U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-R- LLC

DATE: AUG. 6, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a restaurant, seeks to temporarily employ the Beneficiary as an executive chef. It seeks to classify him as an O-1 nonimmigrant, a visa classification available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim 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 California Service Center denied Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international or award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner asserts that the Director did not properly consider the record and maintains that the evidence satisfies the regulatory requirements.

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 extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements 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 define "extraordinary ability in the field of arts" as "distinction," and "distinction" as "a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative initial evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of nomination for or receipt of "significant national or international awards or prizes" such as "an

Academy Award, an Emmy, a Grammy, or a Director's Guild Award," or at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C).

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 extraordinary ability in the arts. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iv).[1]

II. ANALYSIS

Absent evidence the Beneficiary has been nominated for, or received, a significant national or international award or prize, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to at least three of the six initial evidentiary criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Beneficiary satisfied two: leading, starring, or critical role for organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) and high salary at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*). We agree with the Director as the record reflects that the Petitioner provided sufficient evidence establishing that the Beneficiary fulfilled both criteria. The Petitioner maintains on appeal that the exhibits satisfy two additional criteria.[2] For the reasons discussed below, we find that the documentation does not meet any other evidentiary categories.

> *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)(iv)(B)(*1*).

The Petitioner contends that it provided recommendation letters from [redacted] food and beverage manager at the [redacted] in the Ukraine, and from [redacted] president of the Association of Head Chefs, to meet this criterion. The Petitioner argues that "nothing in the regulation itself excludes these letters from consideration" and "such letters may reasonably be

[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."

[2] The Petitioner also argues that the Director should have given weight to insufficiently translated evidence and "plans to supplement this brief with properly certified translations shortly and will forward them to the AAO soon." Any document in a foreign language must be accompanied by a full English language translation. 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.* As of the date of this decision, the Petitioner has not submitted the translations; therefore, we consider the record to be complete as it now stands.

characterized as, or contain, critical reviews, publicity releases, publications, or endorsements." The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) requires the Petitioner to demonstrate that the Beneficiary "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." Here, the Petitioner has not established that the recommendation letters reflect "critical reviews, advertisements, publicity releases, publications contracts, or endorsements" as required by the regulation. Moreover, while the letters indicate that the Petitioner oversaw the food operations for company anniversary, as well as served guests for the hotel's "New Year's Eve Gala" in 2015 and 2016, they do not contain detailed information showing that he performed as a lead or starring participant for events with distinguished reputations.

Similarly, the Petitioner argues that a letter from director of education at the fulfills the criterion. Again, the Petitioner did not show that a reference letter meets the plain language of this regulatory criterion that requires evidence of "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." In addition, does not indicate that the Beneficiary has performed as a lead or in a starring role for "productions or events which have a distinguished reputation." Rather, generally opines that the Beneficiary "is an extraordinary chef who has set himself apart from his peers" without identifying any productions or events that he performed services in a leading or starring role.

Likewise, the Petitioner contends that the Beneficiary performed in a lead for in the United Kingdom. Specifically, the Petitioner references a recommendation letter from Paul Bancroft, general operations manager, who stated that the Beneficiary "was pivotal in the turnaround of the successes . . . with his food presentation" including the pub being recognized with a five-star review in the and named one of the country's top 25 pubs in the newspaper. Although the documentation relates to the pub, the evidence makes no mention of the Beneficiary's performance for "productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements" consistent with this regulatory criterion.

In addition, the Petitioner argues that the Beneficiary satisfies this criterion based on his participation on a panel of 100 judges for the in 2015. Although the Petitioner presented emails thanking the Beneficiary for his participation and extending an invitation to judge for the 2016 awards, the documentation does not establish that he performed as a lead or starring participant "as evidenced by critical reviews, publicity releases, publications, or endorsements." Furthermore, the Petitioner did not show, for example, how his role or performance differentiated from the other judges on the panel to reflect a leading or starring role. Moreover, while the Petitioner submits screenshots from saltawards.com regarding background and history of the awards, it does not demonstrate that the have a distinguished reputation.

Finally, this regulatory criterion requires that the Beneficiary will prospectively perform for 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. While the Petitioner presented an employment contract, it does not identify specific productions or events, let alone indicate whether the Beneficiary will perform as a leading or starring participant in productions or events that have a distinguished reputation. As the record does not document future productions or events or evince that they have a distinguished reputation, the Petitioner has not demonstrated that the Beneficiary satisfies the requirements of this evidentiary criterion.

> *Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*).

As evidence under this criterion, the Petitioner argues that its letter from [redacted] discussed above, satisfies this criterion. In particular, [redacted] claimed that the Beneficiary's "education and years of work experience, documents and verifies his vast background and in depth experience in vital roles in the culinary industry." Although [redacted] provides her opinion, she does not explain or provide examples of how the Beneficiary "received significant recognition for achievements" in the field. While [redacted] generally references the Beneficiary's professional education and experience, she does not sufficiently explain how he has received significant recognition in the field for his work, nor has the Petitioner shown that the letter itself constitutes such recognition. The issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. The record lacks documentary evidence showing that the Beneficiary has received such recognition.

III. CONCLUSION

The record does not contain evidence of the Beneficiary's nomination for or receipt of a significant national or international award or prize, at least three of six listed categories of documents, or comparable evidence of his eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C). Accordingly, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of T-R- LLC*, ID# 1577773 (AAO Aug. 6, 2018)