U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF I-S- LLC

DATE: OCT. 19, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner seeks to temporarily employ the Beneficiary as an instructor and composer at its music and art school. To do so, it seeks to classify her as an O-1 nonimmigrant, a visa classification available to foreign nationals 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).

The Director of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: a significant national or international award, at least three of six possible forms of documentation, or comparable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C).

On appeal, the Petitioner maintains that sufficient evidence was presented attesting to the Beneficiary's distinction in the field and, thus, she is eligible for O-1 classification.

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." 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 must submit evidence either 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. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(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."). 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 sustained national or international acclaim such that the individual is prominent in the field of endeavor.[1]

II. ANALYSIS

A. Evidentiary Criteria

Absent evidence of a significant national or international award or prize like the Academy Award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner satisfied only two of the evidentiary criteria: 8 C.F.R § 214.2(o)(3)(iv)(B)(*1*) (performing as a lead or starring participant in distinguished productions or events) and 8 C.F.R § 214.2(o)(3)(iv)(B)(*5*) (significant recognition for achievements from experts in the field). On appeal, the Petitioner maintains that it has also met the criterion at 8 C.F.R § 214.2(o)(3)(iv)(B)(*2*) (published material).[2] As discussed below, we conclude that the record does not satisfy any of the claimed criteria at 8 C.F.R § 214.2(o)(3)(iv)(B).

> *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)(iv)(B)(*1*).

The Director determined that the record established that the Beneficiary meets this criterion, without specifically addressing the evidence upon which this conclusion was based. Upon review of the record we withdraw the Director's determination. The record shows that the Beneficiary has been involved in composing electronic/computer music and performing as a singer. She studied music at [redacted] and [redacted] universities in Taiwan between 2012 and 2013, and obtained a Master's degree

[1] While not at issue here, the regulations contain additional evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

[2] The Petitioner does not contest the decision of the Director that it has not claimed that it satisfies the criteria at 8 C.F.R § 214.2(o)(3)(iv)(B)(*3*), (*4*) or (*6*). Accordingly, we will not address these criteria in the decision.

in arts and entertainment administration from [redacted] in Indiana in 2016. The Petitioner maintains that the Beneficiary satisfies this criterion based upon her past group music exhibitions and projects between 2012 and 2016, and her proposed work with the Petitioner.

The Beneficiary's past group music exhibitions and projects include the following:

- Exhibited at the [redacted] (Taiwan 2012)
- Awarded "Outstanding" certificate for her composition [redacted] at the [redacted] (Taiwan 2013)
- Exhibited her composition [redacted] at the [redacted] music festival (2013)
- Interned as sound designer on [redacted] (2016)

The Petitioner provided articles and advertisements about the annual [redacted] music festival, establishing the event's distinguished reputation in the field of electroacoustic/computer music. Among the advertisements is the music festival's 2013 program booklet *Innovation*, which shows that the Beneficiary's composition [redacted] was performed among the works of hundreds of other composers, performers and artists during the week-long festival. The publication does not single out the Beneficiary as having performed as a lead or starring participant in the festival, but shows that her composition was exhibited on the third day of the festival, for approximately two hours. Other advertisements and articles about the 2013 [redacted] music festival do not mention her by name as a participant in the event.

The Beneficiary's participation in the [redacted] was documented by an "Outstanding" award certificate, issued jointly by the musician's association of the [redacted] and the [redacted] The certificate alone does not establish the level of the Beneficiary's participation in the event.

The Petitioner also submitted several testimonial letters, some of which contain information that is relevant to this criterion. [redacted] of [redacted] chairman of [redacted] states that he was on the judging panel that selected one of the Beneficiary's compositions for display at [redacted] in 2012, but his letter does not establish the level of the her participation in the event. [redacted] director of [redacted] that managed the [redacted] 2013, indicates that the Beneficiary played a starring role in the festival. [redacted] marketing director of the [redacted] in [redacted] Indiana, claims that the Beneficiary played a starring role in its production of [redacted] as a student intern sound designer. While those letters suggest that she was a main artist for some shows, consistent with a lead or starring level of participation, the regulation requires evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. We will consider the letters below in our discussion of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*).

The Petitioner further provided a CD containing the Beneficiary's song [redacted] with a print-out showing the song was listed on the music-streaming website *KuGou*. The Petitioner, however, has not identified, or documented through submission of the evidence prescribed by regulation her lead or starring role in this production, or its distinguished reputation.

Next, in order to meet this criterion, the Petitioner must establish that the Beneficiary *will* perform services as a lead or starring participant in productions or events which have a distinguished reputation upon approval of the petition. The submitted employment agreement indicates that the Beneficiary's primary duties will be teaching piano and voice, in addition to being the composer-in-residence for the Petitioner's music productions. The Petitioner provided a three-year itinerary listing music productions in the United States, China, and Italy in which she will participate with its students.

In response to the Director's request for additional evidence, the Petitioner emphasized that some of its student performances will take place "at prestigious locations such as Carnegie Hall and The Bitter End," and provided several articles about the school published on its own website and in the local publications *Port Washington News*, *Syosset Jericho Tribune*, and *Port Washington, NY Patch*. In the article [redacted] published in the *Syosset Jericho Tribune*, the Petitioner explained, regarding those prestigious venues that "kids usually don't get into them, but we rent them for the whole day and they have a chance to play on a real stage." Upon review, the Petitioner has not offered critical reviews, advertisements, publicity releases, publications, or other evidence that would distinguish the Beneficiary's proposed role as a teacher or composer as lead or starring within its upcoming productions, or established that the events themselves have a distinguished reputation, as required pursuant to the plain language of the regulation. Based on the foregoing, the submitted evidence does not satisfy this 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)(iv)(B)(*2*).

To meet this criterion, the Petitioner cites published material by and pertaining to the Beneficiary. The Director determined, and we agree, that those materials did not satisfy this criterion. The Petitioner provided the above-mentioned program booklet *Innovation*, which discusses the [redacted] music festival, and contains the Beneficiary's photograph and brief biographical listing, among those of other composers, performers and artists. The program is not specifically "about" the Beneficiary but about the music festival.

On appeal, the Petitioner avers that *Innovation* is "highly appraised in the musical world," because it memorialized the premieres of works by renowned musicians. It offers articles about several of those composers. The Petitioner also notes that it previously submitted letters attesting to the publication's reach. Composer [redacted] executive president of [redacted] and

[redacted] a participant in [redacted] 2013, stated that *Innovation* is internationally circulated. While this evidence helps establish the distinguished reputation of the [redacted] music festival, it does not show that the publication *Innovation* qualifies as major media.[3]

The Petitioner also submitted the Beneficiary's co-authored research paper, [redacted] which was published in the *Journal of Gerontechnology and Service Management* (*JGSM*), and details a computer-designed signing technology. The record indicates that this journal publishes research papers related to senior citizens, and is issued quarterly in electronic and paper form. Although the Director advised that circulation figures and similar statistics would be required to establish whether the published material is in major media, the Petitioner does not provide circulation and distribution data for *JGSM* on appeal. It maintains that the journal has national or international significance because is it part of the collections of the National Central Library of Taiwan and Airiti Library, an online digital library. It provides materials from those libraries' websites confirming the journal is part of their collections. This this evidence does not show that *JGSM* qualifies as major media, in the absence of circulation and distribution data for the publication.

> *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)(iv)(B)(5).

The Director determined that the record established that the Beneficiary meets this criterion, without specifically addressing the evidence upon which this conclusion was based. Upon review of the record we withdraw the Director's determination. As noted above, the Petitioner submitted numerous testimonial letters in support of the petition. We determine that the submitted testimonials and other documentary evidence do not satisfy this criterion.[4] The letters primarily discuss the Beneficiary's innate talent and artistry rather than her achievements as a composer or performer. Those letters that did address specific achievements of the Beneficiary, such as the exhibitions of her compositions at [redacted] 2013, and the [redacted] do not explain how her achievements to date have received significant recognition from organizations, critics, government agencies, or other recognized experts in the field.[5]

The above-mentioned letter from [redacted] describes the Beneficiary as "an outstanding composer" whose inclusion in the festival and its program booklet *Innovation*, "is a particular honor, placing [the Beneficiary] on par with the foremost in the field." [redacted]

[3] To qualify as major media, the publication should have significant national or international distribution.
[4] While we discuss only a sampling of the submitted letters, we have reviewed and considered each one.
[5] We also note that all of the letters submitted are from the Beneficiary's own current and former teachers and colleagues, and therefore do not demonstrate significant recognition outside of that circle.

music director of the [redacted] who met her when she was studying at [redacted] describes her as "a very outstanding young musician" who "uniquely possesses the combined expertise in composition, singing and percussion." [redacted] of the [redacted] who met her at [redacted] states that the fact that one of her compositions was selected for the [redacted] music festival attests to the excellence of her work and her outstanding reputation. The previously discussed letter from [redacted] of the [redacted] in Indiana, praises the Beneficiary's "remarkable contributions" as an intern to the theatre's production of [redacted] and states that the quality of her sound design far exceeded expectations for a graduate student. The previously mentioned letter from [redacted] describes her as "one of the most talented young experts in composition" in the field of computer music and audio technology, and her article [redacted] as "important." [redacted] editor of [redacted] and a professor at [redacted] describes the Beneficiary as "an outstanding expert whose contributions are highly recognized." The above-cited letter from [redacted] states that she is "a highly acclaimed composer/singer."

Without further information and evidence, the above-referenced letters are not sufficient to demonstrate that the Beneficiary's achievements have received significant recognition. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. In addition, such letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility.

It remains the Petitioner's burden to show the Beneficiary's significant recognition for achievements in the field. As discussed, the testimonial evidence submitted does not meet this burden. Overall, while the Beneficiary has earned the respect of her colleagues and mentors, the material is insufficient to establish that she has received significant recognition for achievements in the field. Based on the above, the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*) has not been met.

B. Intent to Continue to Work in the Area of Extraordinary Ability in the United States

According to the employment agreement between the parties, the Beneficiary will perform services not only as a composer but also as an instructor. However, as the Petitioner has not established the Beneficiary's extraordinary ability, we need not analyze whether this proposed role qualifies as continuing to work in the area of extraordinary ability, as required under section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(*1*).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of I-S- LLC*, ID# 1659125 (AAO Oct. 19, 2018)