U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-B-

DATE: MAY 10, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a ballet company, seeks to temporarily employ the Beneficiary as a principal ballet dancer. 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 Vermont 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).

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 "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.[1]

II. ANALYSIS

Absent evidence of a significant national or international award or prize like the Academy Award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner did not satisfy any of the evidentiary criteria. The Petitioner maintains that the exhibits satisfy four of those criteria. As discussed below, we find that the exhibits do not satisfy any of the evidentiary criteria.

> *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*).

According to the Beneficiary's resume, she trained in ballet in Brazil and the United States at the the and the from 2002 until 2014, when she began her professional career with the The Petitioner maintains that the Beneficiary satisfies this criterion by her roles in those organizations' productions. To demonstrate this criterion, the Petitioner provided programs for some of the Beneficiary's performances that mention her by name, and numerous testimonial letters from teachers, colleagues, and employers.[2] We determine that the evidence is insufficient to establish that the Beneficiary performed in a lead or starring role in those productions.

As a student with the the Beneficiary performed with the youth ballet company in a production of While not addressed by the Director, the Petitioner did not provide a properly certified English language translation of the program for this production. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully

[1] While not at issue here, the regulations contain additional evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

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

determine whether the translated material is accurate and supports the Petitioner's claims. Even if the Petitioner had provided such translation, the program shows that the Beneficiary danced as one of many members of the and not in a lead or starring role.

The Beneficiary next completed a pre-professional graduate course at from 2010 until 2014, during which she danced roles including those of ' and ' in and the roles of ' and ' in in which she also performed as one of many dancers in the ' The Petitioner provided recommendation letters from principal of who named several of the productions in which the Beneficiary danced as a student, and artistic director, who stated that she "fit in very well with the professional dancers." She is identified as a student in the dancer listings that are included in their programs. Upon review, based on the programs these pre-professional productions serve as showcases for the school's ballet students, and the Beneficiary's roles appear to be ensemble parts that do not rise to the level of a leading dancer within the scope of the productions.

Next, in the Beneficiary's first professional employment with she danced roles including those of ' ' and ' ' in the roles of ' ' and in and the role of ' in in which she also performed as one of many dancers in the ' and The Petitioner submitted two letters from artistic director of who describes the Beneficiary as a hard-working dancer who "works well as part of a group as well as a soloist." The Beneficiary is identified as an "apprentice" in programs for 2014, and a full company member in its programs for 2016. Based on the record, the Beneficiary's roles do not appear to rise to the level of a leading dancer within the scope of those productions.

We note mentions that, during a guest residency in Arizona, the Beneficiary worked with "choreographers as they created new works [for] her." In addition, a letter from the Beneficiary's colleague at indicates that he choreographed a new work for that company in which she "was cast as the lead." The Petitioner has not, however, provided specific information regarding those roles.

Further, the Petitioner has not submitted critical reviews, advertisements, publicity releases, publications, or other evidence to establish that the above-mentioned events have a distinguished reputation and to show the Beneficiary's lead or starring role in the events. Such evidence is required under the regulation.

Finally, in order to meet this criterion, the Petitioner must establish that the Beneficiary *will* perform services as a lead or starring participant in productions or events which have a distinguished reputation upon approval of the petition. The Petitioner has not offered additional evidence that would distinguish the Beneficiary's proposed role as leading or starring within the company's upcoming productions. It indicates in the petition that she will be a "principal dancer," but has not provided information regarding her proposed roles in its upcoming productions of

and others. 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, the Petitioner cites published material pertaining to the Beneficiary. The Director determined, and we agree, that those materials did not satisfy this criterion. The Petitioner provided a photo advertisement published in magazine showing the Beneficiary performing in a summer dance program, and a photograph of her published in the performing in a dress-rehearsal of These published materials are not specifically "about" the Beneficiary as an individual, as they do not mention her by name.

The Petitioner also submitted translations of several articles pertaining to the Beneficiary which were published in Brazilian publications. While not addressed by the Director, we note that these foreign language documents do not comport with the regulation at 8 C.F.R. § 103.2(b)(3), since they are accompanied by uncertified translations. Thus, for the reasons previously discussed, we cannot meaningfully determine whether the translated material is accurate and supports the Petitioner's claims. Regardless, the articles, published in the Brazilian publications and discuss the and contain the Beneficiary's brief biography among those of other students. Those published materials are not specifically "about" the Beneficiary but about the school.

Two additional articles are about the Beneficiary, published in the magazines and The article in describes the Beneficiary as a student of the who will attend the The article in mentions that the Beneficiary is attending While the authors of the published material speak very positively of the Beneficiary's talent and determination, the articles do not recognize her individual achievements as a dancer, or the national or international recognition she received for such achievements. In addition, the record does not contain evidence of the print circulation statistics showing that either of the above-referenced publications qualifies as a "major" newspaper, trade journal, or publication.[3]

Finally, the Petitioner submitted documentary evidence that the Beneficiary received awards in youth dance competition in Argentina between 2005 and 2007. However, the Beneficiary's award certificates alone are not sufficient to satisfy this criterion, which requires evidence in the form of "critical reviews or other published materials by or about the individual in major newspapers, trade

[3] To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.

journals, magazines, or other publications." Therefore, we will examine this evidence below in our discussion of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*).

> *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 cites the Beneficiaries' past performances for the and Upon review, the evidence does not establish that the Beneficiary has held a lead or starring role with respect to an organization or establishment, or that she will hold such role with the Petitioner. As discussed above with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*), the majority of the Beneficiary's performances have been as a ballet student with rather than as a professional dancer, and the specific roles mentioned appear to have taken place within the context of student showcases rather than professional productions. Regarding her first professional employment with the Beneficiary was only recently promoted from apprentice to full member of the company. The testimonial letters from the Beneficiary's current and former teachers and colleagues do not mention the Beneficiary's roles or responsibilities for an organization or establishment. Further, the Petitioner has not provided sufficient evidence to establish that the or have a distinguished reputation. The testimonial letters submitted do not address the reputation of those organizations, other than to state that they are "prestigious" and "well-respected" in the field.

Further, the evidence does not establish that the Beneficiary's proposed role with the petitioning organization would satisfy the requirement that she will be performing in a lead, starring, or critical role. As discussed above, the Petitioner indicated in the petition that the Beneficiary will be a "principal dancer," but it has not offered information regarding her proposed roles in its upcoming productions. On appeal, the Petitioner submits a letter from the director of its ' stating that as a member of that company the Beneficiary "would be an indispensable artist in our education programs." The record does not elucidate where the Beneficiary's proposed position falls in the overall hierarchy of the Petitioner's organization or her proposed impact on the organization. statement does not establish how the Beneficiary will serve in a lead, starring, or critical role that would set her apart from other dancers the Petitioner employs.

> *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 numerous testimonial letters in support of the petition. We determine that the submitted testimonials and other documentary evidence do not satisfy this criterion. The letters primarily discuss the Beneficiary's innate talent, work ethic, personal traits, and

artistry rather than her achievements as a ballet dancer. Those letters that did address specific achievements of the Beneficiary, such as her participation in the ballets [redacted] and [redacted] 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.[4]

On appeal the Petitioner avers that the "no objection" letter from [redacted] of the [redacted] which was contacted by the Petitioner for a consultation, "constitutes significant recognition from an organization/expert in the field." It contends that the Director's decision did not give this evidence proper weight and demonstrated "a preconceived bias . . . and an inability to objectively view the evidence." The letter from the [redacted] satisfies the Petitioner's burden to submit a written advisory opinion from an appropriate consulting entity. 8 C.F.R. § 214.2(o)(2)(ii)(D). As the Petitioner acknowledges, however, consultations are advisory in nature and are not binding on U.S. Citizenship and Immigration Services (USCIS). *Id.* Regardless, [redacted] letter, the sole independent opinion provided, concludes that upon review of the Beneficiary's documentation, "[she] appears to meet the standard of distinction set forth at [8 C.F.R. § 214.2(o)]." [redacted] does not specify, however, on what she based this conclusion, and she does not offer an explanation as to how the Beneficiary's achievements as a ballet dancer have been recognized in the field.

Without further information and evidence, [redacted] advisory opinion is not sufficient to demonstrate that the Beneficiary's achievements have received significant recognition. 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 foreign national's eligibility for the benefit sought. 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 foreign national's eligibility. USCIS may give less weight to an opinion that is not corroborated, or in accord with other information. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

Finally, the Petitioner submitted evidence of the Beneficiary's receipt of the following awards:

- [redacted] (Argentina 2005);
- [redacted] and [redacted] (Argentina 2006); and
- [redacted] and [redacted] (Argentina 2007).

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

While not addressed by the Director, we note that these foreign language documents are accompanied by uncertified translations. *See* 8 C.F.R. § 103.2(b)(3). Thus, as previously discussed, we cannot meaningfully determine whether the translated material is accurate and supports the Petitioner's claims. Regardless, the evidence does not sufficiently establish that the prizes rise to the level of a "significant recognition for achievements" pursuant to the plain language of the criterion. Although one of [redacted] testimonials mentions the Beneficiary's receipt of the above-referenced dance awards, the information submitted regarding the [redacted] shows that the competition was limited to those under 18 years of age.[5] The Petitioner has not shown, therefore, that these awards were open to established professionals already working in the field rather than limited to students.

We acknowledge the Petitioner's contention on appeal that "the fact that the Beneficiary was recently a student . . . does not disqualify the Beneficiary from meeting the criteria set forth in 8 C.F.R. § 214.2(o)(3)(iv)(B)." However, it remains the Petitioner's burden to establish the Beneficiary's significant recognition for achievements in the field. While the awards may well be evidence of significant recognition for achievements when compared to other dancers of student age, the Petitioner has not shown they constitute significant recognition when compared to all dancers of all ages. Thus, while the restriction limiting these awards to those of student age does not diminish the merit of the Beneficiary's achievements in the class for which the award is presented, the Petitioner has not established that the awards meet this criterion.

III. CONCLUSION

The record does not satisfy at least three of the six evidentiary criteria. 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, 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-B-*, ID# 273110 (AAO May 10, 2017)

[5] During the period when the Beneficiary received the awards, the [redacted] competition was open to dancers under 18 years. Beginning in 2008, the upper age limit was raised to 18 years and 11 months.