U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 35306840

Date: JAN. 31, 2025

Appeal of Vermont Service Center Decision

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

The Petitioner, a dance studio, seeks to classify the Beneficiary as a dance choreographer of extraordinary ability. To do so, the Petitioner pursues 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 Vermont Service Center denied the petition, concluding the Petitioner did not establish the Beneficiary's satisfaction of the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international award, or at least three of six possible forms of documentation. The matter is now before us on appeal pursuant to 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, 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).

II. ANALYSIS

In denying the petition, the Director determined the Petitioner did not establish the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). The Director also concluded the Beneficiary fulfilled only two of six alternative initial evidentiary criteria, national or international recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) and significant recognition for achievements under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*).

On appeal, the Petitioner asserts the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes and, in the alternative, that she meets four additional criteria. After reviewing all of the evidence in the record, we conclude that the Petitioner does not establish the Beneficiary's nomination for, or receipt of, significant national or international awards or that she satisfies the requirements of at least three criteria.

A. Nomination or Receipt of Significant National or International Award or Prize

As noted above, a petitioner may demonstrate that a beneficiary qualifies as an individual of extraordinary ability in the arts through evidence of her nomination for, or receipt of, a significant national or international award or prize like the Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R § 214.2(o)(3)(iv)(A). On appeal, the Petitioner maintains that it provided evidence that the Beneficiary was the "winner of a significant national or international award," because she won several awards at the annual modern dance and cheerleading competition [redacted] The Petitioner references previously submitted documentation, including two award certificates, showing that the Beneficiary won third place at the 2013 [redacted] competition in the adult hip-hop solo female open class and second place at the 2014 [redacted] competition in the category of adult hip-hop duo.[1] The Petitioner also provided several articles from the Russian web portal pda.ekskursii.by and on the Russian websites news.sb.by and telegraf.news, and it claims they demonstrate that dance festival is "an international event." The articles, dated 2013 and 2014, advertise the upcoming [redacted] competition, which they describe as a four-day event organized annually since 2007 by the [redacted]

[1] The Petitioner previously claimed that the Beneficiary also received a significant national or international award or prize based on her claimed receipt of awards such as the [redacted] and, [redacted] among others. On appeal, the Petitioner claims the Beneficiary's eligibility based on the [redacted] awards mentioned above and does not address the other awards.

[redacted] to introduce young people to sports and a healthy lifestyle. The articles indicate it is "one of the largest dance competitions in Europe," where "more than 5000 dancers from 12 countries will compete in all styles of modern dance and cheerleading," and it includes a dance show, [redacted] with the participation of world stars of modern dance. The Director concluded that the documentation submitted is not sufficient to demonstrate that the Beneficiary's awards rise to the level of significant national or international prizes or awards. We agree with the Director's determination.

The aforementioned awards and articles are not sufficient to demonstrate that the 2013 and 2014 [redacted] third-place adult hip-hop solo female open class award or second-place adult hip-hop duo award received by the Beneficiary is a "significant national or international" award or prize that rises to the level comparable to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award, the examples provided in the regulations. The record contains insufficient evidence regarding the purpose of the awards, the application, nominating, or selection process used by the issuing body, the eligibility criteria, or that the awards have attracted significant recognition beyond the context of the events where they were presented. The winners and nominees of Emmy and Grammy awards, for example, receive significant national and international media attention as the result of their recognition, and the awards themselves are considered among the highest achievements attainable in the performing arts. The Petitioner has not provided evidence that the winners for a [redacted] award receive similar recognition..

Without evidence establishing that the Beneficiary's award has garnered national or international recognition similar to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award, the Petitioner's exhibits do not satisfy the regulation at 8 C.F.R § 214.2(o)(3)(iv)(A).

B. Evidentiary Criteria

1. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) requires "[e]vidence 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." This criterion requires evidence of the beneficiary's past lead or starring participation in distinguished productions or events, and the beneficiary's prospective lead or starring participation in distinguished productions or events.[2]

The Director found that the Beneficiary met the past part of this criterion but not its future component. As it relates to the Beneficiary's prospective services, the future element of this criterion requires that the Beneficiary "will perform" services as a lead or starring participant in productions or events with a distinguished reputation. The record includes the Petitioner's deal memo with the Beneficiary which indicates that she will serve as the Dance Choreographer of its dance productions, lists the responsibilities associated with the Beneficiary's position, and identifies five specific upcoming dance events in which she will participate in the World of Dance Championship Series and Starpower National Talent Competition. The Petitioner has not established how the Beneficiary's role as choreographer for the petitioning dance studio will be performing in a lead or starring role for the

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

proposed events. For example, and the record does not demonstrate that the Beneficiary's participation in any upcoming events has been featured in promotional materials or highlighted in media coverage of the events. In addition, the record does not demonstrate that the future events have a distinguished reputation as shown by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The Petitioner, therefore, has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

Finally, as the Director's decision noted, within its response to the Director's request for evidence (RFE), the Petitioner submitted an additional letter from [redacted], a Poland-based cultural foundation that produces and presents theater performances with dance, music, and martial arts celebrating the [redacted] The letter anticipates the Beneficiary's employment in the role of "lead choreographer" and "lead dancer" in [redacted] planned "upcoming American fall tours in 2025 and 2026," and notes that "negotiations with sponsors and customers are still underway and specific dates are yet to be finalized." On appeal, the Petitioner maintains the letter from [redacted] "stating that [the Beneficiary] will serve as a choreographer for the organization's future tour in the United States" satisfies he future component of this criterion. However, the job offer letter is dated June 2024, after the date the petition was filed in May 2024. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).[3] Accordingly, the Petitioner did not establish the Beneficiary fulfills the future part of this criterion. For these reasons, the Petitioner did not demonstrate the Beneficiary meets all elements of this criterion.

2. 8 C.F.R. § 214.2(o)(3)(iv)(3)

The record supports the Director's determination that the Petitioner has not sufficiently documented or explained how the Beneficiary has performed and will perform in a lead, starring, or critical role for organizations or establishments. Here, the Petitioner maintains that the Beneficiary performed in a lead, starring, or critical role for [redacted] We note that this criterion is separate from the previously discussed criterion requiring evidence of the Beneficiary's performance of services as a lead or starring participant in a production or event. *See* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*l*). Accordingly, participating at the requisite level for *a production or event* is not necessarily the same as performing in a qualifying role *for an organization or establishment.*

Thus, even though the Director determined that the Petitioner had established the significance of the Beneficiary's role in past productions including for [redacted] the record does not verify that her lead or starring participation in those events constitutes a lead, starring, or critical role for the overall entity that produces the artistic productions or events. The submissions do not sufficiently describe the duties the Beneficiary performed for the organization in her various roles, and do not establish how her position fit within the company's overall hierarchy. Furthermore, the record does not contain the required documentary evidence in the form of articles in newspapers, trade journals, publications, or

[3] As the Director further noted, the record does not contain documentation showing that the Petitioner had obtained authorization from [redacted] to act as an agent in order to file the instant petition on its behalf. *See generally* 2 *USCIS Policy Manual*, *supra*, at M.3(C).

testimonials pertaining to the reputation of [redacted] nor does it offer evidence documenting the manner in which her work has resulted in a measurable level of success for the company.
In addition, the Petitioner must establish that the Beneficiary will, prospectively, provide services in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation. The petition and the deal memo indicate that the Beneficiary will work for the Petitioner over a three year period. The record does not include evidence explaining how the Beneficiary's role as a choreographer rises to the level of a lead, starring, or critical role for the petitioning dance studio. The Petitioner has not provided information that would elucidate where the Beneficiary's proposed position falls in the overall hierarchy of its organization or demonstrate her proposed impact on the organization. Further, the Petitioner did not provide sufficient evidence demonstrating that it enjoys a distinguished reputation. As previously noted, the plain language of this criterion requires the submission of evidence in the form of newspapers, trade journals, publications, or testimonials.

Finally, as previously stated, the Director's decision noted that within the Petitioner's RFE response, it submitted an additional letter from [redacted] for the Beneficiary's employment in the role of "lead choreographer" and "lead dancer" in planned "upcoming American fall tours in 2025 and 2026," for which "negotiations with sponsors and customers are still underway and specific dates are yet to be finalized." However, as previously discussed, the job offer letter is dated June 2024, after the date the petition was filed in May 2024. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

3. 8 C.F.R. § 214.2(o)(3)(iv)(B)(4)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) requires "[e]vidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, or other occupational achievements reported in trade journals, major newspapers, or other publications."[4] The publications may include print or online publications or transcripts of radio or video coverage.[5]

The Director determined that the record did not include documentation relevant to this evidentiary criterion. On appeal, the Petitioner does not specifically challenge this determination or point to indicators of the Beneficiary's record of major commercial or critically acclaimed successes. As evidence for this criterion, the Petitioner refers to documentation it submitted within its RFE response, specifically, "articles published in 4 glossy magazines" which it claims, "demonstrate a record of critically acclaimed successes." The Petitioner offered interviews dated 2023 with the Beneficiary in the Russian print publications *Beautiful*, *New Look*, and *Antenna-Telesem*, in which she provides her background and experience as a dancer, dance teacher, and choreographer; advice for aspiring dancers; her teaching and choreography methodology; and a step-by-step description of the basic movements of hip hop. This evidence does not demonstrate the Beneficiary's record of major commercial or critically acclaimed successes, nor does the record contain other documentation satisfying the plain language requirements of this criterion. The Petitioner has not established, therefore, that the

[4] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[5] *Id.*

Beneficiary meets this criterion.

4. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*) requires "[e]vidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence." The Director determined that the Petitioner had not demonstrated the Beneficiary's high salary in relation to others in the field. To demonstrate eligibility for this criterion, the petitioner should provide appropriate evidence establishing that the beneficiary's past or future compensation is or will be high relative to others working in the field.[6]

At initial filing, as evidence of the Beneficiary's past compensation in Russia, the Petitioner submitted copies of the Beneficiary's contracts with the [redacted] dance school for a twelve-year period, and her contracts with the [redacted] dance center for a seven-year period. In addition, the Petitioner submitted salary statistics from spb.hh.ru, gorodrabt.ru, and mojazarplata.ru for the positions of "dance teacher," "dance teacher, choreographer" and "dancers and choreographers" showing an average annual salary of 20,000 to 70,000 rubles. The Director's RFE requested "pay statements as evidence of the Beneficiary's salary" because the aforementioned contracts do not show the Beneficiary's earnings.

In response, the Petitioner provided signed salary verification statements from the [redacted] and [redacted] dance schools. The certificate from [redacted] indicates that the Beneficiary "worked at the dance school [redacted] from September 1, 2012, to November 10, 2023 as a choreographer" and her "[a]verage monthly earnings received for the period from September 1, 2021 to October 31, 2023 is 120,000 rubles 00 kopeks." The certificate from the [redacted] states the Beneficiary "worked at the [d]ance center [redacted] from September 1, 2017 to November 8, 2023, as a choreographer" and that her "[a]verage monthly earnings received for the period from January 1, 2022 to October 31, 2023[] is 60,000 rubles 00 kopeks."

Assuming that the Beneficiary's average monthly salary was as stated in the aforementioned certificates, the Petitioner did not demonstrate that the Beneficiary earned a high salary compared to other dance choreographers in Russia. The Petitioner does not offer salary statistics or other documentation as bases for comparison showing that the Beneficiary commanded a high salary relative to other choreographers. Without evidence such as statistical documentation reflecting the salaries of choreographers, the Petitioner did not demonstrate that the Beneficiary has commanded a high salary. The Petitioner does not explain how the submitted salary comparisons for the different occupations of "dance teacher," "dance teacher, choreographer" or "dancers and choreographers" shows that the Beneficiary commanded a high salary as a choreographer. In addition, we note that the above salary and wage resources on which the Petitioner relies do not state how many users reported their salaries to make its findings, which limits the data's evidentiary value, and do not identify a "high salary" for those different occupations. Thus, the Petitioner did not establish the Beneficiary has commanded a high salary in relation to others in the field. For the reasons discussed above, the Petitioner did not demonstrate the Beneficiary fulfills this criterion.

[6] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).

III. CONCLUSION

Because the Petitioner did not establish the O-1 Beneficiary's satisfaction of a nomination for or receipt of a significant national or international award or at least three of six possible forms of documentation, we need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim, has received a high level of achievement, and has been recognized as being prominent, renowned, leading, or well-known in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).[7] Accordingly, we reserve these issues.[8] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual 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.

[7] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D).

[8] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).