U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF M-F-P- LLC

DATE: OCT. 24, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a motion picture production company, seeks to classify the Beneficiary, an actor, 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 evidentiary criteria. Specifically, the Director found that the Petitioner did not satisfy any of the criteria. In addition, the Director concluded that the Petitioner did not submit the required written consultations from an appropriate union representing the Beneficiary's occupational peers and a management organization in the area of the Beneficiary's extraordinary achievement.

On appeal, the Petitioner offers additional evidence and asserts that the Beneficiary meets three regulatory criteria and has a record of extraordinary achievement. The Petitioner further asserts that the consultations provided are evidence of the Beneficiary's extraordinary achievement in film.

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 provide 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.

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) imposes the following requirements on petitions filed by United States agents:

> *Agents as petitioners.* A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary; the representative of both the employer and the beneficiary; or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:
>
> (*1*) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.
>
> (*2*) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary as an actress for a period of three years. In its initial letter the Petitioner explained that it seeks to have the Beneficiary perform services as an actress in its films " " and " " In addition, the record indicates the Petitioner will

serve as an agent for [redacted] for its production [redacted] and for [redacted] for its film [redacted] The evidence submitted includes the Petitioner's deal memos with the Beneficiary, deal memos between the Beneficiary and the two additional production companies, the required consultations, and several testimonial letters.

B. Consultation Requirements

Pursuant to section 214(c)(3)(A), an O-1 petition with respect to individuals seeking entry for a motion picture or television production shall be approved only after consultation with the appropriate union representing the individual's occupational peers and a management organization in the area of the individual's ability. In the case of an alien working on a motion picture or television production, consultation shall be made with the appropriate union representing the individual's occupational peers and a management organization in the area of the her ability describing her achievements in the motion picture or television field, stating whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above. 8 C.F.R. § 214.2(o)(5)(iii).

On appeal, the Petitioner provides an advisory opinion from [redacted] of the [redacted] a management organization in the Beneficiary's field. The letter states that it is the opinion of the organization that "the Beneficiary has a history of extraordinary achievement in this field of endeavor and that the prospective services clearly require an individual with this level of professional and artistic achievement." The Petitioner also provides a letter from [redacted] of the [redacted] expressing "no objection" to the Beneficiary's proposed work on the films [redacted] and [redacted] As such, the Petitioner has met the consultation requirements under 8 C.F.R. § 214.2(o)(5)(iii).

On appeal, the Petitioner further maintains that the consultations are evidence of the Beneficiary's extraordinary achievement in the field, and that the Director's "decision to ignore the consultations as proof of the Beneficiary's extraordinary ability is capricious and arbitrary." We disagree. 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). The consultation authors do not address whether the Beneficiary meets the relevant evidentiary criteria demonstrating extraordinary achievement, describe in any detail her achievements in the field, or explain the nature of the work to be done. Rather, [redacted] states that [redacted] has "no objections to the granting of a temporary O-1 visa." Similarly, while [redacted] states that "the beneficiary has a history of extraordinary achievement" and that [redacted] supports "the granting of an O-1 visa for the beneficiary," she does not list her specific film or production achievements, or the regulatory criteria which those achievements satisfy. Moreover, neither consultation details how the Beneficiary is an individual of extraordinary achievement in the television or motion picture industry, or what particular evidence they reviewed in issuing their letters.

C. Extraordinary Achievement in the Motion Picture or Television Industry

The next issue 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*). In denying the petition, the Director determined that the Petitioner did not claim the Beneficiary met the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A), and he further found that she did not meet any of the alternative regulatory criteria. On appeal, the Petitioner asserts that the Beneficiary meets the criteria for: lead or starring participant in productions or events with a distinguished reputation under 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*); leading or critical role for organizations and establishments that have a distinguished reputation under 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*); and significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field under 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*). As discussed below, we find that the Petitioner has not established that the Beneficiary meets any of the claimed 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 maintains on appeal that the Beneficiary satisfies this criterion based upon her past roles in four short films: " and " However, the record lacks sufficient documentary evidence of most of these productions to establish that the Beneficiary played a lead or starring role. The Petitioner did not provide evidence regarding the film " and the only documentation it offered regarding " includes a schedule of films screened at the listing the film and identifying the Beneficiary as one of seven members of the cast. Similarly, the Petitioner provided promotional literature for the film " which notes the Beneficiary as one of six members of the cast, but does not designate her role as a leading role.[1] The record does confirm the Beneficiary's leading role in " " through publicity releases.

However, the Petitioner must also establish through the submission of critical reviews, advertisements, publicity releases, contracts, or endorsements that the films themselves have a distinguished reputation. The Petitioner provided documentation that " " was selected for the in 2015 and described the awards as a "monthly awards competition that allows filmmakers from all over the world to enter their short films to get it judged by industry professionals and compete with other filmmakers." The Petitioner

[1] The record also includes a letter from the Vice President describing the Beneficiary's performances in " " and " " However, the letter does not provide sufficient detail regarding the Beneficiary's roles in the films to demonstrate that they were leading or starring. Further, the letter does not address the reputation of the films noted, nor is it a critical review, advertisement, publicity release, publication, contract, or endorsement as required by the regulation.

did not document the reach of the [redacted] or provide evidence that a film's nomination for the award is commensurate having a distinguished reputation. Therefore, the Petitioner has not established that the Beneficiary served in a leading role for a production with a distinguished reputation.

In addition, the Petitioner must establish that the Beneficiary *will* be performing services as a lead or starring participant in productions or events with a distinguished reputation. In the initial letter, the Petitioner stated that the Beneficiary will be working on various film projects while in the United States including "[redacted]" and "[redacted]" The record does not contain sufficient evidence to document the distinguished reputation of the films. While the submitted deal memos confirm that the Beneficiary will perform as a lead or starring participant in each film, they do not contain information suggesting that the films will have a distinguished reputation. For example, the deal memos do not remark on the past successes of the director, production company, or actors, or otherwise remark on the pre-release expectations for the film. The record does include evidence that [redacted], the director of "[redacted]" has won awards for his previous work; however, it does not sufficiently demonstrate the prestige of his upcoming productions or his recognition in general to support a finding that his future projects are anticipated at such a level that they can be said to enjoy a distinguished reputation. On appeal, the Petitioner notes that the script for "[redacted]" was a 2015 [redacted] quarter-finalist; however, it has not explained the significance of this award or shown that being a quarter-finalist in this contest is reflective of a distinguished reputation. Without corroboration of the reputation of these prospective projects, the Petitioner has not met its burden.

> *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 record supports the Director's determination that the Petitioner has not sufficiently documented or explained how the Beneficiary has performed and will perform in a lead, starring, or critical role for organizations or establishments. The appeal focuses on her participation in productions and events. Specifically, the Petitioner maintains on appeal that the Beneficiary satisfies this criterion based upon her leading role in the short film "[redacted]" which aired on [redacted] the [redacted] television channel in Ukraine, operated by the [redacted] It further asserts that the Beneficiary also played a leading role in several televised commercials for brands [redacted] and [redacted] both produced by [redacted] a transnational food and drink company.

This criterion, however, is separate from the previously discussed criterion requiring evidence of her performance of services as a lead or starring participant in a production or event. *See* 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*). Accordingly, participating at the requisite level for *a production or event* is not necessarily the same as performing in a qualifying role *for an organization or establishment.* Even if the Petitioner had established the distinguished reputation of the productions discussed above, the record does not verify that her lead or starring participation in those movies constitutes a

lead, starring, or critical role for the overall production companies. The submissions do not describe the duties the Beneficiary performed for any organization in her various roles, and do not establish how her position fit within the overall hierarchy of the organizations.

For example, the testimonial letters, while complementary of the Beneficiary's performance in ' ' do not specify how her role fits into the hierarchy of to show that it is a leading role, nor do they clarify how her work was critical to the success and standing of this organization. In addition, the Petitioner did not corroborate that the organization enjoys a distinguished reputation. Although the Petitioner provided an excerpt from *Wikipedia* describing we note that there are no assurances about the reliability of the content from *Wikipedia*, an open, user-edited website. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Similarly, the Petitioner has not adequately shown that the Beneficiary has performed in a lead, starring, or critical role for the businesses whose products she has advertised. The record does not contain the required documentary evidence in the form of articles in newspapers, trade journals, publications, or testimonials pertaining to the reputation of nor does it offer evidence documenting the manner in which her work has resulted in a measurable level of success for the company.

In addition, the Petitioner must establish that the Beneficiary will, prospectively, provide services in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation. As previously stated, the petition and the deal memo indicate that the Beneficiary will work for the Petitioner and two additional production companies over a three year period. The record does not include evidence explaining how the Beneficiary's role as an actor in the noted films rises to the level of a lead, starring or critical role for either the petitioning production company or the two additional companies for whom she intends to work. While the Petitioner has established the Beneficiary's job title relating to the upcoming film projects, the submitted evidence does not describe how she will contribute to the overall companies, or how her proposed positions fit within the hierarchy of the organizations.

Finally, the Petitioner did not provide sufficient evidence demonstrating that the production companies enjoy distinguished reputations. 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).

In support of this criterion, the Petitioner submitted several letters from colleagues with whom the Beneficiary worked on various films. For example, a fellow actress, states that the Beneficiary is "able to play roles efficiently and effectively in multiple languages," and that she "will

continue to bring a very detail-oriented focus to television and films." Similarly, a producer, states that "her versatile talents exceed that of the confines of a conventional actress." a producer of the Beneficiary's short film, " describes her "flawless portrayal of the main character," and states that she "is a "distinctive actress of commercials and films." writer, director, and production designer, who worked with the Beneficiary on the film describes her as "responsive, receptive, and swift," and a "team leader who steers stories with grace and artistic expertise."

The record also contains a letter from the Vice President of the discussing the Beneficiary's performances in " and " The Petitioner contends on appeal that the letter "confirms [the Beneficiary's] prominence in the motion picture and television field in Ukraine." While the letter describes the emotional quality of her roles in the named films and states that she "has the singular commitment, drive, and passion to develop her talents to the utmost," it does not explain in factual terms the Beneficiary's 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 other recognized experts in the field. The record lacks documentary evidence showing that the Beneficiary has received such recognition. Here, the letters discuss the Beneficiary's innate talent, work ethic, personal traits, and artistry rather than her achievements as an actress. They do not explain or indicate that her achievements to date have received "significant recognition" from organizations, critics, government agencies, or other recognized experts in the field, nor does the record otherwise demonstrate that she has received such recognition. The Petitioner has, therefore, not established that the Beneficiary satisfies the plain language requirements of this evidentiary criterion.

D. Agency

Although not addressed by the Director, we find the Petitioner has not provided sufficient evidence that it has met the evidentiary requirements listed under 8 C.F.R. § 214.2(o)(2)(iv)(E) for agents. In this case, the Petitioner has provided deal memos for two production companies seeking to employ the Beneficiary, and Both companies indicate that the Petitioner is acting as their agent. However, the Petitioner did not provide a complete itinerary of the events specifying the dates of each service or engagement, the names and addresses of the other employers, and the names and addresses of the establishments, venues, or locations where the services will be performed, as required under 8 C.F.R. § 214.2(o)(2)(iv)(E)(*2*). The appeal will be dismissed for this additional reason.

III. CONCLUSION

The Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). Furthermore, the Petitioner has not met the regulatory requirements for agency under 8 C.F.R. § 214.2(o)(2)(iv)(E).

ORDER: The appeal is dismissed.

Cite as *Matter of M-F-P- LLC*, ID# 628724 (AAO Oct. 24, 2017)