U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 38950000

Date: OCT. 14, 2025

Appeal of Service Center Operations (SCOPS) Decision

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

The Petitioner, a hair salon, seeks to classify the Beneficiary as a makeup artist 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 did not establish the Beneficiary's eligibility for any of the four claimed alternative criteria, in which at least three must be fulfilled. On appeal, the Petitioner contends the Beneficiary satisfies four categories of evidence, including through the submission of comparable evidence.[2]

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.[3] 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.[4]

As it relates to the future part of this criterion, SCOPS indicated in its request for evidence (RFE):

> Regarding future productions or events, it appears the beneficiary will be a Lead/Specialized Makeup Artist for your organization, [the Petitioner]. However, you did [not] identify specific productions or events that the beneficiary will participate in. As such, you provided insufficient evidence, in the prescribed form, to establish that the beneficiary will perform in a lead or starring role for productions or events with distinguished reputations.

---

[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 generally 2 USCIS Policy Manual*, *supra*, M.4(D)(2).
[4] *Id.*

In denying the petition, SCOPS stated:

> Regarding future productions or events, your attorney states the beneficiary "...will perform services as a lead or starring participant in productions or events which have a distinguished reputation as demonstrated by the letter of intent from Petitioner . . . that was provided in the initial filing. [The Petitioner] plans to expand its target market to the entertainment markets as well as VIP personalities. [The Beneficiary] would offer services to entertainment performers and video and movie filmmakers as she has experience having worked for [redacted] and [redacted]..." However, letters are not the prescribed form of evidence to satisfy this criterion. Also, the contract between the beneficiary and [the Petitioner] states the beneficiary will be a Lead/Specialized Makeup Artist at [the Petitioner] with responsibilities such as "...Responsible for attending VIP clients and Special event contracts – Providing professional makeup services to clients, ensuring their unique preferences and requirements are met. – Collaborating with the team to plan and execute makeup looks for various events, such as weddings, fashion shows, photoshoots, and special occasions. – Conducting makeup consultations and offering expert beauty advice to clients. – Staying updated with the latest industry trends and techniques to enhance the services we offer. – Maintaining a clean and organized workspace, ensuring all equipment and supplies are properly sanitized and restock..." However, the contract does not identify specific productions or events. As noted in the RFE, insufficient evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements was submitted to establish the beneficiary will perform in a lead or starring role for specific productions or events that will have distinguished reputations.

On appeal, the Petitioner contends that "[t]here is no regulatory mandate that the Petitioner list specific future productions at its own organization to satisfy this criterion." 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." 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.[5] Here, the Petitioner petitions the Beneficiary to work as a makeup artist for its company, and the Petitioner did not indicate that the Beneficiary will work in any productions or events for anybody else. As such, the Petitioner must show that the Beneficiary will perform services as a lead or starring participant in the Petitioner's productions or events that have distinguished reputations.

Moreover, the Petitioner argues that "the record does include a letter from [the Petitioner's] president . . . describing the Beneficiary's role as Lead/Specialized Makeup Artist for the company," and "[b]y the very nature of that title, the Beneficiary is entrusted with a principal role on the organization's projects." As discussed in SCOPS' decision, a letter from the Petitioner is not one of the prescribed

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

types of evidence required under this criterion. Rather, the regulation requires "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." The Petitioner did not demonstrate how its self-serving letter equates to any of these regulatory required documents.

Further, the Petitioner asserts that "USCIS erred by demanding additional detail about how her future work at [the Petitioner] would be 'lead' or 'critical' to the organization as a whole – an extra requirement found nowhere in 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*). SCOPS' decision for this criterion does not support the Petitioner's assertion. SCOPS did not determine for this criterion, as claimed by the Petitioner, that the Beneficiary's work would be leading or critical to the organization as a whole. Again, this criterion requires the Beneficiary's services in productions or events, and SCOPS' decision made no reference to the Beneficiary's role in an organization as a whole when specifically discussing this criterion. *Compare* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) relating a beneficiary's leading, starring, or critical role for organizations and establishments with distinguished reputations.

Finally, the Petitioner claims that it "has received some inquiries from diamond jewelry brands inquiring about Beneficiary's makeup services, as well as inquiries from stylist classes for local artists and beauty shows – demonstrating that the Beneficiary will perform in in [sic] a lead or starring role for productions or events with distinguished reputations for [the Petitioner]." However, the Petitioner does not point to evidence to support its assertions, let alone "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." Counsel's unsubstantiated assertions do not constitute evidence. *See, e.g., Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("statements in a brief, motion, or Notice of Appeal are not evidence and thus are not entitled to any evidentiary weight"). Moreover, the Petitioner refers to "inquiries" rather than evidence that the Beneficiary will perform services as a lead or starring participant in productions or events that have a distinguished reputation.

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)(B)(*2*)

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) requires "[e]vidence 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." In determining whether the submitted evidence demonstrates that the beneficiary has achieved national or international recognition for achievements, USCIS considers both the content of the published material and the level of recognition enjoyed by the publication in which it appears.[6] For example, favorable coverage or publication of the beneficiary's work in major media, as demonstrated by high relative circulation, readership, or viewership figures, could establish national

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

or international recognition of the beneficiary's achievements.[7]

The Petitioner argues that it "submitted published material in *Cosmopolitan* magazine profiling the Beneficiary as one of the top make-up artists in Romania." The record contains three translations for articles entitled, [redacted] None of the translations, however, contain the source for the articles. Although the titles reference "Cosmopolitan" and "Cosmo," the Petitioner did not show the articles were actually published by *Cosmopolitan,* or they simply reported on a *Cosmopolitan*-related event.

Notwithstanding the above, the first article refers to the Beneficiary as "a professional make-up artist who is most likely behind the selfies of many local stars" and lists three of the Beneficiary's makeup tips. The second item shows an online article listing the Beneficiary with two others, without any specific discussion above her, and mentions them as "Romania's best-known make-up artists." The third article reflects an identical article as the second item but with an expanded section reporting on the event. Here, the Petitioner did not establish that the content of the material reflects the Beneficiary achieved national or international recognition for achievements. Moreover, the Petitioner did not demonstrate that the general references to the Beneficiary and lack of substance in the articles show national or international recognition.

Furthermore, the Petitioner claims that it "submitted information showing Cosmopolitan to be the largest women's media brand in the world, with an average of 72 million readers per month across print, digital, video, and social media channels." Even if the Petitioner demonstrated that *Cosmopolitan* published the articles, the translations reflect the Romanian language thereby indicating publication in *Cosmopolitan Romania* and posted on its website. Although the Petitioner submitted evidence relating the overall *Cosmopolitan* brand, it did not offer documentation regarding circulation, readership, or viewership figures for *Cosmopolitan Romania* or its website, demonstrating major status.

For these reasons, the Petitioner did not establish the Beneficiary fulfills this criterion.

C. 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)(iv) 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."[8] On appeal, for the first time, the Petitioner argues that eligibility for comparable evidence and asserts that "USCIS, however, failed to meaningfully analyze the evidence under this provision."

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

[7] *Id.*

[8] *See also generally 2 USCIS Policy Manual, supra,* M.4(D)(2) (indicating that if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary's occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion).

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). Regardless, the Petitioner did not identify or establish which criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B), if any, do not readily apply to the Beneficiary's occupation and how the vague reference to evidence is comparable to the unspecified criteria.[9]

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 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*) and (*5*), we need not address these evidence categories because the Beneficiary cannot fulfill the initial evidentiary requirement of at least three. 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).[10] Accordingly, we reserve these issues.[11] 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.

---

[9] *See also generally 2 USCIS Policy Manual*, *supra*, M.4(D)(2) (instructing that for comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to the beneficiary's occupation as well as why the submitted evidence is "comparable" to that criterion, and a general unsupported assertion that the listed criterion does not apply to the beneficiary's occupation is not probative).

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

[11] *See INS v. Bagamasbad*, 429 U.S. at 25.