U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37601474

Date: MAY 19, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a tattoo arts 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) revoked the approval of 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."). 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

In revoking the petition, 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 did not establish the Beneficiary's eligibility for any of the five claimed alternative criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*), in which at least three must be fulfilled.

On appeal, the Petitioner contends that SCOPS arbitrarily revoked the approval of the petition. In addition, the Petitioner claims the Beneficiary received significant national or international awards or prizes and satisfies five categories of evidence.

A. Revocation

The Petitioner argues that "[a]s far as we can determine, the sole basis of the I-129 approval revocation is a difference in opinion by the reviewing officer with the original examiner over subjective factors" and "that is not a valid basis for revocation."

The regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that USCIS may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

> (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
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> (*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
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> (*2*) The statement of facts contained in the petition was not true and correct;
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> (*3*) The petitioner violated the terms or conditions of the approved petition;
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> (*4*) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or

(*5*) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

Although the Petitioner asserts that SCOPS revoked the petition approval based on a differing of opinion between an "original examiner" and a "reviewing officer," neither the record nor the decision supports the claim of contradicting positions by multiple individuals adjudicating the petition. Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight").

Regardless, the regulation at 8 C.F.R. § 214.2(o)(8)(iii)(A)(5) permits USCIS to revoke the approval of a petition if there was "gross error." As indicated above, SCOPS revoked the petition because the Petitioner did not show 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), and the Petitioner did not establish the Beneficiary's eligibility for any of the five claimed alternative criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*). Thus, SCOPS initially approved the petition in gross error because the Beneficiary did not qualify as an alien of extraordinary ability. Moreover, for the reasons discussed below, the Petitioner did not establish on appeal that the Beneficiary met the regulatory requirements under 8 C.F.R. § 214.2(o)(3)(iv)(A) or 8 C.F.R. § 214.2(o)(3)(iv)(B).

B. 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] Initially, the Petitioner claimed the Beneficiary's eligibility based on being a "winner" at the 2022 [redacted] Russia). The Petitioner provided documentation from the competition evidencing the Beneficiary's receipt of the award, as well as the other participants and exhibits, and advertising the competition. In addition, the Petitioner submitted screenshots from [redacted] reporting on the results.

In response to the Notice of Intent to Revoke (NOIR), the Petitioner argued that "additional evidence on this point is not properly required at this time to determine eligibility for the benefit granted" regarding [redacted] Further, the Petitioner claimed the Beneficiary "is a winner of many tattoo arts awards" and submitted photographs of the Beneficiary holding trophies and plaques from competitions occurring after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing

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

through adjudication. 8 C.F.R. § 103.2(b)(1). Therefore, we will not consider these post-filing awards for the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(A).

Furthermore, the Petitioner did not establish that the Beneficiary's 2022 award qualifies as a significant national or international award. 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 the award enjoys similar standing. Furthermore, the Petitioner did not demonstrate how its limited submission of press material reporting on the competition shows the gravity of the award in order to classify it as a significant national or international accolade, 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 initially claimed the Beneficiary's eligibility based on his "present[ation of] extraordinary tattoo artwork at prestigious national and international Tattoo Conventions and exhibitions": 2022 2022 Tennessee), 2019 (Netherlands), and 2016 (Russia). In response to the NOIR, the Petitioner made the same claims and referenced the previously submitted documentation.

As it relates to the Petitioner submitted screenshots from website listing participants and their works and screenshots from inkpp.com and reporting on the event and listing all of the participants and winners. However, the Petitioner did not show that the Beneficiary performed services in a lead or starring participant at the competition. The Petitioner did not demonstrate how the Beneficiary differentiated himself from the other participants at the event. Although the Petitioner is listed among the numerous participants or winners, the Petitioner did not establish that the Beneficiary's participation resulted in leading or starring services.

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

Likewise, regarding [redacted] the Petitioner submitted an advertisement posted on [redacted] website and [redacted] listing the Beneficiary among 70 plus other artists scheduled to participate at the festival. Again, the Petitioner did not demonstrate how the Beneficiary performed leading or starring services at the festival. The Petitioner did not show that the Beneficiary distinguished himself from the artists or otherwise performed leading or starring services.

Similarly, as it pertains to [redacted] the Petitioner offered screenshots from [redacted] listing the Beneficiary among 40 plus tattoo artists scheduled to participate at the convention and posting samples of his work. Once more, the Petitioner did not establish how the evidence reflects the Beneficiary's leading or starring services at the convention. The Petitioner did not demonstrate, for example, how the Beneficiary separated himself from the other artists, whether the Beneficiary was advertised as a featured artist, or otherwise performed services as a leading or starring participant.

Concerning [redacted] the Petitioner presented screenshots from the festival's social media pages posting samples of the Beneficiary's work. While the evidence may show the Beneficiary's participation, the Petitioner did not establish how the evidence reflects his leading or starring services at the festival. The documentation, for instance, does not show that the festival highlighted or advertised the Beneficiary as a starring artist or that he performed in a leading position at the event.

For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary performed services as a leading or starring participant for any of the events. Therefore, we need not determine whether any of these productions or events have distinguished reputations. Moreover, we reserve a determination on the prospective aspect of this criterion. *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).

Accordingly, the Petitioner did not establish the Beneficiary satisfies this criterion.

C. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*)

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 evidenced 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]

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 relative to others

[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).

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]

As it relates to the Beneficiary's past services, the Petitioner initially claimed the Beneficiary's eligibility for this criterion based on his role as a judge at 2022 [redacted] In response to the NOIR, the Petitioner made the same claims and referenced the previously submitted documentation. The Petitioner submitted photographs purportedly of the Beneficiary with handwritten captions claiming to be of the Beneficiary as a "judge" at the festival. However, the Petitioner did not demonstrate how photographs qualify as "articles in newspapers, trade journals, publications, or testimonials" as required by this regulatory criterion. Furthermore, the Petitioner provided articles posted on [redacted] website and [redacted] advertising the festival without any mention of the Beneficiary or other evidence of his role as a judge. In addition, the Petitioner did not show how [redacted] counts as an organization or establishment in light of the fact that it claimed above to be a production or event.

For these reasons, the Petitioner did not establish that the Beneficiary has performed in a lead, starring, or critical role at organizations or establishments as evidenced by the required articles in newspapers, trade journals, publications, or testimonials. Therefore, we need not determine whether [redacted] has a distinguished reputation. In addition, we reserve a determination on the prospective aspect of this criterion. *See INS v. Bagamasbad*, 429 U.S. at 25.

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

D. 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.[10] The publications may include print or online publications or transcripts of radio or video coverage.[11]

The Petitioner asserts the Beneficiary's eligibility based on testimonial letters. However, the Petitioner did not demonstrate how letters qualify as "trade journals, major newspapers, or other publications." Similarly, the Petitioner references the Beneficiary's judging at [redacted] indicated above. Again, the Petitioner did not show how the photographs fall within trade journals, major newspapers, or other publications, and the [redacted] website and [redacted] did not mention the Beneficiary, let alone reflect that he garnered major commercial or critically acclaimed success from judging the festival.

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

Likewise, the Petitioner indicates the Beneficiary's participation at [redacted] discussed earlier. However, besides being listed among dozens of participants and among numerous winners, the Petitioner did not show how the evidence reflects the Beneficiary's major successes or that he received public-facing praise or positive reviews from professional artists. 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.[12] 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.[13]

Furthermore, the Petitioner references "copies of press articles covering [the Beneficiary's] outstanding work" and "printouts from Instagram accounts of the tattoo industry professional organizations and media featuring [the Beneficiary's] tattoo artworks." However, the Petitioner did not elaborate and explain the relevance or significance of the evidence or how the documentation meets this criterion. Regardless, the record reflects the Petitioner submitted screenshots of articles posted on [redacted] reflecting interviews of the Beneficiary and coverage of his work. In addition, the Petitioner provided screenshots from the Beneficiary's Instagram page posting his work, as well as the posting of his work on the Instagram pages of others.

However, the Petitioner did not establish that the evidence reflects the Beneficiary's major commercial successes. The Petitioner did not demonstrate that they report on the Beneficiary's ratings, receipts, sales, revenue, standing, or other occupational achievements. Moreover, the evidence does not cover the Beneficiary's major critically acclaimed successes. The Petitioner did not show that they represent public-facing praise or positive reviews from professional art critics.

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

III. CONCLUSION

The Petitioner did not establish the Beneficiary has been nominated for, or received, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). Moreover, the Petitioner did not demonstrate that the Beneficiary meets any of the criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility for two additional criteria (8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) and (*5*)), we need not address these grounds because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three criteria. 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).[14] Accordingly, we reserve these issues.[15] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. The

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

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.