U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35506568

Date: DEC. 18, 2024

Appeal of California Service Center Decision

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

The Petitioner, a food and beverage market, seeks to classify the Beneficiary as a sous chef 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. 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 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). A petitioner may submit comparable evidence if the criteria do not readily apply to the beneficiary's occupation. *See* 8 C.F.R. § 214.2(o)(3)(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).

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 did not establish the Beneficiary's eligibility for any of the five claimed criteria. On appeal, the Petitioner contends the Beneficiary satisfies five categories of evidence.[1] For the reasons discussed below, the Petitioner did not establish the Beneficiary meets at least three.

A. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) requires "[e]vidence 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." 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]

Regarding the Beneficiary's past services, the Director's decision does not indicate whether the Beneficiary fulfilled this portion. At initial filing, the Petitioner claimed the Beneficiary's eligibility for this criterion based on three letters inviting or discussing the Beneficiary's participation at culinary showcases or events. However, the Petitioner did not demonstrate how the submission of letters qualified for the evidentiary requirement of "critical reviews, advertisements, publicity releases, publications contracts, or endorsements."[3] To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.[4] Advertisements, publicity releases, and endorsements are promotional materials.[5]

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[1] Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

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

[3] The Petitioner's initial cover letter also claimed the Beneficiary "was the lead chef for the culinary demonstrations for all H-E-B Mexico stores during Lent and the Super Bowl" and listed four YouTube addresses. However, the Petitioner did not offer screenshots and transcripts for the YouTube addresses, corroborating the Petitioner's assertions.

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

[5] *Id.*

Endorsements are public facing and serve a marketing purpose.[6] This exhaustive list does not include unpublished testimonial or recommendation letters.[7] In response to the Director's request for evidence, the Petitioner did not address the past aspect of this criterion.

On appeal, the Petitioner claims that "USCIS has accepted that the beneficiary has met the past performance requirement and, therefore, only his future performance role is at issue." Again, the Director's decision makes no mention of the Beneficiary meeting the past part of this criterion, and the record does not support the Petitioner's claim. Without the required regulatory evidence of "critical reviews, advertisements, publicity releases, publications contracts, or endorsements" showing the Beneficiary's lead or starring participation for organizations or establishments with a distinguished reputation, the Petitioner has not established the Beneficiary satisfies the past feature of this criterion.

As it relates to the Beneficiary's prospective services, the Petitioner argues that it "provided testimonial letters evidencing that the beneficiary will be performing both a leading and starring role as participant in productions or events which have a distinguished reputation in his role as employee of [the Petitioner]." Again, although the Petitioner references a letter, the Petitioner does not show how testimonial letters meet the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*), requiring "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." Accordingly, the Petitioner did not establish the Beneficiary fulfills the future part of this criterion.

For these reasons, the Petitioner did not demonstrate the Beneficiary meets all elements of this criterion.

B. 8 C.F.R. § 214.2(o)(3)(iv)(B)(2)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) requires "[e]vidence that the beneficiary has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications." To meet this criterion, the petitioner must provide evidence that demonstrates the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, which may include online publications or transcripts of radio or video coverage.[8] The Petitioner contends it submitted two articles published in *El Horizonte* and *El Universal De10.mx* that qualify for this criterion. The record reflects the Petitioner submitted articles from elhorizonte.com and de10.com.mx rather than from *El Horizonte* and *El Universal De10.mz*, as claimed by the Petitioner.

In determining whether the submitted evidence demonstrates the beneficiary has achieved national or international recognition for achievements, officers consider both the content of the published material and the level of recognition enjoyed by the publication in which it appears.[9] For example, favorable coverage or publication of the beneficiary's work in major media, as demonstrated by high relative

[6] *Id.*
[7] *Id.*
[8] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix).
[9] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix).

circulation, readership, or viewership figures, could establish national or international recognition of the beneficiary's achievements.[10]

Although the articles reflect favorable coverage of the Beneficiary discussing his career and work, the Petitioner did not establish the major status of either digital publication. The Petitioner provided a letter from P-G-, journalist for *El Horizonte*, who claimed that *El Horizonte* has "about 2,250,000 subscribers all over the world in our digital version." Moreover, the Petitioner submitted a letter from C-S-G-, editorial coordinator for De10.mz, who claimed "De10.mx, has a 3.1 million maximum of range and with more than 10 million web views per month; this, according to the marketing investigation company, ComScore." However, the Petitioner did not offer any independent, objective evidence to corroborate the assertions in the letters. Furthermore, P-G- did not indicate the source for the claimed figures, and the Petitioner did not present evidence from ComScore to support C-S-G-'s letter. In addition, the Petitioner did not demonstrate the significance or relevance of the statistics indicated by P-G- and C-S-G- to show the major status of either digital publication.

Accordingly, the Petitioner did not establish the Beneficiary satisfies this criterion.

C. 8 C.F.R. § 214.2(o)(3)(iv)(B)(4)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) requires "[e]vidence 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, or other occupational achievements reported in trade journals, major newspapers, or other publications." This criterion requires evidence in the form of publications establishing the beneficiary's record of major commercial or critically acclaimed success.[11] The publications may include print or online publications or transcripts of radio or video coverage.[12]

The Petitioner claims:

> Per 8 CFR 214.2(o)(3)(iv)(C), a petitioner is allowed to submit comparable evidence of a criterion when that criterion does not fully apply to the beneficiary. We argue that although 8 CFR 214.2(o)(3)(iv)(B)(4) technically applies to those in the motion picture industry, this criterion can be applied to chefs in the culinary space. This criterion is meant to show evidence of financial commercial success which in the culinary industry is shown by a restaurant's increased revenues due to it successes attracting and maintaining customers and reducing expenses. A restaurant's success thrives from its ability to maximize profit and revenues.
>
> As the following testimonial letter excerpts show, the beneficiary helped prominent institutions, chefs and culinary leaders achieve financial and commercial success – achievements that are not of a general nature! We therefore, request that this

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

comparable evidence be accepted as evidence of this criterion at 8 CFR 214.2(o)(3)(iv)(B)(4).

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that "[i]f the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility." Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary's occupation.[13] However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary's occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion.[14]

For comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to the beneficiary's occupation as well as why the submitted evidence is "comparable" to that criterion.[15] A general unsupported assertion that the listed criterion does not readily apply to the beneficiary's occupation is not probative.[16] However, a statement alone can be sufficient if it is detailed, specific, and credible.[17]

We are not persuaded by the Petitioner's assertions on appeal. The Petitioner argues that the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) "technically applies to those in the motion picture industry." We disagree. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) allows for evidence of "a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field . . . or other occupational achievements reported in trade journals, major newspapers, or other publications." Thus, occupations in the overall field of arts, not just in the motion picture industry, may meet this criterion with evidence of commercial or critically acclaimed successes through indicators or other occupational achievements reported in publications. Although the regulation specifies "box office receipts" and "motion pictures or television ratings," the other references to evidentiary "indicators" and "other occupational achievements" pertain to the occupations not related to the motion picture industry. Here, the Petitioner did not support his assertions with evidence showing that chefs could not achieve major commercial or critically acclaimed successes through indicators or other occupational achievements reported in trade journals, major newspapers, or other publications.[18]

For these reasons, the Petitioner's unsupported assertions are not probative, detailed, specific, and credible. Thus, the Petitioner did not demonstrate that the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) does not readily apply to the Beneficiary's occupation as a chef or sous chef. As such, the Petitioner did not show the Beneficiary can meet this criterion through comparable evidence under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C). In addition, the Petitioner did not

[13] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(3).
[14] *Id.*
[15] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(3).
[16] *Id.*
[17] *Id.*
[18] The regulation at 8 C.F.R. § 214.2(o)(3)(v) provides a separate O-1 nonimmigrant classification for individuals achievement in the motion picture or television industry, including a specific criterion for a record of major commercial or critically acclaimed successes under 8 C.F.R. § 214.2(o)(3)(v)(B).

establish eligibility for the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) as the testimonial letters do not comply with the regulatory evidence of "trade journals, major newspapers, or other publications."

Therefore, the Petitioner did not show the Beneficiary fulfills this criterion, including through the submission of comparable evidence.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) and (*5*) for organizations/establishments and significant recognition, respectively, we need not address these grounds because it 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).[19] Accordingly, we reserve these issues.[20] 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.

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

[20] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).