U.S. Citizenship and Immigration Services

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

In Re: 37098204

Date: APR. 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an agent, seeks to classify the Beneficiary in the motion picture or television industry. This O-1 nonimmigrant visa classification is available to individuals 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).

Service Center Operations (SCOPS) denied the petition because the Petitioner did not satisfy the consultation requirement. 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

As relevant here, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D) requires written advisory opinions from the appropriate consulting entities. Consultation with an appropriate U.S. peer group, labor, and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved. Evidence of a consultation shall be in the form of a written advisory opinion from a peer group, labor, and/or management organization with expertise in the specific field involved. 8 C.F.R. § 214.2(o)(5)(i)(B). The petitioner shall obtain a written advisory opinion from a peer group, labor, and/or management organization with expertise in the specific field involved, and the advisory opinion shall be submitted when the petition is filed. 8 C.F.R. § 214.2(o)(5)(i)(C). Written evidence of consultation shall be included in the record in every approved O petition. 8 C.F.R. § 214.2(o)(5)(i)(D). In the case of an individual of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the individual's occupational peers and a management organization in the area of the individual's ability. 8 C.F.R. § 214.2(o)(5)(iii).

## II. ANALYSIS

At initial filing, the Petitioner provided documentation, including a tentative itinerary and summaries of oral agreements, reflecting the Beneficiary's intended employment, in part, as an art director in the motion picture and television industry (MPTV). Specifically, the Beneficiary intends to be employed as an art director for [redacted] on the feature film, [redacted] and for [redacted] for animated short videos for games, [redacted] and [redacted] In addition, the Petitioner submitted an advisory opinion from [redacted] "a national arts service organization that supports occupational peers of the proposed beneficiary."

In the request for evidence (RFE), SCOPS informed the Petitioner:

> You requested to classify the beneficiary as an O-1B nonimmigrant. There are two different ways to qualify. If the beneficiary is coming to the United States to work on a motion picture or television production, you must establish that the beneficiary has a demonstrated record of extraordinary achievements in motion picture or television productions and provide advisory opinions from both labor and management organizations.
>
> If the beneficiary is coming to the United States solely to engage in a creative endeavor unrelated to motion picture or television productions or if any work or appearance on a motion picture or television production is incidental to the beneficiary's non-MPTV work as an artist, then you must establish that the beneficiary has distinction in the arts. According to the record, the beneficiary will be employed by [redacted] as an Art Director on the feature film [redacted] In addition, the record indicates the beneficiary will be employed by [redacted] as Art Director "for upcoming short videos [redacted] and [redacted] Therefore, unless you establish that this proposed work is incidental to the beneficiary's artistic work in another industry, you are required to provide both advisory opinions and establish the beneficiary has a demonstrated record of extraordinary achievement in motion picture or television productions.

Moreover, SCOPS stated that the advisory opinion from [redacted] was insufficient to satisfy the consultation requirement in the MPTV industry. Further, SCOPS advised that the [redacted] and the [redacted] may be the appropriate labor organizations for the Beneficiary's profession.[1]

In response, the Petitioner claimed that the Beneficiary's role as an art director for [redacted] was incidental to his artistic work in the animation and digital artist industry. SCOPS determined that the submitted deal memo did not support the Petitioner's assertion and highlighted language in the memo and the Beneficiary's duties that he would perform on the film. Thus, SCOPS

[1] SCOPS provided the Petitioner with the organizations' contact and address information.

found that "[b]ecause the beneficiary's work on the feature film is considered essential to the production of the film, he will be employed in the motion picture and television industry."

Although SCOPS acknowledged the Petitioner's submission of an advisory opinion from [redacted] SCOPS determined that "[s]ince the beneficiary will be employed in the motion picture and television industry, the record must also include an advisory opinion from an appropriate management organization." Because the Petitioner did not provide such required evidence, SCOPS denied the petition.

On appeal, the Petitioner argues that "[w]e submit that at this stage, the burden should have been shifted to [SCOPS] to submit further request(s) to the appropriate labor organization(s) within five days of receiving the petition pursuant to 8 CFR 214.2(o)(5)(i)(F)" and a "second letter from the labor union [redacted] which, in addition to the peer group letter from [redacted] had further fulfilled the requirements of 8 CFR 214.2(o)(5)(i)(F). We do not agree. The regulation at 8 C.F.R. § 214.2(o)(5)(i)(F) states:

> In a routine processing case where the petition is accompanied by a written opinion from a peer group, but the peer group is not a labor organization, the Director will forward a copy of the petition and all supporting documentation to the national office of the appropriate labor organization within 5 days of receipt of the petition . . . .

Here, the Petitioner provided an advisory opinion from [redacted], a peer group that was not within the MPTV industry. The advisory opinion from [redacted] related to the Beneficiary's occupation as a "Digital Artist" rather than his occupation in the MPTV industry as an "Art Director." Furthermore, the regulation at 8 C.F.R. § 214.2(o)(5)(i)(F) requires SCOPS to forward a copy of the petition and supporting documentation to the appropriate labor organization when the Petitioner provides a written opinion from a peer group, but the peer group is not a labor organization. Here, the Petitioner did not establish [redacted] peer group status. In fact, the Petitioner indicates on appeal that [redacted] is a "labor union." Because the Petitioner provided an advisory opinion from a peer group [redacted] that is not within the Beneficiary's occupational peers and [redacted] is not peer group but a labor organization, the regulation at 8 C.F.R. § 214.2(o)(5)(i)(F) does not apply, and SCOPS was not required to forward the petition and supporting documentation.

Moreover, consultations shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. 8 C.F.R. § 214.2(o)(5)(iii).[2] The Petitioner did not submit a consultation from the management organization in the area of the Beneficiary's ability at initial filing or in response to the RFE. Although the Petitioner offers on appeal an advisory opinion from [redacted] we will not consider this evidence that was not presented before SCOPS. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence to be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put

[2] *See also generally* 2 *USCIS Policy Manual* M.7(B)(4), https://www.uscis.gov/policy-manual (indicating that the petitioner must provide consultations in the form of advisory opinions from both the union representing the beneficiary's occupational peers and a management organization in the area of the beneficiary's ability).

on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

Finally, the Petitioner has not demonstrated how SCOPS erred as a matter of law or policy at the time of the rendered decision. Accordingly, the Petitioner has not shown eligibility for the consulting requirements under 8 C.F.R. § 214.2(o)(2)(ii)(D), 8 C.F.R. § 214.2(o)(5)(i)(B)-(D), and 8 C.F.R. § 214.2(o)(5)(iii).

## III. CONCLUSION

The Petitioner did not satisfy the written advisory opinion requirements from the appropriate consulting entities. 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.