U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 15895806

Date: APR. 5, 2021

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, an artist representative and production company, seeks to temporarily employ the Beneficiary as an actress in the motion picture or television industry. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals who can demonstrate a record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary achievement in the motion picture or television industry: nomination for or receipt of a significant national or international prize or award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(v)(A)-(B).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievements that have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations include the following definition: "*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field."

Next, DHS regulations set forth the initial evidentiary criteria for establishing an individual's record of extraordinary achievement. First, a petitioner can demonstrate the beneficiary's nomination for, or receipt of, significant national or international awards or prizes in the particular field such as an Academy

Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(v)(A). If the petitioner does not offer this information, then it must submit sufficient qualifying exhibits that satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) ("The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met."). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (v).[1]

II. ANALYSIS

Absent evidence of a nomination for or receipt of a significant national or international prize or award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six evidentiary criteria at 8 C.F.R § 214.2(o)(3)(v)(B)(*1*)-(*6*). The Director determined that the Beneficiary did not satisfy any of the claimed criteria. On appeal, the Petitioner maintains that the documentation satisfies six criteria. As discussed below, we find that the evidence does not fulfill at least three criteria, as required.

> *Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements*. 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

In regards to the Beneficiary's past services in productions or events, the Petitioner references material from the magazines *Contigo*, *Risa,* and *Quem*. However, the Petitioner did not demonstrate how the evidence reflects the Beneficiary's services as a lead or starring participant in productions or events. Although the documentation briefly mentions her roles in plays and television series, the material from *Contigo* and *Risa* does not show the Beneficiary's service as a lead or starring participant.

Specifically, the *Contigo* article references the Beneficiary as [redacted] but provides no further material relating to a leading or starring role for the [redacted] Likewise, the *Risa* article indicates that "[redacted]" but does not establish the prominence of the role to be leading or starring for the [redacted]. As it relates to *Quem*, the material consists of two photographs of the Beneficiary, including with another actress, but the Petitioner did not demonstrate how the photographs show the Beneficiary's services as a lead or starring participant in productions or events.

Notwithstanding the above, the Petitioner did not establish how the magazine material qualifies as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements"

[1] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

consistent with this regulatory criterion. Moreover, the Petitioner did demonstrate that the evidence shows the distinguished reputation of the [redacted] or any other productions or events.

In addition, the Petitioner argues that the Beneficiary participated in a print advertising campaign for [redacted] and submits photographs of the Beneficiary and screenshots from *Wikipedia* regarding [redacted] The *Wikipedia* screenshots, however, relate to [redacted] rather than to the specific advertising campaign involving the Beneficiary. Here, the Petitioner did not show that the particular [redacted] advertisement generated a distinguished reputation. Without further supporting documentation, the Petitioner did not demonstrate that the photographs reflect the Beneficiary's leading or starring participation for the [redacted] print advertising campaign.

With regard to the prospective element of this criterion, the Petitioner submits a "Deal Memo" between [redacted] and the Beneficiary and screenshots from YouTube of an interview between [redacted] and the Beneficiary.[2] The evidence, however, occurred after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, we will not consider this evidence.

In addition, the Petitioner references a previously submitted contract between [redacted] and the Beneficiary reflecting that she "will have the lead role in a production that tells the story of [redacted]" Although the evidence indicates the Beneficiary's leading role, the Petitioner did not demonstrate that the production or television series has a distinguished reputation. The evidence, for instance, does not show the prestigious nature or eminent standing of the television production.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary meets this criterion.

> *Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*).

The Petitioner argues that the Beneficiary satisfies this criterion based on her work on [redacted], and as a unionized actress; through testimonial letters; and in a music video from [redacted] band. In order to fulfill this criterion, the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*) requires that "the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications." On appeal, however, the Petitioner does not reference "critical reviews or other published materials by or about the individual

[2] In its brief, the Petitioner provides a partial, uncertified translation of the interview without submitting the original transcription. Any document in a foreign language must be accompanied by a full English language translation. *See* 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit an original transcription and a properly certified English language translation of the material, the Petitioner did not show that the material is accurate and thus supports its claims.

in major newspapers, trade journals, magazines, or other publications." Instead, the Petitioner cites to documentation confirming her participation and involvement in various events. Without the regulatory requirement of evidence of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, the Petitioner did not establish that the Beneficiary meets this criterion.

We note, as discussed under the previous criterion, the Petitioner submitted two articles from *Contigo* and *Risa* and photographs from *Quem*. Neither the articles nor the photographs reflect critical reviews of the Beneficiary representing national or international recognition for her achievements. The material does not show what the Beneficiary achieved through her performances, and the Petitioner did not show how two magazine articles and magazine photographs establish that the Beneficiary has received national or international recognition.

Accordingly, the Petitioner did not demonstrate that the Beneficiary fulfills this criterion.

> *Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*).

The Petitioner argues that the Beneficiary "starred in several major advertising campaigns" for [redacted], [redacted], [redacted], [redacted], [redacted], and [redacted]. The regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*) requires "[e]vidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials." Although the Petitioner provided still shots and photographs of the advertising campaigns, the Petitioner did not demonstrate that the Beneficiary performed in a lead, starring, or critical role for organizations or establishments through the required evidence of "articles in newspapers, trade journals, publications, or testimonials." Moreover, the Petitioner did not explain how participating in advertising campaigns also shows the Beneficiary's leading, starring, or critical roles for the overall organizations or establishments. Further, besides [redacted] the Petitioner did not establish that the organizations and establishments have a distinguished reputation through the required regulatory evidence.

As it relates to the futuristic element, the Petitioner references the "Deal Memo" and YouTube interview previously discussed. As this evidence occurred after the filing of the initial petition, we will not consider these claims. *See* 8 C.F.R. §§ 103.2(b)(1). The Petitioner also argues eligibility based on the [redacted] contract for the Beneficiary to perform in the television series, [redacted] However, the Petitioner did not show how the contract qualifies as "articles in newspapers, trade journals, publications, or testimonials" consistent with this regulatory criterion. In addition, the Petitioner did not demonstrate how performing as an actress in a television series corresponds to her leading, starring, or critical role for [redacted] Furthermore, the Petitioner did not establish that [redacted] enjoys a distinguished reputation through the required regulatory evidence.

For these reasons, the Petitioner did not show that the Beneficiary satisfies this criterion.

> *Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*).

The Petitioner contends that the Beneficiary meets this criterion for the first time on appeal based on "several major advertising campaigns in Brazil." However, as the Petitioner did not claim the Beneficiary's eligibility for this criterion before the Director, either at the time it filed the petition or in response to the Director's request for evidence (RFE), we will not consider this claim in our adjudication of this appeal.[3] *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criteria relating to 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*4*). Although the Petitioner claims the Beneficiary's eligibility for two additional criteria on appeal, relating to significant recognition at 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*) and high salary at 8 C.F.R. § 214.2(o)(3)(v)(B)(*6*), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(v)(B), we reserve these issues.[4] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary achievement. 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.

[3] In the RFE, the Director specifically indicated that the Petitioner "did not submit any evidence for this option." In response, the Petitioner did not claim the Beneficiary's eligibility for this criterion.

[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).