U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35075460

Date: DEC. 11, 2024

Appeal of California Service Center Decision

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

The Petitioner, an artistic production, drama, and dance class business, seeks to classify the Beneficiary as an artistic director and drama and art teacher of extraordinary ability. To do so, the Petitioner pursues O-1 nonimmigrant classification, available to individuals 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, concluding the Petitioner did not establish the Beneficiary's satisfaction of the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international award, or at least three of six possible forms of documentation. The matter is now before us on appeal.[1] 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, 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

[1] The Petitioner filed Form I-290B, Notice of Appeal or Motion, indicating representation by an attorney. However, the Petitioner did not submit Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. *See* 8 C.F.R. § 292.4(a). We informed the Petitioner that we considered the matter to be self-represented and if the Petitioner wished to be represented, a properly filed Form G-28 must be submitted. In response, we received Form G-28 for attorney [redacted] however, Form G-28 also shows representation for the Beneficiary rather than for the Petitioner, including a signature by the Beneficiary and dated January 16, 2024, eight months prior to the Director's denial. A beneficiary of a petition is not a recognized party in such a proceeding. *See* C.F.R. § 102.2(a)(3). Because the Petitioner did not provide a properly executed Form G-28, we consider the appeal to be self-represented.

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).

II. ANALYSIS

The Director determined the Petitioner did not claim the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, the Director concluded the Petitioner established the Beneficiary's eligibility for only one criterion, national or international recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*). On appeal, the Petitioner contends the Beneficiary satisfies an additional three. For the reasons discussed below, the Petitioner did not establish the Beneficiary meets at least three of the regulatory criteria.

> *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*).

This criterion requires evidence of the beneficiary's past lead or starring participation in distinguished productions or events, and the beneficiary's prospective lead or starring participation in distinguished productions or events.[2] At initial filing, the Petitioner's cover letter did not claim eligibility for this criterion. The Director issued a request for evidence (RFE) informing the Petitioner, in part:

> The evidence you submitted in order to satisfy the past component of this criterion is insufficient. You submitted articles from, but not limited to, articles in Tribuna de Minas, Estado de Minas, Hoje em Dia, O Folha de Minas, Jornal do Buritis, and MG Turismo. You also submitted articles from magazines such as Encontro, Cenario Minas, Cultural Magazine Em Voga, and the Royal Academy of Dance. You did not submit evidence showing the articles appeared in publications with the breadth of

[2] *See generally* 2 *USCIS Policy Manual*, M.4(D)(2)(appendix), https://www.uscis.gov.policymanual.

> coverage and readership that would show the productions as having a distinguished reputation.
>
> The evidence you submitted in order to satisfy the future component of this criterion is insufficient. You submitted a contract between the beneficiary and the petitioner outlining her future lead role; however, you did not submit evidence establishing [the Petitioner] as having a distinguished reputation.

In response, the Petitioner again did not specifically claim eligibility for this criterion. However, under the Petitioner's claim of eligibility for the national or international recognition criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*), the Petitioner addressed the Director's reference to "breadth of coverage of readership." Moreover, the Petitioner stated that "we kindly point out a discrepancy made by the Service in the RFE letter. During the initial filing, we did not include any articles or publications from Tribuna de Minas, Cultural Magazine Em Voga, and the Royal Academy of Dance, as stated in the RFE letter."[3]

In denying the petition, the Director repeated the RFE statements and indicated that the "RFE response did not include additional evidence" and "USCIS concludes you have abandoned your attempt to satisfy this criterion." On appeal, the Petitioner does not address the Director's finding of the Petitioner's abandonment of this criterion. Instead, the Petitioner argues the Director made a factual error by referencing articles from three publications that were not submitted and "request[s] a thorough review and reconsideration of the evidence actually provide in support of the petition." The record does not contain articles from *Encontro*, *Cenario Minas*, *Cultural Magazine Em Voga*, and the *Royal Academy of Dance*. However, this claimed error was, at most, harmless. *See generally Matter of O-R-E-*, 28 I&N Dec. 330, 350 n.5 (BIA 2021) (citing cases regarding harmless or scrivener's errors).

Again, the Petitioner never claimed eligibility for this criterion, and the Petitioner does not specify which evidence, if any, should be reviewed and reconsidered in the record. Furthermore, the Petitioner does not identify which productions, if any, the Beneficiary has served as a leading or starring participant and explain how those productions have distinguished reputations. Moreover, the Petitioner does not demonstrate how the evidence qualifies as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." *See Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support). The burden remains with the Petitioner to establish eligibility for the benefit. *See* 8 C.F.R. § 103.2(b)(1); *Chawathe*, 25 I&N Dec. at 375-76.

As it relates to the Beneficiary's prospective services, the Petitioner references its RFE arguments in relation to the major commercial or critically acclaimed successes criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) criterion. Specifically, the Petitioner points to its number of views and subscribers on its YouTube channel; the geographic location, population, and wealth of [redacted] Brazil; and the number of its followers for its courses. Again, this criterion requires evidence that the Beneficiary will perform as a leading or starring participant in productions that have distinguished reputations "as evidenced by critical reviews, advertisements, publicity releases,

[3] The record does not contain articles from *Encontro*, *Cenario Minas*, *Cultural Magazine Em Voga*, and the *Royal Academy of Dance*.

publications contracts, or endorsements." Here, the Petitioner did not demonstrate how references to YouTube subscribers and viewers, [redacted] Brazil statistics and geographic information, and course figures qualify as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements," as required under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*).

For these reasons, the Petitioner did not establish the Beneficiary satisfies 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*).

To meet this criterion, the evidence must establish the beneficiary has received significant recognition for one or more achievements from an organization, critic, government agency, or other recognized expert in the field.[4] The Petitioner contends:

> The officer's statement contains two significant factual inaccuracies. First, contrary to the officer's assertion, the letter from [redacted] was included in the initial petition submission and not in the Response to the Request for Evidence (RFE). Second, the claim that the beneficiary was selected as a juror for [redacted] in 1999 and 2000 is incorrect, as this information was never presented by us. These inaccuracies reflect a fundamental error in the decision-making process and necessitate a reassessment of the petition based on accurate information.

Although the Petitioner is correct in stating the letter was submitted at initial filing, the record reflects the Petitioner resubmitted the letter in response to the Director's RFE. Moreover, the Petitioner provided two letters, which will be discussed further below, indicating the Beneficiary served on a jury for three editions of the [redacted] rather than the [redacted] However, these claimed errors were, at most, harmless. *See generally O-R-E-*, 28 I&N Dec. at 350 n.5. Besides pointing to these two issues, the Petitioner does not challenge any of the Director's other findings for this criterion.

Notwithstanding, the record reflects the Petitioner provided identical or nearly identical letters, suggesting the individuals were not the actual authors of the material. Accordingly, the letters lack probative value and call into question the persuasive value of the letters' content. *See Hamal v. U.S. Dep't of Homeland Security*, No. 19-cv-2534, 2021 WL 2338316, at 4* n.3 (D.D.C. June 8, 2021). Specifically, letters from the co-founder of the Petitioner, [redacted] referenced above by the Petitioner, mirror each other. Likewise, the letters from [redacted] are identical.

In addition, the Petitioner submitted letters claim to be independent or impartial, but the authors have worked with the Beneficiary questioning their independence or impartiality. For instance, the letter from Dr. [redacted] claims that "[t]his statement is an independent expert advisory letter";

[4] *See generally 2 USCIS Policy Manual, supra,* at M.4(D)(2)(appendix).

however, the letter states that he has "had the pleasure of working with the [Beneficiary], who was my student, from 2006 to 2012 at [redacted] on important projects." Similarly, the letter from Dr. [redacted] asserts that "[t]his declaration serves as an impartial expert recommendation"; yet, the letter indicates that she "had the pleasure of working with [the Beneficiary] beginning in 2007 to 2012 at [redacted]

Further, the record contains approximately half dozen other letters from individuals ranging in various professions, such as actors, voice actors, playwrights, and teachers and professors. For example, Dr. [redacted] praised the Beneficiary's "exceptional commitment and skill" but did not further elaborate and specifically identify her achievements. Moreover, [redacted] indicated that the Beneficiary "developed a teaching methodology for Theater based on the creation and execution of stage makeup" and "her idea not only brought more polish and ownership to the children's performances but also allowed them to develop new skills and helped them discover themselves in the art of makeup." Although the letters praise the Beneficiary and generally discuss her professional accomplishments, the Petitioner did not demonstrate how the letters, either individually or collectively, rise to the level of significant recognition, as required by this regulatory criterion.

For the reasons discussed above, the Petitioner did not show the Beneficiary fulfills this criterion.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any additional criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*), we need not address this ground, as well as the favorable finding of the Director for 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*), because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three criteria. We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim, has received a high level of achievement, and has been recognized as being prominent, renowned, leading, or well-known in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).[5] Accordingly, we reserve these issues.[6] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. 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.

[5] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(4).

[6] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *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 applicants do not otherwise meet their burden of proof).