U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF L-B-

DATE: AUG. 9, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a music agent, seeks to temporarily employ the Beneficiary as a jazz pianist. It seeks to classify her 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 Vermont 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 Petitioner provided evidence relating to four criteria but did not satisfy any of them. The Petitioner maintains on appeal that she fulfills those four criteria. For the reasons discussed below, we find that the exhibits do not meet any evidentiary categories.

> *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)(iv)(B)(*2*).

The Petitioner provided a screenshot from goscon.co.kr reflecting an interview of the Beneficiary. The text in the screenshot summarizes the Beneficiary's musical career and asks questions relating to musical education. However, the screenshot does not demonstrate that the Beneficiary has been nationally or internationally recognized for her achievements. Moreover, the Petitioner did not submit supporting evidence establishing that [redacted] qualifies as a major newspaper, trade journal, magazine, or other publication. Accordingly, the Petitioner did not show that the Beneficiary received national or international recognition for achievements evidenced by critical reviews or published material in major publications consistent with this regulatory 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*

[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."

> *evidenced by articles in newspapers, trade journals, publications, or testimonials.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*).

The Petitioner asserts the Beneficiary's eligibility for this criterion based on assisting with other Korean musicians' album recordings, performing on Korean television programs, and playing with Korean musicians. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) requires a beneficiary's role "for organizations and establishments that have a distinguished reputation." Here, the Petitioner has not identified the organizations and establishments that she served through these projects. Further, although not claimed, we note that the Petitioner has not established that the Beneficiary performed in a lead, starring, or critical role for the organizations and establishments that produced the albums, television programs, and concerts. Moreover, while the Petitioner provided recommendation letters asserting that the Beneficiary performed in a critical role, they do not contain specific information reflecting such a role. For instance, CEO for , stated that the Beneficiary appeared on the television show, "to perform a live keyboard session in 2014 to the delight of her Korean fans." however, did not show how the Beneficiary's one-time appearance on a television program was critical to the program or production company.

In addition, the Petitioner argues that the Beneficiary performed in a critical role for Specifically, the Petitioner references a letter from CEO for who stated that the Beneficiary "has worked with and was part of the in some capacity from 2003 to 2012." Although the Petitioner submitted several screenshots dated between 2007 and 2011 that contained photographs of and listed the members, the Beneficiary is not listed as a member contrary to claim. While the record does contain one 2007 screenshot and album labels that list the Beneficiary as a member of the band, the Petitioner has not established the extent of her role, what contributions she made, and how her role was critical to Moreover, the Petitioner did not demonstrate how the Beneficiary's role as a member of "Heritage" was critical to overall. Further, although the aforementioned screenshots relate to the Petitioner did not show that Production enjoys a distinguished reputation. Accordingly, the Petitioner has not shown that the Beneficiary has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation.

Further, this regulatory criterion requires that the Beneficiary will prospectively perform in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. The Petitioner provided a letter from founder of the who stated that he has asked the Beneficiary to perform as a piano accompanist for two productions, and Although claims that the Petitioner will perform in a critical role, he does not provide specific details demonstrating the critical nature of her role for the organization. In addition, the Petitioner presented screenshots from oscarmicheauxrep.tripod.com and newspaper articles relating to events at however, the evidence does not indicate that the theater program enjoys a distinguished reputation. Even

though the Petitioner submitted additional evidence that [redacted] received a grant from the Boston Foundation, it did not show that receiving funds from this philanthropic organization establishes the distinguished reputation of [redacted]

The Petitioner also submits a letter from [redacted] minister of music at [redacted] who stated that the Beneficiary "will serve as our instructor and performer at [redacted] and "[h]er role will be critical to the success of [redacted] Similar to the Petitioner's previously discussed letters, [redacted] does not support his claims with specific information demonstrating that the Beneficiary will perform in a critical role for [redacted] or the church. Further, while the Petitioner presented floor plans of the academy, past concert pamphlets, and a screenshot from koreadaily.com regarding the expansion and remodeling of the sanctuary, the evidence does not show that the [redacted] has a distinguished reputation. As the record does not document a future lead, starring, or critical role for organizations and establishments that have a distinguished reputation, the Petitioner has not demonstrated that the Beneficiary satisfies the requirements of this evidentiary 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 pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*).

The Petitioner argues that it provided evidence showing that the Beneficiary was selected to perform at the [redacted] as well as expert opinion letters testifying that the festival "is considered to be a huge honor and achievement in the field of Jazz music." In order to meet this criterion, the Petitioner must demonstrate that the Beneficiary "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 pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications." Here, the Petitioner did not establish that her performance at the [redacted] is considered to be a major commercial or critically acclaimed success. Although the Petitioner submitted recommendation letters indicating that the Beneficiary "earn[ed] a place among the [redacted] at the [redacted] held at the [redacted] it did not offer evidence of her major commercial or critically acclaimed success such as box office receipts or occupational achievements reported in trade journals, major newspapers, or other publications consistent with this regulatory criterion. For these reasons, the Petitioner did not demonstrate that the Beneficiary satisfied this 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 contends that it provided testimonial letters to show that the Beneficiary has received significant recognition for her achievements. While the letters summarized the Beneficiary's musical work and highlighted her personal accomplishments, they do not demonstrate that she has "received significant recognition."[2] For instance, professor at indicated that the Beneficiary performed at the and the however, did not explain that she received significant recognition for her performances at the festivals. Similarly, , jazz pianist, stated that the Beneficiary "has produced four CDs with her band, in Korea." did not show what recognition the Beneficiary received from producing the CDs. Likewise, producer and composer at , listed several bands, concerts, and other events in which the Beneficiary participated without indicating whether she garnered significant attention for her performances. Here, the letters do not sufficiently explain how the Beneficiary has received significant recognition in the field for her work, nor has the Petitioner shown that the letters themselves constitute 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 L-B-*, ID# 1363639 (AAO Aug. 9, 2018)

[2] Although we discuss a sampling of letters, we have reviewed and considered each one.