U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37048640

Date: FEB. 20, 2025

Appeal of California Service Center Decision

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

The Petitioner, a business providing design, development, and customer service/account management for original equipment manufacturers, seeks to classify the Beneficiary as a financial vice president of extraordinary ability. This O-1 nonimmigrant visa classification is available to individuals with 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 Beneficiary had not satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability: either receipt of 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). 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 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 work in the area of extraordinary ability. Department of Homeland Security (DHS) regulations define "extraordinary 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 alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed

categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). If the petitioner demonstrates a criterion does not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(3)(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) ("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 sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

II. ANALYSIS

Because the Petitioner did not indicate or establish the Beneficiary has received a major, internationally recognized award, it must demonstrate the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). The Director determined the Beneficiary fulfilled only one (critical or essential capacity under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*7*)) of the eight claimed categories. On appeal, the Petitioner maintains the Beneficiary meets five additional criteria.[2]

A. Awards

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) requires "[d]ocumentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor." The Petitioner argues that this criterion does not readily apply to the Beneficiary's occupation and "business-related filings are different from other industries" because "the critical capacities of a business professional are largely team-oriented and limited to the confines of the workplace, the opportunity to market one's own individuality is quite different." Furthermore, the Petitioner claims that it conducted Google searches on the topics of "Automative Manufacturing Executive of the Year" and "Manufacturing Executive of the Year Criteria" with no results. Thus, the Petitioner contends that the Beneficiary's eligibility for this criterion based on "receiving the [redacted] Award' on behalf of the company is appropriate comparable evidence for this prong."

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) states that "[i]f the criteria in paragraph (o)(3)(iii) 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."[3] 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

[1] *See also generally 2 USCIS Policy Manual*, M.4(C)(2), https://www.uscis.gov/policymanaul.
[2] Any ground of eligibility 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)).
[3] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(C)(3).

"comparable to that criterion."[4] A general unsupported assertion that the listed criterion does not readily apply to the beneficiary's occupation is not probative.[5] However, a statement alone can be sufficient if it is detailed, specific, and credible.[6]

Here, the Petitioner has not shown eligibility for the submission of comparable evidence. Although the Petitioner claims that a Google search had no results, the Petitioner narrowly identifies only two specific search terms, misconstruing the results in attempt to show that nationally or internationally recognized prizes or awards for excellence in the field do not exist for individuals. While the Petitioner references articles and studies relating to individual and team-based incentives, teamwork, and unreliability of annual performance reviews, the evidence does not indicate the nonexistence of individual awards in the Beneficiary's field. In fact, the Petitioner states that "[e]ven though there are individual business awards, there is also an extreme barrier to entry, making the pursuit of these awards not feasible" and "[i]ndividual accolades necessitate great financial power and an extensive application that outweighs any sort of benefit the accolade may provide." Thus, the Petitioner acknowledges the existence of individual awards. Officers do not consider comparable evidence if the petitioner submits evidence in lieu of a particular criterion that is readily applicable to the beneficiary's occupation simply because the beneficiary cannot satisfy that criterion.[7]

Even if the Petitioner qualified for the submission of comparable evidence, the Petitioner has not demonstrated that the [redacted] Award" qualifies as a nationally or internationally recognized prize or award for excellence in the field. The Petitioner provided screenshots from frost.com promoting the 2024 [redacted] Awards" claiming them to be "the country's earliest and most respected assessment-based manufacturing award." In addition, the Petitioner offered the presentation slides indicating that "[t]hese awards acknowledge the best facilities in India that have achieved and sustained manufacturing excellence." Although the evidence reflects purpose and background material, the Petitioner did not establish how the documentation shows the national or international recognition for excellence in the field for the awards. The Petitioner, for instance, did not demonstrate the field's view as nationally or internationally recognized awards for excellence.

For the reasons discussed above, the Petitioner did not establish the Beneficiary meets this criterion, including through the submission of comparable evidence.

B. Memberships

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." The Petitioner asserts:

> We respectfully know of no such associations in business that require outstanding achievements for membership. As such, we submit comparable evidence is appropriate

[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(C)(3).

> for this criterion and that the beneficiary's role as the Vice President (Finance) of [the Petitioner's] first venture into the United States, where he spearheaded the financial aspects of the construction of their facilities in [redacted] South Carolina and then the continued operations of these premises puts him in that rare association of executives who have successfully grown operations from the ground up. The letter from [the Petitioner], provided the length the work he performed . . . .

The Petitioner has not shown eligibility for the submission of comparable evidence for this criterion. Again, the Petitioner indicates a Google search of "Manufacutring [sic] Associations Outstnading [sic] Requirements for Membership" garnered no results. Notwithstanding the misspellings, the Petitioner's single search attempt again misconstrues the results in attempt to show that association memberships requiring outstanding achievements do not exist. In addition, the Petitioner did not provide any other evidence demonstrating this criterion does not apply to the Beneficiary's occupation. Moreover, the Petitioner did not establish how serving as a financial vice president for a business (the Petitioner) is comparable to being a member of an association that requires outstanding achievements, as judged by recognized national or international experts.[8] In fact, the Beneficiary's position and service is best considered under the critical or essential capacity criterion under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*7*), which the Director considered.

Accordingly, the Petitioner did not demonstrate the Beneficiary satisfies this criterion, including through the submission of comparable evidence.

C. Judging

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*) requires "[e]vidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought." Similar to above, the Petitioner asserts that "[w]e respectfully submit comparable evidence is appropriate for this criterion as we know of no panels of executives who evaluate the work of other executives" and requests consideration of the Beneficiary's work on negotiations with banks in funding, foreign investment, and equipment purchasing. Here, the Petitioner's general unsupported assertion provides no probative value in establishing that this criterion does not apply to the Beneficiary's occupation.[9] Without evidence or a detailed, specific, and credible statement, other than indicating that "we know of no panels of executives who evaluate the work of other executives," the Petitioner did not establish eligibility for the submission of comparable evidence.[10] Further, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*) allows for the participation to judge, either individually or on a panel, in the same or an allied field of specialization rather than only on a panel of executives evaluating the work of other executives, as claimed by the Petitioner. Notwithstanding, the Petitioner did not demonstrate that the Beneficiary's involvement with bank negotiations involves participating as a judge of the work of others consistent with this regulatory criterion.

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[8] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(C)(3) (instructing that the petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts).

[9] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(C)(3) (stating that a general unsupported assertion that the listed criterion does not readily apply to the beneficiary's occupation is not probative).

[10] *Id.* (indicating that a statement alone can be sufficient if it is detailed, specific, and credible).

As such, the Petitioner did not show the Beneficiary meets this criterion, including through the submission of comparable evidence.

D. Original Contributions

> *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 regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*) requires "[e]vidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field." The Petitioner asserts:

> Given the growth of this business in the United States, we respectfully submit comparable evidence is appropriate for this category. The focus of an executive is on the growth of a business. As such, we submit the success of a company is directly attributable to the actions of the ones making the leadership-level decisions. The beneficiary oversaw the construction of [the Petitioner's] facilities in the United States.

Further, the Petitioner highlights the Beneficiary's work for it, such as overseeing the hiring/job creation process and approving contracts. In addition, the Petitioner points out the company's praise by government officials, including the leadership of the business.

Again, the Petitioner's general assertion does not demonstrate that this criterion does not apply to the Beneficiary's occupation; the Petitioner did not show that a financial vice president could not make original business-related contributions in the field.[11] General unsupported assertions provide no probative value in establishing that this criterion does not apply to the Beneficiary's occupation.[12] Without evidence or a detailed, specific, and credible statement, the Petitioner did not establish eligibility for the submission of comparable evidence.[13]

Regardless, the Petitioner did not show that the Beneficiary's work for the Petitioner, including his job duties and accomplishments, resulted in original contributions of major significance in the field rather than limited to the Petitioner. The Petitioner has not demonstrated that the Beneficiary's involvement in overseeing the Petitioner's hiring process or approving contracts somehow impacted, influenced, or affected the overall or general field in a majorly significant manner. Moreover, the Beneficiary's job performance and value to the Petitioner is more applicable to the critical or essential capacity criterion under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*7*), which the Director already considered.

For the reasons discussed above, the Petitioner did not establish the Beneficiary satisfies this criterion, including through the submission of comparable evidence.

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[11] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(C)(2) (USCIS determines whether the person has made original contributions in the field, and whether the original contributions are of major significance in the field).
[12] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(C)(3).
[13] *Id.* (indicating that a statement alone can be sufficient if it is detailed, specific, and credible).

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any additional criteria discussed above, including through the submission of comparable evidence. Although the Petitioner claims the Beneficiary's eligibility for a further criterion on appeal, scholarly articles under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*6*), we need not reach this ground, as well as a review of the Director's favorable determination of the critical or essential capacity criterion under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*), because it cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).[14] Accordingly, we reserve these issues.[15] Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an alien 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.

[14] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

[15] *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).