



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

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

In Re: 22147895

Date: OCT. 14, 2022

Appeal of California Service Center Decision

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

The Petitioner, a sports and entertainment talent agency, seeks to classify the Beneficiary as a   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, concluding that the record did not contain evidence of the Beneficiary's nomination for or receipt of a significant national or international award, at least three of six listed categories of documents, or comparable evidence of his eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C)

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." *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). If the petitioner demonstrates that the

criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, it may submit comparable evidence in order to establish the individual's 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).<sup>1</sup>

## II. ANALYSIS

The Petitioner does not assert, and the record does not reflect, that the Beneficiary has been nominated for, or is the recipient of, significant national or international awards or prizes in his field. *See* 8 C.F.R. § 214.2(o)(3)(iv)(A). Accordingly, the Petitioner must satisfy at least three of the six regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner established that the Beneficiary fulfilled two of the initial evidentiary criteria, lead or starring participant in productions or events at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) and significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). Although the favorable testimonials in the record support the Director's determination that the Beneficiary received significant recognition for achievements, we do not agree with the Director's finding relating to the lead or starring participant in productions or events criterion, discussed later.

The Petitioner maintains on appeal that the Beneficiary satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) and requests that we consider comparable evidence for the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).<sup>2</sup> After reviewing all the evidence in the record, we conclude that the Petitioner does not establish that the Beneficiary satisfies 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 determined, without discussion, that the Petitioner established that the Beneficiary satisfied this criterion. For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that the Beneficiary meets this criterion, and the Director's determination on this issue will be withdrawn.

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<sup>1</sup> *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."

<sup>2</sup> While the Director determined that the Petitioner did not establish the Beneficiary's eligibility under the lead, starring, or critical role for organizations and establishments criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), the Petitioner does not address this criterion on appeal.

While it appears that the Beneficiary's [redacted] performance with [redacted] in [redacted] 2019 was as a lead or starring participant for a production with a distinguished reputation, we find that the record does not demonstrate that the Beneficiary will prospectively serve as such a participant. At the time of filing, the Petitioner submitted an itinerary indicating that the Beneficiary will perform as a [redacted] host, and actor in events including an untitled Netflix [redacted] show/series in [redacted] Texas; live [redacted] shows at the [redacted] in [redacted] Texas; a [redacted] show fundraiser [redacted] in [redacted] Florida; a [redacted] show and tour [redacted] in several U.S. cities, [redacted] and the [redacted] a [redacted] series [redacted] in [redacted] [redacted] and [redacted] and a self-titled [redacted] show and [redacted]<sup>3</sup> for [redacted] in [redacted]. It did not, however, offer evidence that would distinguish his role as leading or starring within those upcoming events, and did not specifically claim or submit evidence, in the form required, to establish the distinguished reputation of those events.<sup>4</sup>

For these reasons, the Petitioner has not established that the Beneficiary will perform in a lead or starring role for a production or event with a distinguished reputation. Accordingly, we withdraw the decision of the Director for this criterion.

*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).

The Petitioner provided three articles regarding the Beneficiary dated between 2019 and 2020 from the websites [www.bazaar.town](http://www.bazaar.town), [www.voyagela.com](http://www.voyagela.com), and [www.arabianbusiness.com](http://www.arabianbusiness.com). The article from [www.bazaar.town](http://www.bazaar.town) entitled, [redacted] notes that since beginning law school in [redacted] in 2016 the Beneficiary has performed [redacted] and created two projects: [redacted] a YouTube docuseries, in which he "interviews successful and noteworthy individuals" in order to "inspire others to chase their dreams;" and [redacted] podcast "to share his thoughts" and "sharpen his speaking skills." The article also provides that the Beneficiary recently performed as the opening act for the [redacted] in [redacted] before an audience of 2,000.

The article from [www.voyagela.com](http://www.voyagela.com) entitled, [redacted] contains an interview with the Beneficiary in which he states, "I have my master's degree in law, I am a working [redacted] and . . . I continue my quest to interview successful people for [redacted]. The Beneficiary asserts that [redacted] "has grown to over a million total views." The article also contains a photograph of the Beneficiary performing [redacted] at [redacted]. Although the articles from [www.bazaar.town](http://www.bazaar.town) and [www.voyagela.com](http://www.voyagela.com) are about the Beneficiary and indicate he performs as a [redacted] and conducts the [redacted] docuseries and [redacted] podcast, they do not reflect that his performances resulted in national or

<sup>3</sup> The record reflects that [redacted] was a project the Beneficiary began in 2020, when he decided to "turn my own backyard into an outdoor [redacted] venue."

<sup>4</sup> We note that even though the Petitioner indicates the Beneficiary's work on several of the proposed projects will be for distinguished companies such as Netflix, VIACOM, and [redacted] it would not automatically follow that the proposed [redacted] shows/series are a "production or event" with a distinguished reputation, absent evidence, in the form required, demonstrating their distinguished reputation in the field.

international recognition. The articles, for instance, do not indicate that the Beneficiary garnered national or international recognition or became nationally or internationally known for his [redacted] work.

The article from [www.arabianbusiness.com](http://www.arabianbusiness.com), a [redacted] publication, entitled, [redacted] [redacted] quotes [redacted] extensively in discussing his [redacted] 2019 [redacted] special in [redacted] and the challenges posed to [redacted] by censorship and cultural sensitivities. It contains a photograph of [redacted] and a photograph of the Beneficiary performing [redacted] with the caption, [redacted]

[redacted] The article notes that [redacted] [redacted] provides that in the region [redacted]

[redacted] This article is not about the Beneficiary but mentions him in passing, and thus does not serve to meet this criterion. Regardless, the statements in the article pertaining to the Beneficiary indicate he is an up-and-coming [redacted] rather than a [redacted] who is already nationally or internationally recognized for his achievements in the field.

Further, in response to the Director's request for evidence (RFE), the Petitioner submitted material to establish the major standing of the above websites. It provided a printout from [www.issuu.com](http://www.issuu.com) that indicates that *Bazaar* is a monthly lifestyle magazine "distributed, free of charge, throughout [redacted] at over 250 retail, fashion and dining outlets." Additional printouts from Bazaar's media kit assert that its website has 55,000 monthly website users. A printout from the website of ITP Media Group indicates that *Arabian Business*' "extensive output includes audio, digital, print and video interviews" and "+1,650,558 total reach." A printout from VoyageLA claims that it has generated "our first million page views in LA." The Petitioner does not offer evidence that the level of readership of any these digital publications is commensurate with major media.

For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary satisfies 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 picture 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).

This criterion specifically requires documentation of commercially or critically acclaimed successes as reported in publications. In the Beneficiary's field, evidence satisfying this criterion would reasonably include evidence of box office receipts, motion picture or television ratings, and similar evidence of tangible achievements in the stand-up comedy field. The Director determined the evidence submitted does not satisfy this criterion, and the record supports that conclusion.

The Petitioner maintains on appeal that as social media is now “a major indicator of commercial success” then “the statistics, viewership and comments on the commercial success of [the Beneficiary’s] social media published projects should be considered as acceptable and qualifying comparable evidence.” The Petitioner submitted screenshots showing 1.3 million views and 23,600 subscribers for the YouTube [redacted] 1,115 downloads for the 28 episodes of [redacted] on PodBean; 2,600 views and more than 30 subscribers for the Beneficiary’s YouTube channel; 6,119 followers of his Instagram account; the availability of [redacted] podcast on Apple Podcasts, [redacted] for Chrome, and Sound Cloud; and the availability on YouTube [redacted]<sup>5</sup> The Petitioner also provided an article from www.tubularlabs.com dated [redacted] 2015 entitled, “How Many Views Does a YouTube Video Get? Average Views by Category,” that indicates that in the category of “Entertainment” the average number of YouTube views per video is 9,816.

As mentioned above, the regulation at 8 C.F.R. 214.2(o)(3)(iv)(C) provides that “[i]f the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence in order to establish the beneficiary’s eligibility.”<sup>6</sup> Thus, a petitioner must demonstrate why the regulatory criterion does not pertain to a beneficiary’s occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iv). As the Director noted, the Petitioner has not asserted, or established, that [redacted] [redacted] are unable to obtain such indicators of a record of major commercial or critically acclaimed successes as box office receipts, motion picture or television ratings, and similar evidence of tangible achievements in the [redacted] field. The fact that the Beneficiary is not in possession of such indicators is not evidence that the criterion does not apply to his occupation.

However, assuming *arguendo* that the Petitioner has established that this criterion does not readily apply to the Beneficiary’s occupation, and that the type of evidence it has submitted is in fact comparable to that specifically called for under this criterion, the Petitioner has still not established that the Beneficiary has enjoyed commercial success. The Petitioner has not submitted evidence to establish that a certain quantity of views, downloads, or subscriptions of the Beneficiary’s docuseries or podcast, whether considered individually or as a whole, can serve as a gauge of commercial success. Although the Tubular Labs article indicates the average number of views received by a YouTube video in the entertainment category, it does not describe a connection between the number of views of an individual’s work and any commercial success it may enjoy. For that reason, the evidence submitted by the Petitioner is insufficient to show that the Beneficiary’s docuseries and podcast have been commercially successful.

Further, the Petitioner maintains that the Director erred in not considering as “comparable evidence” the “comments on the commercial successes of [the Beneficiary]” in testimonial letters. While these letters were examined by the Director and found to satisfy the criterion at 8 C.F.R.

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<sup>5</sup> The record shows that the [redacted] is the live 15-minute opening act the Beneficiary performed for [redacted] in [redacted] in 2019.

<sup>6</sup> Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary’s occupation. However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary’s occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion. See 2 USCIS Policy Manual M.4(C), <https://www.uscis.gov/policy-manual>.

§ 214.2(o)(3)(iv)(B)(5), the Petitioner has not demonstrated that they establish that the Beneficiary has enjoyed commercial success. The letters from several experts in the field of [ ] while stating that the Beneficiary's docuseries [ ] has "a following of over 23,000 subscribers and over one million views" and opining that it is "astounding that he has made the [ ] special . . . and created a pioneering podcast all at such a young age," do not assert or detail in what manner having created a [ ] special, a podcast, and a docuseries with that quantity of views and subscribers is comparable to a record of major commercial successes in the field. While the authors highly praise the Beneficiary's skills and abilities, these letters do not establish his record of successes in the field.

Based on the above, the Petitioner has not established that the Beneficiary satisfies this evidentiary criterion.

### III. CONCLUSION

We conclude that the Petitioner did demonstrate that the Beneficiary meets the criterion relating to significant recognition for achievements. *See* 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). The evidence, however, does not satisfy at least three of the six evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). We 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 in his field of endeavor. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).<sup>7</sup> Accordingly, we reserve these issues.<sup>8</sup> 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.

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<sup>7</sup> *See also* 2 *USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policymanual>.

<sup>8</sup> *See INS v. Bagambashad*, 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).