U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-[redacted]

DATE: DEC. 21, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a motor sports engine designer, seeks to temporarily employ the Beneficiary as an engine and testing manager. To do so, the Petitioner seeks O-1 nonimmigrant 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 California Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner asserts that the Beneficiary meets the regulatory requirements for O-1 classification.

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 that 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 to work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "[e]xtraordinary ability in the field of science, education, business, or athletics" as "a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth the evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. 8 C.F.R. § 214.2(o)(3)(iii). First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the individual's achievements in the field through evidence of a major, internationally recognized award, such as the Nobel Prize.

8 C.F.R. § 214.2(o)(3)(iii)(A). If the petitioner does not submit this evidence, then it must submit sufficient qualifying evidence that meets at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, it may submit comparable evidence in order to establish the individual's eligibility. 8 C.F.R. § 214.2(o)(iii)(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). In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, "truth is to be determined not by the quantity of evidence alone but by its quality." 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 satisfying the initial evidentiary criteria, we will determine whether the totality of the record shows eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii).

II. ANALYSIS

Absent evidence of a major, internationally recognized award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the eight regulatory criteria at 8 C.F.R § 214.2(o)(3)(iii)(B). The Director determined that the Beneficiary satisfied only criterion – high salary at 8 C.F.R § 214.2(o)(3)(iii)(B)(8). The Petitioner maintains that the documentation satisfies at least three criteria. As discussed below, we find that the evidence meets only one other criterion – critical or essential capacity at § 214.2(o)(3)(iii)(B)(7).

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

The Petitioner maintains that the Beneficiary has had a key role with teams that have been the recipient of significant internationally recognized prizes or awards. Specifically, the Petitioner argues that "[w]hile automotive racing teams usually have a large number of employees, there are certain key directors, managers and specialists who have critical responsibilities and impact, and who should, therefore, be entitled to share in the credit for team victories." Further, the Petitioner refers to a letter from technical director and chief engineer for who stated that the Beneficiary was the resident expert and project leader to install a test facility at for further indicated that, based on the Beneficiary's contributions to the project, secured nine victories in 2007 and eight victories in 2008. Moreover, the Petitioner states that the Beneficiary "has led vehicle testing simulation at whose driver, is in first place leading who drives for competitor, in points so far this season." It therefore contends the Beneficiary "should be able to share in the credit for

recent wins and successes."

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) requires "the alien's receipt of nationally or internationally recognized prizes or awards." The Petitioner, however, has not shown that the Beneficiary has been the recipient any such prizes or awards, either individually or as the member of a team. For instance, the Petitioner did not demonstrate that bestowed any prizes or awards on the Beneficiary for any of championships or its drivers' victories. Furthermore, as it pertains to the importance of the Beneficiary's role and contributions to the Petitioner's argument is best considered under the critical or essential capacity criterion under the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), which we will address later in this decision. For these reasons, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

> *Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

The Petitioner contends that the Beneficiary has made original automotive race engineering related contributions of major significance. Specifically, the Petitioner argues that while at the Beneficiary "was responsible for major innovations and successes in test bed technologies which benefited as described by In addition, in referencing a letter from former engine and electronics director for the Petitioner stated that the Beneficiary "was critical to the design and management of new engine testing facilities and thus to development of the marque's new powertrain system, still in use in team." Further, the Petitioner cites to a letter from former technical and project manager with who described the Petitioner's work with ' As an example, indicated that the Beneficiary's " is today the state-of-the-art for development at and provides the ability to test and improve the complete system prior to integration with the other car systems."

In order to satisfy the regulation at 214.2(o)(3)(iii)(B)(5), a petitioner must establish that not only has the Beneficiary made original contributions but that they have been of major significance in the field. For example, a petitioner may support the record with evidence that a beneficiary's contributions have been widely implemented, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field. Here, while the Petitioner has proven the effect of the Beneficiary's contributions to it has not shown their significance to the field. As indicated above, the Beneficiary's recommendation letters exclusively discuss the Beneficiary's contributions to as an employee without indicating how those contributions have been considered influential or important to the broader field. The Petitioner, for example, did not demonstrate that his contributions to have been implemented by other companies within or in other racing circuits. Accordingly, the Petitioner did not show that the Beneficiary meets this criterion.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

In considering the totality of the evidence offered by the Petitioner, we find the Beneficiary has been employed in a critical or essential capacity for [redacted] The record, including the letters discussed above, shows that the Beneficiary managed the engineering and multi-configuration test benches for [redacted] As such, the Petitioner demonstrated that the Beneficiary satisfies this criterion.

> *Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*).

The Director determined that the Beneficiary met this criterion, and the record supports that finding.

III. CONCLUSION

The record does not satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in athletics.

ORDER: The appeal is dismissed.

Cite as *Matter of T-* [redacted] ID# 763700 (AAO Dec. 21, 2017)