



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 23202361

Date: DEC. 29, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, a dance studio, seeks to classify the Beneficiary as a person of extraordinary ability in the arts. 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 denied the petition, concluding that the record did not establish that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

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, in pertinent part, the term arts: "Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts." 8 C.F.R. § 214.2(o)(3)(ii). The arts have a different standard and evidentiary criteria than athletics.¹ The 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). In contrast, this regulation defines extraordinary ability in the field of science, education, business, or athletics as a

¹ *See* 59 Fed. Reg. 41818, 41819 (Aug. 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the "distinction" standard for the arts).

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.

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).² 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)(3)(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).³

II. ANALYSIS

A. Introduction

The issues addressed on appeal include whether the Petitioner properly filed the petition under the O-1B arts classification, whether the Beneficiary meets the evidentiary criteria as set forth at 8 C.F.R. 214.2(o)(3)(iv)(A) or (B), and whether consideration of comparable evidence is appropriate. For the reasons discussed below, the Petitioner has not demonstrated that the Beneficiary's occupation falls under the arts. Regardless, it has satisfied only one of the criteria under the arts, of which the Beneficiary must meet at least three.

B. Beneficiary's Eligibility under the Requested Classification

The Petitioner seeks to temporarily employ the Beneficiary to perform services in competitive ballroom dance (dancesport) as a multidisciplinary dancer and dance instructor. The Petitioner requested classification of the Beneficiary as a person of extraordinary ability in the "arts" at 8 C.F.R. § 214.2(o)(3)(iv) and averred that he meets the standard of "distinction," pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii). Although not addressed by the Director, while the Petitioner affirms that the Beneficiary should be evaluated based upon the standard applicable to those engaged in a creative activity or endeavor, its description of his job duties demonstrates that the Beneficiary is engaged in the field of athletics. We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal.

² The evidentiary criteria for an individual of extraordinary ability in the fields of science, education, business or athletics are set forth at 8 C.F.R. § 214.2(o)(3)(iii).

³ *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."

2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). The Petitioner's initial exhibits included a copy of its employment agreement with the Beneficiary, stating that he will be employed as a ballroom, Latin and social dance instructor. The Petitioner's letter in support of the petition indicates the Beneficiary duties will include competing in regional, national and international dancesport events throughout the United States and abroad and instructing the Petitioner's competition-bound top amateur and Pro-Am students of dancesport. It also provided the Beneficiary's competition itinerary of specified dancesport events for 2022 to 2025, including regional, interregional, and national Fred Astaire dancesport championships and events sanctioned by the National Dance Council of America (NDCA), at which he will compete as a dancer and as the dance partner to the top Pro-Am students of the petitioning organization. The record, therefore, indicates that the Beneficiary is entering the United States to provide services as an "athlete."

Although on appeal the Petitioner maintains that the Beneficiary should be evaluated based upon the standard applicable to those engaged in a creative activity or endeavor, the description of his job duties demonstrates that he is engaged, as a competitive dancer-athlete, choreographer, and coach, in the field of athletics.⁴ As noted in 8 C.F.R. § 214.2(o)(3)(ii), the definition of "arts" focuses on "any field of creative activity or endeavor." While the definition explicitly mentions choreographers and coaches, it includes them as examples of "other essential persons" engaged in the field of arts beyond "the principal creators and performers." We do not find support for the position that choreographers and coaches of those engaged in athletic endeavors would similarly fall under the definition of arts.

There may of course be instances in which a competitive ballroom dancer seeks to enter the United States to provide services as an entertainer or performing artist, rather than as a competitive dancer-athlete. The nature of the intended events or activities in the United States is critical in determining whether the Beneficiary is entering the United States to provide services as an "athlete" or as an "artist." Where, as here, the Beneficiary is coming to the United States to participate in or train others for athletic events, such as dancesport competitions, extraordinary ability in the arts is not the applicable classification; rather, the appropriate criteria are those applicable to athletes.⁵

As noted previously, the regulations clearly prescribe different evidentiary criteria and standards of review for persons of extraordinary ability in the arts as opposed to those of extraordinary ability in athletics. The extraordinary ability provisions of this visa classification are intended to be highly restrictive for those in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the less restrictive standard for the arts). A petitioner sponsoring an O-1 athlete cannot seek consideration of the petition under the less restrictive standard of "distinction" by characterizing the Beneficiary's field as arts. Moreover, the fact that the Petitioner seeks the wrong O-1 classification is fundamental to why it may not rely on comparable evidence, as discussed below. Nevertheless, as

⁴ We note that the International Olympic Committee (IOC) has formally recognized dancesport as a sport under consideration for inclusion in the Olympic Games, although it is not yet a medal sport in the Olympic Games. The World Dancesport Federation (WDSF), formerly the IDSF, has been designated as the world governing body of the sport. The recognition of dancesport by the IOC is a clear indication that it is an acknowledged form of athletic competition.

⁵ 8 C.F.R. § 214.2(o)(3)(iii).

the Petitioner has applied under the arts, the Director correctly analyzed the evidence under the arts criteria enumerated at 8 C.F.R. § 214.2(o)(3)(iv), and we will do so as well.⁶

C. Evidentiary Criteria

In denying the petition, the Director determined that the Petitioner did not demonstrate that the Beneficiary has been nominated for, or has been the recipient of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). The Petitioner does not contest this determination on appeal, nor does the record support a finding of such awards or prizes. Accordingly, we will not further address this criterion in our decision. In addition, the Director concluded that the Petitioner fulfilled only one of the alternate initial evidentiary criteria, significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). The record contains favorable testimonials supporting that determination.

The Petitioner maintains on appeal that the Beneficiary fulfills three additional criteria: lead or starring participant in productions or events at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), national or international recognition for achievements at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), and lead, starring, or critical role for organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).⁷ After reviewing all the submitted evidence, the record does not reflect that the Beneficiary meets the requirements of at least three 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).

The Director concluded that the Petitioner had not demonstrated that the Beneficiary, as a competitor and instructor, would serve as a lead or starring participant in productions or events with a distinguished reputation. On appeal, the Petitioner avers that the Director “failed to properly review the record when concluding that the Beneficiary’s role for [the Petitioner] at the competitions and events listed on the itinerary is not a lead or starring role.”

The Petitioner relies on three previously submitted letters to support this position. [redacted] founder and organizer of the [redacted] Ball Championship, [redacted], organizer of the [redacted] Dance Festival, and [redacted] organizer of the [redacted] Ball DanceSport Championships, assert that the Beneficiary will compete in Professional Show Dance, Professional International Ballroom, Professional Latin and Pro-Am divisions which they claim are reserved for only top extraordinary ability dancers, and that competing in these categories is a leading role within the

⁶ U.S. Citizenship and Immigration Services (USCIS) will only consider the visa classification that a petitioner annotates on the petition. We note that, in the context of another nonimmigrant classification, the Ninth Circuit stated that once USCIS concludes that a foreign national is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the foreign national is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, 286 Fed. Appx. 963, 965 (9th Cir. 2008).

⁷ The Director also concluded that the Petitioner had not claimed that the Beneficiary meets the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) or (6), and it does not contest these determinations on appeal.

competitions. In addition, [] claims that Beneficiary's proposed competition in the Pro-Am division alongside the Petitioner's top Pro-Am competitors "is likewise a leading and starring role, as they compete at the level requiring a supporting professional dancer to be able to match and surpass their skill and technique."

The Petitioner has not established, however, that competing in an athletic competition is a lead or starring role for a production or event. In the arts, for instance, directors cast artists in leading or starring roles prior to the production or event. The promotional materials leading up to the production or event typically feature the lead or starring artists. Conversely, an athlete receives his ranking at the competition and the record does not demonstrate that the Beneficiary's anticipated participation was featured in promotional materials or highlighted in media coverage of the upcoming events. Although the Petitioner submitted background information regarding many upcoming dance competitions to be held in various U.S. cities, the record does not include critical reviews, advertisements, publicity releases, publications contracts, or endorsements as required by the plain language of 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). For these reasons, the Petitioner has not established that the Beneficiary's proposed participation in athletic competitions is providing services in a lead or starring capacity for a production or event. As such, we need not address whether the Petitioner demonstrated that the Beneficiary has performed as a lead or starring participant in production or events that have a distinguished reputation, and we reserve this issue.⁸

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)(iv)(B)(2).

To meet this criterion, the Petitioner cites published material relating to the Beneficiary's dancing career published in the print publication *El Deber* and on the websites eju.tv, culturadesantacruz.blogspot.com, eldeber.com, tvn.cl, soychile.cl, 24horas.cl, uniacc.cl, runnianth.blogspot.com, fotech.cl, fmdos.cl, 13.cl, pagina7.cl, and blog.uniacc.cl. The Director determined, in part, that the record does not contain probative evidence showing that the submitted articles appeared in major media. We agree with the Director's determination. Within the Petitioner's response to the Director's request for additional evidence (RFE), as evidence of major media the Petitioner offered screenshots from Similar Web regarding rankings and "traffic overview" for pagina7.cl, fotech.cl, and fmdos.cl. For example, Similar Web reflects that those websites range from a global ranking of 27,203 to 60,390, a country ranking of 183 to 434 and total visits of 685,800 to 14,400,000. The Petitioner, however, did not demonstrate the significance of the Internet rankings and viewing statistics or show how such information reflects status as major media. Specifically, it did not establish that the global or country rankings indicate major international or national media.⁹ Regarding the remaining publications, the Petitioner has not submitted information reflecting their

⁸ 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); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

⁹ The Petitioner has not claimed, or provided evidence, showing that the articles appeared in other major media, such as trade publications or magazines.

status as major media.¹⁰ For the foregoing reasons, the record supports the Director's determination that the published materials do not meet this criterion.

D. Comparable Evidence

On appeal, the Petitioner maintains that the Director erred in not also considering submitted documentation of the Beneficiary's awards under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C), as comparable evidence of the awards criterion for individuals of extraordinary ability in athletics (O-1A) at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1),¹¹ because the "O-1B visa classification does not include a criterion to demonstrate/showcase nationally and internationally recognized prizes and awards received by an artist in the field of his/her endeavor."

As discussed above, the Petitioner's classification of the Beneficiary's field as within the arts is improper. The comparable evidence provision for the O-1B (arts) classification pertains to situations where the evidentiary criteria to show prominence in the arts do not readily apply to the Beneficiary's occupation. The comparable evidence provision is not designed for situations where, as here, criteria for the relevant field exist, but the Petitioner instead chooses to file under the provisions relating to a different field than the one in which the Beneficiary works.

III. CONCLUSION

The evidence of record indicates that the Beneficiary's area of extraordinary ability, competitive ballroom dance otherwise known as dancesport, falls within the field of athletics rather than the arts. The Beneficiary's occupation does not fall within the O-1 classification requested on the petition. In addition, the Petitioner did not establish that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) and (2). Although the Petitioner claims the Beneficiary's eligibility for one additional criterion 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), we need not reach this ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and has achieved distinction 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).¹² Accordingly, we reserve these issues.¹³ 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.

¹⁰ The Petitioner's RFE response also provided additional articles about the Beneficiary and his relationship with his dance partner [REDACTED]. This evidence, however, occurred after the initial filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Accordingly, we will not consider this evidence.

¹¹ The criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) requires "[d]ocumentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor."

¹² *See also* 2 *USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policy-manual>.

¹³ *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. 516, n.7.