U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF F-M- LLC

DATE: MAY 20, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an automobile racing business, seeks O-2 nonimmigrant visa classification for the Beneficiary as an accompanying individual to a race car driver whose petition for O-1 classification was previously approved. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(ii), 8 U.S.C. § 1101(a)(15)(O)(ii).

The Director of the Vermont Service Center initially approved the Form I-129, Petition for a Nonimmigrant Worker, granting the Beneficiary O-2 classification. The Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition based, in part, on information from the U.S. Embassy in [redacted] Venezuela. After reviewing the Petitioner's response to the NOIR, the Director issued a notice of revocation, concluding that the Beneficiary did not qualify for classification as an O-2 accompanying individual because the record did not show that he had substantial experience performing critical skills with the O-1 athlete.

On appeal, the Petitioner provides copies of previously submitted documents and a brief, arguing that the Director "misinterpreted the statements made and evidence provided in the O-2 petition" and that the Beneficiary "meets the requirements to be granted O-2 status."

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

## I. LAW

Section 101(a)(15)(O)(ii) of the Act provides classification to a qualified alien who:

> (I) seeks to enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance by an alien who is admitted under clause (i) for a specific event or events;
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> (II) is an integral part of such actual performance,
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> (III) (a) has critical skills and experience with such alien which are not of a general nature and which cannot be performed by other individuals . . . .

(IV) has a foreign residence which the alien has no intention of abandoning.

The regulations at 8 C.F.R. § 214.2(o)(4) provide, in pertinent part, the following requirements for an O-2 accompanying alien:

> (i) General. An O-2 accompanying alien provides essential support to an O-1 artist or athlete. Such aliens may not accompany O-1 aliens in the fields of science, business or education. Although the O-2 alien must obtain his or her own classification, this classification does not entitle him or her to work separate and apart from the O-1 alien to whom he or she provides support. An O-2 alien must be petitioned for in conjunction with the services of the O-1 alien.
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> (ii) Evidentiary criteria for qualifying as an O-2 accompanying alien –
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> > (A) Alien accompanying an O-1 artist or athlete of extraordinary ability. To qualify as an O-2 accompanying alien, the alien must be coming to the United States to assist in the performance of the O-1 alien, be an integral part of the actual performance, and have critical skills and experience with the O-1 alien which are not of a general nature and which are not possessed by a U.S. worker.
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> > * * *
> >
> > (C) The evidence shall establish the current essentiality, critical skills, and experience of the O-2 alien with the O-1 alien and that the alien has substantial experience performing the critical skills and essential support services for the O-1 alien.

Finally, the regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the Director 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.

## II. ANALYSIS

### A. Background

In a cover letter provided with the Form I-129, the Petitioner asserted that the Beneficiary qualifies as an accompanying individual "essential to the actual performance of an individual of extraordinary ability in athletics." The Petitioner indicated that the O-1 athlete, a race car driver, "needs the critical and indispensable assistance and support of his essential support personnel in the form of Technical Director [the Beneficiary]." The Petitioner further stated that the Beneficiary "has intimate knowledge of the O-1 athlete's racing technique, mechanical preferences, car and equipment usage."

The initial filing included an August 2016 letter from the O-1 athlete explaining that the Beneficiary "manages the entire pit crew working for me during both my races and training sessions. . . . During races, [the Beneficiary's] work is critical as he has to ensure that my four (4) tires are changed, gas tank is filled and necessary adjustment[s] to the car are made all within a matter of seconds." In addition, the O-1 athlete asserted that the Beneficiary "has served as my Technical Director for almost twenty (20) years" and they had worked together "since 1998."

With the petition, the Petitioner also presented letters from the Manager of [redacted] Hotel (the O-1 athlete's sponsor), the president of the [redacted], and the President of the [redacted] (South Florida) indicating that the Beneficiary worked as the O-1 athlete's Technical Director.[1] Additionally, the record contained a March 2016 agreement for the Beneficiary's services as Technical Director, his curriculum vitae, an itinerary, and press coverage relating to the O-1 athlete's races.

In response to the Director's request for evidence, the Petitioner provided an October 2016 letter discussing the Beneficiary's work, an updated itinerary listing specific upcoming races for 2016 and 2017, photographs of damage to the O-1 athlete's race car, and copies of previously submitted documents. The Director approved the petition in November 2016 and forwarded it to the U.S. Embassy in [redacted] Venezuela.

Subsequently, in June 2018, the Director issued a NOIR, informing the Petitioner that, based on information revealed during the Beneficiary's interview at the U.S. Embassy, and upon further review, it appeared the statement of facts contained in the petition was not true and correct and the record did not establish eligibility. *See* 8 C.F.R. § 214.2(o)(8)(iii)(A)(*2*), (*5*). Specifically, the Director stated that the record did not demonstrate the Beneficiary was an integral part of the O-1 athlete's actual performance or events, had critical skills and experience with the O-1 athlete which are not of a general nature and which are not possessed by a U.S. worker, and had substantial experience performing the critical skills for the O-1 athlete. *See* 8 C.F.R. § 214.2(o)(4)(ii)(A) and (C). In summarizing the findings of the U.S. Embassy, the NOIR indicated that the Beneficiary was not working full time for the O-1

[1] The latter two letters stated that the Beneficiary had served as the O-1 athlete's Technical Director since 1998.

athlete, listed his occupation as "public accountant" on previous visa applications, and worked for employers whose business did not involve race car driving. Further, it noted that "despite claiming to have worked for the [O-1 athlete] since 1998, only one article about the . . . race car driver, published in September of 2016, mentioned the Beneficiary by name."

After reviewing the Petitioner's response to the NOIR, which included July 2018 letters from the Beneficiary and O-1 athlete, the Director revoked approval of the petition, concluding that the Petitioner had not overcome the grounds for revocation. The Director determined that the record did not establish the Beneficiary had substantial experience performing critical skills for the O-1 athlete, finding that the letters of support and Beneficiary's curriculum vitae "lack sufficient detail in terms of skills, duties, and responsibilities as well as any employment history to demonstrate the Beneficiary has substantial experience performing critical skills for the [O-1 athlete]."

The Director also questioned statements asserting that the Beneficiary possessed 20 years of experience as the O-1 athlete's Technical Director. Specifically, the Director noted that the record did not include "corroborating evidence" of the Beneficiary's 20 years of experience with the O-1 athlete "such as newspaper articles, articles from trade publications, proof of wages paid to the Beneficiary, employment contracts, passport pages showing the Beneficiary and [the O-1 athlete] traveled together in the past, photographs of the Beneficiary with [the O-1 athlete], or any other relevant evidence." The Director noted that in response to the NOIR the Petitioner provided copies of articles about the O-1 athlete but they included "no mention or acknowledgement of the Beneficiary or his services."

Furthermore, the Director pointed to information in the O-1 athlete's August 2016 letter contradicting claims that the Beneficiary had 20 years of experience. Specifically, while the athlete had indicated that the Beneficiary had worked as his technical director "for almost twenty (20) years," he went on to note several extended periods during which he did not directly perform that role or his role was limited:

> From 2001 to 2004, I did not compete in races in Venezuela but I continued to work with [the Beneficiary]. He was still my Technical Director during drills and practices. He also traveled extensively with me to observe racing in other countries so that together we could improve my performance. From 2006 – 2007 we continued to work together in other forms of the sport due to certain sport bans imposed by the Venezuelan government. Regardless, [the Beneficiary] continued to work with me while I practiced and trained. In 2010, [the Beneficiary] did suffer health issues and did not work again until 2013 when he resumed work as my Technical Director. Although [the Beneficiary] was not physically directing my pit crew and working alongside me at the track, he was still always consulted by me due to our years of work together. . . . Upon recovery, [the Beneficiary] joined me on the track again where he has been to date.

B. Substantial Experience Performing the Critical Skills Under 8 C.F.R. § 214.2(o)(4)(ii)(C)

For the reasons discussed below, the record supports the Director's conclusion that the record does not demonstrate that the Beneficiary has substantial experience performing critical skills for the O-1 athlete. Accordingly, we find that the Director properly revoked the approval of the petition.

As evidence of the Beneficiary's experience, the record includes two letters (August 2016 and July 2018) from the O-1 athlete and letters of support from the Petitioner, the Manager [redacted] Hotel, the president of [redacted] and the president of [redacted] indicating that the Beneficiary worked as the O-1 athlete's Technical Director.[2] Although these references discuss the Beneficiary's work for the O-1 athlete, we agree with the Director that their letters do not include sufficient details regarding the Beneficiary's substantial experience nor do they adequately describe specific critical skills he performed. For example, the O-1 athlete's July 2018 letter stated:

> [The Beneficiary] has worked as my Technical Director since 1998 in Venezuela. He has worked with me on countless important national and international competitions as well as day to day training. As my Technical Director, [the Petitioner] has performed a critical role which has directly impacted my success and work as a race car driver. He has managed my entire pit crew working for me during both my races and training sessions.

Similarly, [redacted] Manager of [redacted] Hotel, indicated that the Beneficiary "has efficiently managed the pit crew directly impacting [the O-1 athlete's] performance at races. . . . Additionally, [the Beneficiary] oversees all technical aspects of [the O-1 athlete's] work including necessary adjustments to his car including the placement of our logo." Likewise, [redacted] president of [redacted], asserted that the Beneficiary has worked as the O-1 athlete's "Technical Director since 1998. As such, he oversees and manages all technical aspects of the [O-1 athlete's] work as well as his trackside operations. His work is critical to the O-1 athlete's actual performances especially during races and practices."

The above letters broadly state that the Beneficiary has been technical director since 1998 and characterize his work as "critical." However, they lack details demonstrating the nature and extent of the Beneficiary's experience during that time. For instance, the letters do not include detailed information about the races and practices in which he served Technical Director, nor do they provide specific explanations of the "critical skills" being performed.

On appeal, in response to the Director's finding that the record lacked corroborating evidence to support assertions regarding the Beneficiary's experience in the aforementioned letters, the Petitioner contends "the practices in Venezuelan race car driving do not include format [*sic*] contracts and payroll as requested by the [Director]." In addition, with regard to the perceived gaps in the Beneficiary's experience based on the O-1 athlete's 2016 letter, the Petitioner contends that the Director misinterpreted some of the statements in the letter. It emphasizes that the parties continued to work together such that the O-1 athlete did not consider any period in question to be a "break in their working relationship."[3]

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[2] While we discuss a sampling of these letters, we have reviewed and considered each one. We also note that the Petitioner's appeal includes a July 2018 letter from the Beneficiary indicating that in addition to his work as Technical Director, he has simultaneously held "multiple jobs in Venezuela" including "Public Accountant" and "Director of a company called [redacted]."

[3] For instance, the O-1 athlete maintained that when he was not competing (2001 – 2004) the Beneficiary "was still my Technical Director during drills and practices" and that during the Beneficiary's health issues preventing his presence at the race track (2010 – 2013) the parties "still always consulted."

Finally, the Petitioner explains that the Beneficiary has not worked for the O-1 athlete since 2016 "because of issues with his visa and not by choice." The Petitioner maintains that the Beneficiary has been candid and truthful to both USCIS and the U.S. Consulate. In his letter accompanying the appeal, the Beneficiary contends that "all the statements and evidence I have provided to USCIS and the U.S. Consulate are true and correct. I do not want my good name and reputation blemished . . . ."

We note that the Director did not render a finding that the Petitioner or Beneficiary engaged in fraud or willful misrepresentation of a material fact with respect to this petition, nor do we find the record supports such a finding in this proceeding.[4] However, while the Petitioner has provided some further explanation regarding the timeline of the Beneficiary's work experience, the information and arguments presented on appeal do not overcome the Director's finding that the record did not include sufficiently detailed information or adequate corroborating evidence to show that the Beneficiary has substantial experience performing critical skills for the O-1 athlete.

C. Additional Issue

Although not discussed by the Director in the NOIR or revocation decision, we note an additional issue preventing reinstatement of the petition's approval. As stated above, an O-2 individual may enter the United States temporarily and solely for the purpose of accompanying and assisting in the artistic or athletic performance of the O-1 individual, and must be petitioned for in conjunction with the services of the O-1 individual. Section 101(a)(15)(O)(ii)(I) of the Act; 8 C.F.R. § 214.2(o)(4)(i).

Here, while the Beneficiary's services as an O-2 accompanying individual were petitioned for in conjunction with the services of an O-1 athlete, that individual no longer has O-1 nonimmigrant status.[5] Accordingly, there is no O-1 individual for the Beneficiary to support.

## III. CONCLUSION

The record supports the Director's determination that the record did not establish that the Beneficiary qualifies as an O-2 accompanying individual to an O-1 athlete. Accordingly, the Director properly revoked the approval of the petition. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). The burden remains with the petitioner in revocation proceedings to establish eligibility for the benefit sought under the immigration laws. *Matter of Cheung*, 12 I&N Dec. 715 (BIA 1968); *Matter of Estime*, 19 I&N Dec. 450, 452, n.1 (BIA 1987); and *Matter of Ho*, 19 I&N Dec. 582, 589 (BIA 1988). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of F-M- LLC*, ID# 3073614 (AAO May 20, 2019)

[4] Our findings relate only to the petition before us, and we make no determination regarding evidence of willful misrepresentation of a material fact in any other proceedings involving the Beneficiary.

[5] The record indicates that the O-1 athlete adjusted to U.S. Lawful Permanent Resident status in February 2019.