U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37409433

Date: MAY 5, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an artificial intelligence technology company, seeks to classify the Beneficiary as a chief technology officer of extraordinary ability. This O-1 nonimmigrant visa classification is available to individuals with 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).

SCOPS denied the petition concluding that the Petitioner did not show the Beneficiary satisfied at least three of eight possible forms of documentation. The matter is now before us on appeal. 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, 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). If the petitioner demonstrates a criterion

does not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C).

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).[1]

II. ANALYSIS

Because the Petitioner did not indicate or establish the Beneficiary has received a major, internationally recognized award, it must demonstrate the Beneficiary satisfies at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). SCOPS determined the Beneficiary fulfilled only one (judging under 8 C.F.R. § 214.2(o)(3)(B)(iii)(*4*)) of the six claimed categories. On appeal, the Petitioner maintains the Beneficiary meets five additional criteria.[2]

A. Awards

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) requires "[d]ocumentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor." USCIS determines whether the award is a lesser nationally or internationally recognized prize or award which the beneficiary received for excellence in the field of endeavor.[3] This criterion does not require an award or prize to have the same level of recognition and prestige associated with the Nobel Prize or another award that would qualify as a one-time achievement, nor does it require an award or prize to be received at an advanced stage of the beneficiary's career.[4]

The Petitioner claims the Beneficiary's eligibility for this criterion because he "has raised $500,000 in funding as a founder of [the Petitioner] from [redacted]." The Petitioner provided a letter from S-D-, founder and chief executive officer for [redacted], who stated that the Beneficiary garnered "significant venture capital funding of $500,000 as awarded by leading industry experts at [redacted], a prominent institution which selectively finances innovative excellence by top founders at the global level." The record also reflects that the Petitioner submitted three articles from [redacted], reporting on eight computer science students receiving $500K each for seed funding from [redacted]. In addition, the Petitioner offered a [redacted] article discussing [redacted].

[1] *See also generally* 2 *USCIS Policy Manual*, M.4(C)(2), https://www.uscis.gov/policymanaul.
[2] Any ground of eligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (*citing Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).
[3] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[4] *Id.*

The evidence, however, does not demonstrate that [redacted] $500K seed funding award constitutes a nationally or internationally recognized prize or award for excellence in the field. Although the Petitioner presented other evidence regarding the overall difficulty of obtaining seed funding and [redacted] stringent approval rate, the issue is whether [redacted] particular $500K seed funding award is nationally or internationally recognized for excellence. Because this regulatory criterion requires nationally or internationally recognized prizes or awards for excellence in the field, simply receiving prizes or awards in the field is insufficient. Similarly, merely receiving seed funding or venture capital does not satisfy this criterion unless the Petitioner establishes that such funding or venture capital is nationally or internationally recognized for excellence in the field. Here, the Petitioner did not show that the limited press coverage from a single website reflects national or international recognition for excellence in the field. Moreover, S-D-'s letter does not discuss the national or international recognition of [redacted] seed funding awards rather than referencing the amount of funding and reputation of [redacted].

Finally, the Petitioner argues that [redacted] seed funding should be considered as comparable evidence. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) states that "[i]f the criteria in paragraph (o)(3)(iii) of this section does not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility." For comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to the beneficiary's occupation, as well as why the submitted evidence is "comparable" to that criterion.[5] Here, the Petitioner's comparable evidence claim is moot because we considered the Beneficiary's seed funding under the awards criterion. Moreover, the Petitioner did not argue or claim that the awards criterion does not readily apply to the Beneficiary's occupation in order to qualify for the submission of comparable evidence.

For these reasons, the Petitioner did not show that the Beneficiary fulfills this criterion.

B. Memberships

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) requires "[d]ocumentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." USCIS determines if the association for which the person claims present or past membership requires that members have outstanding achievements in the field as judged by recognized experts in the field.[6]

The Petitioner provided screenshots from [redacted] website indicating that "[s]ince 2005, we have invested in over 9,000 founders," and the Beneficiary is listed in the directory. In addition, the Petitioner is listed as a company with the Beneficiary indicated as a co-founder. Moreover, the Petitioner submitted a letter from H-T-, group partner for [redacted], who stated that he "firmly endorse[s] [the Beneficiary's] outstanding merits including as a founder of [the Petitioner] to be accepted to [redacted], an eminent associational affiliation that complements their credentials and acclaim on the international level." Further, H-T- discussed the Beneficiary's background and claimed:

[5] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(3).
[6] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).

> This reflects [the Beneficiary's] technical skill, creative vision, and business acumen in their work that has novel, practical, and scalable qualities—a cohesive union of which is the outstanding achievement that is required and rigorously validated in just 1-2% of founders accepted from thousands of applicants to each [redacted] cohort, for which this founder and their technology company are featured including within [redacted] media coverage."

Although H-T- references "outstanding merits," "outstanding achievements," and "acclaim on the international level," repeating the language of the statute or regulations does not establish eligibility for the benefit. *Fedin Bros. Co. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729 MBM, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). Moreover, H-T- does not describe the selection criteria for choosing "founders," nor does he point to any supporting evidence to establish that outstanding achievements are an essential element for membership with [redacted]. Other than asserting that the Beneficiary possesses the skills of a cohesive union that is the outstanding achievement, the letter does not demonstrate that a founder member requires outstanding achievements as a condition for membership.

Furthermore, the Petitioner offered additional screenshots from [redacted] website regarding background information about the company, including that it "help[s] founders for the life of their company, and beyond" a list of [redacted] company clients. However, the Petitioner did not show how the purpose and history of [redacted] reflects that [redacted] founding membership requires outstanding achievements.

In addition, the Petitioner provided articles from forbes.com, techcrunch.com, and a field guide entitled, [redacted]. The evidence relates to companies and teams obtaining startup accelerators rather than individual membership requirements for founders of [redacted]. For instance, forbes.com discussed that "[i]deas are great, but your skills and experience are just as important when it comes to building a company from the ground up," "[i]f your company is further along, you should highlight financial key performance indicators . . . such as revenue, revenue growth and gross profit margin," and "[b]eing able to explain why your team and company are a worthy investment in a few sentences is ten times more impressive than a lengthy exposition." Further, techcrunch.com indicated that "[w]hat gets one team in where another is turned away," "what I'm looking for is technical excellence on the team," and "[w]hat that means can vary a bit from company to company."

Moreover, as indicated above, H-T- claimed that "just 1-2% of founders accepted from thousands." Although H-T-'s letter references acceptance figures for founders, the forbes.com article and [redacted] guide references the 1-2% acceptance rate for "startup accelerators" without any indication of acceptance rates for individual founders. Regardless, the Petitioner did not show that having a 1-2% acceptance rate also demonstrates that [redacted] requires outstanding achievements for its members.

Further, the Petitioner did not establish that recognized national or international experts judge founder membership. Although H-T- claims that "as an expert in the field of technology entrepreneurship, I wholeheartedly endorse [the Beneficiary]," the letter does not describe or indicate whether nationally or internationally recognized experts judge [redacted] membership. In addition, while the Petitioner offered screenshots from [redacted] reflecting that "[w]e collected and sorted advice on [redacted] application process by those greatest minds" and listed 19 current and [redacted] alum, the Petitioner did not provide supporting evidence demonstrating that these individuals judge [redacted] founder membership.

For these reasons, the Petitioner did not show that the Beneficiary meet this criterion.

C. Published Materials

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*) requires "[p]ublished material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation." USCIS first determines whether the published material was related to the person and the person's specific work in the field for which classification is sought.[7] USCIS then determines whether the publication qualifies as a professional publication, major trade publication, or major media publication.[8]

The Petitioner claims the Beneficiary's eligibility for this criterion based on an article mentioned above entitled, "Meet the [redacted]" posted on [redacted] The article is about [redacted] and lists several tech startups at the cohort. The article does not reflect published material about the Beneficiary relating to his work. In fact, the Beneficiary is briefly indicated as being one of the founders for one of tech startups at the event. Published material that includes only a brief citation or passing reference to the beneficiary's work is not "about" the beneficiary, relating to the beneficiary's work in the field, as required under this criterion.[9] Published material that covers a broader topic but includes a substantial discussion of the beneficiary's work in the field and mentions the beneficiary in connection to the work may be considered material "about" the beneficiary relating to the work.[10] Here, the article does not contain a substantial discussion of the Beneficiary and his work in the field.

Because the Petitioner did not demonstrate that the article reflects published material about the Beneficiary relating to his work, we need not determine whether [redacted] qualifies as a professional or major trade publication or other major medium.[11]

D. Judging

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*4*) requires "[e]vidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought."[12] Although SCOPS found the Petitioner demonstrated the Beneficiary's eligibility for this criterion, the record does not support this finding. Therefore, we withdraw SCOPS' decision for this criterion, discussed below.

At initial filing, the Petitioner's cover letter claimed that the Beneficiary "is publicly-credited for his panel judging over the work of others within the same or allied field, including risk innovators,

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[7] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[8] *Id.*
[9] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[10] *Id.*
[11] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (per curiam) (holding that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision).
[12] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2) (indicating that USCIS determines whether the person has acted as the judge of the work of others in the same or an allied field of specialization).

technologists, and entrepreneurs at the 2024 [redacted]." The Petitioner provided background documentation, registration information, promotional material, and judging criteria for the event. In addition, the Petitioner submitted an email from [redacted] "to invite [the Beneficiary and another individual] to participate in the [redacted] as judges." Although the evidence shows the Beneficiary's invitation to participate as a judge, the Petitioner did not reference documentation establishing that the Beneficiary participated as a judge at the event. The petitioner must show that the beneficiary has not only been invited to judge the work of others, but also that the beneficiary actually participated in judging the work of others in the same or allied field of specialization.[13]

Without evidence establishing that the Beneficiary actually participated as a judge, the Petitioner did not show the Beneficiary fulfills this criterion. Accordingly, we withdraw SCOPS' decision for this criterion.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any criteria discussed above, including through the submission of comparable evidence. Although the Petitioner claims the Beneficiary's eligibility for further criteria on appeal (capacity under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*) and salary under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*)), we need not reach these grounds because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).[14] Accordingly, we reserve these issues.[15] Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an alien of extraordinary ability. The appeal will be dismissed for the above-stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[13] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[14] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).
[15] *See INS v. Bagamasbad*, 429 U.S. at 25.