U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF W-C-

DATE: OCT. 12, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an artistic representative, seeks to classify the Beneficiary as an individual of extraordinary achievement in motion picture or television productions. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals whose achievements in this industry have been recognized in the field through extensive documentation.

The Director of the Vermont Service Center denied the petition, concluding that the record did not establish, as required, that the Beneficiary met at least three of the six regulatory criteria. Specifically, the Director found that the Petitioner had satisfied only one criterion.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets three additional criteria. He contends that the Director erred in determining that the Beneficiary is not eligible for the classification sought and did not properly consider all of the evidence.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary who has a demonstrated record of extraordinary achievement with regard to motion picture and television productions, 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. The implementing regulation at 8 C.F.R. § 214.2(o)(3)(ii) clarifies, in pertinent part:

> *Extraordinary 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.

Next, the regulations set forth the evidentiary criteria for establishing recognition of a beneficiary's achievements. A petitioner must either submit evidence of the beneficiary's nomination 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, or documentation satisfying at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(A)-(B). When a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows a record of extraordinary achievement in the motion picture and television industry and demonstrates that the beneficiary's achievements have been recognized in the field through extensive documentation.

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to represent the Beneficiary during his employment as a director of photography for a period of three years. An accompanying "summary of agency agreement" between the parties indicates that the Beneficiary "will serve as a key Head of Department on the film productions providing the films with their unique visual identity. He will play a major creative role in crafting and developing the desired visual style of the films and assuring that the results fit with the overall vision for the projects." The evidence also includes an offer of employment from and deal memos reflecting that the Beneficiary will provide services for the films and

According to his profile from the the Beneficiary "has shot several short films, music, and web videos." He graduated from the in 2012 and the in 2015. In addition, the record contains the required consultations and several testimonial letters. The Petitioner also provided articles and promotional materials pertaining to projects the Beneficiary filmed, and information pertaining to film festivals at which his work has been screened, along with awards received by productions on which he worked.

B. Extraordinary Achievement in the Motion Picture or Television Industry

The question to be addressed is whether the Petitioner offered evidence to establish that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three of the six categories listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*). The Petitioner does not assert, and the record does not reflect, that the Beneficiary has been nominated for, or is the recipient of, significant national or international awards or prizes in his field. *See* 8 C.F.R. § 214.2(o)(3)(v)(A). Accordingly, the Petitioner must satisfy at least three of the six regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The Director determined that the Beneficiary 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, and thus, that he satisfied the criterion for leading or starring participation in distinguished productions or events under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*). The Director found the record insufficient to meet the remaining criteria.

On appeal, the Petitioner maintains that the Beneficiary also meets the criteria for: leading, starring, or critical roles in distinguished organizations or establishments under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*) and(*3*); recognition for achievements evidenced by critical reviews or published material under 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*); and significant recognition for achievements from organizations, critics, government agencies, or other recognized experts under 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*).[1] The record, however, does not support the Director's finding that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*) or that he meets any additional criteria.

1. Evidentiary Criteria

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

The Petitioner asserts that the Beneficiary has performed as a leading or starring participant as a director of photography for ' and three Japanese hip hop artists' music videos. In addition, the Petitioner contends that the Beneficiary played a leading role as director for his short film, For the reasons outlined below, we find that the Petitioner has not submitted sufficient documentary evidence showing that the Beneficiary meets the plain language of this criterion. Accordingly, the Director's determination on this issue will be withdrawn.

The letters of support and other evidence sufficiently demonstrate that the Beneficiary's role as director of photography and film director for the aforementioned productions may be categorized as providing services as a lead participant. However, the Petitioner must also establish through the submission of critical reviews, advertisements, publicity releases, contracts, or endorsements that the films and music videos themselves have a distinguished reputation. Within his initial submission and response to the RFE, the Petitioner provided documentation that the Beneficiary's films were selected for various film festivals in the United States and abroad. For example, his work was included in the and In addition, the Beneficiary's films received three awards including:

[1] As the Petitioner has not contested the Director's findings with regard to the remaining criteria, we will not address them in this decision.

- [redacted] (monthly online film festival) – [redacted] (2016);
- [redacted] (2016); and
- [redacted] (online film festival) – [redacted]

While the Petitioner submitted information about the above film festivals from their websites and other online sources, the documentation is not sufficient to demonstrate that the Beneficiary's productions enjoyed a distinguished reputation by virtue of the awards or screenings. For instance, the scope, significance, and level of distinction of the above awards has not been explained or documented. Furthermore, the record does not demonstrate that the selection requirements for the film festivals in which the Beneficiary's productions were screened are indicative of a distinguished reputation. For example, the [redacted] focuses on exhibiting the work "produced by post-secondary student filmmakers."

The record contains an [redacted] 2016 article, entitled "[redacted] from [redacted] a New York focused entertainment magazine. In the article, the organizer of the second annual [redacted] states that "there's a lot of youth film makers who are interested in getting their voice heard and their films made; we just want to give them the opportunity." This article, which lists "[redacted] and ten other films, further notes that "[t]he film festival gave the youth an opportunity to express themselves in a manner that many may never receive." The film festival coverage from [redacted] is not sufficient demonstrate that "[redacted] has earned a distinguished reputation.

In addition, the Petitioner provides a [redacted] 2016 article from [redacted] a press release distribution website, discussing the debut of the Beneficiary's new film "at [redacted] While the article does not actually identify the name of the film, it appears to relate to his short film "[redacted] The article indicates that it "was shown in the [redacted] and that "[t]he feedback was reaction [*sic*] from the audience was great." The Beneficiary's debut of a new film at [redacted] is also mentioned briefly in a posting at [redacted] a press release distribution service, and in [redacted] online blog. The aforementioned news releases and blog posting, however, do not demonstrate that his film has garnered a distinguished reputation.

The record also includes a [redacted] 2016 article, entitled "[redacted] in [redacted] a Brazilian daily newspaper. The same article appears in [redacted] magazine, a weekly entertainment guide for [redacted] that is distributed with [redacted] newspaper. This article states that [redacted] "took the 1 year filmmaking course in the [redacted] and that [redacted] is "her first work." Both submissions list [redacted] and email contact information. This article promoting [redacted] early career is not sufficient to show the distinguished reputation of "[redacted]

The Petitioner also offers an 2016 article from a daily newspaper in New York. This local news coverage discusses the success of the in the community and then lists multiple award recipients, including " for " The article, however, is insufficient to demonstrate that has earned a distinguished reputation.

With respect to the three Japanese hip hop artists' music videos for which the Beneficiary served as director of photography, the Petitioner provides webpages indicating that music is available for viewing or purchase on and In addition, the Petitioner submits an artist profile of available at an webpage reflecting that the Beneficiary performed cinematography for video a free digital download offer from webpage, and an webpage indicating that the Beneficiary was director of photography for music video. The aforementioned documentation, however, does not demonstrate that the music videos shot by the Beneficiary have a distinguished reputation.

For the reasons discussed above, we find that the Petitioner has not submitted critical reviews, advertisements, publicity releases, publications or other evidence demonstrating that the Beneficiary's past music videos and films have a distinguished reputation. Furthermore, in addition to his past positions, this criterion requires that the Beneficiary "will perform" services as a lead or starring participant in productions or events with a distinguished reputation. As set forth in the petition and the deal memos, the Beneficiary will provide services for " and " The record, however, does not show that these prospective productions have a distinguished reputation. In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary 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)(v)(B)(*2*).

As evidence under this criterion, the Petitioner submitted an article entitled " in The aforementioned article also appears in magazine, a weekly entertainment guide distributed with newspaper. Although the Petitioner provided documentation indicating that is a major Brazilian newspaper, he did not offer circulation evidence for to demonstrate that it qualifies as a major magazine. In addition, the Petitioner submits information from *Wikipedia* about but the documentation does not establish that this newspaper's online visitors and readership numbers elevate it to a form of major media.[2] Regardless, the article that appears in these

[2] We note that, with respect to information from *Wikipedia*, there are no assurances about the reliability of the content

publications is about [redacted] rather than the Beneficiary, and only references him once. The plain language of the regulatory criterion requires "published materials by or about the individual." Articles that are not by or about the Beneficiary do not meet this regulatory criterion. *Cf. Negro-Plumpe v. Okin*, 2:07-CV-00820 at *1, *7 (D. Nev. Sept. 2008) (upholding a finding that articles about a show are not about the actor).

The Petitioner also provides an article entitled "[redacted] [*sic*] [redacted] from [redacted] a press release distribution website. In addition, he offers webpages from [redacted] and [redacted] The record, however, does not demonstrate that the aforementioned websites are major newspapers, trade journals, magazines, or other publications. Furthermore, several of the aforementioned webpages are not about the Beneficiary. For example, the material from [redacted] includes only the Beneficiary's photograph and the webpage from [redacted] lists just the phrase "[redacted] [the Beneficiary]" with no further content about him. Accordingly, the Petitioner has not established that the Beneficiary meets this evidentiary 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 by articles in newspapers, trade journals, publications, or testimonials.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*).

The Petitioner maintains on appeal that the Beneficiary satisfies this criterion based upon his leading or critical roles for [redacted] and [redacted] however, is an individual rather than an organization or establishment, and the Petitioner has not identified a specific organization or establishment associated with her.[4] While the record includes information about several individuals who work for the aforementioned companies (such as their [redacted] profiles and film festival participation), the Petitioner has not demonstrated through the submission of articles in newspapers, trade journals, publications, or testimonials that the above organizations have a distinguished reputation.

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from this open, user-edited Internet site. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

[3] After identifying these organizations and [redacted] the Petitioner's brief also discusses the Beneficiary's roles for [redacted] and three Japanese hip hop artists' music videos. The Beneficiary's role in the aforementioned film and music video productions is more relevant to the "lead or starring participant in productions or events which have a distinguished reputation" category of evidence at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*), a separate and distinct criterion under which this documentation has already been addressed. Consistent with the plain language of the regulations and the requirement that a petitioner meet at least three separate criteria, we generally do not consider "productions or events" as constituting "organizations or establishments." Regardless, as we previously detailed, the evidence does not sufficiently demonstrate that the Beneficiary's aforementioned film and music video productions have earned a distinguished reputation.

[4] The plain language of this regulatory criterion requires that the beneficiary "has performed, and will perform, in a lead, starring, or critical role for *organizations and establishments*" (emphasis added).

Furthermore, a leading role should be apparent by its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. A critical role should be apparent from the beneficiary's impact on the organization or the establishment's activities. Although the Petitioner provided testimonial letters, deal memos, and other documentation indicating that the Beneficiary's roles as director of photography and cinematographer may be categorized as providing leading or critical services for particular films and individual productions on behalf of the above companies, the evidence is not sufficient to demonstrate that his roles are leading, starring, or critical for those organizations overall.[5]

For example, the Petitioner provides two letters and a deal memo from president of March 2016 letter and the deal memo state that the Beneficiary will serve as director of photography for the production The documentation does not specify how the Beneficiary's position fits into the hierarchy of the aforementioned company to show that it is a leading role, clarify how his work will be critical to the success and standing of the organization, or suggest the manner in which his work will result in a measurable level of success for In addition, the evidence does not demonstrate whether the Beneficiary has previously worked in a director of photography role for this company, how his role differentiates him from the organization's other photographers, or how the company progressed while the Beneficiary worked there.

Aside from not demonstrating that the Beneficiary has performed, and will perform, in a lead, starring, or critical role for the Petitioner has failed to show that this organization has a distinguished reputation. The record includes profile and articles from the and websites discussing short films, but these documents do not offer information about or its level of distinction. The Petitioner also submits an event program for screening of which states that he created "the in 2011 and produced several short films.[6] There is no mention, however, of or its reputation in the motion picture industry. As the Petitioner does not provide additional evidence or information showing the company's distinguished reputation, he has not established that the Beneficiary's involvement with meets this criterion.

In addition, the Petitioner submits letters and deal memos from and stating that the Beneficiary will serve as director of photography for the productions and The record reflects that the aforementioned production companies

[5] The supporting evidence submitted under this criterion mainly relates to the three companies discussed below: and

[6] The Beneficiary served as "1st assistant camera" for film while was the "Director of Photography." The Petitioner has not demonstrated that the Beneficiary's role for this film was leading or critical.

co-produced ' According to this film's profile offered by the Petitioner, the Beneficiary served as "first assistant camera" while performed the cinematography. The aforementioned documents, however, do not demonstrate that the Beneficiary has performed, or will perform, in a lead, starring, or critical role for and overall.

The record also includes articles from and the Pennsylvania) announcing that ' is set to begin filming in Central Pennsylvania. The aforementioned articles about " are insufficient to show that and have garnered a distinguished reputation in the industry based on some media coverage surrounding their unreleased film. Additionally, the Petitioner submits biographies for leadership team from the company's website and webpages relating to pre- and post-production projects. USCIS need not rely on this self-promotional material. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9). The Petitioner has not offered sufficient evidence to demonstrate that the aforementioned production companies enjoy a distinguished reputation. As previously noted, the plain language of this criterion requires the submission of evidence in the form of newspapers, trade journals, publications, or testimonials. In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary 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)(v)(B)(5)

As evidence under this criterion, the Petitioner provided several reference letters. The Director considered the letters and concluded that, although they discussed the Beneficiary's projects and skills as a cinematographer, they were insufficient to establish that his work has received significant recognition for achievements in the field. Specifically, the Director noted that the Petitioner had not shown that the Beneficiary's work has been recognized beyond his coworkers and former employers.

On appeal, the Petitioner asserts that Director disregarded the "expert opinions acknowledging the fact that the beneficiary has received significant recognition in the field of cinematography." He further contends that "the impact of the letters of support is highly significant as their authors are not only renowned experts in the field of motion picture and television . . . but also they have direct and first-hand knowledge of [the Beneficiary's] achievements."

The record includes letters of support from various individuals who have participated in projects for which the Beneficiary's served as a director of photography or cameraman.[7] For example, chair of the filmmaking department at asserts that the Beneficiary has demonstrated

[7] We discuss only a sampling of these letters, but have reviewed and considered each one.

"unique artistic vision, resourcefulness and exceptional cinematographic skills."[8] further indicates that they "worked together on filming the series of interviews for to appear on and that the Beneficiary "has been able to achieve outstanding results during all phases of the production process." In addition, a film and television actor, states that he met the Beneficiary during the production of ' ' and that he "was impressed with [the Beneficiary's] professional attitude and charisma" and "leadership and management skills." also notes that the Beneficiary's "extraordinary ability helped the production to move faster between setups and execute incredibly challenging focus pulls."

The Petitioner offers another letter from a director of photography and member of the who "worked with [the Beneficiary] on a feature film shoot in titled indicates that the Beneficiary "did several challenging camera and lens tests, prepared the gear for the shoot, [and] he was also responsible for delivering high quality image to the director on set and managing his crew." In further support of this criterion, the Petitioner provides a letter from the Beneficiary's former employer and "co-founder of based in Russia." states that the Beneficiary "played a leading role in directing and filming behind the scenes . . . on a number of commercial shoots. The job requires a set of technical and creative skills like knowing camera and camera gear, editing and color grading software."

On appeal, the Petitioner submits a letter from a music video director, indicating that he and the Beneficiary worked together on the music video ' ' by explains that the Beneficiary handled "lighting and operating the camera" and that he "was instrumental in the overall look and quality of the video." Additionally, mentions awards received by the Beneficiary's films such as the award won by ' ' for [9] As previously noted, the Beneficiary's other films ' ' and ' won ' at the and ' ' at respectively. The Petitioner, however, does not include any supporting explanation or documentation with respect to the significance of the aforementioned awards and the context in which recipients are chosen. As such, we have no basis on which to conclude that such awards are evidence that the Beneficiary "has received significant recognition for achievements."

Upon review of the letters, we concur with the Director's determination that the Petitioner has not established that the Beneficiary satisfies this criterion. The authors do not attest to the Beneficiary's level of recognition beyond their own companies and organizations, nor do they explain in factual terms his achievements in the field. The issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or

[8] notes that he first met the Beneficiary at when he was a teaching assistant in the cinematography department.

[9] The list of "Full Cast & Crew" for " contained in the record indicates that while the Beneficiary directed, wrote, and produced this film, the cinematography was performed by

other recognized experts in the field. The record lacks documentary evidence showing that the Beneficiary has received such recognition. Based on the foregoing, the Petitioner has not submitted evidence that the Beneficiary meets this regulatory criterion.

2. Petitioner's Argument that Consultations Demonstrate Extraordinary Achievement

In his appeal brief, the Petitioner contends he has demonstrated the Beneficiary's extraordinary achievement through his submission of consultations from the and the as required under 8 C.F.R. § 214.2(o)(5). He asserts that the Beneficiary's "eligibility for an O-1 visa has been recognized by the and stating that "[t]he favorable advisory opinions are only issued for beneficiaries who are able to demonstrate extraordinary achievement in their field of expertise and [the Beneficiary] was approved by both organizations."

While the submitted consultations meet the requirements of 8 C.F.R. § 214.2(o)(5), the regulations also require evidence satisfying the regulatory criteria under 8 C.F.R. § 214.2(o)(3)(v)(A)-(B). As discussed above, the Petitioner has not provided such evidence. Further, the consultation authors do not address whether the Beneficiary meets the relevant evidentiary criteria demonstrating extraordinary achievement. Rather, expresses that has "no objections to the granting of a temporary O-1 visa." Similarly, while states that "the beneficiary has a history of extraordinary achievement" and that supports "the granting of an O-1 visa for the beneficiary," she does not specify which of the regulatory criteria which his achievements satisfy. Moreover, neither consultation details what particular evidence they reviewed in issuing their letters. Regardless, consultations are advisory and are not binding on us. 8 C.F.R. § 214.2(o)(5)(i)(D). It remains the Petitioner's burden to provide the specific documentation mandated by the regulations in addition to the consultations.

III. CONCLUSION

The Petitioner has not submitted qualifying evidence for the Beneficiary under 8 C.F.R. § 214.2(o)(3)(v)(A) or that he meets at least three criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). Accordingly, the Petitioner has not established the Beneficiary's eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of W-C-*, ID# 613312 (AAO Oct. 12, 2017)