U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 39154762

Date: NOV. 18, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, an agent, seeks to classify the Beneficiary as a set/production designer in the motion picture or television industry. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals who can demonstrate a record of extraordinary achievement, 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, with a finding of fraud, concluding the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary achievement in the motion picture or television industry: nomination for or receipt of a significant national or international prize or award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(v)(A)-(B). 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, with regard to motion picture and television productions, a demonstrated record of extraordinary achievements that 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 achievement. Department of Homeland Security (DHS) regulations include the following definition: "*[e]xtraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field." 8 C.F.R. 214.2(o)(3)(ii).

Next, DHS regulations set forth the initial evidentiary criteria for establishing an individual's record of extraordinary achievement. First, a petitioner can demonstrate the beneficiary's nomination for, or receipt 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)(v)(A). If the petitioner does not offer this information, then it must submit sufficient qualifying exhibits that satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*).

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 eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (v).

II. ANALYSIS

SCOPS initially approved the petition. The Beneficiary appeared at the U.S. Embassy in [redacted] Serbia for an interview for her nonimmigrant visa. However, the U.S. Embassy returned the petition for review and recommended revocation, determining that "the petitioner and beneficiary exaggerated the beneficiary's accomplishments to create the false impression that the beneficiary possesses 'extraordinary ability' as required for approval in the O-1B category," and "[i]n the visa interview, it became clear that the beneficiary's qualifications do not satisfy the requirements of 8 C.F.R. § 214.2." Subsequently, SCOPS revoked the approval, after issuing a notice of intent to revoke, and found fraud involved in the proceeding. Moreover, SCOPS concluded the Petitioner did not establish the Beneficiary's eligibility for any of the four claimed alternative criteria under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*), in which at least three must be fulfilled.[1]

A. Fraud

Although SCOPS determined the Petitioner and Beneficiary committed fraud, we conclude that the record does not contain sufficient information to support that finding.

As outlined by the Board of Immigration Appeals, a material misrepresentation requires that the individual willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term "willfully" means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which "tends to shut off a line of inquiry which is relevant to the alien's eligibility, and which might well have resulted in a proper determination that he be excluded." *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

[1] SCOPS also indicated that the Petitioner did not claim, nor did the record contain evidence, that the Beneficiary has been nominated for, or received, a significant national or international prize or award under 8 C.F.R. § 214.2(o)(3)(v)(A).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: 1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; 2) that the misrepresentation was willfully made; and 3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Kai Hing Hui*, 15 I&N Dec. at 288.

Furthermore, to be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. U.S.*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cut off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. *See Ng*, 17 I&N Dec. at 537.

SCOPS' decision lists issues and concerns from the consular interview without showing the existence of fraud or material misrepresentations. For instance, the decision indicates that "[t]he [B]eneficiary has not been compensated as an extraordinary production designer – and indeed, is not currently even making the average salary of a working production designer in New York," and "[t]he [P]etitioner . . . is not a valid petitioner as he is a beginning designer himself." Although these consular findings may be relevant in evaluating the totality of the record in order to determine whether the Beneficiary achieved a very high level of accomplishment or obtained a degree of skill and recognition significantly above that ordinarily encountered to establish the Beneficiary's recognition as an outstanding, notable, or leading individual in the motion picture or television field, the decision does not articulate how these observations reflect that the Petitioner or Beneficiary committed fraud or misrepresented material facts in the filing of the petition. In addition, the decision does not show that the Petitioner made any false assertions regarding the Beneficiary's salary or presented fraudulent wage documentation.

Similarly, the decision states that "[t]he [P]etitioner . . . is not a valid petitioner as he is beginning designer himself." However, the decision does not explain how being a beginning designer disqualifies the Petitioner as a "valid" petitioner. The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) allows agents to act as petitioners in cases where the agent will be the actual employer of the beneficiary, the representative of both the employer and the beneficiary, or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. Moreover, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(*1*)-(*3*) provides requirements depending on the particular situation, none of which prohibit beginning petitioners from acting as agents. Although the longevity of the Petitioner may play a role in considering the "distinguished reputation" requirement under 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*) if the petitioner claims the beneficiary has performed and will perform in a leading, starring, or critical role for it, the decision does not establish the existence of fraud or material misrepresentation in this case.[2]

Furthermore, the decision claims that "[t]he [B]eneficiary exaggerated her contributions to projects in order to falsify national or international recognition." The decision then states:

> The petition cites several awards for films on which beneficiary worked in Serbia including [redacted] and other Serbian productions. While

[2] The Petitioner did not claim the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*)

> some of these projects did win awards, it is important to note that [the Beneficiary] herself did not receive any awards for her work and her interview revealed that she did not take a leadership or critical role on these projects. At the interview, the [Beneficiary] admitted that she was not the lead production designer for any of these Serbian productions and was working under someone else's direction as simply part of a team. The most significant award for any of these projects was for the film [redacted] which won a Best Film award in Serbia. In order to establish the prestige of this award, the consular officer asked the beneficiary how many other films were in consideration, to which she replied that she did not know how many other films were in the running for this award as she "was not a producer." If she indeed played an integral role that led to the film winning the award – or had been nominated herself as is customary for sound and design work – it is not credible that she would not know how many and who the other nominees were.

Although the decision indicates that the Beneficiary did not receive any awards for her work, the record does not reflect that the Petitioner claimed the Beneficiary did so at any point in the proceeding. In fact, the Petitioner's initial cover letter discussed awards and nominations received by the movies rather than awards and nominations received by the Beneficiary. While the consular officer questioned the Beneficiary's lack of knowledge regarding a "Best Film award in Serbia" for [redacted] SCOPS did not explain how the Beneficiary's inability to produce information about the nominating process or lack of being specifically nominated for sound and design work for the film is tantamount to fraud or misrepresentation. Even though the absence of fraud relating to this particular issue, the Beneficiary's failure to receive prestigious awards for her work may be relevant in evaluating the totality of the record to demonstrate whether the Beneficiary received a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field. 8 C.F.R. 214.2(o)(3)(ii).

The decision also discusses the Petitioner's initial cover letter and the Beneficiary's statements at the consular interview. Specifically:

> Your support letter included with your initial filing you made the following statements in relation to the beneficiary's role in past productions and events:
>
> > [The Beneficiary] has performed and will continue to perform services in a leading and starring role in light of her extraordinary talent as a Production Designer and Set Designer in the United States and abroad. A copy of [the Beneficiary's] impressive CV and IMDb profile highlighting her expertise are annexed for the record at Exhibit A.
> >
> > For instance, [the Beneficiary] has played a leading role for the film, [redacted]...
> >
> > ...[the Beneficiary] has also played a leading role as Production Designer for the short film, [redacted]...

> …Along with her leading roles for films abroad, which have earned recognition in the United States at prominent film festivals, [the Beneficiary] has recently performed in a leading role on the upcoming production[redacted]…
>
> Moreover, as indicated above, the consular officer conducting the beneficiary's interview stated, "At the interview, the applicant admitted that she was not the lead production designer for any of these Serbian productions and was working under someone else's direction as simply part of a team." Therefore, based on the beneficiary's own statements, your initial filing included several misrepresentations of the beneficiary's role in various productions and events in the motion picture and film industry as described under 8 CFR 214.2(o)(3)(v)(B)(1).

The Petitioner's cover letter did not claim that the Beneficiary served as "the lead production designer for any of the Serbian productions." Rather, the cover letter broadly stated that the Beneficiary "has performed and will continue to perform services in a leading and starring role," "has played a leading role for the film," "has also played a leading role as Production Designer," and "has recently performed in a leading role on the upcoming production." Here, the record does not contain sufficient evidence or information to show that the Petitioner misrepresented the Beneficiary's role in any of the productions or events, such as falsely claiming that she was the "lead production designer" when she was actually just a production designer or falsely asserting that the Beneficiary performed services she never actually conducted for any of the films. Further, for this case, the issue of whether the Beneficiary's services were, in fact, leading or starring relates to her eligibility under the regulation at 8 CFR 214.2(o)(3)(v)(B)(1) rather than disqualification for fraud or misrepresentation.

For the reasons discussed above, the record does not support SCOPS' finding of fraud. Accordingly, we withdraw SCOPS' determination for this issue.

B. Extraordinary Achievement

Absent evidence of a nomination for or receipt of a significant national or international prize or award under 8 C.F.R § 214.2(o)(3)(v)(A), the Petitioner sought to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six categories of evidence under 8 C.F.R § 214.2(o)(3)(v)(B)(*1*)-(*6*). SCOPS determined the Beneficiary did not satisfy any of the four claimed criteria. On appeal, the Petitioner maintains the documentation meets the same four categories of evidence. As discussed below, we find the evidence does not fulfill at least three criteria, as required.

1. 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)

The regulation at 8 C.F.R. § 214.2(o)(3)(v)(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.[3] Evidence may demonstrate a lead role by establishing that the person has a principal role in the event or production.[4] A starring role means a position of great prominence relative to others in the event or production.[5]

As it relates to the past aspect of this criterion, the Petitioner presented recommendation letters, the Beneficiary's curriculum vitae, and her IMDb page. To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.[6] Advertisements, publicity releases, and endorsements are promotional materials.[7] Endorsements are public facing and serve a marketing purpose.[8] This exhaustive list does not include unpublished testimonial or recommendation letters.[9] The Petitioner did not demonstrate how this evidence meets the regulatory required evidence under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*). Accordingly, we will not consider this evidence to determine the Beneficiary's eligibility for this criterion.

The Petitioner also provided flyers or posters for various productions, such as [redacted] Although the Beneficiary is listed as one of dozens of cast and crew members for the particular production, the Petitioner did not establish how the evidence shows that the Beneficiary performed services as a lead or starring participant. The flyers or posters, for instance, do not promote the Beneficiary, advertise the Beneficiary, or otherwise indicate the Beneficiary performed leading or starring services. *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(E)(2) (instructing that in evaluating whether the beneficiary's participation in a past or future event or production qualifies as lead or starring, USCIS may consider, for example, whether the beneficiary's role is highlighted or featured in advertisements, publicity releases, critical reviews, or other materials).

Likewise, the Petitioner submitted press releases and reviews and online announcements for the productions, such as [redacted] and [redacted] Again, while the material briefly credits the Beneficiary as being the set or production designer, the material also lists the other crew and cast members involved in the production. Here, the Petitioner did not demonstrate how the evidence indicates that the Beneficiary performed leading or starring services in the productions. The documentation, for example, does not feature the Beneficiary or reflects a prominent role she performed in the productions.

The Petitioner also offered partial playbills for several productions, such as [redacted] and [redacted] Similar to above, the playbills reflect short biography pages for the cast and crew members, including the Beneficiary, involved in the plays. However, none of the playbills feature, advertise, or set the Beneficiary apart as a leading or starring participant.

For these reasons, the Petitioner did not show that the Beneficiary has performed services as a lead or starring participant in past productions or events.

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[3] *See generally* 2 *USCIS Policy Manual*, M.4(E)(2)(appendix), https://www.uscis.gov/policymanual.
[4] *Id.*
[5] *Id.*
[6] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(E)(2).
[7] *Id.*
[8] *Id.*
[9] *Id.*

Regarding the futuristic part of this criterion, the Petitioner again submitted letters. The petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.[10] This exhaustive list does not include unpublished testimonial or recommendation letters.[11] Accordingly, we will not consider this evidence to determine the Beneficiary's eligibility for this criterion.

The record also contains engagement contracts for the Beneficiary's services in future productions, such as [redacted] (associate designer), various commercials (art director), [redacted] (associate designer), [redacted] (associate designer), [redacted] (associate designer), [redacted] (set designer), [redacted] (associate set designer), [redacted] (production designer), and [redacted] (production designer). The Petitioner, however, did not establish how the contracts show that the Beneficiary will perform leading or starring services in the productions. *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(E)(2) (indicating that the contractual terms offered to the beneficiary may also be relevant to establishing the lead or starring nature of the beneficiary's participation, especially with regard to a prospective event or production). Moreover, the Petitioner did not demonstrate that the Beneficiary's anticipated job titles, such as associate designer, indicate that she will perform leading or starring services for any of the productions. Here, the contracts do not indicate that the Beneficiary's services will be featured, highlighted, or otherwise performed as a lead or starring participant.

For these reasons, the Petitioner did not establish that the Beneficiary will perform services as a lead or starring participant.

Because the Petitioner did not demonstrate the Beneficiary's previous and prospective services as a lead or starring participant, we need not address whether the productions, both past and future, have distinguished reputations. *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 show that the Beneficiary satisfies this criterion.

2. 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) requires "[e]vidence 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."

At the outset, the record contains a shoutoutla.com article dated after the filing of the petition. A petitioner must establish eligibility for the benefit from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1); *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

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

beneficiary may become qualified under a new set of facts.). Therefore, we will not consider this article for this criterion.

The Petitioner submitted an article published in *Politika* about the Beneficiary and her work, an article posted on voyagela.com reflecting an interview with the Beneficiary, and an article posted on vojvodjanske.rs regarding a critique of the show, [redacted] with a mention of the Beneficiary and her work as the set designer.

In determining whether the submitted evidence demonstrates that the beneficiary has achieved national or international recognition for achievements, USCIS considers both the content of the published material and the level of recognition enjoyed by the publication in which it appears.[12] For example, favorable coverage or publication of the beneficiary's work in major media, as demonstrated by high relative circulation, readership, or viewership figures, could establish national or international recognition of the beneficiary's achievements.[13]

Although the content of the material reflects recognition of the Beneficiary's work, the Petitioner did not demonstrate the level of recognition she received through the standings of the publications. As it relates to *Politika*, the Petitioner offered a screenshot from britannica.com briefly indicating that "*Politika*, founded in 1904, is considered the most authoritative of the republic's dailies." However, the screenshot did not further elaborate on its claim or provide further information to show *Politika's* major status. Regarding voyagela.com, the Petitioner submitted "About Shoutout LA" screenshots claiming that "Shoutout LA is part of the Los Angeles based Voyage Group of Magazines and our flagship publication, VoyageLA was started in 2015" and "[s]ince then we've grown to almost a dozen cities, generated millions of page views and helped tens of thousands of entrepreneurs and creative share their stories." However, the Petitioner did not offer independent, objective evidence to corroborate the website's self-serving assertions for voyagela.com. Finally, the Petitioner did not present any evidence as it pertained to vojvodjanske.rs. Without credible, reliable evidence reflecting high relative circulation, readership, or viewership figures, the Petitioner did not establish that the materials reflect major publications.[14]

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

III. CONCLUSION

The Petitioner did not demonstrate the Beneficiary meets the categories of evidence discussed above. Although the Petitioner claims the Beneficiary's eligibility for two additional criteria on appeal (8 C.F.R. §§ 214.2(o)(3)(v)(B)(*4*) and (5)), we need not reach these grounds because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three under 8 C.F.R. § 214.2(o)(3)(v)(B). We also need not provide a totality determination to establish whether the Petitioner has shown the Beneficiary's very high level of accomplishment evidenced by a degree or skill and recognition significantly above that ordinarily encountered to the extent that the Beneficiary is recognized as outstanding, notable, or leading in the field. *See* section 101(a)(15)(O)(i) of the Act

[12] *See generally 2 USCIS Policy Manual*, *supra*, M.4(E)(2).
[13] *Id.*
[14] *See generally 2 USCIS Policy Manual*, *supra*, M.4(E)(2).

and 8 C.F.R. § 214.2(o)(3)(ii) and (v).[15] Accordingly, we reserve these issues.[16] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary achievement. 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.

NOTICE: This constitutes the final decision in this matter. The filing of a motion will not postpone the effect of the decision. 8 C.F.R. § 103.5(a)(1)(iv). Aliens who are not lawfully present, or who are otherwise inadmissible or deportable, may be subject to the commencement of removal proceedings under section 240 of the Act through the issuance of a Form I-862, Notice to Appear. Those proceedings may result in their removal from the United States and possible ineligibility for future visas or other immigration benefits.

[15] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).
[16] *See Bagamasbad*, 429 U.S. at 25-26.