U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF K-E-, LLC

DATE: MAR. 4, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a television and internet production business, seeks to temporarily employ the Beneficiary in the United States as a television host and producer. To do so, the Petitioner seeks to classify him as an O-1 nonimmigrant, a visa classification available to foreign nationals who have, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement 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 that the Petitioner did not provide, as required, written consultations from an appropriate labor union representing the Beneficiary's occupational peers and a management organization in the area of the Beneficiary's ability. Section 214(c)(3)(A) of the Act; 8 C.F.R. § 214.2(o)(2)(ii)(D) and 214.2(o)(5)(iii).

On appeal, the Petitioner asserts that it submitted evidence that satisfies the required consultation requirements, thus, the Beneficiary is eligible for O-1 classification. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

> *Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

Pursuant to section 214(c)(3)(A) of the Act, an O-1 petition with respect to foreign nationals seeking entry for a motion picture or television production shall be approved only after consultation with the appropriate union representing the individual's occupational peers and a management organization in the area of the alien's ability.

The regulations at 8 C.F.R. § 214.2(o)(3)(v) outline the evidentiary requirements that must be met in order for a petitioner to establish that an alien is recognized as having a demonstrated record of extraordinary achievement in the motion picture or television industry. In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D) requires the petitioner to submit copies of "written advisory opinion(s) from the appropriate consulting entity or entities."

Specific consultation requirements for an O-1 alien of extraordinary achievement are set forth at 8 C.F.R. 214.2(o)(5)(iii):

> In the case of an alien working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. If an advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. If the advisory opinion is favorable to the petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

II. ANALYSIS

The Petitioner stated on the petition that the Beneficiary will work as a "host/producer." As noted above, the Director denied the petition because the Petitioner did not submit the required consultations from an appropriate union representing the Beneficiary's occupational peers and from a management organization in the area of his ability. It is noted that the Petitioner indicated in the O and P Classifications Supplement that an appropriate labor organization does exist for the petition. In addition, the ,Director issued two detailed requests for evidence ("RFE"), on July 13, 2017, and November 7, 2017, respectively, in which the Director clearly advised the Petitioner of the required consultations and provided him six weeks to submit the two required consultations. While the Petitioner submitted a response to the RFEs, its response did not include the required consultations. In a letter responding to the second RFE, the Petitioner asserted that it had not timely received the notice and therefore did not have an opportunity to obtain the consultations, but that "we are more than willing to obtain the consultation letters from the appropriate organizations and to submit them to U.S. Citizenship and Immigration Services in support of this O-1 Visa petition."

On appeal, the Petitioner does not provide the consultation letters, but instead indicates that it provided an "advisory opinion" prior to the adjudication of the petition. It asserts that the previously submitted recommendation letter from actor [redacted] "served us in this case as an expert peer [letter]." Upon review, the Petitioner has not satisfied the written consultation requirements set forth at 8 C.F.R. § 214.2(o)(5)(iii). [redacted] letter is not an advisory opinion from an appropriate union representing the Beneficiary's occupational peers.[1] In addition, the Petitioner still has not addressed its requirement to also submit a consultation from a management organization in the area of the Beneficiary's ability.[2] In light of the above, the Petitioner has not established that it satisfied the required written consultation requirements for the requested O-1 visa classification in accordance with the applicable statutory and regulatory provisions.[3] Accordingly, the appeal will be dismissed.

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 who has a demonstrated record of extraordinary achievement in the motion picture or television industry. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of K-E-, LLC*, ID# 2193710 (AAO Mar. 4, 2019)

[1] As noted above, the petition lists that Beneficiary's job title as host/producer. If his primary occupation in the United States will be as a television performer then an example of an appropriate union would be the Screen Actors Guild–American Federation of Television and Radio Artists. If his primary occupation will be as a television producer then an example of an appropriate union would be the Producers Guild of America.

[2] An example of an appropriate management organization would be the Alliance of Motion Picture & Television Producers.

[3] On appeal, the Petitioner also states that the evidence submitted attests to the Beneficiary's demonstrated record of extraordinary achievement in the television industry. As the grounds discussed above are dispositive of the Beneficiary's eligibility for the benefit sought in this matter, we will not address and will instead reserve our determination on this additional issue.