U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-F-

DATE: JUNE 1, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, an agent, seeks to represent the Beneficiary during his temporary employment in the United States as a professional photographer. To do so, the Petitioner seeks to classify him as an O-1 nonimmigrant, a visa classification available to foreign nationals 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 satisfy the evidentiary criteria applicable to individuals of extraordinary ability in the arts, either a significant national or international award or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner submits additional evidence, contends that the Director did not properly consider the record, and maintains that the documentation satisfies the regulatory requirements.

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." 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 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 of at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C). When a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.[1]

II. ANALYSIS

The Petitioner's initial letter described the Beneficiary as "Argentina's premier contemporary visual artist in photography." The record shows that between 2010 and 2015 he worked in the role of photographer or videographer for productions or events of the and the

Absent evidence of a significant national or international award or prize like the Academy Award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner did not satisfy any of the evidentiary criteria. The Petitioner does not specifically address the regulatory criteria on appeal. In an accompanying letter, however, the Beneficiary discusses evidence and achievements relating to four criteria. As discussed below, we find that the exhibits do not satisfy any of the evidentiary 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*).

We will first address the evidence submitted to establish that the Beneficiary *has performed* services as a lead or starring participant in productions or events which have a distinguished reputation. The Petitioner submitted numerous articles and several testimonial letters from colleagues and employers.[2] We determine that the evidence is insufficient for the reasons discussed below.

First, the Petitioner provided articles describing festivals, concerts, and meetings with public figures at which the Beneficiary worked in the role of photographer for the and in Argentina, Paraguay, and Chile. While some of the articles contain one-sentence captions crediting the Beneficiary with having taken the accompanying photographs of those events, the Petitioner has not presented persuasive evidence to establish that the Beneficiary's role as a

[1] While not at issue here, the regulations contain additional evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

[2] While we discuss only a sampling of the submitted letters, we have reviewed and considered each one.

photographer can be considered a "lead" role in the festival, concert, or publicity event. For instance, the Petitioner has not demonstrated that the Beneficiary received the level of recognition attributed to the events' stars. Rather, the articles show that his son or of was the lead or starring participant at many of the events. The Petitioner also submitted photographs taken by the Beneficiary for a promotional campaign for and at several private weddings, but it did not specifically claim or submit evidence to establish the distinguished reputation of those events.

Next, regarding the submitted testimonial letters, as the plain language of the regulation specifically requires submission of documentary evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements, the Petitioner cannot rely on testimonial evidence to satisfy this criterion. Regardless, the submitted letters do not establish that the Petitioner was a leading or starring participant at distinguished events or productions. The Petitioner provides a letter from Production Director for the who confirmed that the Beneficiary's promotional video for the organization was featured at an event with at the He emphasized that the event was attended by "more than 4,000 people, among which there were special guests from the artistic, sports[,] and political realms in " In addition, a letter from Commercial Director of the indicated that the Beneficiary's photographs of the festival were chosen from those of other members of the media team to publish in his book, The authors, however, do not explain how the Beneficiary's role at those events was as a lead or starring participant. Rather, it appears from the record that was the lead or starring participant at both events.

Based on the foregoing, the Petitioner has not submitted evidence that the Beneficiary has served as a lead or starring participant in productions that have a distinguished reputation. In addition, the record does not demonstrate that the Beneficiary will prospectively serve as such a participant. At the time of filing, the Petitioner submitted a signed agreement between the Beneficiary and a business providing printing services, establishing that his duties will include working as the organization's "main photographer for the coverage of our social events." In response to the Director's request for evidence, the Petitioner provided an itinerary, indicating that the Beneficiary's proposed projects will also include marketing and social media campaigns for and festivals for the The Petitioner did not, however, offer evidence that would distinguish the Beneficiary's proposed role as leading or starring within those upcoming events, and did not specifically claim or submit evidence to establish the reputation of those events.

[3] The record reflects that the president of is the Beneficiary's father.

[4] Although not addressed by the Director, we note that letter is unsigned and therefore has limited evidentiary value.

> *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)(iv)(B)(*2*).

To meet this criterion, the Petitioner cites published materials pertaining to the Beneficiary. The Director determined, and we agree, that those items do not satisfy this criterion. The Petitioner provided a copy of the credits page for the book by indicating that the Beneficiary was responsible for the book's "[c]opyright and events photography." The record also contains articles about several of the above-referenced events, published on the websites and including the articles ' and

The Petitioner further submitted a press release titled published in the newspaper Although not discussed by the Director, we note that that the press release does not comply with the regulation, as it is not accompanied by the foreign language original source document. The regulation at 8 C.F.R. § 103.2(b) states: "Any document containing foreign language submitted to USCIS [U.S. Citizenship and Immigration Services] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because of this deficiency we cannot meaningfully determine whether the translated material is accurate and supports the Petitioner's claims.

Regardless, the press release, book, and articles contain one-sentence captions crediting the Beneficiary with having taken the accompanying photographs of the events. These materials are "about" the subject matter they describe -- they are not specifically about the Beneficiary, as they do not mention his work, and thus do not demonstrate his individual achievements as a photographer, or the national or international recognition he received for such achievements. Further, the record does not contain documentary evidence of the general online readership of the websites on which the above-referenced materials appeared, or publication statistics for the book Finally, the circulation statistics submitted for do not show that the publication qualifies as a "major" newspaper, trade journal, or other publication,[5] but instead indicate that it does not have significant national or international distribution but only serves the particular locality of Northern Indiana.

[5] To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

> *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)(iv)(B)(*3*).

To meet this criterion, the Petitioner cites the Beneficiary's past work for the and Upon review, the evidence does not establish that the Beneficiary has held a lead or starring role with respect to an organization or establishment, or that he will hold such role with As discussed above, the record shows that the Beneficiary has worked for the past six years as a photographer for the and Two testimonial letters discuss his work for those establishments. Executive Director of confirms that the Beneficiary has been "the official photographer of our company for more than 5 years," and praises his professionalism. Production Director for the mentions several videos that the Beneficiary produced and describes him as "a very talented and gifted artist." The testimonial letters from the Beneficiary's past employers do not show where his position fell in the overall hierarchy of their organization or his impact on the organization. In addition, the evidence does not establish that the Beneficiary's prior employers, described in the record as religious organizations, enjoy a distinguished reputation in his area of expertise.

With respect to his proposed role, the Beneficiary's agreement with states that his responsibilities as photographer will include working as the "main photographer for the coverage of our social events," "gathering photos for marketing and promotion," and "ensuring photo quality." The company, however, has not offered information that would elucidate where his proposed position falls in the overall hierarchy of its organization or his proposed impact on the organization. The agreement does not establish how the Beneficiary will serve in a lead, starring, or critical role that would set him apart from other photographers the company employs.

> *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)(iv)(B)(*5*).

As noted above, the Petitioner submitted several testimonial letters in support of the petition. We determine that the submitted testimonials and other documentary evidence do not satisfy this criterion. The above-referenced letters from and discuss the Beneficiary's innate talent, work ethic, personal traits, and artistry rather than his achievements as a photographer. The letters do not explain how the Beneficiary's achievements to date have received significant recognition from organizations, critics, government agencies or other recognized experts in the field of photography.[6]

[6] We also note that all but one of the letters submitted are from the Beneficiary's own current colleagues and employers, and therefore do not demonstrate significant recognition outside of that circle.

In addition, the submitted letters do not satisfy the regulatory standard, which states that affidavits from experts "shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information." 8 C.F.R. § 214.2(o)(2)(iii)(B). The Petitioner has not shown that and as administrative staff of religious organizations, are recognized experts in the field of photography. Although they praise the Beneficiary's artistry, none of these individuals establish their credentials as recognized experts in that field.

Without further information and evidence, the above-referenced letters are not sufficient to demonstrate that the Beneficiary's achievements have received significant recognition. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. In addition, such letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility.

Finally, we note that on appeal the Beneficiary argues that he has achieved a level of recognition that is "more than a common photographer," as shown by the fact that he has had the opportunity to photograph high-ranking officials in Argentina and Paraguay in his work for the and As stated previously, DHS regulations provide that comparable evidence may be submitted if the Petitioner demonstrates that the listed criteria do not readily apply to the Beneficiary's occupation. 8 C.F.R. § 214.2(o)(3)(iv)(C). The Petitioner has neither claimed nor demonstrated that the standard regulatory criteria do not apply to the Beneficiary's occupation, nor has it explained how the evidence submitted is comparable to any of the required categories of evidence.[7]

III. CONCLUSION

The record does not satisfy at least three of the six evidentiary criteria. 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of C-F-*, ID# 327618 (AAO June 1, 2017)

[7] The burden of proof is on the party seeking the benefit. Section 291 of the Act.