U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF B-T-P-, LLC

DATE: SEPT. 13, 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 as an individual of extraordinary achievement in the 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 regulatory criteria. Specifically, the Director found that the Petitioner had satisfied only two criteria.

On appeal, the Petitioner submits additional evidence and asserts that the Beneficiary meets two additional criteria and has a record of extraordinary achievement.

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 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.

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 a film director for a period of approximately four and a half months. In its initial letter the Petitioner explained that it seeks to have the Beneficiary perform services as the director of a feature film tentatively called It described the Beneficiary as a "highly qualified film director with a proven track record of successful productions in the film/television industry." The evidence submitted in support of the petition included the Petitioner's deal memo with the Beneficiary, the required consultations, and several testimonial letters. The Petitioner also provided articles and promotional materials pertaining to commercials the Beneficiary has directed, and information pertaining to film festivals at which his films have been screened, along with awards he has received.

B. Extraordinary Achievement in the Motion Picture or Television Industry

The sole 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 to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A). The Director found that the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which he is engaged, and thus, he satisfies the criterion under 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*). He further found that he will command a high salary or other substantial remuneration for services in relation to others in the field satisfying the criterion under 8 C.F.R. § 214.2(o)(3)(v)(B)(*6*). The Director found the record insufficient to meet the remaining criteria.

On appeal, the Petitioner maintains that the Beneficiary meets the leading or critical role criteria under 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*), and the recognition for achievements evidenced by critical reviews or published material criterion under 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*).[1] The record supports the Director's finding that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*) and

[1] As the Petitioner has not contested the Director's findings with regard to the remaining criteria, we will not address them in this decision.

(6). As discussed below, however, the record does not support a finding that the Beneficiary meets at least one additional 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)(v)(B)(*2*).

As evidence under this criterion, the Petitioner submitted a copy of an article published in the magazine [redacted] highlighting the Beneficiary's acceptance of a director's position with [redacted] It also offered a copy of an article published in 1999 in [redacted] a Canadian broadcasting and publishing journal. The article describes the Beneficiary's directorial background and highlights his production of a commercial for [redacted] in Mexico entitled '[redacted][2] Also included are articles from www.[redacted] discussing the founding of the Beneficiary's production company, [redacted] along with a 2006 photograph and quotation of the Beneficiary published in the magazine [redacted] Finally, the record contains excerpts from the website www.[redacted] in which the Beneficiary offers his thoughts on the narrative elements in his commercial productions.[3]

While some of the above-referenced published materials are about the Beneficiary, the Petitioner has not established that they were published in major publications that are reflective of "national or international recognition," as required by the plain language of 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*). The record does not contain sufficient evidence (such as objective circulation information or internet readership statistics from an independent source) showing the distribution or readership of these publications relative to other print or online media to demonstrate that these publications can be considered "major" newspapers or magazines or to show that they are reflective of national or international recognition.[4] In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

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[2] On appeal, the Petitioner claims that this commercial production "was submitted for a prestigious [redacted]' and offers a Wikipedia article generally discussing the [redacted] but the article does not offer evidence of the Beneficiary's submission or the result. Furthermore, even if the Wikipedia article was about the Beneficiary or his work, there are no assurances about the reliability of the content from this open, user-edited Internet site. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).

[3] We also note that, in support of this criterion, the Petitioner offers evidence that the Beneficiary has won several awards for his work in commercial production including the 1999 '[redacted] at the [redacted] in Canada, the "[redacted]' at the [redacted] and the '[redacted] for the production '[redacted] The record also includes evidence that the Beneficiary directed a short film entitled "[redacted]' that won the 2015 [redacted] award from the [redacted] the impact short film award at the [redacted] and further competed at the [redacted] in 2016, reaching the final selection round. Evidence of awards appropriately falls under the significant recognition for achievements criterion under 8 C.F.R. § 214.2(o)(3)(v)(B)(*5*). The Director found this evidence sufficient to satisfy that criterion and we agree with that determination.

[4] As documentation under this criterion, the Petitioner has also submitted testimonial evidence. Testimonial evidence cannot be used to satisfy this criterion, which requires submission of published materials by or about the Beneficiary in major newspapers, trade journals, magazines or other publications.

> *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 Petitioner maintains on appeal that the Beneficiary satisfies this criterion based upon his leading roles with and A leading role should be apparent by its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. A critical role should be apparent from the beneficiary's impact on the organization or the establishment's activities. As explained below, the Petitioner has provided insufficient information relating to the Beneficiary's role at Radke to show he performed in a leading or critical role, and has not demonstrated that Radke has a distinguished reputation. Furthermore, while the Beneficiary has established his leading role with he has not provided sufficient evidence of the organization's distinguished reputation.

On appeal, the Petitioner explains that the Beneficiary worked as a director for receiving "international attention" for his commercials for and The Petitioner also states that the Beneficiary worked closely with the company's executive producer to co-write film screenplays such as ' and ' and that his feature film, ' ' earned recognition at the . Also, the Beneficiary's film, won the impact award at the and competed in the The Petitioner provided a letter from executive producer, describes the Beneficiary as "one of the best directors we had on our roster," but does not specify how his role fits into the hierarchy of the organization to show that it is a leading role, clarify how his work was critical to the success and standing of the organization, or suggest the manner in which his work has resulted in a measurable level of success for Furthermore, the evidence does not demonstrate when the Beneficiary worked in a director's role, how his role differentiates him from the numerous other directors working for or how the organization progressed while the Beneficiary worked there. Finally, although writes that his company is the "largest commercial production company in Canada," he does not offer additional evidence or information regarding the company's distinguished reputation. Thus, the Petitioner has not established that the Beneficiary's role with meets this criterion.

The Petitioner further asserts on appeal that the Beneficiary's work for constitutes a leading role for an organization with a distinguished reputation. The Petitioner provided a copy of an excerpt from the www. featuring the Beneficiary's comments on the Latino market in the United States, along with his reflections on his career, and copies of two articles published on www. The first article, entitled " discusses the Beneficiary's 2006 founding of The author describes the Beneficiary's commercial production background and his aspirations for stating that it provides a "base" in Mexico "with the possibility to film in any part of the world." The second article, "

[redacted] outlines the Beneficiary's role as one of two founders, and it details their reflections on the company's first year of operation.

Based on the above, we find that the Petitioner provided sufficient evidence demonstrating that the Beneficiary has performed in a lead role for [redacted] however, it did not corroborate that [redacted] enjoys a distinguished reputation. The record does not contain documentary evidence in the form of articles in newspapers, trade journals, publications, or testimonials sufficiently establishing the reputation of the [redacted]

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 for a four and a half month period as the director of the short film "[redacted] The Petitioner's submission on appeal contains a copy of a letter from its counsel and executive producer, [redacted] states that the "primary purpose" of [redacted] Productions is to "produce non-union independent films and it is currently engaged in the pre-production of such a film tentatively entitled [redacted] He describes how the Beneficiary is responsible for "the most critical and essential parts of this production," including "development of the script, casting input, key crew input, and overall production supervision as well as providing creative services and directional support for the development of the film." While the letter supports the Beneficiary's role as director of the short film, the Petitioner has not demonstrated how the Beneficiary's role as a director on a film rises to the level of a lead, starring or critical role for the petitioning production company. While the Petitioner has established the Beneficiary's job title and duties relating to the upcoming film project, the submitted evidence does not describe how the Beneficiary will contribute to the petitioning production company as a whole, or how his position fits within the overall hierarchy of the company.

Finally, the Petitioner did not provide sufficient evidence to demonstrate that it enjoys a distinguished reputation. 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.

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). Accordingly, it has not established eligibility for the immigration benefit sought.

ORDER: The appeal is dismissed.

Cite as *Matter of B-T-P-, LLC*, ID# 534739 (AAO Sept. 13, 2017)