U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF H-P-

DATE: SEPT. 7, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a public school system, seeks to classify the Beneficiary as a foreign national of extraordinary ability as a high school biology teacher. *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 Vermont Service Center denied the Form I-129, Petition for a Nonimmigrant Worker, concluding that the record did not establish, as required, that that the Beneficiary enjoys the necessary acclaim as a teacher.

On appeal, the Petitioner asserts that the Director erred in not taking into account her accomplishments in scientific research when evaluating her extraordinary ability as a biology teacher.[1] In May 2017, we issued a request for evidence (RFE), noting that the record lacked a consultation even though there was evidence that an appropriate labor organization exists. We afforded the Petitioner 87 days to respond. As of today, more than three months later, we have received no response.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary 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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, in pertinent part: "*Extraordinary ability in the field of science, education, business, or*

[1] Upon a review of the record, including evidence presented on appeal, we find that the Petitioner has overcome the Director's ground of denial.

athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor."

The regulation at 8 C.F.R. § 214.2(o)(2)(ii)(D) provides that every petition must be accompanied by a written advisory opinion from the appropriate consulting entity. According to 8 C.F.R. § 214.2(o)(5)(i)(A) and (B) the mandatory consultation should be from an appropriate U.S. peer group, which could include a person or persons with expertise in the field, or a labor or management organization with expertise in the specific field involved. The opinion should describe the beneficiary's ability and achievements in the field of endeavor, describe the nature of the duties to be performed, and state whether the position requires the services of an individual of extraordinary ability. 8 C.F.R. § 214.2(o)(5)(ii)(A). A consulting organization may also submit a letter of no objection instead. *Id.* In those cases where the petitioner establishes that an appropriate peer group, including a labor organization, does not exist, U.S. Citizenship and Immigration Services shall render a decision on the evidence of record. 8 C.F.R. § 214.2(o)(5)(i)(G).

II. ANALYSIS

On the O and P Classification Supplement to the petition, where instructed to provide the "Name of Recognized Peer/Peer Group or Labor Organization," the Petitioner requested that we review the attached reference letters. The reference letters, however, are either not from experts in biology education or do not detail the nature of the work the Beneficiary will perform as a biology teacher. Rather, they are from afterschool or environmental policy organizations, a professor who oversaw some the Beneficiary's doctoral work, and the petitioning organization's principal. Moreover, they focus more on her past contributions to research projects and afterschool curriculum than her proposed duties as a biology teacher.

In addition, on part 9 of the petition, the Petitioner indicated that no appropriate labor organization exists. The record, however, contains an agreement between the and the and a teacher contract negotiated with that association. As the record suggested that an appropriate labor organization does exist for high school biology teachers, we issued an RFE requesting a consultation letter from that association or evidence that otherwise meets the regulatory requirements cited above. The Petitioner has not responded. Accordingly, it has not supported the petition with the mandatory consultation.

III. CONCLUSION

The Petitioner has not provided the necessary written advisory opinion from an appropriate consulting entity.

ORDER: The appeal is dismissed.

Cite as *Matter of H-P-*, ID# 321045 (AAO Sept. 7, 2017)