U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF J-G-G-

DATE: AUG. 15, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, acting as an agent, seeks to classify the Beneficiary, an actor, as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas 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.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary meets at least three of the six criteria listed under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*).

On appeal, the Petitioner submits additional documentation and asserts that the record contains sufficient evidence demonstrating the Beneficiary's eligibility.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary 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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part:

> *Extraordinary ability in the field of arts* means distinction. Distinction means 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.

That provision also defines, in pertinent part: "*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts."

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's recognition in the field through documentation that the beneficiary has been nominated for, or is the recipient 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)(iv)(A). In the alternative, a petitioner must satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*). If certain criteria in paragraph (o)(3)(iv)(B) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(C).

The submission of documents relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Id.* Accordingly, where a petitioner provides qualifying evidence under at least three criteria, we will determine whether the totality of the record shows eligibility under 8 C.F.R. § 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii).

II. ANALYSIS

The Beneficiary is an actor, for whom the Petitioner filed the petition as her agent. The Director determined that the Beneficiary satisfied only one of the six criteria, of which she must meet three. For the reasons discussed below, we find that it has not satisfied the requisite criteria and, regardless, the evidence in the aggregate is not indicative of eligibility. In addition, we conclude that the Petitioner has not provided a consultation from a peer group in the Beneficiary's field, as required under 8 C.F.R. § 214.2(o)(5)(ii)(A).

A. Extraordinary Ability

1. Regulatory Criteria

The Petitioner does not assert, and the record does not reflect, that the Beneficiary has been nominated for, or is the recipient of, significant national or international awards or prizes in her field. *See* 8 C.F.R. § 214.2(o)(3)(iv)(A). Accordingly, the Petitioner must satisfy at least three of the six regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The Director found that the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which she is engaged, and thus, she satisfies the criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). The record contains favorable testimonials supporting that determination. On appeal, the Petitioner maintains that the Beneficiary meets two additional criteria because she has served as a lead or starring participant in productions or events with a distinguished reputation and has achieved national or international recognition for

achievements evidenced by critical reviews or other published materials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*), (*2*).

> *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 Director acknowledged that the Beneficiary performed in a lead or starring role with the but determined that the materials relating to this participation "when reviewed with the other evidence in its totality fail to sufficiently show that the productions this theatre creates have a distinguished reputation when compared to other productions in the field." The regulation, however, does not require that the production or event be comparatively eminent, only that it be distinguished. We will consider the documentation in that context.

The record contains publications establishing that the Beneficiary's participation as an actress in and translator for version of ' at the historic in Turkey was a lead role for a production with a distinguished reputation. Major media outlets including and covered the production and its focus on bringing together locals, archeologists, and officials to debate the future of the gardens. interviewed the Beneficiary and art director together. Also, many of the articles mention her by name. The focus of much of the coverage is the future of the with little discussion of the theatrical merits of the production. Nevertheless, these items demonstrate that the project had a distinguished reputation.

While we find that the Beneficiary has participated in a leading role for a production with a distinguished reputation, we agree with the Director that the record lacks evidence that she will do so. The record verifies that the Beneficiary has received employment offers. Specifically, it contains letters of intent for projects with the an offer from for roles in two films; and Deal Memos from playwrights and and the We discuss these projects below.

The information relating to corroborates that the studio has produced at least one film that garnered some attention at film festivals, but the Petitioner did not sufficiently demonstrate that future films from this entity, in which the Beneficiary will star, are likely to enjoy a distinguished reputation. vice president of discusses the recognition of its film, ' in which the Beneficiary played the head nurse, at film festivals. The Petitioner supplied materials from the confirming that a different performer won the best actress prize at one film festival and the film itself was nominated

[1] The Petitioner submitted materials showing that was the highest circulated newspaper in Turkey (verified by BPA Worldwide) before government seizure.

for awards at seven other festivals. It also appears in the film catalogue. The where the film received a nomination for a is "one of only a handful" of -affiliated festivals. This promotional information, however, does not adequately demonstrate that every short film nominated there enjoys a distinguished reputation. The record lacks information about the remaining festivals where the film was nominated for recognition or evidence that routinely produces films that have a distinguished reputation. Moreover, does not offer information about the films in which she proposes to cast the Beneficiary and the Petitioner has not supplied any previews,[2] advertisements, publicity releases, or publications examining these projects.

Similarly, the record is insufficient to demonstrate that any of the Beneficiary's remaining future projects is anticipated to enjoy a distinguished reputation. founder of explains that the group has significant support from the in New York and prominent Turkish-Americans but does not provide examples of the distinguished reputation of its past or future projects. The record lacks information about or his proposed project. Finally, confirms that she is writing a play entitled ' ' inspired by the production the ' ' in Turkey. She does not, however, detail the reputation of her past projects or clarify why her work will enjoy a distinguished reputation. The record contains no previews, advertisements, publicity releases, or publications relating to or her projects. For all of these reasons, the Petitioner has not established that the Beneficiary will perform in a lead or starring role for a production or event with a distinguished reputation.

> *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 articles and media coverage in the record do not satisfy the requirements of the criterion. First, the record contains no critical reviews of the Beneficiary's performances. The promotional piece in for the upcoming ' a play in which she performed, is not a review. In addition, the above mentioned published materials about ' and the are not from theater critics and do not evaluate the performance. They are also not by the Beneficiary. The remaining issue, then, is whether these items are about her, reflecting her national or international recognition for achievements.

None of the remaining materials are about the Beneficiary. The promotional item for ' ' mentions her one time in the list of 18 cast members and includes no other details about her. The interview is with the art director and the Beneficiary, and the interview printed in the section of is with her alone. While notable, in these interviews, she does not talk about herself, her role, or how she translated the work. Rather, she explains how others organized plan to come to Turkey and selected the play to perform.

[2] While we recognize that reviews would not be available for future projects, we would accept preview pieces as "reviews" of upcoming work.

Accordingly, these pieces are not about her. The other articles about [redacted] either mention her in passing as a member of the cast, as the translator, or not at all. Thus, these materials do not serve to meet this criterion.

2. Qualitative Analysis

Even if we concluded that [redacted] projects are likely to enjoy a distinguished reputation,[3] and that the [redacted] and [redacted] articles constituted qualifying published material about the Beneficiary,[4] we must still consider all of the documents in the aggregate to determine whether they are indicative of eligibility. *See* 59 Fed. Reg. 41820; *Chawathe*, 25 I&N Dec. at 376. For the reasons discussed below, the record does not sufficiently demonstrate the Beneficiary has 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) (definition of extraordinary ability in the arts).

The Beneficiary's past services as a lead or starring participant with [redacted] are not persuasive in establishing her eligibility. Even though the production enjoyed a distinguished reputation, it did so because of its mission to highlight the controversy over the future of the [redacted] This information does not demonstrate that the Beneficiary's involvement shows a high level of achievement in the arts. Similarly, the published materials about that project, even if we concluded that they were about her, focus on the mission of the [redacted] and the controversy over the gardens, they do not evaluate the performance as a piece of theater art and do not suggest that she enjoys recognition substantially above that ordinarily encountered in the performing arts.

The future projects for which the Petitioner has provided relevant documentation under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) are the movies for [redacted] As noted, while this company has produced one movie that garnered several film festival nominations and one best actress award, the overall evidence of its reputation is insufficient to demonstrate that its offer to cast the Beneficiary is reflective of her degree of skill and recognition substantially above that ordinarily encountered in the field. Specifically, there is no corroboration that the entity attracts renowned, leading, or well-known talent.

Similarly, the Petitioner's attendance at the prestigious [redacted] and participation in their student performances do not demonstrate her eligibility. While it is a prestigious school with several well-known alumni, the record does not establish that attending the school as a student is indicative of recognition in the field.

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[3] *See* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*).
[4] *See* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*).

Finally, we acknowledge the favorable letters from directors, actors, an artistic director, and teachers, but find that they do not sufficiently establish the Beneficiary's eligibility. These letters affirm that she is a professional actress who takes direction well and displays a certain level of skill. For example, director of states that her "unique abilities gave her that edge over all other actresses [at the audition] because of her commitment to exhibit the character she was portraying in the best way possible." In addition, characterizes the Beneficiary as exuding "a special kind of magic as she bring depth and candor to her characters . . . and [her] ability to convey this with subtlety and power creates a strong connection between the audience and the story, which is at the heart of a good film." Attestations of professionalism and talent, while notable, do not by themselves confirm that she is renowned, leading, or well-known. For all of the reasons above, the totality of the evidence does not show the Beneficiary's eligibility for the classification sought.

B. Consultation

The regulation at 8 C.F.R. § 214.2(o)(5)(ii)(A) requires documentation of consultation "with a peer group in the area of the alien's ability (which may include a labor organization), or a person or persons with expertise in the area of the alien's ability." The Petitioner presented a letter from program director of raising no objection to the requested visa classification. He explains that his organization's services "facilitate the creation of art by helping artists and creative professionals function more effectively as businesses – we provide access to funding, insurance, education, and more." The record does not reflect that is a peer group in the area of performing arts, the Beneficiary's occupation. Rather, it is a business consulting firm that offers services to any artistic entrepreneur. Accordingly, the letter is not a proper consultation from a qualifying peer group.

III. CONCLUSION

The Petitioner has not provided the necessary initial evidence and the record in the aggregate does not establish the Beneficiary's eligibility for the classification. In addition, the Petitioner has not submitted the required consultation.

ORDER: The appeal is dismissed.

Cite as *Matter of J-G-G-*, ID# 526826 (AAO Aug. 15, 2017)