U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38414526

Date: OCT. 1, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a business management and concierge services company, seeks to classify the Beneficiary as a magician/performer 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 the Petitioner did not establish the Beneficiary's satisfaction of the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international award or at least three of six possible forms of 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

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." *See* 8 C.F.R. § 214.2(o)(3)(ii). Next, DHS regulations set forth alternative initial 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. *See* 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). A petitioner may submit comparable evidence if the criteria do not readily apply to the beneficiary's occupation. *See* 8 C.F.R. § 214.2(o)(3)(iv)(C).

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.").[1] 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).

II. ANALYSIS

SCOPS determined the Petitioner did not establish the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, SCOPS concluded the Petitioner established the Beneficiary's eligibility for only one of the six claimed alternative criteria, in which at least three must be fulfilled. On appeal, the Petitioner contends the Beneficiary received a significant national or international award and satisfies four additional categories of evidence.[2]

Moreover, the Petitioner submits new evidence on appeal. Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider it for the first time on appeal. *See Matter of Furtado*, 28 I&N Dec. 794, 801-02 (BIA 2024) (declining to consider new evidence on appeal when the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it) (citing *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988)); *see also* 8 C.F.R. § 103.2(b)(11) (requiring that in response to a request for evidence or notice of intent to deny, all evidence must be submitted together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record).

A. 8 C.F.R. § 214.2(o)(3)(iv)(A)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A) requires "[e]vidence 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, a Grammy, or a Director's Guild Award."[3] The Petitioner argues the Beneficiary's eligibility for this criterion based on first prize at the 2010 [redacted] in [redacted] United Arab Emirates.

The Petitioner provided letters from C-P-Y-, chairman at the [redacted] University, who stated that he was one of the judges at the convention and the Beneficiary "ultimately took home the first-place prize in the category of '[redacted],'" and "[h]e specifically showed off

[1] *See also generally* 2 *USCIS Policy Manual*, M.4(B), https://www.uscis.gov.policymanual.
[2] Any ground of ineligibility that is not raised on appeal is waived. *See Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).
[3] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).

his skills as a 'mind reader,' a form of magic in which the performer uses a number of tricks to convince their audience that they possess extrasensory and psychic powers." In a subsequent letter, C-P-Y- claimed:

> . . . This convention has been held annually in major cities in various countries over the years, including the United States, United Kingdom, France, Italy, and China, among others. [redacted] University is India's premiere educational facility for those seeking to pursue careers in magic performance, with courses being offered on such specialized skills as illusionism and mentalism. In past few decades we have organized numerous national and international magic conventions in India and abroad. It is for this reason that our prestigious institution was chosen to serve as the [redacted] central organizer in 2010. This edition of the convention certified it as Asia's largest magic convention by attendance, having gained international recognition in the magic fraternity all over the globe. More than 200 delegates from the Philippines, Singapore, Malaysia, India, Sri Lanka, Indonesia, and the UAE participated as contestants, magic dealers, and lecturers.
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> I must specially note that prizes awarded by the convention in its competition section are some of the absolute most prestigious awards in the field of magic, with each prize recognizing particular excellence and achievement among magicians nationally and internationally. They recognize outstanding contributions to the art of magic and celebrate the skill, innovation, and creativity of magicians worldwide.

Moreover, the Petitioner references two articles from *The Times of India* and *NavBharat Times* reporting on his receipt of the prize at the convention.

The Petitioner did not establish that the Beneficiary's first prize at the 2010 [redacted] constitutes a significant national or international award. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A) does not define significant national or international awards or prizes. However, the regulation offers examples: the Academy Award, an Emmy, a Grammy, or a Director's Guild Award. While these are only samples and other awards and prizes may qualify, the Petitioner must demonstrate that the Beneficiary's first prize is comparable or consistent in significance, stature, or prestige to the examples. Here, the Petitioner did not show that the first prize enjoys similar standing. Although C-P-Y- asserted that the prizes "are some of the absolute most prestigious awards in the field of magic," he did not further elaborate to support his claim. Instead, C-P-Y- generally stated that the prizes recognize magicians for excellence and achievement nationally and internationally. Further, C-P-Y- did not explain why he considered the prize to be "the absolute most prestigious" how it places among other significant national or international awards, such as an Academy Award or Emmy.

In addition, the Petitioner did not demonstrate how the submission of two articles reporting on the Beneficiary's receipt of the prize shows it as a "significant national or international award[ ] or prize [ ]." The articles, for example, do not discuss the prize's standing in the field, how the overall field views the prize, or otherwise reflects a significant national or international prize. Again, the articles indicate the Beneficiary's receipt of the prize and include some background information and quotations from the Beneficiary. Here, the Petitioner did not establish how the articles show the

gravity of the prize or otherwise indicate it as a significant national or international accolade, consistent with this regulatory criterion.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary meets the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A).

B. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)

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

At the outset, SCOPS concluded that since the Beneficiary did not meet the prospective aspect of this criterion, it did not need to determine the past part.

In the request for evidence (RFE), SCOPS stated:

> Regarding future productions or events, it appears the beneficiary will be a Magician for [redacted] and [redacted] LLC [redacted]. However, your itinerary and contract are not supported by independent objective evidence that shows the beneficiary will perform in a lead or starring role in productions or events with a distinguished reputation. You submitted printouts of past events associated with [redacted] and [redacted] LLC. However, this, in and of itself, does not demonstrate the beneficiary's productions or events such as "[redacted]" (Mind reader and Psychological Illusionist)" and '[redacted]" will have distinguished reputations. You have not shown that the association of past events or productions will elevate the beneficiary's productions or events simply by their association. As such, the evidence on record is insufficient to demonstrate that the beneficiary will play a lead or starring role for productions or events with a distinguished reputation.

In response to the RFE, the Petitioner argued that "we have provided for USCIS [a] testimonial letter . . . from [R-W-], Chief Operations Officer for [redacted] and the signer of [the Beneficiary's] [redacted] deal memo." Again, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(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." Here, the Petitioner did not establish how a letter from a future employer qualifies under any of the regulatory forms of evidence of "critical reviews,

[4] *See generally* 2 *USCIS Policy Manual*, M.4(D)(2), https://www.uscis.gov/policymanual.
[5] *Id.*

advertisements, publicity releases, publications contracts, or endorsements." 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]

On appeal, the Petitioner contends that it submitted "numerous advertising flyers and posters featuring [ ] artists and noting that their upcoming live performance projects were to be produced by these two businesses" and "if a distinguished company with a record of success and a history of producing major events starring distinguished performers is producing a new live show such as [the Beneficiary's], then the distinguished reputation of the producing organization provides a significant level of distinction to his new show."

With regard to demonstrating the distinguished reputation of a prospective event, a petitioner may submit documentation such as advance publicity, endorsements, or other evidence regarding the level of anticipation of the relevant event or production.[10] However, as the available evidence relating to the reputation of a prospective production or event will often be limited, USCIS may also consider factors such as the reputation of similar past events or productions by the same individuals or entities.[11]

Although the Petitioner submitted flyers from [redacted] for the Beneficiary's upcoming "[redacted]" and from [redacted] for the Beneficiary's upcoming "[redacted]" the Petitioner did not demonstrate that the flyers reflect a level of anticipation for any of the events. The Petitioner did not point to or explain how the Beneficiary's show will have a distinguished reputation. For example, the flyers do not boast any of the Beneficiary's prior performances as a reason to see his upcoming shows or otherwise set his shows apart from other magical events, indicating it would have a distinguished reputation.

Similarly, the Petitioner provided flyers and posters from both [redacted] and [redacted] for various past events by other artists and performers. Again, the Petitioner did not establish that the documentation reflects distinguished productions by [redacted] or [redacted] Rather, the flyers and posters simply advertise various events, such as holidays, concerts, and parties. Here, the Petitioner did not demonstrate that the reputations of these prior events or productions by [redacted] or [redacted] would tend to indicate the Beneficiary's upcoming shows will have distinguished reputations. In addition, the Petitioner did not show that the evidence reflects the reputations of the productions of [redacted] or [redacted], separating themselves from other hospitality or entertainment productions or events.

Finally, the Petitioner offered background information and samples of songs by singers K-S- and A-K-. In addition, the Petitioner submitted an article about actress S-A-K-'s brand endorsements. The record contains [redacted]'s promotional flyers for a joint concert by K-S- and A-K- and "an evening"

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[6] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[11] *Id.*

occasion with S-A-K-. However, the Petitioner did not demonstrate that any of these events with these performers resulted in distinguished reputations.

For the reasons discussed above, the Petitioner did not establish the prospective aspect of this criterion. Accordingly, we reserve a determination on whether the Petitioner has shown the past part.[12]

C. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*).

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) requires "[e]vidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators 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."

The Petitioner argues that "we have provided testimonial letters" to "attest to the exceptional degree of international acclaim that [the Beneficiary] has drawn to himself in his field due to his success at the 2010 edition of the [redacted], and as distinguished peers of [the Beneficiary], their testimony logically carries significant authority." This criterion requires evidence in the form of publications establishing the beneficiary's record of major commercial or critically acclaimed success.[13] The publications may include print or online publications or transcripts of radio or video coverage.[14] Thus, the Petitioner's submission of, and reference to, testimonial letters do not fall under the required evidence of "trade journals, major newspapers, or other publications."

Moreover, the Petitioner claims that the Beneficiary's "profiling and interviewing by multiple leading Indian print publications" "leads to the fact that [the Beneficiary's] winning of the [redacted] award serves as evidence that he has indeed earned a significant degree of critical acclaim in his field."

A submitted publication does not have to be primarily about the beneficiary and may be about a production in which the beneficiary performed.[15] However, the record should demonstrate how the production's major commercial or critically acclaimed success represents the beneficiary's success.[16] For instance, a petitioner might establish that a production's success is in some way attributable to the beneficiary based on the significance of the beneficiary's contributions.[17] If demonstrating critically acclaimed success, the evidence should demonstrate that the beneficiary's work has received public-facing praise or positive reviews in the relevant field, such as from professional art, television, or film critics.[18]

As indicated above, the Petitioner provided two articles from *The Times of India* and *NavBharat Times* reporting on the Beneficiary's receipt of the prize and including some of his background information

[12] *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).
[13] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[14] *Id.*
[15] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[16] *Id.*
[17] *Id.*
[18] *Id.*

and quotations. The Petitioner also previously indicated an article published in *Filmy Adalat*, indicating the Beneficiary's selection for the '[redacted]' convention. Here, the Petitioner did not demonstrate that any of the material reflects critically acclaimed successes. Instead, the press coverage reports on the Beneficiary's placement or invitation at magic conventions. The Petitioner did not show, for example, that the material reflects enthusiastic approval and praise from professional critics who are experts in their fields rather than general reporting by regular newspaper reporters.

Accordingly, the Petitioner did not establish that the Beneficiary satisfies this criterion.

D. 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

SCOPS indicated that "[t]he beneficiary appears to have met this criterion" without further explaining its determination. Because the record does not show the Beneficiary's eligibility for this criterion, we will withdraw SCOPS' decision for this criterion.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*) requires "[e]vidence 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." To demonstrate that the petitioner meets this criterion, the petitioner should provide appropriate evidence establishing that the beneficiary's past or future compensation is or will be high relative to others working in the field.[19]

In the initial cover letter, the Petitioner claimed:

> For his lead role as a performer/magician in his upcoming show [redacted] to be performed while employed by future U.S. employer [redacted], [the Beneficiary] will command a salary of $2,500 USD per 1-to-1.5-hour performance (equal to a salary of $2,5000 to $1,666 USD per hour) and $95.000 USD per hour while preparing for his performances.
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> For his lead role as a performer in his upcoming show [redacted] to be performed while employed by future U.S. employer [redacted], [the Beneficiary] will command a salary of $1,350 to $1,800 USD per hour) and $95.00 USD per hour while preparing for his performances.

The Petitioner also referenced deal memos for the Beneficiary's position as a "Lead Magician/Performer." In attempting to show the Beneficiary's prospective high salary, the Petitioner submitted screenshots from the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics for "Entertainers and Performers, Sports and Related Workers, All Other." However, the Petitioner did not provide appropriate, comparative salary data for the Beneficiary's occupation as a "Lead Magician/Performer." Broad descriptions that include multiple occupations or multiple industries may not provide an accurate comparison to others in the field.[20] For example, directors and producers might be listed as a single category across industries, but evidence that a film director receives high remuneration based on a broad range of occupational data that include disparate occupations such as film

[19] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[20] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).

director and radio show producer, may not be sufficiently probative.[21] Here, the Petitioner's submission of salary data for the broad occupations of "Entertainers and Performers, Sports and Related Workers, All Other" does not show that the Beneficiary will command a high salary as a lead magician.

Furthermore, the BLS screenshots reflect hourly and annual wages. However, the deal memos do not reflect the Beneficiary will be compensated in a traditional hourly or annual rate. Instead, consistent with the nature of his occupation, the deal memos indicate that he will be compensated on a performance/event basis rather than an hourly rate. Thus, in this case, the Petitioner must establish that the Beneficiary will command other substantial remuneration for services in relation to others in the field. USCIS considers whether the comparison data measures and hourly rate or an annual salary.[22] Another consideration is how that information compares to the beneficiary's pay.[23] Many artists are not paid an hourly rate but instead are paid a daily rate (which may not be equivalent to 8 hours) or are paid a certain amount for a project (involving an unknown number of hours).[24] Here, the Petitioner did not provide comparative performance/event rates for lead magicians to show that the Beneficiary will command other substantial remuneration for services in relation to others in the field.

For the reasons discussed above, the Petitioner did not demonstrate the Beneficiary fulfills this criterion. Accordingly, we withdraw SCOPS' determination for this criterion.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. §§ 214.2(o)(3)(iv)(B)(*2*) and (*5*), we need not address these grounds because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three criteria. We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim, has received a high level of achievement, and has been recognized as being prominent, renowned, leading, or well-known in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).[25] Accordingly, we reserve these issues.[26] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility 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.

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.

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[21] *Id.*
[22] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2).
[23] *Id.*
[24] *Id.*
[25] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(4).
[26] *See INS v. Bagamasbad*, 429 U.S. at 25.