U.S. Citizenship and Immigration Services

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

MATTER OF N-H-R-

DATE: NOV. 30, 2017

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a custom hot rod company, seeks to temporarily employ the Beneficiary in the United States as a fabricator and painter. To do so, the Petitioner seeks to classify him as an O-1 nonimmigrant, a visa 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 Director of the California 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 avers that the Director did not properly consider the record and maintains that the evidence satisfies the regulatory requirements.

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 alternative 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. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C). When a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) sets forth evidence that must accompany petitions for O foreign nationals, including in pertinent part:

> (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities

## II. ANALYSIS

### A. Evidentiary Criteria

The Director determined that the Petitioner did not satisfy any of the criteria at 8 C.F.R § 214.2(o)(3)(iv)(A)-(B). The Petitioner maintains that the exhibits satisfy four of those criteria. It also avers that it submitted comparable evidence of the Beneficiary's eligibility under 8 C.F.R § 214.2(o)(3)(iv)(C). As discussed below, we find that the exhibits do not satisfy any of the evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B), or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C).

> *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*).

We agree with the Director's determination that the Petitioner has not met the requirements of this criterion. It provided photographs, excerpts from foreign language magazines, and a print out of a foreign language page from the website www. However, the Petitioner did not submit a properly certified English language translation of the foreign language text contained in these submissions. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Thus, we cannot identify the publications or meaningfully determine whether the documents represent critical reviews or other published materials by or about the Beneficiary, as required by the plain language of the criterion.

> *Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators such as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational*

> *achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*).

The Director determined that the evidence does not satisfy this evidentiary criterion. We note that the Petitioner provided testimonial evidence from the Beneficiary's customers indicating that their cars' value increased following his paint work. However, the Petitioner has not provided evidence of the Beneficiary's own commercial success, such as documentation of his business revenue, nor has it otherwise shown that he has achieved "major commercial or critically acclaimed success" in the fabrication industry.

On appeal, the Petitioner contends that testimonials from recognized experts in the fabrication industry, as well as newly submitted reference letters from numerous clients who use the Beneficiary's services, satisfy this criterion. While we will examine this evidence below in our discussion of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*), the Petitioner has not demonstrated that these letters meet the objective requirements of this regulatory criterion. Although several letters attest to the Beneficiary's skill, they do not offer specific examples of how his work constitutes a record of major commercial or critically acclaimed successes in the field.

> *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*).

As noted above, the Petitioner submitted several testimonial letters in support of the petition. We determine that the submitted testimonials do not satisfy this criterion. Most of the letters discuss the Beneficiary's talent, work ethic, personal traits, and artistry rather than his achievements as an automotive fabricator and painter. For example, [redacted] a customer painter with [redacted] states that the Beneficiary is "an exceptional artist." Similarly, [redacted] host of the television show [redacted] praises his work stating that his "touch is absolutely incomparable," and [redacted] customer painter from Brazil, states that the Beneficiary is "accurate" and "thorough in his research." Lastly, [redacted] president of [redacted] a custom car and bike restoration shop, maintains that the Beneficiary is "a phenomenal artist and one of a kind." While complementary of his artistry, the letters 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 of automotive fabrication, nor do the letters themselves reflect such recognition.

On appeal, the Petitioner claims that the testimonial letters include statements that the Beneficiary "has won multiple awards in his field," constituting significant recognition. For example, [redacted] letter stated that the Beneficiary has won several awards as "best paint." Similarly, [redacted] the owner of the Petitioning entity in [redacted] Nevada, noted that his bike was painted by the Beneficiary and went on to win first place in a custom paint show known as [redacted] in [redacted] California. Their statements are not sufficient evidence that the Beneficiary won award(s)

or that such awards constitute significant recognition in the field. The letters do not specify the nature of the competitions or provides additional details regarding the Beneficiary's entry or results. Further, the Petitioner has not offered sufficient evidence confirming that winning an award at [redacted] is commensurate with significant recognition in the field. Accordingly, the record does not satisfy this criterion.

> *Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

The Petitioner did not submit material relating to the Beneficiary's past salary or remuneration, such as letters from former employers, income tax forms, or pay statements. On the Form I-129, the Petitioner indicates that the Beneficiary will receive $15 per hour for his services as a fabricator. However, the contract between the Petitioner and the Beneficiary, provided in response to a request for evidence from the Director, indicates that he will earn $1,200 per week or the equivalent of $30 per hour. The Director noted the discrepancy and found that this change constituted an impermissible material change. We agree that amending the terms of the Beneficiary's employment constituted a material change, therefore requiring the Petitioner to submit an amended O-1 petition with U.S. Citizenship and Immigration Services. If "material changes" in the terms and conditions of employment or the beneficiary's eligibility are made, an amended petition must be filed with the service center of original jurisdiction to reflect those changes. 8 C.F.R. §214.2(o)(2)(iv)(D)

On appeal, the Petitioner asserts that "this evidence should be considered in its totality" and that the record supports its contention that the Beneficiary commands a high salary compared to others in the field. However, even if we were to accept the higher wage ($30 per hour) as evidence of the Beneficiary's compensation, the evidence of record does not indicate the Beneficiary's proffered salary is a "high salary." The Petitioner provided comparative wage data relating to average or median wages of "Painters, Transportation Equipment," in California, from the Occupational Outlook Handbook published on the website www.bls.gov. The Beneficiary's salary does not exceed the Level 4 prevailing wage for the Petitioner's area, and regardless, the prevailing wage only reflects the *average* wage paid to all similarly employed workers in the same occupation in the same area. 20 C.F.R. § 655.10. This evidence does not sufficiently demonstrate that the Beneficiary's proffered salary in the position of automotive fabricator is a "high salary."

B. Comparable Evidence

On appeal, the Petitioner contends that the Director erred in not considering the Beneficiary's "renown on social media as well as portions of his portfolio" under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) because it claims that the regulatory criteria are not applicable to automotive fabricators. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that comparable evidence "may" be submitted if the criteria in 8 C.F.R. § 214.2(o)(3)(iv) do not readily apply to the beneficiary's occupation. It is the Petitioner's the burden to articulate why the criteria do not readily apply and how the evidence submitted is "comparable."

Here, the Petitioner has not provided sufficient documentation of the Beneficiary's social media presence or portfolio,[1] or explained how this evidence is comparable to the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv), nor has it established that it is reflective of 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).

C. Intended Employment and Itinerary

Finally, although not discussed by the Director, the Petitioner has not sufficiently clarified or documented the dates of intended employment. On the Form I-129, the Petitioner indicates that it seeks to employ the Beneficiary through December 2018. However, counsel for the Petitioner states that the "Petitioner seeks to employ the Beneficiary to work on custom and automotive design and paint for display at automotive trade shows leading up to the which will take place 2017 in Nevada, and the which will take place 2017 in California." The Petitioner further indicates that, "in order to accomplish" the display of the Beneficiary's work at these "premier" events, it will show his work at small trade shows throughout the year. The Petitioner has not explained whether it will continue to employ the Beneficiary after the show in December 2017 and through December 2018 as indicated in the initial filing. Also, the Petitioner has not provided a copy of an itinerary for the events. 8 C.F.R. § 214.2(o)(2)(ii).

## III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

**ORDER:** The appeal is dismissed.

Cite as *Matter of N-H-R-*, ID# 709390 (AAO Nov. 30, 2017)

[1] The record does include photographs, however, they are not dated or annotated and we cannot therefore, determine whether they are indicative of the Beneficiary's eligibility.