U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-H-G-A-S-, LLC

DATE: SEPT. 7, 2017

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, an art studio and gallery, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the arts. *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 who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The Director of the California Service Center denied the petition, concluding that the exhibits did not satisfy the evidentiary requirements applicable to foreign nationals of extraordinary ability in the arts, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A) (a significant national or international prize or award) or (B)(at least three of six possible forms of documentation). We dismissed the appeal on the same grounds.[1] The Petitioner now files a motion to reopen the matter.

On motion, the Petitioner submits additional evidence and maintains that the material satisfies the regulatory requirements and thus the Beneficiary is eligible for O-1 classification.

Upon review, we will deny the motion.

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).

[1] *See T-H-G-A-S-, LLC*, ID# 15858 (AAO Mar. 22, 2016).

Next, DHS regulations set forth the 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 of 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). When a petitioner provides the requisite evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.

A motion to reopen is based on documentary evidence of *new facts.* The requirements of a motion to reopen are located at 8 C.F.R. § 103.5(a)(2). We may grant a motion that satisfies these requirements and demonstrates eligibility for the requested immigration benefit.

II. ANALYSIS

Absent evidence that the Beneficiary has been nominated for, or is the recipient of, significant national or international awards or prizes, the Petitioner seeks to demonstrate her sustained acclaim and recognition of achievements through evidence corresponding to the six regulatory criteria. The Director determined that the Petitioner satisfied only one of six evidentiary criteria, 8 C.F.R § 214.2(o)(3)(iv)(B)(*5*) (significant recognition for achievements). On appeal, we agreed with the Director's favorable determination pertaining to that criterion, and determined that the Petitioner also satisfied the criterion at 8 C.F.R § 214.2(o)(3)(iv)(B)(*2*) (published material). On motion, the Petitioner maintains that the new exhibits satisfy two additional criteria, 8 C.F.R § 214.2(o)(3)(iv)(B)(*1*) (lead or starring participant in productions or events), and 8 C.F.R § 214.2(o)(3)(iv)(B)(*6*) (high salary or remuneration). As discussed below, we find that the documents that accompany the motion do not satisfy either of those criteria.[2]

> *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*).

In support of this criterion, the Petitioner provides new evidence pertaining to the Beneficiary's past solo fine art exhibition [redacted] (2012) and group exhibition [redacted] (2010).[3] The record

[2] The Petitioner acknowledges that it has not established that the Beneficiary's nomination for the [redacted] (2013) by the Israeli business newspaper [redacted] is a significant national or international nomination in accordance with 8 C.F.R. § 214.2(o)(3)(iv)(A). Instead, the Petitioner requests that we consider the award in an examination of the totality of the evidence, "as a part of the 'quality' if not 'quantity' portion of the analysis." As previously discussed, however, when, as here, a petitioner has not submitted the requisite evidence under at least three of six categories evidence, we will not conduct a further determination of whether the record, viewed in its totality, shows the level of acclaim indicative of prominence in the field.

[3] It submits a flyer for the [redacted] exhibition and information from *Wikipedia* about its venue, the [redacted] It also

also includes evidence, discussed in our previous decision, of the Beneficiary's solo exhibition at the Israeli gallery ' ' which was covered by several Israeli publications, including a major national paper, Accordingly, the record demonstrates that the Beneficiary has performed in a lead or starring role for productions or events which have a distinguished reputation.

As noted in our previous decision, however, in order to satisfy this criterion, the Petitioner must also establish that the Beneficiary "*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." According to the record, the Petitioner intends for the Beneficiary to join its gallery as a resident artist. The submitted itinerary of events indicates that each month it will feature her fine art in its gallery and exhibit her work in the While the Petitioner provides additional letters regarding the Beneficiary's prospective role in these exhibits, the evidence on motion does not address our concerns that the Petitioner has not demonstrated, by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements, that the Beneficiary will perform as the star or lead in those upcoming exhibitions, or that they have a distinguished reputation. As a result, we do not find that the new evidence satisfies the requirements of this evidentiary criterion.

> *Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

The Petitioner maintains that it satisfies this criterion. It did not submit material relating to the Beneficiary's past salary or remuneration, such as letters from former employers, income tax forms, or pay statements. Instead, on the Form I-129, the Petitioner indicated the Beneficiary will earn compensation from the sale of her artwork, after paying the petitioning gallery's commission. On motion, the Petitioner submits an additional letter from CEO of the production company who previously arranged the exhibition of the Beneficiary's work at maintains that based upon his knowledge of "the prices commanded by other artists of similar quality and content . . . [the Beneficiary's] work will be sold at the price range of $3,000 - $20,000 depending on size and subject." He does not support his statement with corroborating materials. Further, while the letter states the Beneficiary's works will be priced anywhere from $3,000 to $20,000 depending on the size of the painting, the Petitioner has not offered evidence as to what constitutes a "high salary" for a fine artist in terms of pricing for individual paintings of similar size.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. The submission of testimonial or expert opinion letters is not

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includes a press release for the exhibition published on the website information from the venue's website, and biographical information for other artists who presented their work in the exhibition.

presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may give less weight to an opinion that is not corroborated or is in any way questionable. *Matter of Caron Int'l.*, 19 I&N Dec. at 795. Based on the above, [redacted] letter does not sufficiently establish that the Beneficiary "will command a high salary or other substantial remuneration" in the offered position of artist. As a result, we do not find that the new evidence satisfies the requirements of this evidentiary criterion.

In sum, based on the above, the Petitioner's submission does not satisfy the requirements of a motion to reopen or establish eligibility for the benefit sought.

ORDER: The motion to reopen is denied.

Cite as *Matter of T-H-G-A-S-, LLC*, ID# 548871 (AAO Sept. 7, 2017)