U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12236548

Date: FEB. 26, 2021

Appeal of California Service Center Decision

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

The Petitioner, a public relations and marketing agency, seeks to temporarily employ the Beneficiary as a musical artist. It seeks to classify him 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 California Service Center denied the petition on the following three grounds: 1) the Petitioner did not meet the conditions as an agent, 2) the Petitioner did not provide sufficient evidence of the Beneficiary's scheduled events in the United States, and 3) the Petitioner did not satisfy the evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international or award, or at least three of six possible forms of documentation.

In these proceedings, it is the petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, the regulation at 8 C.F.R. § 214.2(o)(2)(i) provides that a petition may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent. In addition, a United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. *See* 8 C.F.R. § 214.2(o)(2)(iv)(E). Moreover, the regulation requires any written contracts between the petitioner and the beneficiary or, if there are not any, a summary of the terms of the oral agreement. *See* 8 C.F.R. § 214.2(o)(2)(ii).

As it relates to a beneficiary, 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).

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).[1]

II. ANALYSIS

At initial filing, the Petitioner submitted a "Management Agreement" between the Petitioner and the Beneficiary. Specifically, the Petitioner "agrees to render such advice, guidance, counsel, and other services as [the Beneficiary] may reasonably require to further his career as a musician, composer, and performing artist, and to develop new and different areas within which his artistic talents can be developed and exploited . . . ." In addition, the Petitioner provided an unsigned itinerary listing various anticipated events for the Beneficiary from June 2019 to Summer 2022.[2] Moreover, the Petitioner presented one signed and dated contract between [redacted] Night Cub and the Beneficiary to perform with [redacted] on August 17, 2019, and five unsigned and undated contracts between various venues and the Beneficiary.[3] In response to the Director's request for evidence, the Petitioner offered 15 additional contracts that were signed between several venues and the Beneficiary.[4]

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. 8 C.F.R. 214.2(o)(2)(iv)(E).[5] A United States agent may be: 1) the actual employer of the beneficiary, 2) the

[1] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

[2] For example, the itinerary indicates that in August 2019, "[n]ew disc studio recording in [redacted] CA. Live performances with [redacted] and [redacted] in the area of Northwest Florida."

[3] Three of the contracts indicate performance dates: September 14, 2019, September 15, 2019, and August-September 2020, and two of the contracts reflect "[t]o be determined based on Artist's availability."

[4] All of the contracts are dated after the initial filing of the petition. *See* 8 C.F.R. § 103.2(b)(1).

[5] *See also* 2 *USCIS Policy Manual* M.3(C), https://www.uscis.gov/policymanual.

representative of both the employer and the beneficiary, or 3) a person or entity authorized by the employer to act for, or in place of, the employer as its agent. *Id.*

On appeal, the Petitioner argues that it meets the conditions for an agent as an "entity authorized by the employer to act for, or in place of, the employer as its agent." Although the Petitioner submitted contracts between the Beneficiary and numerous employers, the Petitioner did not demonstrate that the employers authorized it to act for, or in place of, the employers as their agent. For instance, the Petitioner provided a contract between [redacted] and the Beneficiary for him to perform at the [redacted] in [redacted] Florida. However, the Petitioner did not show that [redacted] authorized the Petitioner to act for, in place of, as its agent consistent with the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E). The petitioner seeking to serve as an agent for the beneficiary or for other employers must establish that it is duly authorized to act as their agent.[6] An officer may determine that this requirement has been satisfied if, for example, the petitioner presents a document signed by the beneficiary's other employer(s) that states that the petitioner is authorized to act in that employer's place as an agent for the limited purpose of filing the petition with USCIS.[7] Other examples of probative evidence that may demonstrate that the petitioner "is in business as an agent" may include a statement confirming the relevant information (itinerary, names and addresses of the series of employers) signed by the petitioner and the series of employers, other types of agency representation contracts, fee arrangements, or statements from the other employers regarding the nature of the petitioner's representation of the employers and beneficiary.[8] Here, the contracts only show agreements between the venues and the Beneficiary without any involvement of the Petitioner.

Without probative evidence that the Petitioner is duly authorized to act as an agent for the employers requiring the Beneficiary's services for the purposes of filing the petition, the Petitioner did not show that it meets the regulatory requirements as an agent under 8 C.F.R. § 214.2(o)(2)(iv)(E).

III. CONCLUSION

The Petitioner did not demonstrate that it meets the conditions as an agent. Consequently, the Petitioner did not establish its eligibility to act as an agent in order to seek the Beneficiary's O-1 visa classification as an individual of extraordinary ability.[9] 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.

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[6] *See* 2 *USCIS Policy Manual*, *supra*, at M.3(C).

[7] *Id.*

[8] *Id.*

[9] We decline to reach and hereby reserve the Petitioner's other appellate arguments regarding the sufficiency of the scheduled events in the United States and the evidentiary criteria applicable to individuals of extraordinary ability in the arts. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to the results they reach"); *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 an applicant is otherwise ineligible).