U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31953606

Date: JUL. 24, 2024

Appeal of California Service Center Decision

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

The Petitioner, a restaurant, seeks to classify the Beneficiary as an executive chef 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 California Service Center denied the petition, concluding that the record 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. 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).[1]

II. ANALYSIS

A. Evidentiary Criteria

The Director determined the Petitioner did not demonstrate 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). In addition, the Director concluded the Petitioner established the Beneficiary's eligibility for only one criterion, significant recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). On appeal, the Petitioner maintains the Beneficiary meets four additional criteria.[2] In addition, the Petitioner submits new evidence. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). For the reasons discussed below, the Petitioner did not establish the Beneficiary meets at least three of the regulatory criteria.

> *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)(iv)(B)(*1*).

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.[3] Regarding the Beneficiary's past services, on appeal, the Petitioner maintains the Beneficiary's eligibility based on his claimed participation in an Indian food festival held at the [redacted] in celebration of the annual festival of [redacted] It asserts that the festival was "a significant cultural extravaganza drawing a massive crowd," and claims:

---

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

[2] On appeal, the Petitioner does not dispute the Director's finding that it had not established the Beneficiary's eligibility for the commercial or critically acclaimed successes criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*). We consider any previous eligibility claims not raised on appeal to be waived. *See, e.g., 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 generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix).

> [The Beneficiary], in his role as the executive chef for this event, demonstrates exceptional event management skills, showcasing his culinary expertise in successfully catering to the entire festival. This festival not only showcased the rich tapestry of Indian cuisine but also highlighted [the Beneficiary] as a true luminary and leader in his field. Through his participation in this distinguished event, [the Beneficiary] solidified his position as a visionary chef, contributing significantly to the cultural and gastronomic landscape.

To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.[4] In support of its claims, the Petitioner offered a copy of an undated print article from an unidentified source, titled [redacted] The article contains a photograph with the caption [redacted] along with the team of the hotel." The article states that exclusive meals have been specially planned by the hotel's executive chef and master chef for the five-day festival, which will include specialty cooks from different parts of Bengal who will supervise a special vegetarian buffet, and performances of Baul music and modern Hindi and Bengali songs. The article shows the [redacted] will host the event, but it does not mention the Beneficiary by name as a participant in the event and, therefore, does not identify or document his lead or starring role.[5]

As it relates to the Beneficiary's prospective services, the Director determined that the Petitioner did not establish that the Beneficiary would perform services as a lead or starring participant in productions or events with distinguished reputations. Although the Petitioner presented its signed employment offer with the Beneficiary, the document does not establish the Beneficiary will serve as a lead or starring participant in productions or events.[6] Nor does the agreement reflect productions or events with distinguished reputations.[7]

For the reasons discussed above, the Petitioner did not show the Beneficiary satisfies this criterion.

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

---

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

[5] *Id.* (providing that evidence may demonstrate a lead role by establishing that the person has a principal role in the events or production, and a starring role means a position of great prominence relative to others in the event or production).

[6] *Id.* (instructing that in evaluating whether the beneficiary's participation in a past or future event or production qualifies as a lead or starring, officers may consider, for example, whether the beneficiary's role is highlighted or featured in advertisements, publicity releases, critical reviews, or other materials, and the contractual terms offered to the beneficiary may also be relevant to establishing the lead or starring nature of the beneficiary's participation, especially with regard to a prospective event or production).

[7] *Id.* (providing that with regard to demonstrating the distinguished reputation of a prospective event, a petitioner may submit documentation such as advance publicity, endorsements, or other evidence regarding the level of anticipation of the relevant event or production; however, as the available evidence relating to the reputation of a prospective production or event will often be limited, officers may also consider factors such as the reputation of similar past events or productions by the same individuals or entities).

To meet this criterion, the petitioner must provide evidence that demonstrates the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, which may include online publications or transcripts of radio or video coverage.[8] In determining whether the submitted evidence demonstrates that the beneficiary has achieved national or international recognition for achievements, officers consider both the content of the published material and the level of recognition enjoyed by the publication in which it appears.[9] For example, favorable coverage or publication of the beneficiary's work in major media, as demonstrated by high relative circulation, readership, or viewership figures, could establish national or international recognition of the beneficiary's achievements.[10]

On appeal, the Petitioner maintains that the Beneficiary's book, [redacted] published by the Petitioner on Amazon Kindle in [redacted] 2023, satisfies this criterion. The book contains the Beneficiary's recipes and a biographical statement "About the Chef," which describes, in general terms, his past duties and claimed success in dining, banquet catering, and facility management. The Petitioner asserts that the book has achieved widespread reach and provides a screenshot of a Kindle Direct Publishing "Orders" report that shows the book has been downloaded 283 times. However, the orders report is dated January 2024, subsequent to the filing of the petition. 8 C.F.R. § 103.2(b)(1). Nonetheless, the Petitioner did not demonstrate the significance, if any, of 283 downloads on Amazon Kindle.

In addition, the Petitioner provides an article dated [redacted] 2023 and published in republicnewsindia.com about the Beneficiary and his work, including his above-mentioned book; however, the article is dated after the initial filing of the petition. Eligibility must be established at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1).

Further, the Petitioner asserts that a "highly favorable review," written by a professor of tourism and hospitality management at [redacted] "exemplifies [the Beneficiary's] expertise in the culinary field." However, the professor's email message to the Beneficiary indicates only that he has "downloaded the eBook and am eagerly looking forward to diving into its contents," and, therefore, does not constitute favorable coverage of the Beneficiary's work in a major medium. Finally, although the Petitioner also claims the Beneficiary's eligibility based upon his receipt of a certificate of appreciation from the [redacted] the certificate is not published material by or about the Beneficiary.[11]

> *Evidence 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.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

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

[8] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix).
[9] *Id.*
[10] *Id.*
[11] We note that on appeal and before the Director, the Petitioner provided a copy of a photograph of the Beneficiary holding a certificate from the [redacted] and an award plaque, but the writing on those items is illegible and blurry.

in the field.[12] At initial filing, the Petitioner indicated the submission of evidence to show the Beneficiary's eligibility based on his current salary with [redacted] as a culinary director. As evidence of the Beneficiary's compensation, the Petitioner submitted the Beneficiary's pay slip for August 2023 indicating a monthly salary of 102,300 INR as a culinary director.

In addition, the Petitioner initially submitted the Beneficiary's resume, which described his past position of executive chef as creating menus and recipes; and managing all food production at restaurant and banquet functions and other outlets. For the Beneficiary's current position as culinary director, his resume indicated different responsibilities, such as: working to increase restaurant liquor sales; achieving budgeted revenues; controlling costs; maximizing profitability related to facility operations; preparing annual budgets for food and beverage operations; communicating financial information daily to the general manager; and conducting staff training and recruitment.

Further, the Petitioner submitted salary data for chefs and executive chefs in India from jobted.in and monthly average wage data for executive chefs from In.indeed.com.[13] However, the Petitioner did not demonstrate that the Beneficiary has commanded a high salary in relation to other culinary directors. Both precedent and case law support this application of 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*). *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In light of the different responsibilities and duties indicated above, the Petitioner did not show that the occupation of a culinary director is the same as a chef or executive chef. Therefore, the Petitioner did not establish that the comparative salary data for chefs and executive chefs is relative to the earnings of culinary directors.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary has commanded a high salary in relation to other culinary directors.

B. Prior Approval

As the Director noted, U.S. Citizenship and Immigration Services has approved another petition previously filed by a different petitioner on behalf of the Beneficiary. We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988); *see also Sussex Eng'g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987). Furthermore, we are not bound to follow a contradictory decision of a service center. *La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *3 (E.D. La. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001).

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

[13] Although the Petitioner provides additional documentation on appeal (salary data for executive chefs from In.indeed.com based upon six salaries at Sodexo food services company), as discussed, we will not consider new eligibility claims or evidence for the first time on appeal. *See Soriano*, 19 I&N Dec. at 766.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any of the criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*), we need not address this ground, as well as the favorable finding of the Director for 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*), because it cannot fulfill the initial evidentiary requirement of at least three criteria. We also 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). Accordingly, we reserve these issues. 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.