U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 7029759

Date: JAN. 24, 2020

Appeal of Vermont Service Center Decision

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

The Petitioner, a production company, seeks to classify the Beneficiary, an actor, as an individual with a demonstrated record of extraordinary achievement in the motion picture or television industry. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to foreign nationals whose achievements in this industry 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 Petitioner seeks to represent the Beneficiary in his employment as an actor in several upcoming film and television projects for a period of four years.[1] 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 achievement in the motion picture or television industry: nomination for or receipt of a significant national or international prize or award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(v)(A)-(B). The Director also determined that the Petitioner did not provide, as required, written consultations from an appropriate labor union representing the Beneficiary's occupational peers and a management organization in the area of the Beneficiary's ability. Section 214(c)(3)(A) of the Act; 8 C.F.R. § 214.2(o)(2)(ii)(D) and 214.2(o)(5)(iii). Further, the Director found that the Petitioner did not provide the beginning and ending dates for the Beneficiary's activities or the specific locations of those activities. 8 C.F.R. § 214.2(o)(2)(ii)(C). [2]

On appeal, the Petitioner maintains that the evidence satisfies at least three of the six regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(v)(B).

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.

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[1] Pursuant to the regulations at 8 C.F.R. 214.2(o)(6)(iii), an approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

[2] Finally, the Director determined that the Beneficiary violated the terms of his B-2 status. The issue of whether a beneficiary violated his B-2 status lies outside our appellate jurisdiction. An application for extension is concurrent with, but separate from, the nonimmigrant petition. There is no appeal from the denial of an application for extension of stay filed on Form I-129, Petition for a Nonimmigrant Worker. 8 C.F.R. § 214.1(c)(5). Because the Beneficiary's maintenance of status is an extension issue, rather than a petition issue, we lack authority to decide this question.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified beneficiary who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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 include the following definition: "*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth the evidentiary criteria for establishing an individual's record of extraordinary achievement. A petitioner must submit evidence either of "significant national or international awards or prizes" such as "an Academy Award, an Emmy, a Grammy, or a Director's Guild Award," or of at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(v)(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 a demonstrated record of extraordinary achievement in the motion picture or television industry. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (v).[3]

In addition, an O-1 petition must be accompanied by:

(A) The evidence specified in the particular section for the classification;
(B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
(C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
(D) A written advisory opinion(s) from the appropriate consulting entity or entities.

8 C.F.R. § 214.2(o)(2)(ii).

Further, specific consultation requirements for an O-1 alien of extraordinary achievement are set forth at 8 C.F.R. 214.2(o)(5)(iii).

[3] *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."

II. ANALYSIS

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary as an actor in several of its upcoming film and TV projects. The record shows that the Beneficiary studied audiovisual arts at the [redacted], Columbia. According to the record, the Beneficiary has been working as a film actor in Colombia since at least 2014. The Beneficiary's acting credits include the following films:

- [redacted] (Short)(2014)
- [redacted] (Short)(2015)
- [redacted] (Short)(2016)
- [redacted] (Short)(2016)
- [redacted] (2018)
- [redacted] (Short)(2018)

The Petitioner seeks to have the Beneficiary perform services as an actor in the films [redacted], and in the TV miniseries [redacted] It describes the Beneficiary as "an actor of impressive capacity" who "has been a success in his country." The evidence submitted in support of the petition includes screenshots from www.imdb.com and www.pro.imdb.com pertaining to the Beneficiary and the films in which he has acted, promotional movie posters, the Beneficiary's talent release form for [redacted], and several testimonial letters.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has been nominated for or received a significant national or international award or prize, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*). The Director found that the Petitioner did not meet any of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*). On appeal, the Petitioner maintains that the exhibits satisfy four of those criteria. After reviewing all of the evidence in the record, we find that the exhibits do not satisfy at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). We will analyze the evidence submitted under each of those criteria below.[4]

> *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)(v)(B)(*1*).

The Petitioner asserts that the Beneficiary satisfies this criterion based upon his roles in the aforementioned film productions. The Petitioner provides evidence in the form of several testimonial letters from the Beneficiary's past collaborators and employers, and publicity releases that pertain to *Emotionless*. Upon review, although the documentation shows that the Beneficiary performed services as a lead or starring role in several of the above-mentioned productions, the Petitioner has not submitted critical reviews, advertisements, publicity releases, publications or other evidence to establish

[4] On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

that the events themselves have a distinguished reputation, as required pursuant to the plain language of the regulation.

The testimonial letters include a letter from [redacted], a film director, who states that the Beneficiary "played a supporting character" in his film [redacted]. [redacted], the director and screenwriter of [redacted] indicates that the Beneficiary "put a lot of effort" into performing his role as protagonist, which "required more the part of corporal expression, than to handle dialog[ue]." In addition, the documentation submitted regarding [redacted] and [redacted] indicates that the Beneficiary's roles in those productions appear to have been in a lead or starring role. Although the Beneficiary's role as an actor in the short films [redacted] and [redacted] may be categorized as providing services as a lead or starring participant, the Petitioner must also establish through the submission of critical reviews, advertisements, publicity releases, contracts, or endorsements that the films themselves have a distinguished reputation. The record contains publicity releases from *Pais* and the Cinematography Directorate of the Ministry of Culture of Colombia, announcing the premiere of [redacted] on the website www.sinemocionpelicula.com. Those releases, however, do not establish the distinguished reputation of [redacted]. Rather, they reflect that the film has recently premiered.

In addition, the Petitioner must establish that the Beneficiary "will perform" services as a lead or starring participant in productions or events with a distinguished reputation. As set forth in the petition and support letter, the Beneficiary will perform as an actor in the Petitioner's upcoming films [redacted] and in the TV miniseries [redacted]. 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. Within its response to the Director's request for evidence (RFE), the Petitioner indicates that the Beneficiary "will have a supporting main role" in [redacted] and "a main role" in [redacted] but it has not provided information regarding those proposed roles and other events. The Petitioner also has not documented that its upcoming productions are considered to be productions or events with a distinguished reputation. At the time the petition was filed it appears that the project [redacted] was in its nascent stages. The Petitioner's RFE response indicated that television series "will have at least 10 episodes each of the four seasons and should last at least four years to shoot and will possibly be release[d] on YouTube Red, AmazonPrime or Netflix."

It is not unusual for a distinguished motion picture or television production to generate press within the industry during pre-production, such as when it casts lead roles or hires a director. Here, although the record on appeal demonstrates that the Petitioner will produce [redacted] and [redacted], and possibly distribute [redacted], it does not establish the distinguished reputation of the projects themselves. Further, the Petitioner has not provided documentary evidence showing that it has been associated with distinguished productions in the past. The Petitioner's support letter indicates that its owner, [redacted] has produced the short films [redacted] and [redacted] It provided information from www.imdb.com about some of those productions, confirming their release. We cannot conclude, based on the limited evidence submitted, that the Petitioner is of such renown that any project it considers placing into development can also be considered to have a distinguished reputation. Overall, the evidence does not establish that the Beneficiary will perform in a lead or starring role for productions or events that have a distinguished reputation.

In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this regulatory criterion.

> *Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*).

On appeal, the Petitioner claims for the first time that it meets this criterion. In support, the Petitioner provided the aforementioned publicity releases from *Pais* and the Cinematography Directorate of the Ministry of Culture of Colombia, announcing the premiere of [redacted] on the website www.sinemocionpelicula.com. First, the plain language of this regulatory criterion requires that the published material be "about the individual." Those press releases, which mention that the Beneficiary is the star of the film, are about the film's premiere, not about the Beneficiary.

In addition, the publicity releases do not recognize the Beneficiary's individual achievements in the motion picture industry as a film actor or the national/international recognition he received for such achievements. The press release from *Pais* mentions that the Beneficiary is a "rookie actor" in his "first film," rather than a film actor who is already nationally recognized for his achievements in the field. Further, the Petitioner did not provide documentation demonstrating that those publications are considered major newspapers, trade journals, magazines, or other major media.

In light of the above, the Petitioner did not establish that it meets the eligibility requirements of 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)(v)(B)(*3*).

On appeal, the Petitioner indicates that the Beneficiary has performed in major roles in the aforementioned film productions. The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's role for distinguished organizations. In general, a lead or starring role is evidenced from the role itself, and a critical role is one in which the petitioner was responsible for the success or standing of the organization or establishment. However, the fact that the Beneficiary may have played a leading role in several of the above-mentioned films is not sufficient to satisfy this criterion's requirements. The Petitioner did not demonstrate how such productions equate to an organization. In addition, the record does not provide background information or documentation regarding the production companies for those productions, to establish the reputation of those organizations. While the record contains some background information on the Petitioner, indicating it is the production company for [redacted], it did not provide independent evidence to establish that it has a distinguished reputation, and the testimonial letters submitted do not address the reputation of those organizations.

The Petitioner must also establish that the Beneficiary will prospectively provide services in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation. As previously stated, the record indicates that the Beneficiary will perform as an actor in the Petitioner's upcoming films [redacted], [redacted] and [redacted] in the TV miniseries [redacted] The submitted evidence does not describe, however, how he will contribute to the petitioning company as a whole, or how his position fits within the overall hierarchy of the company. In addition, as previously mentioned, the Petitioner did not provide sufficient evidence to demonstrate that it enjoys a distinguished reputation. While the Petitioner provided information that it has produced the short films [redacted], [redacted], [redacted], [redacted], and [redacted] as previously noted, we cannot conclude based on the limited evidence submitted that it has a distinguished reputation in the field.

In light of the above, the Petitioner did not establish that he meets this criterion.

> *Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*).

Within its initial submission, the Petitioner submitted several testimonial letters in support of this criterion.[5] In his above-referenced letter, [redacted] describes the Beneficiary as "an extraordinary actor" of "great presence" and "dominating charm." [redacted], an actor, refers to the Beneficiary as "an inspiring fellow actor and a strong talent with a magnetic presence." [redacted] a representative of GMSI Productions in Colombia, indicates he has known the Beneficiary for six years and that he is "[o]f grand acting capacity in the area of cinema and television."

On appeal, the Petitioner submits emails dated May 2019 inviting the Beneficiary to participate in influencer campaigns for [redacted] and [redacted]. However, this evidence relates to events occurring after the filing of the petition on January 5, 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Further, the Petitioner provides additional testimonial letters. [redacted], a theater director, states that the Beneficiary is "an exceptional dramatic and film actor." The Petitioner includes an expert letter from [redacted] of the Hispanic Organization of Latin Actors (HOLA), who asserts that the Beneficiary "has demonstrated a record of extraordinary achievement since his involvement with the film and TV in Colombia since 2013," and cites as examples the Beneficiary's roles in [redacted] and [redacted]. [redacted] an actor

[5] Although we discuss a sampling of letters, we have reviewed and considered each one. We note that the letters contained in the Petitioner's initial submission were offered in support of a prior O-1 petition filed on the Beneficiary's behalf.

and director who studied with the Beneficiary at the [redacted] calls the Beneficiary an actor of "great qualities."

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. The submission of testimonial or expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also* Matter of V-K-, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795.

Upon review of the letters, we concur with the Director's determination that the Petitioner has not established that the Beneficiary satisfies this criterion. The letters do not explain in factual terms the Beneficiary's achievements in the field. The issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. The record lacks documentary evidence showing that the Beneficiary has received such recognition.

In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

In summary, the Petitioner has not established that the Beneficiary satisfies the antecedent regulatory requirement of three types of evidence.

B. Consultation and Event

The Director denied the petition on the additional ground that the Petitioner has not satisfied the written consultation requirements pursuant to section 214(c)(3)(A) of the Act and the regulations at 8 C.F.R. § 214.2(o)(2)(ii)(D), and 214.2(o)(5)(iii) which provides:

> Consultation requirements for an O-1 alien of extraordinary achievement. In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. . . . If the advisory opinion is favorable to the Petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

At the time of filing the petition, the Petitioner indicated in the O and P Classification Supplement to Form I-129 that an appropriate labor organization did exist for the petition. In response to the question whether the required consultation or written advisory opinion was being supplied with the petition, the Petitioner indicated, "No." In the RFE, the Director instructed the Petitioner to submit the required labor organization and management organization consultations. On appeal the Petitioner submits the

above-referenced letter from [redacted] of HOLA, however, his letter is not an advisory opinion from an appropriate union representing the Beneficiary's occupational peers.[6] In addition, the Petitioner still has not addressed its requirement to also submit a consultation from a management organization in the area of the Beneficiary's ability.[7] In light of the above, the Petitioner has not has established that it satisfied the required written consultation requirements for the requested O-1 visa classification as set forth at 8 C.F.R. § 214.2(o)(5)(iii).

Further, the Petitioner also did not provide, as requested in the RFE, the beginning and ending dates for the Beneficiary's activities or the specific locations of those activities, required evidence in all O-1 visa petitions. 8 C.F.R. § 214.2(o)(2)(ii)(C).

The appeal will be dismissed on these additional bases.

C. Contract

Although not addressed in the decision, the Petitioner has not provided the contractual agreement that specifies the wage and the other terms and conditions of the Beneficiary's employment, or a summary of the terms of the oral agreement between the parties. The Form I-129 indicated that the Petitioner would employ the Beneficiary in the position of "Actor, Commercials, Print, V.O." The Petitioner also provided that the Beneficiary would not receive weekly wages, but would receive "payments for moneys received from production budgets and royalties."

In the RFE, the Director instructed the Petitioner to submit either a written contract or, if there is none, a summary of the terms of the oral agreement under which the Beneficiary will be employed, which must specify the wage offered and explain the terms and conditions of the Beneficiary's employment. Within its response to the RFE, the Petitioner did not submit a copy of its contract with the Beneficiary. Rather, it stated that the Beneficiary "will be paid based on the budget available for the projects and sponsors we may get contract deals with and after Production [the Beneficiary] will receive Royalties from Film showings and sales." On appeal, the Petitioner provides its contract with the Beneficiary that indicates that he "agrees to receive the agreed amount for each paid production and understands that each production pays differently due to different budgets. . . ." The contract was signed by the Beneficiary on March 15, 2019.

As stated above, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(B) requires that the Petitioner must submit copies of any written contracts for the Beneficiary or a summary of any oral agreement under which the Beneficiary will be employed. Here, the Petitioner has not fulfilled this requirement. The contract does not specify the wage offered or an agreed upon fee structure or otherwise indicate how the Beneficiary will be paid. Even if it had done so, the contract does not indicate that the Beneficiary accepted that offer as of the date the petition was filed on January 5, 2018. As previously stated, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied at the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Based on

[6] The petition lists that Beneficiary's job title as an actor. An appropriate union would be the Screen Actors Guild–American Federation of Television and Radio Artists.

[7] An appropriate management organization would be the Alliance of Motion Picture & Television Producers.

the foregoing, the Petitioner did not satisfy the evidentiary requirements set forth in the regulations at 8 C.F.R. § 214.2(o)(ii)(B). The appeal will be dismissed on this additional basis.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary achievement in the motion picture or television industry. 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.