U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF P-, INC.

DATE: FEB. 2, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a Georgian folk dance studio, seeks to temporarily employ the Beneficiary as a choreographer. To do so, the Petitioner seeks to classify her as an O-1 nonimmigrant, a 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 Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts, either a significant national or international award or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner avers that the Director did not properly consider the record, and maintains that the evidence satisfies the regulatory requirements.

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." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative 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. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(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). 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).[1]

II. ANALYSIS

Absent evidence of a significant national or international award or prize like the Academy Award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner satisfied one evidentiary criteria, the significant recognition criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*), and we agree with this determination. On appeal, the Petitioner maintains that the exhibits satisfy two additional criteria: lead or starring participant in productions or events,[2] and lead, starring, or critical role for organizations or establishments.[3] It also avers that it provided comparable evidence of the Beneficiary's eligibility under 8 C.F.R § 214.2(o)(3)(iv)(C). As discussed below, we find that the exhibits do not satisfy any additional evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B), or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C).

> *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*).

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[1] While not at issue here, the regulations contain additional evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

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

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

According to the Beneficiary's resume, she began her professional career in 2007 with the [redacted] in [redacted] Georgia.[4] There she performed as a dancer and choreographer with the company's ensemble [redacted]' and as a choreographer with its children's ensemble '[redacted] The Petitioner maintains that the Beneficiary satisfies this criterion by her roles in the organizations' performances, festivals, and competitions. It states that the Beneficiary "won several national and international dance contests and festivals both as a dancer and choreographer."

To meet this criterion, the Petitioner provided photographs of dancers from the ensemble [redacted] copies of "diplomas" and letters of appreciation issued to the group, copies of certificates of the ensemble's participation in several international folk festivals and contests, photographs of [redacted] at festivals and performances, and testimonial letters from teachers and colleagues.[5] For the reasons discussed below, we find that the evidence is insufficient to establish that the Beneficiary performed in a lead or starring role in those events.

The record includes evidence that the ensembles [redacted] and [redacted] participated in several folk festivals and dance competitions in Georgia and abroad. However, the Beneficiary's role in the ensemble performances has not been sufficiently explained. For example, [redacted] founder of the [redacted] ensemble, provides a letter commending the Beneficiary's talent and artistry. He states that she "was invited as a premier soloist" within the ensemble. He further describes the ensemble's success at festivals such as the [redacted] in Slovakia, and the [redacted] held at the [redacted] in [redacted] Greece. However, his statements do not establish that the Beneficiary's roles in these events were lead or starring. The Petitioner has not offered information or evidence describing whether her performance as a soloist was highlighted as central to the events, or otherwise explaining the significance of her role. Similarly, [redacted] chairman of the [redacted], states that he observed the Beneficiary's work at the 2009 [redacted] and that the Beneficiary was a "premier" dancer of the ensemble, performing "complex and leading parts," however, he does not identify her role in the festival as lead or starring.

[redacted] also states that the Beneficiary served as a teacher and choreographer to the children's groups within the ensemble, rather than as a performer, in several of the festivals noted. However, he has not offered evidence that the Beneficiary's work as a teacher or choreographer constituted a lead or starring role for these events. Furthermore, the Petitioner has not submitted critical reviews, advertisements, publicity releases, or publications, to establish that the above-mentioned events have a distinguished reputation. The record does include a letter from the [redacted] stating that "all of the festivals, contests, and cultural events were national or international level cultural events that were organized by various cultural organizations with distinguished reputation." However,

[4] We also note that the Beneficiary was a member of other [redacted] groups as a child and prior to beginning her professional career.

[5] While we discuss only a sampling of the submitted letters, we have reviewed and considered each one.

the letter does not address the reputation of the events or contests themselves, but only the reputation of the entities organizing the events.

Finally, in order to meet this criterion, the Petitioner must establish that the Beneficiary *will* perform services as a lead or starring participant in productions or events which have a distinguished reputation upon approval of the petition. The Petitioner has not offered additional evidence that would distinguish the Beneficiary's proposed role as leading or starring within the company's upcoming productions or events. It indicates in the petition that she will be a "choreographer," but has not provided sufficient information regarding her proposed roles in its upcoming productions or events. Addressing this issue on appeal, the Petitioner provides a "tentative schedule of performances" but does not offer evidence or information explaining the Beneficiary's proposed role in these performances.[6] Further, the Petitioner has not provided sufficient evidence that the events or productions listed on the itinerary enjoy a distinguished reputation. Based on the foregoing, the submitted evidence does not satisfy this criterion.

> *Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*).

To meet this criterion, the Petitioner cites the Beneficiaries' past performances for the [redacted] Upon review, the evidence does not establish that the Beneficiary has held a lead or starring role with respect to an organization or establishment, or that she will hold such role with the Petitioner. The record does not include sufficient documentation confirming that her roles as dancer, teacher, or choreographer were lead, starring, or critical for the overall organization. The testimonial letters from the Beneficiary's current and former teachers and colleagues do not adequately detail the Beneficiary's roles or responsibilities for an organization or establishment. Further, the Petitioner has not provided sufficient evidence to establish that the [redacted] has a distinguished reputation. While the record includes letters from individuals within the organization attesting to its status in the field, the record doesn't include adequate documentary evidence to corroborate the distinguished reputation of [redacted] in articles in newspapers, trade journals, publications, or testimonials. The record includes a copy of an article from an unidentified Slovak newspaper referencing the [redacted] ensemble's performance of a maypole dance; however, the Beneficiary's name is not mentioned and the article does not address the reputation of either the ensemble or the [redacted] Thus, the Petitioner has not established that the Beneficiary has performed in a lead, starring, or critical role for an organization or establishment that has a distinguished reputation.

[6] In a letter accompanying the initial filing, the Petitioner provided a list of the Beneficiary's proposed duties. Most of her duties are related to teaching dance lessons at the school associated with the dance company and the Petitioner does not delineate what role, if any, the Beneficiary will have in choreographing dances for its performance itinerary.

Further, the evidence does not establish that the Beneficiary's proposed role with the petitioning organization would satisfy the requirement that she will be performing in a lead, starring, or critical role. The Petitioner states that as a member of that organization the Beneficiary "will make a significant contribution" to the successful development of the entity. However, the record does not elucidate where the Beneficiary's proposed position falls within the overall hierarchy of the Petitioner's organization or her proposed impact on the organization. Further, the Petitioner's statement does not establish how the Beneficiary will serve in a lead, starring, or critical role that would set her apart from other instructors or choreographers the Petitioner employs.

B. Comparable Evidence

On appeal, the Petitioner contends that the Director erred in not considering the "numerous recommendation letters, several employment agreements, several articles, multiple diplomas, several certificates, a gratitude letter, pictures of performances, various advertisements and posters, a tentative schedule of performances," and other evidence regarding her roles in performances. The Petitioner requests that the above noted evidence be considered under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C). However, the Petitioner does not claim that any of the regulatory criteria are not applicable to folk dancers or choreographers, or explain why the criteria cannot be met with the evidence categories described. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that comparable evidence "may" be submitted if the criteria in 8 C.F.R. § 214.2(o)(3)(iv) do not readily apply to the Beneficiary's occupation. It is the Petitioner's the burden to articulate why the criteria do not readily apply and how the evidence submitted is "comparable."

Here, the Petitioner has not explained how the noted evidence is comparable to any of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv), nor has it established that it is reflective of 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).

III. CONCLUSION

The record does not satisfy at least three of the six evidentiary criteria. 8 C.F.R. § 214.2(o)(3)(iv)(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 the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of P-, Inc.*, ID# 862162 (AAO Feb. 2, 2018)