U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 10553059

Date: SEPT. 24, 2020

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, acting as an agent, seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa 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.[1] *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 establish that the Beneficiary, a fashion designer, satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international or award, or at least three of six possible forms of documentation.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 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).

Next, DHS regulations set forth alternative initial evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of nomination for or receipt of "significant national or international awards or prizes" such as "an Academy Award, an Emmy, a Grammy, or a Director's Guild Award," or at least three of six listed categories of

[1] *See* [redacted] with a validity period of December 27, 2016 to May 31, 2019.

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).

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 extraordinary ability in the arts. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iv).[2]

II. ANALYSIS

Absent evidence the Beneficiary has been nominated for, or received, a significant national or international award or prize, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to at least three of the six initial evidentiary criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner provided evidence relating to four criteria, but the Beneficiary did not satisfy any of them. The Petitioner maintains on appeal that the Beneficiary fulfills three of those criteria, including an additional criterion not previously claimed before the Director.[3] For the reasons discussed below, the Petitioner did not establish that the documentation meets at least three of the evidentiary categories.

> *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*).

The Petitioner contends that the "Beneficiary has performed and will perform services as a lead and critical participant in productions or events which have a distinguished reputation" for: 1) [redacted]; 2) [redacted]; 3) [redacted]; 4) [redacted]; 5) [redacted]; 6) [redacted]; and 7) [redacted] In addition, the Petitioner submits documentation regarding clothing offerings and specifications by the companies, along with sales receipts and invoices. Further, the Petitioner provides screenshots of the clothing sold on the companies' websites and by various online stores, such as drjays.com, epicvibez.com, thefreshfitted.com, sears.com, and amazon.com.

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[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 also argues that "the sole reason that [it] failed to present sufficient evidence was due to the ineffective assistance of previous counsel who failed to adequately lay out all the important evidence and provide sufficient analysis to prove the eligibility." The Board of Immigration Appeals (the Board) established a framework for asserting and assessing claims of ineffective assistance of counsel. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988). Here, the Petitioner did not provide the threshold documentary requirements for asserting a claim of ineffective assistance of counsel.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) requires the Petitioner to demonstrate that the Beneficiary "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." However, the Petitioner did not show how the documentation reflects that the Beneficiary performed as a lead or starring participant in productions or events. The evidence does not reflect the Beneficiary's participation in a leading or starring role. In fact, none of the documents mention or name the Beneficiary as having performed as a participant, let alone as a lead or starring participant.

In addition, the documentation does not identify the productions or events in which the Beneficiary participated, nor does it show that the productions or events have a distinguished reputation. Furthermore, the Petitioner did not demonstrate how the evidence qualifies as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements," as required by this regulatory criterion. While the screenshots from the online stores indicate that they sell apparel, the evidence does not reflect promotional, marketing, or other publicity showing advertising material. Even if we consider them to be advertisements, they do not show that the Beneficiary performed as a lead or starring participant in productions or events with distinguished reputations.

Moreover, the Petitioner references two recommendation letters for [redacted], one for [redacted], and one for [redacted] Again, this regulatory criterion requires the Petitioner to establish the Beneficiary's participation in productions and events through "critical reviews, advertisements, publicity releases, publications contracts, or endorsements." Here, the Petitioner did not demonstrate how recommendation letters meet those evidentiary requirements.

Finally, the Petitioner did not demonstrate through critical reviews, advertisements, publicity releases, publications contracts, or endorsements that the Beneficiary will perform services as a lead or starring participant in productions or events which have a distinguished reputation.

For these reasons, the Petitioner did not establish that the Beneficiary meets this criterion.

> *Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*).

The Petitioner claims the Beneficiary's eligibility for this criterion for the first time on appeal. Specifically, the Petitioner contends that [redacted] had a gross sales of $8.5 million in 2018," and "[t]he Beneficiary's designs at [redacted], resulted in commercial success totaling $3,999,258.64 for Spring/Summer 2018 and Fall/Winter 2018 collections." Further, the Petitioner references a letter from [redacted] president of [redacted] and submits [redacted]s 2018 federal income taxes and a chart of Spring/Summer 2018 and Fall/Winter 2018 sales.

In order to meet this criterion, the Petitioner must demonstrate that the Beneficiary "has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational

achievements reported in trade journals, major newspapers, or other publications." Here, the Petitioner did not establish how [redacted]s income tax returns and accounting documentation and recommendation letter constitute "such indicators as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications." Further, this regulatory criterion requires the Beneficiary to not only have a record of commercial successes but to have a record of "major" commercial successes. The Petitioner did not show the significance or relevance of [redacted]s sales figures through the regulatory evidentiary indicators to meet the threshold of "major commercial" successes.

Accordingly, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criterion relating to services as a lead or starring participant in production or events at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*) and major commercial or critically acclaimed successes at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*). Although the Petitioner claims the Beneficiary's eligibility for two additional criteria on appeal, relating to lead, starring, or critical role for organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*) and significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), we need not reach these additional grounds. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B), we reserve these issues.[4] Consequently, the Petitioner has not demonstrated the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

[4] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach).