



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

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

In Re: 23653580

Date: DEC. 30, 2022

Appeal of California Service Center Decision

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

The Petitioner, an entertainment business, seeks to temporarily employ the Beneficiary in the United States as a musician. To do so, the Petitioner seeks to classify him as an O-1 nonimmigrant, a visa 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 (INA) 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, concluding that the record did not establish a bona fide “United States employer” and definite, non-speculative employment. The matter is now before us on appeal. 8 C.F.R. § 103.3. We will withdraw the Director’s decision and remand the matter for further proceedings.

The regulations governing O-1 nonimmigrants require a bona fide United States employer and definite, non-speculative employment associated with the Beneficiary’s extraordinary ability. *See* 8 C.F.R. §§ 214.2(o)(2)(i) and (ii). Prior to entering a decision, the Director issued a request for additional evidence (RFE) in February 2022, noting that “USCIS conducted an open-source internet search of [the Petitioner’s] business location at [REDACTED], CA. [REDACTED] as provided in the petition and “could not determine if [the petitioning business] was located at this address.” The Director provided the Petitioner an opportunity to establish, inter alia, that it is a bona fide United States employer under 8 C.F.R. § 214.2(o)(2)(i). Specifically, the Director’s RFE requested that the Petitioner “provide objective evidence of probative value (lease, tax documents, paystubs, etc.) that would show that your business . . . is actively operating at this location.” The Director also noted that USCIS attempted to contact the [REDACTED] Restaurant, the claimed venue of the Beneficiary’s proposed U.S. performances, “to confirm the beneficiary’s employment but was unsuccessful in getting a response at this time.” Within its RFE response, the Petitioner submitted documentation including its 2020 U.S. Form 1120-S, and its 2016 articles of incorporation and 2021 Statement of Information filed with the California Secretary of State, all listing the above address as its business location.

The Director denied the petition, concluding that “discrepancies encountered in the evidence (including the site visit) call into question the [P]etitioner’s ability to document the requirements under

the statute and regulations.” Specifically, the Director’s decision provided that USCIS conducted an on-site visit in March 2022 at the Petitioner’s stated business location and determined the address “was associated with a business called [REDACTED]” whose representative was “unaware of any business in that building called ‘[the Petitioner].’” The Director also stated that an additional site visit conducted in March 2022 could not verify the location of the [REDACTED] Restaurant. The Director found dispositive the issues of whether the Petitioner has established that it is a bona fide United States employer and definite, non-speculative employment, and did not address the issue of the Beneficiary’s eligibility as an individual of extraordinary ability in the field of arts.

On appeal, the Petitioner contends, inter alia, that the previously submitted evidence and newly obtained evidence demonstrates that it is a bona fide U.S. employer and verifies the stated location of [REDACTED] Restaurant. In support, the Petitioner provides additional documentation, including a statement from the representative of [REDACTED] and online printouts pertaining to [REDACTED] Restaurant. Considering the new evidence submitted on appeal, we find it appropriate to remand the matter for the Director to consider its impact on eligibility. The Director’s decision will be withdrawn, and the matter will be remanded for further consideration of the record, including the claims and documentation submitted on appeal, and for the entry of a new decision.

ORDER: The decision of the Director is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.