U.S. Citizenship and Immigration Services

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

In Re: 39124724

Date: OCT. 8, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a dance studio, seeks to classify the Beneficiary as a ballroom dancer 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 claim 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 three claimed alternative criteria, in which at least three must be fulfilled. On appeal, the Petitioner contends the Beneficiary satisfies two additional categories of evidence, including through the submission of comparable evidence.

### A. 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.[2] 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.[3]

At initial filing, the Petitioner's cover letter did not specifically argue that the Beneficiary will perform services as a lead or starring participant in production of events. Rather, the letter contended the Beneficiary's prior services with various engagements. SCOPS issued a request for evidence (RFE) and indicated, in part, that "[f]or the purpose of meeting the second part of this criterion, you must also establish that the productions or events in the future which the beneficiary will perform in have distinguished reputations as well as establish that the beneficiary's role in these distinguished events or productions will be considered lead or starring."

In response, the Petitioner's cover letter again did not specifically address the prospective aspect of this criterion. However, in denying the petition, SCOPS indicated that the Petitioner's RFE response

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

included a letter from the Petitioner, which was submitted to address the Beneficiary's nature of the events or engagement under 8 C.F.R. § 214.2(o)(2)(ii)(C). SCOPS determined that the Petitioner's letter was "insufficient to satisfy this requirement," "[did] not contain sufficient detail about any future production or event," and "[d]id not establish that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation."

On appeal, the Petitioner's brief once again does not address the futuristic feature of this criterion. The Petitioner does not contest SCOPS' decision relating to the Petitioner's RFE letter or make any other claims regarding the Beneficiary's prospective services in productions or events.[4] Instead, the brief exclusively argues the Beneficiary's past services. 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)).

Because the Petitioner did not demonstrate the Beneficiary's futuristic services as a lead or starring participant in productions or events that have a distinguished reputation, we need not determine whether the Petitioner established the Beneficiary's past services. *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 the Beneficiary meets this criterion.

B. 8 C.F.R. § 214.2(o)(3)(iv)(C)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) states that "[i]f the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility." On appeal, the Petitioner argues for the first time that the Beneficiary "has evidence that is comparable and should be considered in classifying that he has sustained national or international acclaim in the arts" and submits two recommendation letters.

The Petitioner did not claim eligibility for the provisions of comparable evidence under 8 C.F.R. § 214.2(o)(3)(iv)(C) at either initial filing or in response to the RFE. Accordingly, we will not consider this eligibility claim for the first time on appeal. *See Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175, 195, 144 S. Ct. 1316, 1331, 218 L. Ed. 2d 642 n.5 (2024) (appellate bodies will generally not decide issues in the first instance, or consider claims raised for the first time on appeal). Moreover, because the Petitioner was put on notice and given a reasonable opportunity to provide the recommendation letters, we will also not consider this evidence 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

[4] The Petitioner also did not demonstrate how its letter qualifies as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements" pursuant to the documentary requirements under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*). *See also generally 2 USCIS Policy Manual*, *supra*, at M.4(D)(2) (instructing that this exhaustive list does not include unpublished testimonial or recommendation letters).

together at one time and that submitting only some of the requested evidence will be considered a request for a decision on the record). Regardless, the Petitioner did not identify which criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B), if any, do not readily apply to the Beneficiary's occupation as a ballroom dancer and how the recommendation letters are truly comparable to the unspecified criteria.

For these reasons, the Petitioner did not show eligibility for the comparable evidence provision.

## III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any additional criteria discussed above, including through the submission of comparable evidence. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*), we need not address this criterion, as well as SCOPS' favorable determination relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*), 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).[5] Accordingly, we reserve these issues.[6] 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.

[5] *See also generally 2 USCIS Policy Manual, supra*, at M.4(D)(4).
[6] *See INS v. Bagamasbad*, 429 U.S. at 25.