U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 29139201

Date: SEP. 25, 2024

Appeal of California Service Center Decision

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

The Petitioner, an art industry and show business, seeks to classify the Beneficiary as a musician of extraordinary ability. To do so, the Petitioner pursues O-1 nonimmigrant classification, available to individuals 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 California Service Center denied the petition on the following grounds: 1) the Petitioner did not provide a sufficient contract, 2) the Petitioner did not demonstrate the Beneficiary's events or activities, 3) the Petitioner did not establish eligibility as an agent, and 4) the Petitioner did not show the Beneficiary's classification as an individual of extraordinary ability through receipt of a major, internationally recognized award or at least three of six possible forms of documentation. Subsequently, the Director dismissed the Petitioner's combined motion to reopen and motion to reconsider. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

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." *See* 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 documents. *See* 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

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).

II. ANALYSIS

The Director determined the Petitioner did not claim the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, the Director concluded the Petitioner established the Beneficiary's eligibility for only one criterion, significant recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). On appeal, the Petitioner contends that its previous motion brief discussed the Beneficiary's satisfaction of an additional three categories. For the reasons discussed below, the Petitioner did not establish the Beneficiary meets at least three of the regulatory criteria.

> *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*).

This criterion requires evidence of the beneficiary's previous leading or starring participation in distinguished productions or events, and the beneficiary's prospective leading or starring participation in distinguished productions or events.[1] Regarding the Beneficiary's past services, the Director determined the Petitioner established the Beneficiary's eligibility for this portion of the criterion.

As it relates to the Beneficiary's prospective services, the motion brief claimed that "[the Petitioner], is a distinguished organization, thus, its productions are of a distinguished reputation." The brief then indicated the Petitioner's previous relationship with an "award-winning musician" and referenced the Petitioner "is supported by recognitions from major publications."

Again, the issue for this criterion is whether the Beneficiary "will perform, services as a lead or starring participant in productions or events which have a distinguished reputation" rather than the Petitioner's reputation. Following the Petitioner's reasoning, the Petitioner did not explain or demonstrate how the distinguished reputation of an organization automatically establishes the distinguished reputation of its productions or events, nor are we persuaded that every distinguished organization generates distinguished productions or events.

[1] *See generally* 2 *USCIS Policy Manual*, M.4(D)(2)(appendix), https://www.uscis.gov.policymanual.

Neither the motion brief nor the appellate brief identified a production or event that has a distinguished reputation in which the Beneficiary will perform services as a leading or starring participant. Similarly, the Petitioner's motion evidence relates to venues in which the Beneficiary will perform, such as the [redacted] rather than productions or events. Moreover, the evidence relates to past productions at those venues, such as "Mystic India," without evidence that the Beneficiary will perform in a leading or starring role in a production or event with a distinguished reputation. Likewise, the Petitioner provided evidence relating to artists in which it has worked with in the past, such as Yordano, without showing that the Beneficiary will be performing or working with in future shows, let alone as a leading or starring participant.

Finally, the Petitioner submitted offered promotional material for the Beneficiary's album, [redacted] However, neither brief mentioned this evidence nor did the Petitioner explain how the evidence demonstrates the distinguished reputation of the album, let alone show how an album qualifies as a production or event. The documentation, for example, does not contain preliminary reviews, critiques, or other evidence reflecting the standing or status of the album.

For these reasons, the Petitioner did not establish that the Beneficiary will perform as a leading or starring participant in productions or events with distinguished reputations. As such, we need not review the Director's favorable determination regarding the Beneficiary's past services as a leading or starring participant in productions or events with distinguished reputations.[2]

> *Evidence that the beneficiary has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications.* 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*).

To meet this criterion, the petitioner must provide evidence that demonstrates the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, which may include online publications or transcripts of radio or video coverage.[3]

The Petitioner's motion brief contended that it provided three articles published in *El Universo*, *El Tiempo*, and *El Telegrafo* establishing the Beneficiary's eligibility for this criterion. However, none of the articles reflect that the Beneficiary achieved national or international recognition for achievements. Rather, the *El Universo* and *El Tiempo* articles report on the Beneficiary's promotion of her second album, and the *El Telegrafo* article indicates that the Beneficiary "returns to the stage with two new singles." The contents of the articles do not reflect the Beneficiary achieving national or international recognition for achievements. In fact, besides mentioning the release of the Beneficiary's album and singles, the articles do not discuss any of her achievements garnering national or international recognition.

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

---

[2] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7. (BIA 2015) (declining to reach alternative issues on appeal where applicants do not meet their burden of proof).

[3] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix).

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any additional criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*), we need not address this ground, as well as the favorable finding of the Director for 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*), because it cannot fulfill the initial evidentiary requirement of at least three criteria. We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim, has received a high level of achievement, and has been recognized as being prominent, renowned, leading, or well-known in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).[4] Moreover, because the Petitioner did not demonstrate the extraordinary ability of the Beneficiary, we need not discuss the other grounds for denial identified by the Director relating to the contract, events or activities, and agent requirements. Accordingly, we reserve all of these issues.[5] 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 generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(4).
[5] *See Bagamasbad*, 429 U.S. at 25-26.