U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 5493924

Date: NOV. 21, 2019

Appeal of Vermont Service Center Decision

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

The Petitioner, a contemporary dance company, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the arts. To do so, the Petitioner seeks O-1 nonimmigrant classification, 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. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Petitioner currently employs the Beneficiary as a principal dancer pursuant to an approved O-1 petition and seeks to extend his O-1 status for a period of one year. The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts, either a significant national or international award or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner maintains that the evidence satisfies at least three of the six regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iv)(B).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth the evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner must submit evidence either of "significant national or international awards or prizes" such as "an Academy Award, an Emmy, a Grammy, or a Director's Guild Award," or of at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

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).[1]

II. ANALYSIS

The record reflects that the Beneficiary trained in dance at the [redacted] University of [redacted] before moving to the United States in 1999. He received O-1 nonimmigrant classification in 2004,[2] along with eleven extensions of his status from 2007 to 2018.[3] However, the Director determined in the Petitioner's latest extension request that the record does satisfy the evidentiary criteria applicable to individuals of extraordinary ability in the arts.[4]

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has been nominated for or received a significant national or international award or prize, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*). The Director found that the Petitioner met one of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*), relating to performing a lead, starring or critical role for distinguished organizations or establishments. On appeal, the Petitioner asserts that it also meets the evidentiary criteria relating performing a lead or starring role in distinguished productions or events, published materials, and significant recognition for achievements. After reviewing all of the evidence in the record, we find that the exhibits do not satisfy at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will analyze the evidence submitted under each of those criteria below.[5]

> *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*

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[1] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

[2] *See* [redacted] with a validity period from October 13, 2004 to October 13, 2007.

[3] *See* [redacted] with a validity period from October 13, 2017 to October 12, 2018, for the most recent extension approval.

[4] We note that exhibits submitted indicate that the Beneficiary's wife, [redacted] has been a member of the petitioning company since 2006.

[5] On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*).

On appeal for the first time, the Petitioner asserts that the Beneficiary satisfies this criterion by his roles in its productions. The Petitioner provided programs for some of the Beneficiary's performances that mention him by name and show that he performed roles in the Petitioner's works as follows:

- Company Member in [redacted] at the Petitioner's [redacted] in New York (2005)
- Company Member in [redacted] at [redacted] at New York [redacted] (2016)
- Company Member in [redacted] at the Petitioner's [redacted] (2017)
- Company Member in [redacted] and [redacted] at the [redacted] International Dance Center, in [redacted] New York (2017)
- Company Member in [redacted] at [redacted] at New York [redacted] (2017)
- Duet Performer in [redacted] at the [redacted] State University *Spring Dance Concert* (2017)
- Company Member in [redacted] at [redacted] (2018)
- Company Member in [redacted] at the [redacted] at New York [redacted] (2018)
- Solo Performer in [redacted] Company Member in [redacted] in the Petitioner's showcase at the [redacted] International Dance Center (2018)
- Company member in [redacted] and [redacted] at the Petitioner's [redacted] at the [redacted] Theater (2018)

Upon review, the programs show the Beneficiary's roles are not as a leading dancer within the scope of those productions. The Beneficiary performed as an ensemble member of the Petitioner's dance company in events that featured the works of several dance companies or at the Petitioner's showcases. From the items submitted it does not appear the Beneficiary was a featured dancer in those productions. We cannot conclude that every dancer who took part in those productions performed services as a "lead or starring participant" within the meaning of this criterion. The Petitioner has not offered evidence that would distinguish the Beneficiary from any other dancers who performed at those events.

Next, the Petitioner's initial evidence included articles that pertain to several of the Petitioner's past productions and events. An article from www.dancemagazine.com reviews the Petitioner's anniversary gala, [redacted] and contains a critique of the dancers' performances in [redacted] including that of the Beneficiary. An article from the blog [redacted] reviews the presented work of several female choreographers, including the "studio run-thru" of [redacted] prior to its presentation at [redacted] at New York [redacted] It describes the Beneficiary's rehearsal of the piece, along with that of the other dancers in that work. A portion of an article from the blog www.artsjournal.com reviews the works of four dance companies presented at [redacted] It mentions the Beneficiary's solo in [redacted] and contains a captioned photograph of his performance. Another review of that event from www.dance-

enthusiast.com contains the same captioned photograph of the Beneficiary but does not mention him by name in describing the performance of the eight dancers in [redacted] An article from www.chronogram.com, previewing the Petitioner's 2018 showcase at the [redacted] International Dance Center, does not mention the Beneficiary but contains a captioned photograph of him dancing. Based on the foregoing, those articles do not establish that the above-mentioned events themselves have a distinguished reputation and the Beneficiary's lead or starring role in such events, as required pursuant to the plain language of the regulation that contain information that is relevant to this criterion.

Further, the Petitioner contends that several testimonial letters from the company's collaborators, employees, and patrons support the Beneficiary's eligibility under this criterion. The plain language of the regulation, however, mandates that the evidence supporting this criterion consist of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.[6] Regardless, the authors of the letters do not discuss the Beneficiary's role in any specific dance production or event.

Finally, in order to meet this criterion, the Petitioner must establish that the Beneficiary will perform services as a lead or starring participant in productions or events that have a distinguished reputation upon approval of the petition. The Petitioner has not offered additional evidence that would distinguish the Beneficiary's proposed role as leading or starring within the company's upcoming productions. It indicates in the petition that he will be a "principal dancer" with the company during its 2018/2019 dance season, but it has not provided information regarding his proposed roles in its upcoming production [redacted] and other events. The Petitioner also has not documented that its upcoming performances are considered to be productions or events with a distinguished reputation.

Based on the foregoing, the submitted evidence does not satisfy 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*).

To meet this criterion, the Petitioner cites published material pertaining to the Beneficiary. The Director determined, and we agree, that those materials did not satisfy this criterion. The Petitioner provided the previously discussed articles from the websites www.dancemagazine.com, www.dance-enthusiast.com, and www.chronogram.com, and the blogs www.artsjournal.com and [redacted] Those published materials are not specifically "about" the Beneficiary but about the events and productions. In addition, the Petitioner did not present evidence establishing that those sources are each a major newspaper, trade journal, magazine or other major medium.

For these reasons, the Petitioner has not submitted documentation that satisfies 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*

[6] Testimonials are listed as initial evidence under the lead, starring, or critical role for a distinguished organization criterion at 8 C.F.R § 214.2(o)(iv)(B)(*3*), and we will consider the letters below in that context.

by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*).

To meet this criterion, the Petitioner cites the Beneficiary's past and proposed roles for its company. The Director determined that the Petitioner met this criterion. We agree and find that the record supports the Petitioner's claim that it meets this criterion. The Petitioner's above-referenced performance programs indicate that in addition to being a member of its dance ensemble, the Beneficiary has also been a member of the Petitioner's three-person artistic council.

In addition, several testimonial letters from the Petitioner's colleagues and employees mention the Beneficiary's roles and responsibilities for the organization. For example, [redacted] the [redacted] of the Netherlands-based dance company [redacted], states that in 2016 the Beneficiary, as the Petitioner's "primary Rehearsal Director," successfully prepared his dancers to perform the Petitioner's work [redacted] and taught them the Petitioner's unique dance technique. [redacted] who previously danced with the Beneficiary as a member of the petitioning company, indicates that he has taught dance classes to professionals and students at the Petitioner's studio, and at its residencies, master classes, and community management workshops.

Further, the evidence establishes that the Beneficiary's proposed role with the petitioning organization would satisfy the requirement that he will be performing in a lead, starring, or critical role for a distinguished organization. As discussed above, the Petitioner indicated in the petition that the Beneficiary will be a "principal dancer" with the company. In addition, the Petitioner's contract with the Beneficiary indicates he will continue to serve as "primary teacher of Company technique class," "an instructor in company workshops and Company outreach community service programs," and "dance instructor for special projects including domestic and internal workshops."

Therefore, the evidence sufficiently establishes that the Petitioner meets this criterion.

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 provided several testimonial letters in support of the petition. We determine that those testimonials do not satisfy this criterion. Upon reviewing the evidence from experts in the field of ballet, we note that the letters submitted are from the Petitioner's own current and former colleagues and, therefore, do not demonstrate the Beneficiary's significant recognition outside of that circle. In addition, the letters primarily discuss the Beneficiary's innate talent and artistry rather than his achievements as a dancer. The authors did not address any specific achievements of the Beneficiary and do not explain how the Beneficiary's achievements to date have received significant recognition from organizations, critics, government agencies or other recognized experts in the field.

For instance, [redacted] a dancer and choreographer who indicates that she has a longstanding professional relationship with the petitioning company, describes the Beneficiary as an "unparalleled" dancer of "superior artistic talent" whose dance style is "deeply emotive" and "highly technical." [redacted]

[redacted] in his previously discussed letter, calls the Beneficiary a "world class" dancer who has "reached the apex of technical mastery." [redacted] in her aforementioned letter, asserts that the Beneficiary is "an integral contributor to the field" and "a truly exceptional artist."

In addition, [redacted] of [redacted] in New York, praises the Beneficiary's "emotive" performance and "advanced" technique. [redacted] a long-time patron of the petitioning company, calls the Beneficiary a dancer of "profound and unique artistry." However, [redacted], an art gallery director, and [redacted] an orthopedic consultant for several dance companies, have not established their credentials as recognized experts in the field of dance, nor do they describe with any specificity how the Beneficiary's achievements as a dancer are recognized in the field.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility. USCIS may give less weight to an opinion that is not corroborated, or in accord with other information. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). The reference letters all praise the Beneficiary's talent and abilities. Such letters can provide useful information about a foreign national's qualifications or help in assigning weight to certain documents. Here, they do not explain how the Beneficiary's achievements to date have received significant recognition from organizations, critics, government agencies, or other recognized experts in the field for those achievements. Overall, while the Beneficiary has earned the respect of his colleagues in the field of dance, the exhibits are insufficient to demonstrate that he has received significant recognition for achievements in the field

For these reasons, the Petitioner did not show that the Beneficiary satisfies this criterion.

III. CONCLUSION

The record does not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: a significant national or international award or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary ability. 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.