U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34043224

Date: OCT. 15, 2024

Appeal of California Service Center Decision

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

The Petitioner, a recruiting agency, seeks to temporarily employ the Beneficiary as a brand ambassador in the motion picture or television industry. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals who can demonstrate a record of extraordinary achievement, 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 the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary achievement in the motion picture or television industry: nomination for or receipt of a significant national or international prize or award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(v)(A)-(B). 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, with regard to motion picture and television productions, a demonstrated record of extraordinary achievements that 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 achievement. Department of Homeland Security (DHS) regulations include the following definition: "*[e]xtraordinary 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." 8 C.F.R. 214.2(o)(3)(ii).

Next, DHS regulations set forth the initial evidentiary criteria for establishing an individual's record of extraordinary achievement. First, a petitioner can demonstrate the beneficiary's nomination for, 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. 8 C.F.R. § 214.2(o)(3)(v)(A). If the petitioner does not offer this information, then it must submit sufficient qualifying exhibits that satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*)-(*6*).

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."). 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 eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (v).

II. ANALYSIS

At the outset, the Petitioner does not challenge or address the Director's decision regarding the Beneficiary's eligibility for a nomination or receipt of a significant national or international prize or award under 8 C.F.R. § 214.2(o)(3)(v)(A).[1] Rather, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six categories of evidence under 8 C.F.R § 214.2(o)(3)(v)(B)(*1*)-(*6*). The Director determined the Beneficiary satisfied only one criterion – high salary under 8 C.F.R § 214.2(o)(3)(v)(B)(*6*). On appeal, the Petitioner maintains the documentation satisfies five additional categories of evidence. As discussed below, we find the evidence does not fulfill at least three criteria, as required.

> *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*).

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] As it relates to the Beneficiary's futuristic participation, the Petitioner's initial cover letter did not specifically identify any prospective productions or events that have distinguished reputations in which the Beneficiary would perform as a lead or star. Instead, the Petitioner briefly discussed the Beneficiary's previous experience. In the request for evidence (RFE), the Director indicated that "USCIS also notes in reference to future events and productions, you only provided an employment contract with your organization and that the record lacks direct evidence to show the beneficiary's intended productions will be distinguished." In response, the Petitioner's cover letter did not discuss the Beneficiary's anticipated productions or events; rather, the cover letter mentioned the Beneficiary's "illustrious 25-year career in Colombia." Furthermore, the Petitioner submitted a letter claiming the

[1] Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., 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)).

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

Beneficiary "will lend his distinctive voice to our promotional efforts" and "will spearhead the production of a podcast." However, the Petitioner did not demonstrate how its self-serving letter qualifies for the required regulatory documentation of "reviews, advertisements, publicity releases, publications contracts, or endorsements" under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

On appeal, the brief states that "we are submitting a revised itinerary. This updated itinerary provides comprehensive details of [the Beneficiary's] intended activities, engagements, and events during the proposed stay in the United States." Because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence, we will not consider this documentation for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial"). Even if we considered the evidence, as discussed above, the Petitioner did not comply with the evidentiary requirements of "reviews, advertisements, publicity releases, publications contracts, or endorsements" under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

For these reasons, the Petitioner did not show the Beneficiary will perform services as a lead or starring participant in productions or events that have distinguished reputations. As such, we need not decide on whether the Beneficiary has performed such services in past productions or events with distinguished reputations.[3]

> *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*).

To meet this criterion, the petitioner must provide evidence demonstrating the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, which may include online publications.[4] In determining whether the submitted evidence demonstrates the beneficiary has achieved national or international recognition for achievements, officers consider both the content of the published material and the level of recognition enjoyed by the publication in which it appears.[5]

The Petitioner argues that it provided coverage of the Beneficiary in *El Tiempo*, *TV y Novelas*, *Q Hubo*, *15 Minutos*, *Elenco*, and *Vea* magazines. The record reflects that at initial filing, the Petitioner provided three articles from *TV y Novelas*, one article from *15 Minutes*, four articles from *Elenco*, and three articles from *Vea*. The record does not support the Petitioner's claim that it submitted material from *El Tiempo* or *Q Hubo* for this criterion, at either initial filing or in response to the Director's RFE.

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[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (declining to reach alternative issues on appeal where an applicant did not otherwise meet their burden of proof).

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

[5] *Id.*

As it relates to the content, the material does not represent the Beneficiary's achievement of national or international recognition for achievements. Instead, the articles mention the Beneficiary in connection to various projects without reflecting the Beneficiary's achievement of national or international recognition. For instance, the [redacted] 2015 article from *Vea* states "[t]hat's precisely what the team of the program [redacted] led by the fiery and controversial [redacted] along with the other relentless pursuers of information [redacted] [the Beneficiary], [redacted] intends to do now." The Beneficiary was briefly mentioned one time as one of the individuals without indicating the Beneficiary's national or international recognition for achievements. In fact, the majority of the material covers the personal aspect of the Beneficiary's life rather than coverage of the Beneficiary's professional achievements.

Furthermore, the Petitioner did not present evidence before the Director demonstrating the magazines constitute major newspapers, trade journals, magazines, or other publications, as required under 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*).[6] Although the Petitioner submits background and circulation information for the first time on appeal, we will not consider evidence that was not presented before the Director. *See* 8 C.F.R. § 103.2(b)(11); *Soriano*, 19 I&N Dec. at 766.

Finally, the Petitioner claims that the Beneficiary "has also been featured in online publications and internet articles, reaching a diverse and widespread audience." However, the Petitioner does not identify the online publications and internet articles, nor does it reference any evidence to support its assertions. *See Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support).

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

> *Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations or 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*).

This criterion differs from the first criterion, which is specific to productions or events.[7] In addition, this criterion requires evidence of the beneficiary's current or past lead, starring, or critical role for a distinguished organization or establishment, including a distinguished division or department of such an entity; and the beneficiary's prospective lead, starring, or critical role for a distinguished organization or establishment, including a distinguished division or department of such an entity.[8]

The Director determined the Petitioner did not establish the Beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation. On appeal, the Petitioner exclusively argues the Beneficiary's eligibility for this criterion

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[6] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(E)(2)(appendix) (providing that 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 or international recognition of the beneficiary's achievements).
[7] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(E)(2)(appendix).
[8] *Id.*

based on his past performances for organizations or establishments. The Petitioner does not contest the Director's decision regarding the Beneficiary's prospective performances. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., O-R-E-*, 28 I&N Dec. at 336 n.5. Therefore, the Petitioner did not demonstrate the Beneficiary's eligibility for the futuristic part of this criterion. Since the identified basis for denial regarding this criterion is dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate argument regarding the Beneficiary's satisfaction of the past aspect of this criterion. *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.

Accordingly, the Petitioner did not show the Beneficiary qualifies for every element of this criterion

> *Evidence 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 picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*).

This criterion requires evidence in the form of publications establishing the beneficiary's record of major commercial or critically acclaimed success.[9] The publications may include print or online publications or transcripts of radio or video coverage.[10] The Petitioner contends the Beneficiary meets this criterion based on his Best Voice Over Award at the [redacted] Festival and receipt of the [redacted] Award by the [redacted] Although the Petitioner does not reference any evidence supporting this criterion, the record reflects the Petitioner submitted photographs and certificates from the awarding entities.[11] However, the Petitioner did not demonstrate how the evidence conforms with the regulatory documentation of "trade journals, major newspapers, or other publications" consistent with 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*). The Petitioner did not offer evidence in the form of publications reporting on the Beneficiary's major commercial or critically acclaimed successes, as required by this regulatory criterion.

Accordingly, the Petitioner did not establish the Beneficiary fulfills this criterion.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets four additional criteria. Although the Petitioner claims the Beneficiary's eligibility for a further criterion on appeal, 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*), we need not reach this ground, as well as a review of the Director's favorable determination of the high salary criterion under 8 C.F.R. § 214.2(o)(3)(v)(B)(*6*), because it cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 214.2(o)(3)(v)(B). We also need not provide a totality determination to establish whether the Petitioner has demonstrated the Beneficiary's very high level of accomplishment evidenced by a degree or skill and recognition significantly above that ordinarily encountered to the extent that the Beneficiary is recognized as outstanding, notable, or leading in the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (v).[12]

[9] *See also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(E)(2)(appendix).
[10] *Id.*
[11] None of the articles provided under 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*) mention these awards.
[12] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

Accordingly, we reserve these issues.[13] Consequently, the Petitioner has not shown the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary achievement. 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.

[13] *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.