U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29852344

Date: FEB. 26, 2024

Appeal of California Service Center Decision

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

The Petitioner, an equestrian competition and sales business, seeks to classify the Beneficiary, a professional showjumping horse groom, as a person of extraordinary ability. To do so, the Petitioner seeks 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 that the Petitioner did not demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in athletics: 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.

On appeal, the Petitioner submits additional documentation and asserts that the Beneficiary satisfies at least three of the eight regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii)(B). 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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

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). The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) also allows a petitioner to submit comparable evidence if the petitioner demonstrates that a particular criterion is not readily apply to the beneficiary's occupation.

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 has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). The Petitioner asserted in response to the Director's request for evidence that the Beneficiary fulfilled five criteria, but the Director determined that the Beneficiary did not meet any of them. On appeal, the Petitioner challenges the Director's determination that the it has not established that the Beneficiary's occupation as a professional showjumping horse groom falls within the purview of "athletics" as set forth in section 101(a)(15)(O)(i) of the Act. In addition, the Petitioner maintains on appeal that the Beneficiary satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*), (*7*), and (*8*), and that the Director "summarily dismisses" its request to consider comparable evidence for the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and (*3*).

First, the Petitioner asserts that the Director did not properly evaluate the Beneficiary's area of expertise and maintains that his occupation is within the field of athletics. In examining whether the Beneficiary satisfied the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and (*3*), the Director concluded that "O-1A classification applies to individuals who have extraordinary ability in the field of athletics. It does not appear that grooming or providing care to horses is an athletic field." The Petitioner asserts that the Director's determination is not supported by a statutory or regulatory provision, or statement of U.S. Citizenship and Immigration Services or Department of Homeland Security policy. It asserts that showjumping horse grooms are in the field of athletics, much like a trainer or a coach.

The nature of the intended events or activities in the United States is critical in determining whether a beneficiary is entering the United States to provide services in the field of athletics. Our review of the record indicates that the Director's decision did not include sufficient analysis of whether the Beneficiary's area of expertise and intended work in the United States fall within the purview of

[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."

"athletics" as set forth in section 101(a)(15)(O)(i) of the Act. We find that the information and evidence relating to the Beneficiary's area of expertise and intended employment in the United States is sufficient to demonstrate that his occupation falls within the purview of "athletics" as set forth in section 101(a)(15)(O)(i) of the Act. Here, according to the Petitioner's initial letter, submitted contract, and itinerary, the Beneficiary's services as a head managing groom are required to prepare showjumping horses for competition.[2] Because the Director's determination on this issue was a basis for discounting the Petitioner's request for the consideration of comparable evidence for the criteria at (*1*) and (*3*), we are remanding for her to consider whether the Petitioner has met its burden of proof with respect to those criteria.

In addition, the Petitioner challenges the Director's determination that it did not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*) because it did not establish the Beneficiary's work for organizations or establishments. Here, the Petitioner has submitted a resume for the Beneficiary which indicates his employment with [redacted] and [redacted] The resume also provides a brief descriptions of the duties he performed for each employer as a head groom, international stable manager, professional managing groom, and FEI Show Groom. The Beneficiary's former employers have submitted recommendation letters on his behalf that reference his role for their organizations and provide background information or documentation regarding the companies.

The Director's decision concluded the record did not establish that "the Beneficiary's role as a groom is in a critical or essential capacity for these organizations. Nor did you establish these organizations have a distinguished reputation." As the decision did not specifically identify the evidence considered in reaching this determination, the Director should re-examine the Petitioner's claims and all evidence submitted in support of those claims when evaluating this criterion on remand. An officer must fully explain the reasons for denying a visa petition to allow a petitioner a fair opportunity to contest the decision and to allow us an opportunity for meaningful appellate review. *See* 8 C.F.R. § 103.3(a)(l)(i); *see also Matter of M-P-,* 20 I&N Dec. 786 (BIA 1994) (finding that a decision must fully explain the reasons for denying a motion to allow the respondent a meaningful opportunity to challenge the determination on appeal). Because the Director's decision does not provide a sufficient explanation of the reasons for denial with respect to the criterion at § 214.2(o)(3)(iii)(B)(7), we are remanding for her to also consider whether the Petitioner has met its burden of proof with respect to this criterion.

Moreover, on appeal, the Petitioner argues that the Director did not fully evaluate its request to consider comparable evidence for the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and (*3*). As stated, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides 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." USCIS determines if the evidence submitted is comparable to the evidence required in 8 C.F.R. § 214.2(o)(3)(iii).[3] This regulatory provision provides petitioners the opportunity to submit comparable evidence to establish the person's eligibility, if it is determined that a particular evidentiary criterion described in the regulations does not readily apply to the beneficiary's occupation. When evaluating such comparable

[2] The record reflects that grooms for showjumping horses oversee the horse's management, particularly during the stress of travel and competitions, professionally assess the horse's welfare, prepare the horse for competition, and administer nutrition and medicines, among other duties.

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

evidence, officers must consider whether the particular criterion is readily applicable to the person's occupation and, if not, whether the evidence provided is of comparable significance to that criterion. A general unsupported assertion that the listed criterion does not readily apply to the beneficiary's occupation is not probative. However, a statement from the petitioner can be sufficient to establish whether a criterion is readily applicable if that statement is detailed, specific, and credible. Although officers do not consider comparable evidence where a particular criterion is readily applicable to the person's occupation, a criterion need not be entirely inapplicable to the person's occupation. Rather, the officer considers comparable evidence if the petitioner shows that a criterion is not easily applicable to the beneficiary's job or profession.

We agree with the Petitioner that the Director appears to have discounted it's request for consideration of comparable evidence for the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and (*3*). At both initial filing and in response to the Director's request for evidence, the Petitioner made arguments for the Beneficiary's eligibility under the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and (*3*) based on comparable evidence. However, the Director's decision does not reflect the Director sufficiently considered the Petitioner's comparable evidence arguments or explained why comparable evidence claims could not be evaluated. The Director's discussion of the comparable evidence the Petitioner submitted under those criteria is conclusory and does not specifically address the Petitioner's claims or the evidence submitted for those criteria.

Based on the deficiencies discussed, we will withdraw the Director's decision and remand the matter for further review and entry of a new decision. In the new decision, regarding the Petitioner's request for consideration of comparable evidence the Director should determine whether the Petitioner first established that the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) and (*3*) do not readily apply to the Beneficiary's occupation. If so, then the Director must determine whether the evidence is truly comparable to those claimed criteria. Furthermore, if the Director determines that the Petitioner satisfies the requirement either of a major, internationally recognized award or of at least three criteria, the decision should include an analysis of the totality of all the evidence in the record to determine whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who have arisen to the very top of his field. *See* section 101(a)(15)(o)(i) of the Act; 8 C.F.R. § 214.2(o)(3)(ii).[4]

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.

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