U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 42347486

Date: MAY 5, 2026

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner seeks to classify the Beneficiary as an executive sous chef/culinary advisor of extraordinary ability. To do so, the Petitioner pursues O-1 nonimmigrant classification, available to individuals 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).

Service Center Operations (SCOPS) denied the petition, concluding the Petitioner did not establish the Beneficiary's satisfaction of the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international award or at least three of six 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, 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." *See* 8 C.F.R. § 214.2(o)(3)(ii). Next, DHS regulations set forth alternative initial 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 at least three of six listed categories of documents. *See* 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). A petitioner may submit comparable evidence if the criteria do not readily apply to the beneficiary's occupation. *See* 8 C.F.R. § 214.2(o)(3)(iv)(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.").[1] 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 extraordinary ability in the arts. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iv).

II. ANALYSIS

SCOPS determined the Petitioner did not claim the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, SCOPS concluded the Petitioner established the Beneficiary's eligibility for only one of the five claimed alternative criteria, in which at least three must be fulfilled. On appeal, the Petitioner contends the Beneficiary satisfies three additional categories of evidence. Any ground of ineligibility 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)).

A. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) requires "[e]vidence 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." This criterion requires evidence of the beneficiary's past lead or starring participation in distinguished productions or events, and the beneficiary's prospective lead or starring participation in distinguished productions or events.[2] Evidence may demonstrate a lead role by establishing that the person has a principal role in the event or production, and a starring role means a position of great prominence relative to others in the event or production.[3]

SCOPS' decision indicates that it issued a request for evidence, informing the Petitioner of the insufficiency of the submitted documentation. Specifically, the Petitioner did not show how letters qualified under the required regulatory evidence of "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." Further, the Petitioner did not demonstrate that the Beneficiary's appearance on the reality show, "Game of Chefs," reflected her leading or starring participation. In addition, the Petitioner did not establish that the Beneficiary would perform as a lead or starring participant in events for it rather than in a supporting or managerial role. In response, the Petitioner's cover letter did not address this regulatory category, and SCOPS determined that the Petitioner did not show the Beneficiary's eligibility for this criterion.

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[1] *See also generally 2 USCIS Policy Manual*, M.4(B), https://www.uscis.gov.policymanual.
[2] *See generally 2 USCIS Policy Manual*, *supra*, M.4(D)(2).
[3] *Id.*

On appeal, the Petitioner's brief combines this criterion with the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*). However, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) requires "[e]vidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidence by articles in newspapers, trade journals, publications, or testimonials." This criterion requires evidence of: the beneficiary's current or past lead, starring, or critical role for a distinguished organization or establishment, including a distinguished division or department of such an entity; and the beneficiary's prospective lead, starring, or critical role for a distinguished organization or establishment, including a distinguished division or department of such an entity.[4] This criterion differs from the first criterion, which is specific to productions or events.[5]

Moreover, the Petitioner's brief does not address SCOPS' specific findings for this criterion. *See O-R-E-*, 28 I&N Dec. at 336 n.5 (finding grounds of ineligibility to be waived if not raised on appeal). Rather, the Petitioner argues the Beneficiary "has served in several lead and critical roles for restaurants" rather than her leading or starring services in productions or events, as required by this regulatory criterion. Therefore, these arguments will be addressed under our evaluation of 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*), discussed below.

Furthermore, the Petitioner contends for the first time that the Beneficiary '[redacted]" and submits new documentation. Because the Petitioner makes such eligibility claims for the first time on appeal and not previously before SCOPS, we will not consider them. Appellate bodies will not consider claims raised for the first time in an appeal. *Nat'l Rifle Ass'n of Am. v. Vullo*, 144 S.Ct. 1316, 1330 n.5 (May 30, 2024). Moreover, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

For these reasons, the Petitioner did not demonstrate the Beneficiary's eligibility for this criterion.

B. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*)

Again, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) requires "[e]vidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidence by articles in newspapers, trade journals, publications, or testimonials." Evidence may demonstrate a lead role by establishing that the person has a principal role in the organization or establishment.[6] A starring role means a position of great prominence

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

relative to others in the organization.[7] To show a critical role, the evidence should establish that the beneficiary has contributed or will contribute in a way that is of significant importance to the organization or establishment's activities.[8] USCIS considers factors such as whether the beneficiary's performance in the role has been or will be integral or important to the organization or establishment's goals or activities, especially in relation to others in similar positions within the organization.[9]

For the past element of this criterion, the Petitioner argues the Beneficiary's eligibility based on her roles with [redacted] Furthermore, the Petitioner claims for the first time on appeal that the Beneficiary "served in the lead and critical role of [redacted]' and submits new evidence. We will not consider new eligibility claims and evidence for the first time on appeal. *Nat'l Rifle Ass'n of Am.*, 144 S.Ct. at 1330 n.5; *Furtado*, 28 I&N Dec. at 801-02; 8 C.F.R. § 103.2(b)(11). For the same reasons, we will not consider any new evidence provided on appeal as it relates to [redacted]

An organization or establishment, or its relevant division or department within the entity, must be recognized as having a distinguished reputation.[10] Relevant factors for evaluating the reputation of an entity or its department or division include, but are not limited to, the scale of its customer base, longevity, or relevant media coverage.[11]

As it relates to [redacted] the Petitioner provided articles from timeout.co.il, haaretz.co.il, and food.walla.co.il reporting on the opening of the bar and restaurant, including menu options and planned theme events, and indicating the Beneficiary's ownership. However, the Petitioner did not demonstrate how the articles show the distinguished reputation of [redacted] At the time of the articles, [redacted] had just opened and the reporting mainly focuses on what the restaurant has to offer without any discussion of [redacted] reputation or any positive indicators showing its eminent standing.

Likewise, regarding [redacted] the Petitioner submitted articles from maariv.co.il, mako.co.il, israelhayom.co.il, and food.wall.co.il also reporting on the opening of the bar and restaurant and listing various dishes. Again, the Petitioner did not establish how the articles represent [redacted] distinguished reputation. Besides announcing the restaurant opening and presenting menu options, the articles do not discuss [redacted] prominent or renowned standing or reputation. In fact, the israelhayom.co.il article indicated that "[s]ince the article was published, [the Beneficiary] and the partners at [redacted] have parted ways following professional differences of opinion, and the place is currently preparing for a reopening." Here, the Petitioner did not demonstrate how the closing of the restaurant due to professional differences reflects its distinguished reputation.

For the prospective element, the Petitioner maintains that the Beneficiary "will serve in the lead and critical role of Executive Sous Chef for [redacted] in [redacted] MA." The Petitioner offered a deal memo and a letter indicating that the Beneficiary will shape "the culinary direction of our Jewish events and programming." However, the Petitioner did

[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[11] *Id.*

not demonstrate that the Beneficiary will perform in a leading, starring, or critical role. The Petitioner, for instance, did not compare the Beneficiary's responsibilities to the executive chef's responsibilities at the school. Moreover, the Petitioner did not show how planning and designing menus for approximately a dozen events, such as [redacted] each school year signifies that the Beneficiary will perform in a leading, starring, or critical role.

Furthermore, the Petitioner did not establish that [redacted] enjoys a distinguished reputation. The Petitioner submitted three screenshots from [redacted] website reflecting "Welcome," "Worship With Us," and "Who We Are." However, the Petitioner did not show how the screenshots show the distinguished reputation of [redacted] The Petitioner did not point to information indicating [redacted] renowned, prominent, or eminent status, standing, or reputation. In addition, the Petitioner did not offer independent, objective evidence demonstrating [redacted] distinguished reputation.

For all these reasons discussed above, the Petitioner did not show the Beneficiary's eligibility for this criterion.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any additional criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*), we need not address this category, as well as SCOPS' favorable determination relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*), because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three. We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim, has received a high level of achievement, and has been recognized as being prominent, renowned, leading, or well-known in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).[12] Accordingly, we reserve these issues.[13] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual 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.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

[12] *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(D)(4).

[13] *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).