U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37447957

Date: MAY 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a tattoo studio, seeks to classify the Beneficiary as a tattoo artist 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 withdraw the decision and remand the matter for entry of a new decision consistent with the following analysis.

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."). 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 demonstrate 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 two of the five claimed alternative criteria, in which at least three must be fulfilled. On appeal, the Petitioner contends the Beneficiary received significant national or international awards or prizes and satisfies three additional categories of evidence.

A. 8 C.F.R. § 214.2(o)(3)(iv)(A)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A) requires "[e]vidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award."[1] The Petitioner argues the Beneficiary's eligibility for this criterion based on receipt of two awards from the [redacted]' (2022) and '[redacted]' (2024).

The Petitioner presented screenshots from [redacted] regarding background and information about the magazine, photographs of trophies and of the Beneficiary, social media announcements from the Beneficiary, and social media posts and other documentation from the magazine announcing the awards and winners. Moreover, the Petitioner submitted promotional material for the 2024 contest (20th anniversary edition), including an excerpt about the Beneficiary and his work, and background information about the judges and previous winners. Further, the Petitioner provided an article from [redacted] regarding an interview of the Beneficiary in which he indicated that "I had a recognition from [redacted] magazine, recognizing myself as the most voted by the public" and background information about [redacted] Similarly, the Petitioner offered an article from [redacted] including background information about the magazine, indicating that the Beneficiary "received recognition from [redacted] magazine as the most-voted artist by the public."

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

On appeal, the Petitioner references a previously submitted letter from L-V- who claimed:

> . . . [The Beneficiary] has achieved remarkable recognition in the broader tattoo industry. [redacted] Magazine, an esteemed publication in the tattoo world, holds an annual contest judged by elite artists from around the globe. [The Beneficiary's] exceptional versatility and popularity were recognized with first place awards in both [redacted] (2024) and [redacted] (2022) categories. As one of the fellow awardees in the 2022 [redacted] Magazine awards, I can attest to the rigorous competition winning artists faced. Participating artists were selected from among the most talented and innovative tattoo artists worldwide, and the award-winners were those whose work stood out for execution of both technical and aesthetic components.

The Petitioner did not establish that the Beneficiary's 2022 "[redacted]" and 2024 "[redacted]" qualify as significant national or international awards. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A) does not further define significant national or international awards or prizes. However, the regulation offers examples: the Academy Award, an Emmy, a Grammy, or a Director's Guild Award. While these are only examples and other awards and prizes may qualify, the Petitioner must demonstrate that the Beneficiary's awards are comparable in significance, stature, or prestige to the examples, consistent with the regulation. Here, the Petitioner did not show that either of the awards enjoy similar standing. For example, the Petitioner did not demonstrate how self-serving comments on the Beneficiary's personal social media pages and his answers in an interview reflect the significance of the awards by the overall field.

Moreover, while L-V- commented on the contest, including the competitors, he did not discuss the Beneficiary's particular awards, besides indicating the Beneficiary's receipt of them. Further, L-V- did not differentiate the Beneficiary's awards from others presented at the contest, explain whether all of the contest awards qualify, or articulate how the specific awards represent significant national or international awards.

In addition, while the Petitioner argues the reputations of judges and other winners, the Petitioner did not show how this constitutes evidence of the significance of the awards around the same category of awards indicated in the regulation, nor are we convinced that every national or international award judged or bestowed upon a highly acclaimed individual would automatically make the award a significant national or international one. Furthermore, the Petitioner did not demonstrate how its limited submission of press material reporting on the contest or indicating the Beneficiary's receipt of awards establishes the gravity of the awards in order to classify them as significant national or international accolades, consistent with this regulatory criterion and on a similar level of an Academy Award, an Emmy, a Grammy, or a Director's Guild Award.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary meets the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A).

B. 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]

Regarding the Beneficiary's past services, the Petitioner's brief specifically points to the Beneficiary's roles at the [redacted] As it relates to [redacted], the Petitioner initially provided a self-composed document entitled, [redacted] 2017," claiming to be photos of the Beneficiary's works and awards. In response to the request for evidence (RFE), the Petitioner similarly submitted a self-composed document entitled, [redacted] Venezuela, 2017)," reflecting the same photos/awards of the Beneficiary's work. To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications contracts, or endorsements.[4] Advertisements, publicity releases, and endorsements are promotional materials.[5] Endorsements are public facing and serve a marketing purpose.[6] This exhaustive list does not include unpublished testimonial or recommendation letters.[7] Here, the Petitioner did not demonstrate how self-compiled documents of photographs satisfy the evidentiary requirements for this criterion. Moreover, the Petitioner did not establish how the evidence reflects the Beneficiary's performance in a leading or starring role for the exposition.

Regarding [redacted] the Petitioner similarly presented a self-composed document entitled, [redacted] 2022," claiming to reflect a photo of the Beneficiary's award, a photo of his award-winning tattoo, a photo of his artwork being judged, a photo of his tattoo and award, and a "Promotional Flyer Advertising [the Beneficiary]." In response to the RFE, the Petitioner submitted another self-composed document entitled, [redacted] (Argentina, 2022)," reflecting the same evidence. For the reasons discussed above, the Petitioner did not establish how the photographs of the Beneficiary's work, awards, and individuals judging his work fall within the required regulatory documentation of "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." As it relates to the purported flyer, the Petitioner did not provide a certified full English language translation. 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 they are competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the flyer as required, we accord it no weight as we cannot

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

determine whether it supports the Petitioner's claim. Regardless, the Petitioner claimed that the Beneficiary was "confirmed" to participate at the event. However, the Petitioner did not show that the Beneficiary's participation at the tattoo festival constituted a leading or starring role at the event; the Petitioner did not demonstrate how the Beneficiary distinguished himself from others at the festival or how he otherwise served in a leading or starring role.

As it pertains to [redacted] the Petitioner initially submitted a self-composed document entitled, [redacted] 2002," claiming to be photographs of the Beneficiary's work and awards and his work being judged at the competition. In response to the RFE, the Petitioner submitted another self-composed document entitled, [redacted] (Argentina, 2022)," reflecting the same evidence. Again, the Petitioner did not establish how the self-compiled documentation of photographs qualifies under this regulatory criterion. Moreover, the Petitioner did not show how the evidence reflects the Beneficiary's participation in a leading or starring role for the convention.

The Petitioner also asserts that it "submitted documentation that illustrates that [the Beneficiary's] receipt of a top award was announced in major international media which indicates that this was a role and achievement worthy of international attention" and references the [redacted] article, discussed above. Notwithstanding that the Petitioner did not show how the magazine article falls within the documentation under this regulatory criterion, the evidence reflects self-authored material by the Beneficiary where he claimed that he "received significant recognition from readers" without demonstrating leading or starring services. In addition, the Petitioner references a newspaper article from [redacted] and highlights that the Beneficiary's "foray into realism, color, and black and gray led him to stand out at local conventions." Once again, the Petitioner did not demonstrate how the article qualifies for any of the regulatory documentation. Moreover, the article reflects material about the Beneficiary rather than about a production or event, and the article does not indicate or discuss the Beneficiary's services in a leading or starring capacity, as well as specifying the conventions.

Moreover, the Petitioner argues that for his role as a judge at the [redacted] 2023 the Beneficiary "was awarded a trophy and his participation was advertised by the event" and "[n]umerous photographs of him on stage at the event confirm that he is one of a small handful of artists judging participants." The record reflects that the Petitioner initially submitted a self-composed document entitled, [redacted] 2023," claiming to be photographs of a trophy the Beneficiary received, a promotional flyer advertising the Beneficiary as a judge, social media posts, and a copy of his identification badge. In response to the RFE, the Petitioner provided another self-composed document entitled, [redacted] (Argentina, 2023)," for the same documents. However, the Petitioner did not submit the required certified English language translations under 8 C.F.R. § 103.2(b)(3); therefore, we cannot afford them any weight. Nevertheless, the Petitioner did not show how the documents fall under the regulatory requirement. Moreover, as it relates to the purported promotional flyer, the Petitioner did not establish how it shows the Beneficiary's leading or starring participation at the festival. According to the photographs, the Beneficiary is purportedly pictured with eight other judges, but the Petitioner did not establish how his services compared to the other judges, as well as to the overall festival, to show leading or starring participation.

Finally, the brief states:

> Petitioner acknowledged in the RFE response that [the Beneficiary's] seminars may not qualify as "distinguished events" under the narrowest reading of the regulations. However, leading seminars are a strong indicator of the respect and recognition he commands within the tattoo community. These seminars, where he is invited to share his expertise, demonstrate his influence as an artist and his ability to educate and inspire others in the field. The fact that he is sought after to lead such events highlights his professional standing and the esteem in which he is held by both peers and aspiring artists.

The Petitioner submitted a "Program," with accompanying English language translations, listing topics for the Beneficiary's seminar, as well as photographs, the Beneficiary's social media post, and correspondence and proof of payments from attendees. However, the Petitioner did not demonstrate how any of the evidence reflects "critical reviews, advertisements, publicity releases, publications contracts, or endorsements," as required under this regulatory criterion.

Because the Petitioner did not demonstrate that the Beneficiary previously performed services as a leading or starring participant, we need not determine whether these productions or events have distinguished reputations. Moreover, we need not determine whether the Petitioner established the Beneficiary's eligibility for the prospective part of this criterion. Accordingly, we reserve these issues. *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).

For the reasons discussed above, the Petitioner did not establish the Beneficiary satisfies this criterion.

C. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) requires "[e]vidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, or other occupational achievements reported in trade journals, major newspapers, or other publications." This criterion requires evidence in the form of publications establishing the beneficiary's record of major commercial or critically acclaimed success.[8] The publications may include print or online publications or transcripts of radio or video coverage.[9]

Initially and repeated in the RFE response, the Petitioner argued the Beneficiary's eligibility for this criterion based on "significant recognition from tattoo organizations in the form of [the Beneficiary's] many awards" and referenced the submission of photographs of artwork and awards and letters. However, the Petitioner did not establish how photographs of artwork and awards and letters qualify as evidence stipulated under this regulatory criterion.

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

Furthermore, the Petitioner contended that the Beneficiary met this criterion based on his occupational achievements reported in [redacted], and [redacted] The [redacted] article reflects an interview of the Beneficiary in which he responded:

> …[W]hen I returned to Argentina I won my first international prize outside my native country, Venezuela, at the tattoo festival convention where I won the first place in full color, that same year I got the second full color at the spring tattoo festival, I had a recognition from [redacted] magazine, recognizing myself as the most voted by the public, obtaining several sponsors that year, then I would say that 2022 was a memorable year.

Regarding [redacted] the record reflects self-authored material in which the Beneficiary indicated that "I participated in several tattoo conventions, where I achieved first place in the full-color category. Additionally, in the same year, I received significant recognition from the readers of [redacted]" As it relates to [redacted] the material reflects a short biography of the Beneficiary indicating:

> Among his career highlights, [the Beneficiary] fondly recalls his European tour in 2022, where he served as a guest artist in renowned studios. This experience was followed by a significant achievement – a first-place win in the full-color category at an international tattoo convention. Additionally, he secured a second-place prize at the spring tattoo festival and received recognition from [redacted] magazine as the most-voted artist by the public. These accolades, coupled with sponsorships, marked 2022 as a memorable year in [the Beneficiary's] career.

A publication reporting the commercial success of the beneficiary or the beneficiary's work should reflect that the ratings, receipts, sales, revenue, standing, or other occupational achievement represent major successes in the relevant field.[10] If demonstrating critically acclaimed success, the evidence should demonstrate that the beneficiary's work has received public-facing praise or positive reviews in the relevant field, such as from professional art, television, or film critics.[11] Here, the Petitioner did not demonstrate that any of the material represents major commercial or critically acclaimed successes. The articles reflect the Beneficiary's responses and statements rather than evidence of major commercial successes or critically acclaimed successes. Moreover, the Petitioner did not establish that the Beneficiary's self-serving statements in magazines show public-facing praise or positive reviews from professional art critics.[12]

Furthermore, the Petitioner claimed that the Beneficiary "is sponsored as a Pro Team Artist for the tattoo brands [redacted] – leading manufacturers in the field" and "sponsorships in the tattoo industry is an occupational achievement realized by only the field's most exceptional artists." Although the Petitioner provided photographs, contracts, letters, and screenshots about the companies, the Petitioner did not demonstrate how this evidence reflects major commercial or critical acclaimed successes in "trade journals, major newspapers, or other publications." In addition, the Petitioner submitted a screenshot from [redacted] listing the Beneficiary as an artist, [redacted] social

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

media promotion of the Beneficiary, a promotional flyer from [redacted] with a photo of the Beneficiary, and [redacted] social media promotion of the Beneficiary. However, the Petitioner did not show how the evidence shows major commercial or critically acclaimed successes. Moreover, the Petitioner did not establish that posting on a social media page is the equivalent to "other publications" consistent with this regulatory criterion.

Similarly, the Petitioner argued that the Beneficiary "has been requested to star as a judge at [redacted] (Argentina) in 2023" and his "selection to star as a judge of the competition was published and promoted on the organization's popular social media platforms." While the Petitioner provided a promotional flyer and copy of a social media post, the Petitioner did not demonstrate how the evidence constitutes major commercial or critically acclaimed successes and equates to trade journals, major newspapers, or other publications.

The Petitioner also offered an article from [redacted] highlighting that the Beneficiary's "specialization in realism and free style has led him to gain recognition in trade magazines and secure sponsorships from prominent brands such as [redacted] However, the Petitioner did not demonstrate that the article reflects the Beneficiary's major commercial or critically acclaimed successes; the Petitioner did not sufficiently explain how an article indicating that the Beneficiary secured two sponsorships represents major successes or shows he has received public-facing praise or positive reviews from professional art critics.

Accordingly, the Petitioner did not show the Beneficiary meets this criterion.

D. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*) requires "[e]vidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence." To demonstrate that the petitioner meets this criterion, the petitioner should provide appropriate evidence establishing that the beneficiary's past or future compensation is or will be high relative to others working in the field.[13]

Regarding the Beneficiary's past compensation, the Petitioner provided an "Income Certification," including monthly invoices, for the Beneficiary's income from February 2023 to January 2024 for "his Principal Business Activity Personal Services Related to Tattoo Art and Landscaping Tattooing" in [redacted] Argentina. As comparable evidence, the Petitioner submitted screenshots from worldsalaries.com for tattoo artist salaries in Argentina.

In the denial, SCOPS stated:

> You provided a "declaration" from an Argentinean CPA who indicates that the beneficiary, in the past, has earned $13,098,692 in Argentinean currency. However, this salary equates to approximately $14,526 per year in US dollars. At an annual

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

> income of $14,526 the hourly wage rate is $7 per hour, which is not a significant salary amount.
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> . . . .
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> The record includes a printout from World Salaries, which indicates only 25% of tattoo artists in Argentina earn more than 294,300 ARS. However, while it is noted that the record included a "declaration" from an Argentinean CPA, which states the beneficiary has earned $13,098,692 in Argentinean currency, the record does not demonstrate how the beneficiary has earned a significant salary amount as compared to the field as a whole, not just in one regional area. While the documentation establishes the beneficiary has earned more than the average tattoo artist in Argentina, the record does not establish how this relates to the field as a whole, not just one geographic area.

Although SCOPS converted the Beneficiary's Argentinean salary into United States currency and determined that it was "not a significant salary amount," policy guidance states that USCIS should evaluate persons working outside of the United States based on wage statistics or comparable evidence relevant to the applicable work location, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States.[14] Thus, the appropriate comparison is to liken the Beneficiary's salary with the salary of other tattoo artists in Argentina rather than comparing the Beneficiary's foreign salary to tattoo artists in the United States.[15]

Here, the Petitioner offered evidence reflecting that the Beneficiary commanded a high salary in relation to other tattoo artists in Argentina. According to the submitted World Salaries evidence, the highest average annual salary for tattoo artists in Argentina is 325,800 ARS, in which the Beneficiary earned 40 times that amount. Because the Petitioner demonstrated the past aspect, we need not determine whether the Beneficiary qualifies for the prospective part of this criterion.[16]

Accordingly, the Petitioner established the Beneficiary satisfies this criterion.

III. CONCLUSION

Because the Petitioner has demonstrated that the Beneficiary fulfills at least three categories of evidence, we remand this proceeding so that SCOPS can review the totality of the record and the quality of the evidence to determine whether the Petitioner has shown the Beneficiary's extraordinary ability in the arts - sustained national or international acclaim, received a high level of achievement, and 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).[17]

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

[15] The issue relating to whether the Beneficiary is among the top paid tattoo artists in the field as a whole is best addressed in an evaluation of the totality of the record and the quality of the evidence to determine extraordinary ability in the arts.

[16] *See INS v. Bagamasbad*, 429 U.S. at 25.

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

ORDER: The decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.