U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-X-H-S-

DATE: SEPT. 11, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a private, all-male high school, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the field of education. To do so, the Petitioner seeks O-1 nonimmigrant 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 alternative evidentiary criteria applicable to individuals of extraordinary ability in business, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner claims that the Director did not properly consider the record, and that the Beneficiary 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 that 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 science, education, business, or athletics" as "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." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed

categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(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)(iii)(C).[1]

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 among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[2]

II. ANALYSIS

A. Introduction

The Beneficiary in this matter holds a Ph.D. in Education from [redacted] University in [redacted] Kentucky (2009). The Petitioner is a private, all-male, [redacted] high school in [redacted] The Beneficiary worked for the Petitioner between 2009 and March 2018 as one of the Chinese language instructors in its World Languages department. The Petitioner seeks classification of the Beneficiary as an alien with extraordinary ability in the field of education, specifically in the field of Chinese language instruction.

B. Evidentiary Criteria

On appeal, the Petitioner does not specifically address the regulatory criteria applicable to aliens with extraordinary ability in the field of education. It maintains that the Beneficiary "is truly among the top in her field." In an accompanying statement the Petitioner asserts that USCIS "abused its discretion" in finding that the Beneficiary does not meet "the criteria set forth for an alien of outstanding ability," and also refers to the evidentiary criteria applicable to immigrant petitions for aliens who are advanced degree professionals pursuant to 203(b)(2) of the Act. The Petitioner has not established that the Beneficiary has received a major, internationally recognized award, and so must show that it satisfies at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). The Director determined that the Petitioner did not satisfy any of the evidentiary criteria. The Petitioner has asserted that the exhibits satisfy five of those criteria. We will analyze the evidence submitted under each of those criteria below.[3]

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[1] While not at issue here, there are other 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] *See also Matter of Chawathe,* 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

[3] The Petitioner does not contest the Director's finding that it has not claimed to satisfy the criteria at 8 C.F.R § 214.2(o)(3)(iii)(B)(*3*), (*6*), or (*8*). Accordingly, we will not address those criteria in the decision.

> *Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*).

The Petitioner asserts that the Beneficiary meets this criterion based on her receipt of awards including the following:

- [redacted] University [redacted] Graduate Scholarship (2005)
- [redacted] University [redacted] Graduate Scholarship (2006)
- [redacted] University [redacted] Scholarship (2006)
- [redacted] University Leadership Education Award (2010)
- Archdiocese of [redacted] Five Years of Service Award (2014)

While the Petitioner has provided evidence of the Beneficiary's receipt of those awards, it has not explained how any of these scholarships or awards are considered nationally or internationally recognized awards or prizes. It has not provided documentation explaining the significance of each award, and thus, there is no evidence demonstrating that the aforementioned scholarships and awards are tantamount to a nationally or internationally recognized prize or award for excellence in the Beneficiary's field of endeavor.

While they may be prestigious, scholarships, fellowships and other sources of competitive financial support are not nationally or internationally recognized prizes or awards because only other students – not recognized experts in the field – compete for such funding. Such support funding is presented not to established teachers with active professional careers, but rather to students seeking to further their research, training and experience. Furthermore, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the Beneficiary's field of endeavor. Academic awards and honors received while preparing for a vocation fall substantially short of constituting a national or international prize or award for recognition in the field. Finally, the Beneficiary's award for her years of service with the Petitioner is an institutional award that the Petitioner has not shown to be recognized nationally or internationally. In light of the above, the Petitioner has not satisfied this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*).

Within its response to the Director's request for further evidence (RFE), the Petitioner claimed that the Beneficiary meets this criterion based on her membership in the American Council on the Teaching of Foreign Languages (ACTFL), Chinese Language Association of Secondary-Elementary Schools (CLASS), Kentucky World Language Association (KWLA), and Kentucky Association of Teacher Educators (KATE).

In order to demonstrate that membership in an association meets this criterion a petitioner must show that the association requires outstanding achievement as an essential condition for admission to

membership. Membership requirements based only on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue is membership requirements rather than the association's overall reputation. Upon review, we agree with the Director's determination that the Petitioner has not provided sufficient evidence establishing that the above-referenced associations require outstanding achievements of their members, or that prospective members are judged by recognized national or international experts.

The Petitioner submitted evidence that the Beneficiary was formerly a member of ACTFL from 2010-2011 and 2015-2016. According to the bylaws of ACTFL, "[a]ny individual, organization or institution interested in foreign language education shall be eligible for membership in the Council." It also provided evidence of the Beneficiary's membership at the "regular" level in CLASS and KWLA. The materials submitted indicate that CLASS has three membership levels (regular, student, and retired), and that one becomes a member by completing an application and paying the applicable dues. The bylaws of KWLA reveal that those eligible for regular membership are "Pre through 16 teachers of languages other than English in the Commonwealth of Kentucky." The record contains evidence that the Beneficiary was a member of KATE in 2010. The bylaws of KATE state, "[a]ctive membership is open to all persons currently engaged in the process of teacher education, either directly or indirectly, and any other interested individuals . . . ."

The evidence provided regarding the membership eligibility criteria for the aforementioned organizations does not establish that they require outstanding achievements of their members, as judged by recognized national or international experts in the field of foreign language education. As previously stated, having qualification criteria based only on experience in the field or payment of dues does not satisfy this criterion. Based on the forgoing, the Petitioner has not established that the Beneficiary's membership in the above-referenced associations constitutes outstanding achievements in her field. Accordingly, the Petitioner has not satisfied this criterion.

> *Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The Director determined that the evidence did not sufficiently establish that the Beneficiary has judged the work of others in the field, considering the nature of the Beneficiary's judging duties.[4] Upon review, we withdraw the Director's determination. The evidence submitted by the Petitioner shows that the Beneficiary served on the thesis committee for a Doctor of Education student at [redacted] University. Accordingly, the Petitioner has established that it meets this regulatory criterion

[4] The nature of the Beneficiary's judging duties would be more relevant to an examination of the totality of the evidence. 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 that the beneficiary has achieved a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor, that the beneficiary has sustained national or international acclaim, and that the individual's achievements have been recognized in the field of expertise through extensive documentation. 8 C.F.R. § 214.2(o)(3)(ii),(iii).

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

The Petitioner submitted several testimonial letters in support of its claim that the Beneficiary has made an original scholarly contribution of major significance in the field in developing the Petitioner's two-year Chinese program into a four-year/AP Chinese language program. To satisfy this criterion the Petitioner must demonstrate not only that the Beneficiary's contribution is "original," but also that it has had a demonstrable impact on her field. Upon review, the letters, while highly complimentary to the Beneficiary and her abilities and accomplishments as a Chinese language instructor, do not establish that she has made an original contribution of major significance in the field.

Within the Petitioner's initial submission, it provided several letters from the Beneficiary's colleagues at the petitioning organization. The Petitioner's president, [redacted] claims the Beneficiary's impact on the school's Chinese language curriculum development as well as its students' motivation for high achievement has "both national and international reach." He emphasizes that several of the Beneficiary's students have participated in the National Security Language Initiative for Youth (NSLA-Y) summer immersion program, passed the College Board's Advanced Placement Chinese Exams, and pursued advanced degrees and work experience based upon their Chinese language skills. [redacted] asserts that the Beneficiary's "advanced skills" enabled the development of the Petitioner's college-level Chinese program, and he highlights her participation in professional education conferences and trainings, and her qualification as a Google Certified Educator.

The Petitioner provided letters from additional colleagues at the petitioning organization, including [redacted], [redacted], [redacted], [redacted], [redacted], [redacted], [redacted] and [redacted], as well as [redacted], a teacher who met the Beneficiary at a professional workshop. They describe her as an exemplary teacher and praise her professionalism, dedication, and work ethic. They indicate that she served on various focus groups and committees, led the Petitioner's professional development sessions, and maintained an extracurricular Chinese club. [redacted] emphasizes that the Petitioner hired the Beneficiary to develop its two-year Chinese program into four-year/AP Chinese language program, and that the Beneficiary is one of the Petitioner's two full-time Chinese instructors. Within its RFE response, the Petitioner provided an additional letter from [redacted] emphasizing that the Beneficiary was one of only two instructors qualified to teach Chinese 1 and 2, as well as Advanced Placement Chinese courses, and indicating that her level of expertise and professionalism make her "irreplaceable" to the petitioning organization.

Upon review, we find that the assertions of the aforementioned colleagues regarding the significance of the Beneficiary's contributions and achievements do not specifically explain how her work is being applied in the field of Chinese language instruction. The fact that the Beneficiary's methods or curricula have been useful to the petitioning organization and those colleagues, without more, is insufficient to establish that her contributions rise to the level of "major significance." We also note that the Petitioner maintains that the fact that the Beneficiary's work has been presented at international conferences and workshops contributes to her eligibility under this criterion. Many professional fields regularly hold conferences and symposia to present new work, to discuss new

findings, and to network with other professionals. Participation in these events, however, does not necessarily reflect an original contribution of major significance in the field.

Demonstrating ability as a skilled foreign language instructor is not itself a contribution of major significance; rather, the Petitioner must demonstrate that the Beneficiary has impacted the field as a whole. *Cf. Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-135 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met a similar criterion in the regulations pertaining to immigrants of extraordinary ability because she did not demonstrate her impact in the field as a whole). The record does not include documentary evidence showing the widespread implementation of the Beneficiary's work, that it has been seminal, or that it otherwise equates to an original contribution of major significance in the field. 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 an individual's eligibility for the benefit sought. *Id.*

It is the Petitioner's burden to establish how and to what extent the Beneficiary's contributions have impacted the field. While the preceding letters of recommendation demonstrate that the Beneficiary's work has earned the respect and admiration of those with whom she has worked in the field, and that her work on projects has benefited them, the letters do not demonstrate that she has made original contributions of major significance in the field as a whole, rather than to the petitioning organization. Instead, the letters explain how the Beneficiary has contributed to the petitioning organization, praising her teaching methods and the curriculum she has developed for it. We acknowledge that the Beneficiary's credentials and experience allowed her to help design and teach an advanced Chinese language curriculum that provides a significant benefit to both the Petitioner and its students. However, the evidence does not demonstrate that her contributions have reached beyond the Petitioner to impact the field of Chinese language instruction more broadly. Upon review, the preceding letters of recommendation demonstrate that the Beneficiary's work has earned the respect and admiration of those with whom she has worked and collaborated, but these letters do not establish that she has made original contributions of major significance in her field. In light of the above, the Petitioner has not satisfied this criterion.

> *Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

The scope of this evidentiary criterion focuses on the relative importance of the Beneficiary's position within the organizations that have employed her. The Petitioner claims that it has employed the Beneficiary in a critical or essential capacity as a Chinese instructor in its World Languages department. Within its RFE response, the Petitioner notes that for the 2018-2019 school year it has 120 faculty members, 11 of which comprise the school's World Languages Department, and a student population of 1,288. It contends that the letters form from the Beneficiary's colleagues at the petitioning organization satisfy this criterion, particularly those from [redacted] and [redacted], who emphasize the fact that the Beneficiary filled one of two Chinese instructor positions within the Petitioner's language department. Upon review, we find that this evidence is insufficient to establish that her role was critical or essential for the Petitioner. The authors of the above-mentioned letters do not elucidate where the Beneficiary's

position fell within the overall hierarchy of the petitioning organization or her impact on the organization. As the Director noted, the Petitioner's evidence does not demonstrate how the Beneficiary's role as an instructor differentiated her from the other Chinese language instructor it employs, or its other instructors or managerial staff within its organization. As previously stated, we may, in our discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec at 795. However, we are ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The documentation submitted by the Petitioner does not establish that the Beneficiary was responsible for the success or standing of the petitioning organization to a degree consistent with the meaning of "critical or essential capacity." Based on the foregoing, the Petitioner has not submitted evidence that satisfies this criterion.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the exhibits do not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, 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 field of education. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of S-X-H-S-*, ID# 4307895 (AAO Sept. 11, 2019)