U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 31746073

Date: JUL. 31, 2024

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, a tennis coach, as an O-1 nonimmigrant, a visa 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 on the following three grounds: 1) the Petitioner did not provide a contract, 2) the Petitioner did not demonstrate the Beneficiary's events or activities, and 3) the Petitioner did not satisfy the advisory opinion requirement.[1] 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, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(B) 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 under which the beneficiary will be employed. In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C) requires an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities. Furthermore, section 214(c)(6)(A)(i) of the Act requires the petitioner to submit an advisory opinion from a peer group or a labor organization. *See also* 8 C.F.R. § 214.2(o)(2)(ii)(D) and 214.2(o)(5). If the petitioner establishes that an appropriate peer group or labor organization does not exist, then a petition may be adjudicated without the advisory opinion. *See* Section 214(c)(6)(C) of the Act and 8 C.F.R. § 214.2(o)(5)(i)(G).

[1] The Director's decision ultimately found those issues to be dispositive and did not address whether the Petitioner has submitted sufficient documentary evidence showing the Beneficiary received either "a major, internationally recognized award, such as a Nobel Prize," or at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

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 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 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).[2]

II. ANALYSIS

A. Contract

The Petitioner, a tennis training center, filed Form I-129, Petition for a Nonimmigrant Worker, seeking to classify the Beneficiary as an O-1 individual of extraordinary ability as a tennis coach. In its initial letter, the Petitioner stated that "we have offered the position of Senior Tennis instructor to [the Beneficiary]. Thus, we have signed an exclusive agreement for him to work as a Tennis Instructor for our Center." Although the Petitioner affirmatively stated that it has an executed agreement with the Beneficiary, it did not submit a copy of that document, nor did it claim to have an oral agreement with the Beneficiary and provide a summary of its terms.

The Director's request for evidence (RFE) requested additional evidence to include, among other items, that the Petitioner provide "[w]ritten contracts, or the summary of the terms of an oral agreement" that must "[s]pecify the wage offered and explain the terms and conditions under which the beneficiary will perform these services; and [d]etail any additional services provided." The RFE advised that the regulation requires a written contract or, if there is no such contract, a summary of the terms of the oral agreement under which the Beneficiary will be employed. 8 C.F.R. § 214.2(o)(2)(ii)(B). Within its RFE response, the Petitioner provided an undated Employment

[2] *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."

Contract Agreement, signed only by the Petitioner. The Director denied the petition, finding that although the Petitioner proposes to employ the Beneficiary, the record contained no evidence that the Petitioner had executed a contract with the Beneficiary, as asserted.

On appeal, the Petitioner urges that the provided Employment Contract Agreement includes requirements for a valid contract, such as "the parties (Employer and Employee), duties and responsibilities, pay and compensation, benefits, and other sections," but the Petitioner indicates the agreement does not contain the Beneficiary's signature because "the signature is deferred with the intention to finalize it as soon as permission to work in the United States is granted through the requested visa."[3] Based on the documentation submitted, we agree with the Director's determination that the Petitioner did not satisfy the general evidentiary requirements at 8 C.F.R. § 214.2(o)(2)(ii)(B). The Petitioner did not submit a contract between the two parties with the initial petition, although it represented that it had an executed agreement with the Beneficiary.

While its RFE response provided an Employment Contract Agreement, that evidence does not satisfy the requirements set forth at 8 C.F.R. § 214.2(o)(2)(ii)(B). As the Director noted, the agreement was not signed by the Beneficiary and is not dated. Assuming the Employment Contract Agreement had been signed by the Beneficiary, it contains no information to indicate that it was in effect at the time the petition was filed. 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). Nor does the Petitioner indicate that the Employment Contract Agreement represents the terms of a pre-existing oral agreement between the two parties.

Any failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Here, the requested evidence was material to the Beneficiary's eligibility. Without any evidence of a contract or similar documents as required under 8 C.F.R. § 214.2(o)(2)(ii)(B), USCIS is unable to determine the actual terms and conditions of the Beneficiary's employment. Because the Petitioner did not meet the contractual requirement, we need not make a determination on the other grounds for denial in the Director's decision. Accordingly, we reserve those issues.[4] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability.

ORDER: The appeal is dismissed.

[3] Although the Petitioner provides additional documentation on appeal, it did not explain if, or how, the evidence relates or addresses the Director's findings regarding the contractual, event, and consultation requirements. Regardless, we will not consider new eligibility claims or evidence for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal of any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Here, the Director afforded the Petitioner an opportunity to present additional evidence through the issuance of a request for evidence.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) ("courts and agencies are not required to make findings on issues the decision of which is unnecessary to results they reach"); *see 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).