U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 32137789

Date: SEP. 27, 2024

Appeal of Vermont Service Center Decision

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

The Petitioner, a ballroom dance academy, seeks to classify the Beneficiary as a ballroom dance teacher 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 Vermont Service Center revoked the approval of the petition, concluding that the record established that the approval of the petition involved gross error. *See* 8 C.F.R. § 214.2(o)(8)(iii)(A)(*5*). The matter is now before us on appeal pursuant to 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.

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." *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).

In addition, the regulations contain additional evidentiary requirements for O noncitizens, 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). The regulations further state that if an O-1 noncitizen in the United States "seeks to change employers, the new employer must file a petition and a request to extend the alien's stay." 8 C.F.R. §214.2(o)(2)(iv)(C).[1]

Moreover, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Finally, the regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the Director may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

> (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
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> (*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
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> (*2*) The statement of facts contained in the petition was not true and correct;
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> (*3*) The petitioner violated the terms or conditions of the approved petition;
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> (*4*) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
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> (*5*) The approval of the petition violated paragraph (o) of this section or involved gross error.
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> (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

[1] *See also* 2 *USCIS Policy Manual*, M.9(D), https://www.uscis.gov.policymanual.

II. ANALYSIS

The petitioning agent, [redacted] filed this Form I-129 in April 2023, seeking to classify the Beneficiary as an individual of extraordinary ability in the arts, as set forth at 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). The Beneficiary was previously granted O-1A classification, applicable to individuals of extraordinary ability in the field of science, education, business, or athletics as set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B), based on a petition filed by a different petitioner, [redacted] In his accompanying cover letter, the petitioning agent stated he sought to classify the Beneficiary as a ballroom dancer, choreographer, and competitor to perform services for two employers, [redacted], for a three-year period. The petitioning agent provided its executed agent agreement with the Beneficiary dated March 15, 2023, and employment agreements with [redacted] signed on February 16, 2023, and March 14, 2023, respectively.[2] The petitioning agent marked in the Form I-129 that the instant petition represents a "change of employer," and requested an extension of the Beneficiary's stay.[3]

In a request for evidence (RFE) dated August 2023, the Director requested documentation showing that the petitioning agent had obtained authorization from employers [redacted] and [redacted] to act as an agent in order to file the instant petition on their behalf.[4] Within the RFE response, counsel for new employer [redacted] advised that "[o]n September 11, 2023, [the Beneficiary and his spouse] decided to change the agent-employer. The new employer will be [redacted] has made a much better job offer to [the Beneficiary and his spouse] as it allows them to both compete and teach as dance professionals." The RFE response included a letter sent by the Beneficiary to petitioning agent [redacted] terminating their agent agreement. In addition, counsel responded by providing "amendments" to the answers in Parts 1, 5, and the O Classifications Supplement of Form I-129, signed by the founder of the [redacted], to reflect it was changing the petitioner and the employer to [redacted]

The RFE response also provided a job offer letter from [redacted] its signed Advanced Instructor Employment Contract with the Beneficiary, and its three-year itinerary of events for the Beneficiary, all dated September 11, 2023. Further, the response contained a new consultation dated September 27, 2023, from [redacted] based on the involvement of the new O-1 employer and the Beneficiary's new proposed events as a Ballroom Dance Teacher with [redacted] The RFE response did not address the Director's request for documentation showing that the petitioning agent had obtained authorization from employers [redacted] to act as an agent in order to file the petition on their behalf.

The Director approved the petition for the validity period October 4, 2023, to April 30, 2026. Upon further review, however, the Director determined that approval of the petition involved gross error.

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[2] We note that the agent agreement between Petitioner [redacted] and the Beneficiary did not indicate he would be directly employing the Beneficiary for any of the proposed events.

[3] Pursuant to 8 C.F.R. § 214.1(c)(5), there is no provision for an appeal from the denial of an application for extension of stay filed on Form 1-129 or 1-539. As we do not have jurisdiction over the portion of the Director's decision regarding the Beneficiary's request for an extension of stay, this issue will not be reviewed.

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

On October 11, 2023, the Director issued a Notice of Intent to Revoke (NOIR) the approval of the petition, advising that U.S. Citizenship and Immigration Services (USCIS) had determined that the petition was approved in error. Specifically, the NOIR advised that "in response to the RFE" a new petitioner, [redacted] "requested to change the employer/petitioner from [redacted] to [redacted] This is a material change and USCIS approved this petition in error."

In the response to the NOIR, counsel offered additional evidence, including documents it contended were responsive to the Director's RFE. Specifically, counsel provided letters from [redacted] and [redacted] indicating that at the time of filing the petition, the petitioning agent was authorized by them to negotiate their contracts with the Beneficiary. We note that these letters do not state that the petitioning agent was authorized to file the petition on those companies' behalf. Nonetheless, counsel argued that "the change of employer was not made with the purpose to conform a deficient petition to the USCIS requirements. [*See e.g.*] *Matter of Izummi* [22 I&N Dec. 169, 176 (Assoc. Comm. 1998)]," because the petition "was never deficient but approvable when filed." Regardless of intent, however, if an O-1 noncitizen in the United States seeks to change employers, the new employer must file a petition and a request to extend the individual's stay.

Further, the job offer letter and employment contract from [redacted] are dated after the date the petition was filed in April 2023. Even assuming that the petition was "approvable when filed," as previously stated the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

Moreover, citing the deference policy, counsel further argued in the NOIR response that the Director erred in revoking the approval of the instant petition because the Director had previously approved the Beneficiary's petition for O-1A classification, and counsel asserted the instant petition was a request for an extension of petition validity. We note that USCIS gives deference to prior determinations when adjudicating extension requests involving the same parties and facts unless there was a material error, material change in circumstances or in eligibility, or new material information that adversely impacts the petitioner's, applicant's, or beneficiary's eligibility. *See* USCIS Policy Alert, PA-2021-05, *Deference to Prior Determinations of Eligibility in Requests for Extensions of Petition Validity* (Apr. 27, 2021), https://www.uscis.gov/sites/default/files/document/policy-manual-updates/20210427-Deference.pdf; *see also* 2 *USCIS Policy Manual*, *supra*, at A.4(B)(l). However, the instant petition, which involves a new O-1 petitioner, new activities and events, and a request for O-1B classification as an individual of extraordinary ability in the arts, is not a request for an extension of petition validity, as contemplated by the regulation at 8 C.F.R. § 214.2(o)(11), involving the same parties and facts and, thus, the previous approval does not warrant deference.

After reviewing the response to the NOIR, the Director issued a notice of revocation in December 2023, determining that the response did not overcome the issues raised in the NOIR. We agree with the Director's determination. The attempt to change employers by "amending" the answers to the above sections in the petition is ineffective; the new employer, [redacted] must file a new petition. A change of employer requires the filing of a new petition with the USCIS office listed on the form instructions. As noted above, with regard to a change of employers, the regulation states that if an O-1 noncitizen in the United States "seeks to change employers, the new employer must file a petition and a request to extend the alien's stay." 8 CFR §214.2(o)(2)(iv)(C). Based on the above

discussion, we are in accord with the Director's revocation of the petition's approval, and neither the response to the NOIR nor the appellate submission of evidence and arguments previously provided in response to the NOIR overcome the grounds for revocation indicated in the NOIR. Accordingly, we will not disturb the Director's decision to revoke the approval of the petition.

ORDER: The appeal is dismissed.