U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-P- LLC

DATE: JUNE 22, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a video production and advertising company, proposes to temporarily employ the Beneficiary as a director of videography and producer. To do so, the Petitioner seeks to classify her 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, as required, 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). The Director also determined that the Petitioner provided insufficient information regarding the Beneficiary's proposed duties in the United States. 8 C.F.R. § 214.2(o)(2)(ii).

On appeal, the Petitioner submits additional evidence, avers that the Director did not properly consider the record, and maintains that the evidence 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.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O foreign nationals shall be accompanied by the following:

(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.

II. ANALYSIS

The Petitioner must demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence of a significant national or international award or prize or through evidence corresponding to the six regulatory criteria. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). The Director determined that the Petitioner did not satisfy any of those evidentiary criteria. The Director also found it provided insufficient information regarding the Beneficiary's proposed duties in the United States. 8 C.F.R. § 214.2(o)(2)(ii). The Petitioner maintains that it has submitted evidence of a significant national or international award or prize, five of the six listed categories of documents, and exhibits sufficient to establish that it has events scheduled for the Beneficiary. As discussed below, while we find that the record establishes that the Beneficiary is coming to perform in events or activities in her field for the requested validity period, the exhibits do not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or any of the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B).

A. Nature of Proposed Employment

We will first address the Director's finding that the Petitioner did not provide sufficient documentation to establish that it has events scheduled for the Beneficiary in order to meet the

requirements of 8 C.F.R. § 214.2(o)(2)(ii)(B)-(C). The petition indicates that the Petitioner is seeking to employ the Beneficiary on its premises as a director of videography and producer for a period of three years at an annual salary of $250,000. The submitted offer of employment, signed employment agreement, signed amended employment agreement, and itinerary of events set forth the terms of the Petitioner's agreement with the Beneficiary and detail her proposed duties on eight video campaigns for its clients. Upon review, the documentary evidence sufficiently establishes, as indicated in the petition, that the Beneficiary is coming to perform in events or activities in her field for the validity period requested.

B. The Beneficiary's Eligibility under the Evidentiary Criteria

The next issue addressed by the Director is whether the Petitioner offered evidence to establish that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A) or at least three of the six categories listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*).

> *Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award.* 8 C.F.R. § 214.2(o)(3)(iv)(A).

We conclude that the record does not satisfy this criterion. While the Petitioner has provided documentation that the Beneficiary's employers have been nominated for, or have received national or international awards in the field, those materials do not specifically identify the Beneficiary as a nominee or recipient of those awards.

The record shows that during the past 15 years the Beneficiary has worked as a videographer and producer. In a letter accompanying the petition, the Petitioner affirmed that her accomplishments in videography and production work on television commercials for several advertising agencies, such as and , and for the commercial film production company led directly to national and international honors in the advertising field for campaigns as follows:

- award (2002), award (2002), and award (2003) for
- Award (2004) for
- award (2006) and (2006) nomination for
- award (2002) for
- Award (2010) and Award (2010) for

The record also shows that the campaign resulted in that company receiving a (2009) for "." The Petitioner initially submitted

publicity releases from those agencies that confirmed their receipt of the awards, and general information about the competitions from the websites of the awarding entities.

On appeal the Petitioner maintains that "[the Beneficiary] produced several campaigns that won awards which are prestigious in her field." The plain language of this criterion, however, specifically requires "evidence that the alien has been nominated for, or has been the recipient of" significant national or international prizes or awards. The record contains documentation that and were nominated for or were the recipients of the preceding awards. While the Beneficiary was an employee of and there is no documentary evidence specifically identifying her as a nominee for, or recipient of, those awards. Therefore, the record does not satisfy the plain language of this criterion.[1]

Finally, even if the Beneficiary were the named recipient of the above-referenced awards, the record contains insufficient evidence establishing the significance and magnitude of the submitted awards and the extent to which the nominees or winners of such awards are recognized beyond the issuing entity. The Petitioner did not provide general information about the competitions such as the eligibility criteria, or the percentage of entrants who earned some type of recognition. Nor is there supporting evidence showing that the recipients of the submitted honors were announced in major media or in some other manner consistent with a significant national or international award. We note that the winners and nominees of Emmy and Grammy awards, examples listed in the regulation, 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. Other than publicity releases published on the recipients' websites, the record does not contain media coverage of the awards, or other exhibits reflecting that the nominees or winners received recognition for achievement beyond receiving the certificates from the awarding organizations.

> *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 conclude that, while the Petitioner established that the Beneficiary *has performed* services as a lead or starring participant in productions or events which have a distinguished reputation, it has not established that she *will perform* as such a participant in events or productions with a distinguished reputation.

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[1] In support of the assertion that we should credit the awards to the Beneficiary, the Petitioner cites a 2009 AAO decision. This decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

First, with regard to the Petitioner's past participation, she submitted published materials, and testimonial letters from employers confirming that the advertising agencies won the above-mentioned awards and crediting her efforts with the success of the campaigns.[2] CEO of , provided two letters stating that the company's nominations and awards for in 2002 and 2004 would not be possible without the Beneficiary's leadership and skills as a lead producer on those campaigns. who previously worked with her at on the campaign, confirmed that the campaign "was many times awarded in local festivals." In two letters, Executive Producer with , explained that the Beneficiary was the producer of the Russian portion of the above-mentioned commercial. He confirmed that the commercial won the above-referenced awards, and indicated that her participation "was critical" to the commercial's success. The Petitioner also submitted published materials including an article and publicity releases corroborating the letters' statements that she performed a lead role in the and campaigns and the distinguished reputation of the events.

We find, however, that the Petitioner has not established that the Beneficiary *will perform* services as a lead or starring participant in events or productions with a distinguished reputation. At the time of filing, the Petitioner submitted an itinerary indicating the duties the Beneficiary will perform on multiple video campaigns include handling project budgets, organizing and supervising casting for TV commercials, coordinating a shoot, handling a project's legal documentation, and making financial reports to clients. Although record indicates that her proposed role as director of videography and producer is leading or starring within those upcoming events, the Petitioner did not specifically claim or submit evidence to establish the distinguished reputation of those events. Based on the foregoing, the submitted evidence does not satisfy this 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)(iv)(B)(*2*).

To meet this criterion, Petitioner provided an article published on the website reporting that campaign won the award in 2002, and a publicity release from webpage, stating that its campaign was nominated for an award in 2006. These items do not mention the Beneficiary by name. In addition, it provided a publicity release, crediting her as the producer of its campaign and referencing an archived article about that campaign. These materials are "about" the advertising campaigns they describe -- they are not specifically about the Beneficiary, as they do not discuss her work, and thus do not demonstrate her individual achievements as a producer or videographer, or the national or international recognition she received for such achievements. Further, the Petitioner has not established, as required, that the submitted items appeared in major

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

newspapers, trade journals, magazines, or other publications, as the record does not contain any evidence of the general online readership of the websites on which those materials appeared.[3]

> *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 cited the Beneficiary's past work for the advertising agencies including [redacted] and [redacted], and submitted several employment recommendation letters from representatives of those companies. Upon review, the evidence does not establish that the Beneficiary has held a lead or critical role with respect to an organization or establishment, or that she will hold such role with the Petitioner.

Mr. [redacted] of [redacted] praises the Beneficiary's abilities and professionalism as "Lead Producer" on several award-winning TV commercials. Mr. [redacted] of [redacted] credited the TV commercial produced by her with increasing [redacted] market share. [redacted] a writer and director, explained that he worked with her at [redacted] and his own company, [redacted] where she supervised TV productions and was an "essential" member of his team.

While the Beneficiary has clearly been able to provide expertise in the area of videography and TV production within the companies that have employed her, the evidence does not establish that her role as a videographer and TV producer was a lead or critical role for those companies as a whole. The record shows that she was assigned projects as part of her normal responsibilities, and achieved results that met or exceeded her employer's expectations. The focus of this criterion, based on the plain language of the regulation, is the Beneficiary's role itself. Although she may have served as the head of one or more advertising campaigns that resulted in significant profit for the employer or client, the evidence does not demonstrate how her role differentiated her from the other videographers and producers at those companies, or from other senior staff such as divisional directors and department heads. We concur with the Director that the documentation does not establish that the Beneficiary was responsible for the previous employers' success or standing to a degree consistent with the meaning of "lead, starring, or critical role."

Further, the evidence does not establish that the Beneficiary's proposed role with the Petitioner would satisfy the requirement that she will be performing in a lead, starring, or critical role for the organization. The Petitioner's offer of employment notes that she will be working in the role of director of videography and producer on various projects as part of its team. It has not, however, offered information that would elucidate where her proposed position falls in the overall hierarchy of its organization or her proposed impact on the organization. Finally, the Petitioner did not specifically claim or submit evidence to establish that its organization has a distinguished reputation.

[3] To qualify as major media, the publication should have significant national or international distribution.

> *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 do not satisfy this criterion. The above-referenced letters from Mr. Mr. and Mr. discuss the Beneficiary's talent, work ethic, personal traits, and artistry rather than her achievements as a videographer and producer. Other colleagues, such as a film producer, Mr. a lighting director, and a writer and director, praise her work on various film and TV productions. 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 videography and commercial film production.[4] The record does not satisfy this criterion.

> *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*).

The Petitioner did not submit material relating to the Beneficiary's past salary or remuneration, such as letters from former employers, income tax forms, or pay statements. Instead, it presented its signed employment agreements with her and its job offer letter, stating it will pay her an annual salary of $250,000 for the proffered position of director of videography and producer.

The Petitioner provided comparative wage data relating to average or median wages of "Media and Communication Workers – All Other," in California, metropolitan area from the Foreign Labor Certification (FLC) Data Center's Online Wage Library (www.flcdatacenter.com), and from www.careeronestop.org. It also included national comparative wage data for 2015 for the same positions from the Occupational Outlook Handbook (OOH) published on the website www.bls.gov. The Petitioner has not established, however, that salary comparisons to media and communication workers are meaningful as it has not shown that such workers are in the Beneficiary's occupation, or performing similar work. The Petitioner's OOH material states only that it relates to "[a]ll media and communication workers not listed separately." The Beneficiary's proposed duties, as stated in the offer of employment, consist of being able "to operate cameras . . . for broadcasts and advertising . . . to compose and frame each shot . . . to achieve the effects sought by directors[,] editing video for broadcast productions." Other duties stated in the itinerary include coordinating the budget and casting of a shoot. Upon review, the occupations of "television, video, and motion picture camera operators and editors " and "producers and directors" appear to be the most appropriate classifications for the proposed position.

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

The Petitioner further provided an expert letter and resume from [redacted] a producer and project manager for advertising campaigns, who states that "[t]he top-tier Directors of Videography/Producers earn $110,000." Ms. [redacted] however, does not support her statement with corroborating materials. 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 beneficiary's eligibility for the benefit sought. *Id.* The submission of 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 beneficiary's eligibility. *See id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.*; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Based on the forgoing, the submitted exhibits do not sufficiently establish that the Beneficiary's proffered salary in the position of director of videography and producer is a "high salary."

III. CONCLUSION

For the reasons discussed above, 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-P- LLC*, ID# 347292 (AAO June 22, 2017)