U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12260392

Date: MAR. 15, 2021

Appeal of California Service Center Decision

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

The Petitioner, a talent management company, seeks O-2 nonimmigrant visa classification for the Beneficiaries as accompanying individuals to [redacted] a fashion designer, whose petition for O-1 classification was filed concurrently. See Immigration and Nationality Act (the Act) section 101(a)(15)(O)(ii), 8 U.S.C. § 1101(a)(15)(O)(ii).

The Director of the California Service Center denied the petition based upon the denial of the O- 1 petition filed on behalf of [redacted] The Petitioner subsequently appealed both denials. We dismissed the Petitioner's appeal of the O-1 petition denial. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon de novo review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(ii) of the Act provides classification to a qualified alien who:

(I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events;

(II) is an integral part of such actual performance,

(III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals . . . .

(IV) has a foreign residence which the alien has no intention of abandoning.

The regulations at 8 C.F.R. § 214.2(o)(4) provide, in pertinent part, the following requirements for an O-2 accompanying alien:

(i) General. An O-2 accompanying alien provides essential support to an O-1 artist or athlete. Such aliens may not accompany O-1 aliens in the fields of science, business or education. Although the O-2 alien must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for in conjunction with the services of the O-1 alien.

II. ANALYSIS

As stated above, an O-2 individual may enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance of the O-1 individual, and must be petitioned for in conjunction with the services of the O-1 individual. Section 101(a)(15)(O)(ii)(I) of the Act; 8 C.F.R. § 214.2(o)(4)(i).

Here, while the Beneficiaries' services as O-2 accompanying individuals were petitioned for in conjunction with the services of an O-1 individual, the O-1 petition was denied, and we dismissed the Petitioner's appeal of that denial. As there is no O-1 individual for the Beneficiaries to support, the statute and regulations prohibit the approval of this petition.

ORDER: The appeal is dismissed.