U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 37627525

Date: MAY 22, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a restaurant and bar, seeks to classify the Beneficiary as a mixologist 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 that in a totality determination the Petitioner did not establish the Beneficiary's sustained national or international acclaim, he is one of the small percentage who has risen to the very top of the field of endeavor, and his achievements have been recognized through extensive 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

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. *See also* 8 C.F.R. § 214.2(o)(1)(i) and (ii)(A)(1).

As relevant here, the regulations provide separate and distinct O-1 categories: 1) O-1A – extraordinary ability in the field of science, education, business, or athletics, and 2) O-1B – extraordinary ability in the field of arts. Extraordinary in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of that small percentage who has arisen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). Extraordinary ability in the field of arts means distinction, which 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. *Id.* Moreover, arts include any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. *Id.*

In order to qualify for O-1A, an alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of either a receipt of a major, internationally award, such as the Nobel prize; or at least three of eight forms of documentation, such as awards, memberships, published material, judging, contributions, authorships, capacities, and salary. 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B)(1)-(8).

In order to qualify for O-1B, an alien of extraordinary ability in the field of arts must be recognized as being prominent in his or her field of endeavor as demonstrated by either evidence 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, or a Director's Guild; or at least three of six forms of documentation, such as past and prospective services in productions, national or international recognition, past and prospective roles for organizations, commercial or critically acclaimed successes, significant recognition, and salary. 8 C.F.R. § 214.2(o)(3)(iv)(A) and (B)(1)-(6).

II. ANALYSIS

The Petitioner filed Form I-140, Petition for a Nonimmigrant Worker, indicating on the O and P Classifications Supplement to Form I-129 that it sought to classify the Beneficiary as an "O-1A Beneficiary of extraordinary ability in sciences, education, business or athletics (not including the arts, motion picture or television industry)."[1] Moreover, the Petitioner's accompanying letter described the Beneficiary's eligibility, referencing documentation, for four of the criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8) as an alien of extraordinary in the fields of science, education, business, or athletics (O-1A).

SCOPS issued a request for evidence stating:

> According to the evidence, you intend to hire the beneficiary as a Mixologist. You also provided evidence on the beneficiary's profession as a business owner of [redacted]. The evidence in the record is insufficient to establish that the beneficiary's career as a business owner of [redacted] sufficiently shares skillsets, knowledge, or expertise with that of a Mixologist. Therefore, the record does not establish how evidence of the beneficiary's business ownership demonstrates sustained national or international acclaim as a Mixologist.

[1] The supplement form also offers a classification box for "O-1B Beneficiary of extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry)".

In response, the Petitioner indicated:

> To be absolutely clear, the Beneficiary's field of endeavor is MIXOLOGY, that is, he is an expert MIXOLOGIST considered to be, among the best in his country, Armenia. In this regard, the Petition is filed under the O-1B (Arts) Classification. Without a doubt, Mixology, as a profession, falls under the broad definition of "arts" in the O-1B context . . . .
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> . . . .
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> At the crux of the definition for Arts are the words "field of creative activity," which means that any endeavor, pursuit or profession that are preeminently involves creation or creative thinking could qualify as an art. By this metric, a mixologist is, undoubtedly, an artist considering that the practice involves the creation of mixing drinks, be it alcoholic or nonalcoholic or both with other ingredients. True enough, mixology is defined as "the art or skill of preparing mixed drinks."

Although the Petitioner attempted to change the Beneficiary's eligibility classification from an O-1A to an O-1B, SCOPS adjudicated the petition based on the Petitioner's original classification claim as an O-1A. Specifically, SCOPS determined that the Beneficiary satisfied three of the eight categories of evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). However, SCOPS concluded that the Petitioner did not show the Beneficiary's sustained national or international acclaim through an analysis of the totality of the evidence.[2]

We agree with the Petitioner that the Beneficiary's field of endeavor is mixology and falls within "the arts" of the O-1B classification. However, as indicated above, the Petitioner filed Form I-140 seeking to classify the Beneficiary as an O-1A, specifically claiming his eligibility for the categories of evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). Although the Petitioner attempted to change the Beneficiary's classification from O-1A to O-1B and claimed the Beneficiary's eligibility for criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6), USCIS will only consider the visa classification that the petitioner annotates on the petition at initial filing. The affected party has the burden of proof to establish eligibility for the requested benefit at the time of filing the benefit request and continuing until the final adjudication. 8 C.F.R. § 103.2(b)(1); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971) (providing that "Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts"); *Brazil Quality Stones, Inc., v. Chertoff*, 286 Fed. Appx. 963, 2008 WL 2743927 (9th Cir. July 10, 2008) (determining that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, sua sponte, whether the alien is eligible for an alternate classification).

Furthermore, even though SCOPS adjudicated the categories of evidence and conducted a totality analysis under O-1A classification, the Petitioner did not demonstrate that the Beneficiary's field of

[2] *See generally* 2 *USCIS Policy Manual* M.4(B), https://www.uscis.gov/policymanual (indicating that as explained in the preamble to the final rule, the evidentiary requirements are not the standard for the classification but are instead the mechanism for establishing whether the standard is met, and USCIS must determine eligibility based on whether the totality of the evidence submitted demonstrates that the beneficiary meets the relevant standard).

mixology qualifies for O-1A classification. Again, O-1A relates to extraordinary ability in the field of sciences, education, business, or athletics. Because the field of arts does not fall within the fields under O-1A but rather O-1B, the Petitioner did not demonstrate the Beneficiary's eligibility for O-1A classification. Accordingly, we need not review SCOPS' criteria findings under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8) and totality determination, and we reserve those issues.[3]

III. CONCLUSION

The Petitioner did not demonstrate the Beneficiary's eligibility for O-1A classification as an alien of extraordinary ability in the sciences, education, business, or athletics. The 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.

[3] *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).