor for a recording of his client, a gospel singer, and the recording has 153.8 million views. The letter does not explain how the Petitioner's contributions impacted the number of views, or that the number of views was of major significance. Further, none of his letters discuss how his contributions were of major significance to the field of music directing. As another example, one of his letters is authored by one of the founders of [redacted] who stated the Petitioner contributed to the creation and design of their bass guitar. Other than stating that he signed a guitar for sale and spread the brand's name, the author did not provide further details and neither the author nor the Petitioner explained how this particular contribution relates to the field of musical directing.

Similarly, the Petitioner described creating a voice editing course, which he claimed over a thousand students enrolled in, but he does not explain how this is a contribution of major significance, and how this voice editing course was relevant to the field of music directing. As a result, the Petitioner has not established this criterion.

4. Evidence of Display of Work at Artistic Exhibitions or Showcases

The Petitioner asserted in the record below and on appeal that he provided evidence of the display of his work in the field at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). We

reserved this issue on appeal. The Petitioner's arguments on appeal and on motions are similar to those raised in the original petition, with some additional photographs submitted in support of the combined motions.

The Petitioner claimed he attended a morning talk show in Brazil where he was a bassist and musical director. He included two photographs, one of a group of individuals standing together with no indication of the location or the date the photograph was taken. The second photograph is blurred and is of a band playing, again with no further identifying information. More significantly, the Petitioner did not provide evidence corroborating that he performed at the morning show or that the venues (virtual or otherwise) where the work was displayed were artistic exhibitions or showcases. *See generally* 6 *USCIS Policy Manual, supra,* at F.2(B)(1). While Merriam-Webster's online dictionary definition of "exhibition" includes public showings other than those that are artistic in nature, the plain language of the criterion includes the modifier "artistic" and explicitly requires that the exhibitions or showcases be artistic in nature. *Id.* Here, the Petitioner does not address how the venue of a morning show is artistic in nature.

Similarly, the Petitioner argued that he contributed to YouTube videos depicting other artists. He claims the videos demonstrate his work as a performer, songwriter or producer. He, however, does not explain how he contributed to the videos or corroborate his contributions with evidence. Nor does he explain how the YouTube videos amount to an artistic exhibition or showcase. He further argued that he has been recognized on a music platform that captures data on the performance of songs. But, he does not explain how this data corroborates the display of his work in the field at an artistic exhibition or showcase.

The Petitioner also claimed that he performed at Send Brazil, a Christian evangelist event, that had 143 million attendees. However, the evidence provided in support of his performance at this event was photographs of individuals on stage. Other evidence verifying his attendance as a performer at the event was not provided and the photographs alone do not establish, by a preponderance of the evidence, his performance at this event.

For the above reasons, the Petitioner has not established that he meets this criterion.

D. Remaining Criteria

The Petitioner claims for the first time on combined motions that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii) and that he has had commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales pursuant to 8 C.F.R. § 204.5(h)(3)(x). We decline to review these arguments raised for the first time on motions. The scope of the combined motions is limited to the prior decision. 8 C.F.R. § 103.5(a)(1)(i), (ii). Here, the appeal decision did not address these criteria. Further, appellate bodies will generally not decide issues in the first instance. *See Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195, n.5 (2024). Nevertheless, even if the Petitioner were able to establish that he meets these two criteria, he still would not demonstrate at least three of the eligibility criteria to meet the initial eligibility requirements for the classification. *See* 8 C.F.R. § 204.5(h)(3). As a result, we need not reach a determination regarding these criterion. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that

agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).

## III. CONCLUSION

Although the Petitioner has submitted additional evidence in support of the motion to reopen, the Petitioner has not established eligibility by a preponderance of the evidence. *See Matter of Chawathe*, 25 I&N Dec. at 375-76 (providing we consider not only the quantity, but also the quality, including relevance, probative value, and credibility, of the evidence in determining whether a petitioner has met the burden under the preponderance standard). On motion to reconsider, the Petitioner has not established that our previous decision was based on an incorrect application of law or policy at the time we issued our decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

**ORDER:** The motion to reopen is dismissed.

**FURTHER ORDER:** The motion to reconsider is dismissed.

**NOTICE:** Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.