U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF C-L-A-, INC.

DATE: MAY 18, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a non-profit educational organization, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas 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.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary has the necessary achievements.

On appeal, the Petitioner submits additional evidence and asserts that the letters adequately demonstrate the Beneficiary's skills.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary 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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part:

> *Extraordinary ability in the field of arts* means distinction. Distinction means 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.
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> . . .

> *Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) sets forth a multi-part analysis to determine whether a beneficiary has extraordinary ability in the arts. First, a petitioner can demonstrate the beneficiary's recognition in the field through documentation that the beneficiary has been nominated for, or is 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. 8 C.F.R. § 214.2(o)(3)(iv)(A). If a petitioner does not provide this information, then that petitioner must satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*). If a petitioner shows that certain criteria do not readily apply to the beneficiary's occupation, that petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(C).

The submission of documents relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Id.* Accordingly, where a petitioner provides qualifying evidence under at least three criteria, we will determine whether the totality of the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor.

II. ANALYSIS

The Petitioner is a non-profit organization dedicated to training and supporting opera singers. As part of these services, it matches them with vocal coaches in France and Italy. It seeks to employ the Beneficiary as an artistic director associate. The duties on the Form I-129, Petition for a Nonimmigrant Worker, O and P Classifications Supplement, include developing the entity's "French artistic and educational activities in the United States as a performer, an event organizer and a development assistant." The accompanying cover letter indicates that the Beneficiary will use his opera experience "to help obtain foundation sponsorships to underwrite [the Petitioner's] critically important vocal training programs in Europe." More specifically, the Beneficiary will perform at the Petitioner's concerts, teach masterclasses, establish and develop ties to patrons of the arts, and promote the organization through media networks. The Petitioner contends that the Beneficiary's relevant experience derives from his career as a singer of extraordinary ability.

The Director concluded that the Beneficiary did not meet any of the regulatory criteria. On appeal, the Petitioner reviews the evidence before the Director, notes that the petition was supported by experts, and offers new exhibits. The Petitioner notes the submission of a consultation from the [redacted] The author, [redacted] does not address the

regulatory criteria; rather, she expresses that has "no objection based on artistic ability that this petition be granted." Consultations, however, are advisory and are not binding on us. 8 C.F.R. § 214.2(o)(5)(i)(D). It remains the Petitioner's burden to provide the specific documentation mandated by the regulations in addition to the consultation.

On appeal, the Petitioner does not address the regulatory criteria directly. The regulation at 8 C.F.R. § 214.2(o)(3)(iv) explains that a petitioner must demonstrate a beneficiary's eligibility through specific categories of evidence rather than relying on general affirmations of talent and success. For the reasons enumerated below, while we find that the Beneficiary satisfies two criteria, the Petitioner has not provided material that meets a third criterion. In addition, the Petitioner has not sufficiently articulated how the Beneficiary, as an artistic director associate, will continue to work in his area of asserted extraordinary ability, singing, with other responsibilities only incidental or related to that activity.

Finally, the record does not contain complete, certified translations of several of the foreign language documents, as required by regulation. 8 C.F.R. § 103.2(b)(3). Those exhibits without translations have limited evidentiary value and our discussion will focus on the items that are in English or accompanied by a compliant translation.

A. Eligibility Criteria

1. Receipt of or Nomination for Significant National or International Award or Prize

The record contains several foreign language certificates offered as awards. Those with complete, certified translations include:

1. A 2004 at the at
2. A 2004 at the -sponsored and
3. A 2002 at the

At issue is whether any of these certificates is a significant national or international award or prize in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(iv)(A). On appeal, the Petitioner contends: "Any connoisseur of the music world is aware that all those prizes in French and international competitions are awarded by juries composed of outstanding celebrities of the classical musical world." It is the Petitioner's burden, however, to document their significance.

According to exhibits in the record, the is open to candidates between 18 and 36 years old. The winner will receive an invitation, upon request, to participate in the in The competition is open to

anyone at least 18 years old, with 10 registrants selected from their video clips for the final. The the sponsor of the is an umbrella organization for approximately 50 competitions. With respect to the rules, information pertaining to who is eligible to compete does not demonstrate the recognition of the awards themselves. The Petitioner did not document awareness of these certificates in the field through, for example, press coverage of the events that might reflect on their visibility. president of in New York, lists the Beneficiary's awards, but offers no discussion of their meaning in the field. Without independent, objective evidence corroborating the significance of the Beneficiary's awards, the Petitioner has not met the plain language of the regulation.

2. Alternative Criteria

As the Petitioner did not document a significant national or international award or prize, it must satisfy at least three of the alternative criteria. A discussion of those criteria follows.

> *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).

The Director concluded that the Petitioner had not explained the leading or starring nature of the Beneficiary's past performances and had not identified specific productions or events in which the Beneficiary would participate in the United States. The record supports the Director's findings.

The Petitioner provided reviews of some of his past performances. For example, he did not provide complete, certified translations of the reviews from a blog copied into an email, the review of ' or the articles by and As noted, such translations are required by regulation in order for us to consider such evidence. 8 C.F.R. § 103.2(b)(3). Thus, these items do not satisfy this criterion.

A review at praises the Beneficiary's performance at a private home. Nothing in the review suggests the event enjoyed a distinguished reputation. The Petitioner also provided reviews of the Beneficiary's performance on a recording of an opera with the Although the comments are favorable, they do not single out the recording as one with a distinguished reputation. Similarly, a review in of ' mentions the Beneficiary as the ' and praises the "semi-staging" of this show. It does not, however, indicate a distinguished reputation, for example by discussing the prestige associated with the show's venue, the based at

On appeal, the Petitioner states that the Beneficiary juried prestigious competitions such as the in We are unable to locate an English-language document or

translation that confirms this role. Without corroboration of this level of participation and information relating to the reputation of the competition, the Petitioner has not met its burden of proof.

Finally, the regulation not only requires past participation with qualifying productions or events, but evidence that the Beneficiary will continue this level of involvement. The Director found that the Petitioner has not met its burden of identifying the productions or events with a distinguished reputation for which the Beneficiary will perform in a lead or starring role. The record supports that determination. On the O and P Classifications Supplement to the petition, the Petitioner merely repeated the position title where the form requests an explanation of the nature of the event.

The initial cover letter indicated that the Beneficiary would perform at the Petitioner's United States-based concerts in New York and The record, however, contains no advertisements, publicity releases, publications, contracts, or endorsements corroborating his involvement or showing the reputation of the Petitioner's events. Similarly, other evidence regarding future performances lacks confirmation of the Petitioner's participation or material regarding the events' reputations. director of music and arts at the expressed his hope to include the Beneficiary more extensively in the church's future programming. distinguished university professor emeritus at confirmed that he has nominated the Beneficiary to perform at concert series organized by the and the but acknowledged that these events have not yet been arranged. Without more specific evidence, the Petitioner has not demonstrated the nature of the Beneficiary's role or the reputation of the planned events. For the above reasons, the Petitioner has not satisfied 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).

On appeal, the Petitioner references a " ' which is a compilation of quotes attributed to media articles. This document is insufficient to meet this criterion, however, as it is the Petitioner's burden to provide the original or copies of critical reviews or other published material themselves, along with complete, certified translations as required. *See* 8 C.F.R. § 103.2(b)(3), (4). We will discuss those exhibits that contain materials complying with the regulations.

The record contains favorable reviews of the Beneficiary's performances. For example, the one posted at affirms that the Beneficiary "has quite a career in his native France and has garnered multiple awards both there and here. His ease with his homeland's is

[1] The letter also states that the Beneficiary will teach masterclasses for aspiring singers; however, classes are not productions or events.

[2] A review of the site shows that it is an individual's blog. Without more, the opinion of a single individual does not satisfy the Petitioner's burden of proof.

legendary and he has achieved quite a reputation as an ambassador of the French repertoire." The Petitioner, however, has not provided any information about the circulation, distribution, or reach of the media outlets that posted the reviews. Without more information about these sites, the Petitioner has not met its burden of proof of showing that the reviews are indicative of national or international recognition.

The record also contains an article by the Beneficiary entitled ' ' that appeared in the journal of the The record does not, however, contain information about the journal or any other information to explain why the selection of the Beneficiary as an author shows national or international recognition for his achievements. Accordingly, the Petitioner has not satisfied this criterion.

> *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).

The Director previously noted that the Petitioner has not demonstrated the distinguished reputation of the music club at the or that serving as a guest instructor for is a lead, starring, or critical role for that entity. The Director also acknowledged statements that the Beneficiary has performed in several countries, but observed that the record did not document the Beneficiary's roles for specific organizations or establishments or their reputations. The record supports the Director's findings.

The record contains a contract between the Beneficiary and for his services as a Lyric Artist. The Petitioner did not document the significance of this role for such as how many such artists it employs, where this position fits within the organizational hierarchy, or the Beneficiary's contribution to the entity while there. The record also does not contain corroboration of the company's reputation. Thus, the Beneficiary's services for do not satisfy this criterion.

On appeal, the Petitioner contends that the Beneficiary teaches at the in The Petitioner offers information about this entity, some of which is in a foreign language with no translation. A letter from for example, mentions both the Beneficiary and the foundation, but it is in a foreign language and is not accompanied by a complete, certified translation as required. 8 C.F.R. § 103.2(b)(3). Thus, this letter does not meet the Petitioner's burden of proof. Accordingly, the Petitioner has not shown that his duties for any particular school satisfy this criterion.

Regarding future roles, the record does not contain confirmation from the three schools where the Petitioner has affirmed that the Beneficiary will provide instruction, namely [3]

[3] On appeal, the Petitioner references a letter from We were unable to locate this letter in the record.

the [redacted] or the [redacted] It also has not corroborated that serving as a guest instructor is lead, starring, or critical for these institutions. With respect to the Beneficiary's proposed role for the Petitioner, the petition reflects that the Petitioner does not employ anyone in the United States, suggesting that the Beneficiary's services will be central to its U.S. operations. In addition, the nature of the Beneficiary's duties is consistent with a critical role for the Petitioner. It is the Petitioner's burden, however, to establish through newspapers, trade journals, publications, or testimonials that it enjoys a distinguished reputation. The review posted at [redacted] states that the Petitioner "has contributed so much to French performance instruction." As noted above, however, the record contains no information about the reach or significance of this website. For the above reasons, the Petitioner has not satisfied this criterion.

> *Evidence 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 picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

The Director concluded that the record did not support a favorable determination under this criterion. The evidence relating to this criterion consists of reviews. Not all of them are accompanied by complete, certified translations as required. 8 C.F.R. § 103.2(b)(3). As noted, however, the English language ones are favorable, characterizing the Beneficiary as a "lyric tenor," "everything you hope for in a French tenor," and even "legendary." While the Petitioner did not document that all of the reviews appeared in trade journals or major newspapers, the regulation allows reports from "other publications." Accordingly, we find that the Petitioner has satisfied the plain language requirements criterion pertaining to critical success.

> *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).

The Petitioner maintains that the letters and supporting documents demonstrate that the Beneficiary enjoys "a degree of professional recognition." The letters of record are all favorable. For example, [redacted] affirms that the Beneficiary followed in his father's tradition to win prizes, earning his own reputation internationally. Evidence supporting the letters includes the awards we addressed above. While the Petitioner did not document that any one of them is comparable to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award, at issue for this criterion is whether they demonstrate significant recognition for achievements from organizations or recognized experts in the field. As an example, the materials from [redacted] indicate that a panel of judges exclusively decides the winners. Their prizes serve "as an international career accelerator bringing final winners to the attention of artist management agencies." Accordingly, the record supports a conclusion that the

[4] The Petitioner's president affirms that he is a faculty member at all three institutions.

Beneficiary has received significant recognition from experts in the field. Thus, the Petitioner has satisfied this criterion.

> *Evidence 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.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

The Director concluded that the record contained no evidence relating to this criterion and the Petitioner does not contest that determination on appeal. The Petitioner did offer contracts between the Beneficiary and [redacted] and [redacted], as well as a foreign language document without translation that may represent an agreement between [redacted] and the Beneficiary. Another foreign language item without a translation may reflect income from 2012.

The Petitioner listed the proposed wages as $4,000 per month. In a separate letter, the Petitioner indicated that the Beneficiary "will be paid" $100 per hour for private vocal coaching services, competition and audition preparation, career planning sessions, and guest master teacher services, and $200 per hour for conducting and teaching masterclasses.[5] It did not present, however, any information on wages in the field to which we can compare the amounts the Beneficiary has earned or will earn. For this reason, the Petitioner has not submitted the requisite initial evidence to meet this criterion.

3. Summary

For all of the reasons discussed above, the Petitioner has satisfied only two criteria, while the regulation requires documentation that meets at least three. Accordingly, the Petitioner has not met its burden to supply the necessary exhibits to support its petition on behalf of the Beneficiary.

B. Area of Extraordinary Ability

The Petitioner must document that the Beneficiary is coming to the United States to "perform services relating to an event or events" and to continue work "in the area of extraordinary ability." 8 C.F.R. § 214.2(o)(1)(i), (ii). A petitioner must offer an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities. 8 C.F.R. § 214.2(o)(2)(ii)(C). While the event must fall within the Beneficiary's area of extraordinary ability, some unrelated activities may be included as part of the event. Specifically, an event may include short vacations, promotional appearances, and stopovers which are incidental or related to the event. 8 C.F.R. § 214.2(o)(3)(ii) (definition of event).

The most persuasive evidence relating to the Beneficiary's achievements are his awards for singing and the reviews of his performances. The Petitioner, however, did not present an itinerary for

[5] By using the passive voice, the Petitioner leaves open who will compensate the Beneficiary. If the Beneficiary will have multiple employers, each employer must file a petition. 8 C.F.R. § 214.2(o)(2)(iv)(B).

performances in the United States as required. 8 C.F.R. § 214.2(o)(2)(ii)(C). Instead, it referenced three tentatively scheduled gala benefit concerts at which the Beneficiary would perform. Some of the Beneficiary's remaining duties are related to singing, including teaching masterclasses,[6] vocal coaching, and judging auditions. Other responsibilities are unrelated, such as reviewing audition applications; researching sponsors, financial partnerships, grants, and other funding opportunities for the Petitioner; and promoting cultural exchanges.

We review the totality of evidence when considering whether activities related to singing, such as instruction, are within a particular singer's area of extraordinary ability. executive director of , confirms that the Beneficiary has been previously involved in that organization's masterclass series. These materials offer limited information about the Beneficiary's experience as an instructor. Without more detail about the level of the Beneficiary's instruction, the record does not sufficiently document that teaching masterclasses is within his area of extraordinary ability. Even if we concluded otherwise, his remaining duties do not relate to singing. While the definition of event at 8 C.F.R. § 214.2(o)(3)(ii) allows short vacations, promotional appearances, and stopovers which are incidental or related to the event, the Petitioner listed numerous duties that are not comparable to the examples in that provision. These responsibilities include reviewing audition applications; researching sponsors, financial partnerships, grants, and other funding opportunities for the Petitioner; and promoting cultural exchanges. For these reasons, the Petitioner has not established that the Beneficiary is coming to the United States to "perform services relating to an event or events" in which he will continue to work "in the area of extraordinary ability." 8 C.F.R. § 214.2(o)(1)(i), (ii).

III. CONCLUSION

The Petitioner has not submitted the requisite initial evidence, including qualifying translations for several documents, to support a petition for an individual of extraordinary ability and the record does not confirm that the event is one in which the Beneficiary will continue in his area of extraordinary ability, with only incidental other duties.

ORDER: The appeal is dismissed.

Cite as *Matter of C-L-A-, Inc.*, ID# 321152 (AAO May 18, 2017)

[6] With respect to the masterclasses, the Petitioner references instruction at , the and the but offers no evidence that these schools have agreed to contract with the Petitioner for the Beneficiary's services. If the Beneficiary will be working directly for these institutions, they must each file a petition for him. 8 C.F.R. § 214.2(o)(2)(iv)(B). Alternatively, an agent may file a petition in cases involving workers who are traditionally self-employed or who use agents to arrange short-term employment on their behalf with multiple employers. 8 C.F.R. § 214.2(2)(iv)(E). In this case, the Petitioner has not complied with the documentary requirements to be an agent filer.