U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 9870747

Date: AUG. 25, 2020

Appeal of California Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, a model, as an O-1 nonimmigrant, a visa classification available to aliens 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 the petition on the following four grounds: 1) the Petitioner did not demonstrate its relationship and qualification as a United States agent, 2) the Petitioner did not provide a sufficient contract, 3) the Petitioner did not satisfy the advisory opinion requirement, and 4) the Petitioner did not show that the Beneficiary received a nomination or receipt of a significant national or international award, or at least three of six possible forms of documentation.

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, the regulation at 8 C.F.R. § 214.2(o)(2)(i) provides that a petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. In addition, a United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. See 8 C.F.R. § 214.2(o)(2)(iv)(E). Moreover, the regulation requires any written contracts between the petitioner and the beneficiary or, if there are not any, a summary of the terms of the oral agreement. See 8 C.F.R. § 214.2(o)(2)(ii). Furthermore, section 214(c)(6)(A)(i) of the Immigration and Nationality Act (the Act) requires the petitioner to submit an advisory opinion from a peer group or a labor organization. See also 8 C.F.R. § 214.2(o)(2)(ii)(D) and 214.2(o)(5) If the petitioner establishes that an appropriate peer group or labor organization does not exist, then a petition may be adjudicated without the advisory opinion. See Section 214(c)(6)(C) of the Act and 8 C.F.R. § 214.2(o)(5)(i)(G).

As it relates to a beneficiary, 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." See 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. See 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

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

On appeal, the Petitioner submits a brief addressing only two out-of-the four grounds for the Director's denial. Specifically, the Petitioner contends that it satisfied the contract requirement, and it demonstrated that the Beneficiary met three of the categories of evidence. However, the Petitioner does not dispute the Director's decision regarding the United States agent relationship and qualification. Moreover, the Petitioner does not challenge the Director's decision relating to the advisory opinion requirement.

Accordingly, we will not address the two uncontested grounds on appeal, and we deem them to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. See, e.g., Matter of M-A-S-, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

Moreover, since the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the contract and Beneficiary's satisfaction of three categories of evidence. See INS v. Bagamasbad, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the

[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."

results they reach"); see also Matter of L-A-C-, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

III. CONCLUSION

The Petitioner did not demonstrate that it satisfied the statutory and regulatory requirements to establish the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary. 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.