



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

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

In Re: 23101912

Date: OCT. 31, 2022

Appeal of California Service Center Decision

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

The Petitioner, a retail music store, seeks to classify the Beneficiary as a ban instrument repair (BIR) technician. 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 Petitioner 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.

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).

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).¹

II. ANALYSIS

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). In addition, the Director concluded that the Petitioner established the Beneficiary’s eligibility for only two of the evidentiary criteria: the lead, starring, or critical role criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and the significant recognition criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). On appeal, the Petitioner contends that the Beneficiary satisfies one additional criterion, the high salary criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). For the reasons discussed below, the Petitioner did not establish that the Beneficiary meets any of the claimed evidentiary categories.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) provides “[e]vidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.” Thus, this regulatory criterion requires a petitioner to show the Beneficiary’s past and future leading, starring, or critical roles. Because the record does not establish that the Petitioner demonstrated the Beneficiary’s eligibility for this criterion, we will withdraw the Director’s favorable decision for this criterion.

In response to the Director’s request for evidence (RFE), the Petitioner stated:

We asked the Recognized Experts to answer certain questions addressing the distinguished reputation of [the Petitioner] and the critical role that [the Beneficiary] will play in the future, which I will address in detail below. I will also describe below the critical role that [the Beneficiary] has played in the past.

¹ *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.”

As it relates to the Beneficiary's past role, the Petitioner claimed:

While working at [the Petitioner] during the 24-month training period under her H-3 Training Visa, [the Beneficiary] also played a critical role for [the Petitioner] [The Beneficiary] was literally a "beta test" of our training program. I have never had anyone under my training provide anywhere close to the amount of valuable constructive feedback as she did during her training under that visa

. . . .

When we applied for [the Beneficiary's] H-3 Training Visa, we provided details about a new training program that we developed for a new inexperienced BIR [band instrument repair] technician. Our two-year training program was extremely intensive and was designed to pack into two years the training that normally takes four to five years through traditional on-the-job training at a repair shop like [the Petitioner]. It was a cutting-edge training program to develop skills that was highly efficient and advanced to band-instrument repair (as we described in the H-3 petition)

. . . .

While working at [the Petitioner] under her H-3 Training Visa, [the Beneficiary] played a critical role at [the Petitioner] in other ways, as well. She established her record of achievement during her time at [the Petitioner] under her H-3 Training Visa. That is a tremendous plus to [the Petitioner]. It adds to our reputation at a critical time. She was also the first person from [the Petitioner] to establish contact and open a huge door for [the Petitioner] to music educators from school districts that we have never had as clients (through the [redacted] for the [redacted] Music Educators Association, which includes 14 counties). By doing so, she has established an extremely important foothold to vast new opportunities for business that we will need to meet our growth needs This is one of the new large growth opportunities that we have established at [the Petitioner] in the past few years that will be critical in moving forward.

In addition, the Petitioner submitted documentation regarding its training program, including a profile, syllabus, photographs, biographies of the trainers, and other self-prepared material. Again, this regulatory criterion requires evidence in the form of "articles in newspapers, trade journals, publications, or testimonials." Here, the Petitioner did not demonstrate how its evidence meets any of the required regulatory documentation. Moreover, the Petitioner did not support its assertions with newspaper articles, trade journals, publications, or testimonials consistent with this regulatory criterion. Furthermore, while the Petitioner submitted testimonials, which we will discuss below, none of the letters address or even mention the Beneficiary's past role with the Petitioner, including participation in the training program. Finally, the Petitioner did not show that it has a distinguished reputation, which we will also examine below. For these reasons, the Petitioner did not establish that the Beneficiary meets this criterion based on her past role.

In regard to her futuristic role, the Petitioner asserted that the Beneficiary would play a critical role by possessing technical and creative skills, talents, passion, courage, loyalty, and entrepreneurial drive;

having the ability to quickly learn, communicate with musicians, train other BIR technicians, and attract new technicians and clients; and furthering its missions and building its reputation. As evidence, the Petitioner submitted testimonial letters with prepared questions and answers. In fact, the letters contained identical language. Specifically, each letter reflected:²

B. [The Beneficiary's] critical role at [the Petitioner]

[The Petitioner] has asked me to answer the following two questions.

(i) First Question and Answer.

First Question: Do you believe that [the Beneficiary] will play a critical role at [the Petitioner] over the next three years (if she is allowed by USCIS to work there during that period)?

Answer to First Question: My answer to that question is Yes.

(ii) Second Question and Answer.

Second Question: Is your belief that [the Beneficiary] will play a critical role at [the Petitioner] over the next three years (if she is allowed by USCIS to work there during that period) based, at least in part, upon the following?

- (1) my knowledge of [the Beneficiary's] talent and abilities, and her record of achievement in the BIR industry,
- (2) my knowledge of the current challenging business circumstances (including extremely difficult business climate) facing [the Petitioner]
- (3) my knowledge of the difficulty with finding and retaining basically-qualified BIR technicians to fill positions at band-instrument repair shops in the U.S. (not mention the compounding effect on that difficulty of the additional qualifications required to be met with respect to the position that [the Petitioner] has offered [the Beneficiary]
- (4) my knowledge of the job qualification for the specific BIR-technician position that [the Petitioner] needs to fill and has offered to [the Beneficiary]

Answer to Second Question: My answer to that question is Yes.

² We note that letters from [] and [] did not address or mention the Beneficiary's role for the Petitioner.

The identical language suggests that the letters were all prepared by the same person and calls into question the persuasive value of the letters' content. *See Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *4, n.3 (D.D.C. June 8, 2021) (the court found our conclusion reasonable that the identical language in the letters submitted undermined their probative value). Moreover, the letters do not contain specific information explaining the authors' opinions. The letters, for example, do not elaborate and articulate why the Beneficiary's role for the Petitioner will be critical. Instead, the letters broadly claim that the Beneficiary will perform in a critical role for the Petitioner. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Because the letters contain identical language, lack detailed information, and reflect diminished probative value, the Petitioner did not establish that the Beneficiary will perform in a critical role for the Petitioner.

As it pertains to the distinguished nature of the Petitioner, the letters similarly reflect the same format of prepared questions and answers and show identical language.³ Specifically, the letters state:

[The Petitioner] has asked me to answer the following question.

Question: Does [the Petitioner] currently have (and has maintained for as long as you have known of [the Petitioner]) a highly-distinguished reputation in the field of BIR at the national level?

Answer: My answer to that question is Yes.

My Comments: I met [] (the owner of [the Petitioner] professionally and have known him for at least the past [] years on a professional basis, and I am familiar with his experience and expertise in the field of BIR. Scott also currently has (and has maintained for a period that extends back beyond his acquisition of [the Petitioner] in 2005) a highly-distinguished reputation in the field of BIR at the national level. I also met and know two top of the technicians at [the Petitioner] [] and [] professionally and I am familiar with their respective experience and expertise in the field of BIR. [] and [] also have highly-distinguished reputations in the field of BIR at the national level, which further enhances the highly-distinguished reputation of [the Petitioner] in the field of BIR.

For the same reasons discussed above, the Petitioner's submission of testimonial letters, which contain identical language, lack detailed information, and reflect diminished probative value, do not demonstrate the Petitioner's distinguished reputation. Furthermore, the "My Comments" section of the letters briefly discuss individuals associated with the Petitioner rather than expounding upon the distinguished reputation of the business. Accordingly, the Petitioner did not show its distinguished reputation.

³ We note that the letter [] did not address or mention the Petitioner's reputation.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary meets the regulatory requirements of this criterion; and therefore, we withdraw the Director's favorable determination for this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) requires "[e]vidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged," and "[s]uch testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements." Because the record does not show that the Petitioner demonstrated the Beneficiary's eligibility for this criterion, we will withdraw the Director's favorable decision for this criterion.

In response to the Director's RFE, the Petitioner claimed the Beneficiary's following achievements:

- Invited and presented a clinic at the National Association of Professional Band Instrument Repair (NAPBIRT) [redacted] – January 2020
- Invited and presented a clinic in BIR at [redacted] – November 2019
- Invited and presented a clinic in BIR at [redacted] – January 2020
- Provided a clinic on BIR at the [redacted] – January 2020
- Wrote four articles for *TechniCom* and awarded a 2019 NAPBIRT [redacted] Scholarship
- Volunteered for positions and activities for NAPBIRT

In addition, the Petitioner provided evidence of the Beneficiary's participation and attendance and based her eligibility for this criterion on the previously discussed testimonial letters. Similar to the discussion above, the testimonials contain prepared questions and answers with identical language. For instance, the letters ask whether the authors have knowledge of the Beneficiary's achievements and how they gained knowledge of her achievements. Moreover, the letters reflect:

[The Petitioner] has asked me to answer the following two questions.

(i) First Question and Answer.

First Question: Is the following language true and correct as if stated by you?

Each of the Recognized Achievements is clearly out of the ordinary and above and beyond what is expected from a BIR technician. Moreover, a record of more than a few achievements such as the Recognized Achievements becomes rarer among those within the BIR industry. Relatively few BIR technicians (i) have the ability, knowledge, skill and artistic talent required to realize achievements such as the Recognized

Achievements and (ii) then undertake the tremendous effort required to actually bring about those achievements (all of which is done on a volunteer basis). Such contributions to the BIR industry are extremely valuable and necessary in the furtherance of the sharing and knowledge, skills and artistic talents with others in the industry. In the end, their achievements not only benefit other BIR technicians, but contribute to the success of musicians at all skill levels.

Answer to First Question: My answer to that question is Yes.

(ii) Second Question and Answer.

Second Question: Is the following language true and correct as if stated by you?

As a nationally-recognized expert in the field of BIR, I hereby recognize each of the Recognized Achievements as “achievement” in the field of BIR by [the Beneficiary]. In addition, the record of achievement that [the Beneficiary] has accomplished at such an early stage in her career is extremely impressive and goes way above and beyond what is ordinary [*sic*] expected from a BIR technician at such an early stage in her career. She has gained a reputation amongst nationally-recognized experts in the field of BIR as a rapidly up-and-coming BIR professional.

Answer to Second Question: My answer to that question is Yes.

For the reasons previously discussed, the letters contain identical language, lack detailed information, and reflect diminished probative value. In addition, the letters do not contain specific information explaining the authors’ opinions; rather, they generally assert that the Beneficiary has “recognized achievements.” The requirement for this criterion, however, is that the Beneficiary has received “significant” recognition for her achievements rather than simply receiving recognition for her achievements.

Furthermore, some of the testimonials reference their previously submitted recommendation letters presented at the initial filing of the petition. While these letters indicate the Beneficiary’s achievements and accomplishments, they do not elaborate and explain how she received significant recognition consistent with this regulatory criterion. For example, [redacted] stated:⁴

[The Beneficiary] has been quite active in her own professional development, having attended in regional and national NAPBIRT events, writing three articles (to date) for NAPBIRT’s journal, *TechniCom*, and is now a NAPBIRT clinician, having presented or [redacted] repair here at [redacted] in November 2019 and repeated in [redacted] California, shortly thereafter. [The Beneficiary] is scheduled to present at NAPBIRT’s international repair conference in [redacted], IL next April 2021. [The Beneficiary] is becoming a leader in NAPBIRT, currently servicing as [redacted] secretary. Outside of

⁴ Although we discuss a sample letter, we have reviewed and considered each one.

NAPBIRT, [the Beneficiary] also trained 51 band directors on emergency repairs through her clinic, “Do It Yourself Instrument Repair.”

Here, the letter lists events, including the authorship of articles, without articulating how she received significant recognition from her attendance or participation. While it praises the Beneficiary for her skills and abilities, the letter does not show what recognition she received or how that recognition rises to the level of significant.

The issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Here, the letters make broad, general statements without specifying how the Beneficiary garnered significant recognition for her achievements in the field. Without detailed, probative information explaining the significant recognition the Beneficiary received for her achievements, the Petitioner did not provide sufficient testimonial letters.

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion, and we withdraw the Director’s favorable determination for this criterion.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

The Petitioner indicated on the petition that the Beneficiary’s wages will be “Commision-based [*sic*].” In addition, the Petitioner submitted an unsigned document entitled, “Payment Terms (Salary for Beneficiary)” reflecting the Beneficiary’s salary as “Commission-Based (Commission Rate: 50%)” and:

[The Petitioner], experienced repair technicians receive payments on commission-based salary. [The Beneficiary] fits into this salary type.

[The Beneficiary] will be paid semimonthly on the 1st of the month and the 15th of the month for the periods that have ended on the 27th of the month and 12th of the month.

[The Petitioner] will make commission payments to [the Beneficiary] based on repair labor cost of musical instruments that she repaired.

The band instrument repair industry, generally, repair technician’s annual salary is between 35k to 60k. Very top of our filed [*sic*] would earn 80k.

As a high-end repair technician, most days we work on several instruments per day. Other days, we focus on overhauling one instrument for three-full days.

Some of our service items have fixed price such as cleaning for brass instruments but some of the items such as Dent Work, Valve Work, or Key Repair are estimate based on severity on the damage and other factors hence the labor cost varies case by case.

In addition, the Petitioner provided several “Example Day[s]” to illustrate how the Beneficiary would earn 50% commission for repair work. Further, the Petitioner submitted a copy of the Beneficiary’s 2019 IRS Form W-2, Wage and Tax Statement, reflecting that the Beneficiary earned \$26,346 from the Petitioner.

In response to the Director’s RFE, the Petitioner claimed the Beneficiary “will command a high salary or other substantial remuneration.” In addition, the Petitioner asserted:

The job we have offered [the Beneficiary] at [the Petitioner] that is the subject of of [*sic*] the original O-1B petition (and which she will start immediately after her O-1B visa is obtained and all appropriate USCIS approvals have been obtained), is a BIR technician position compensated fully on a commission in which she is expected to earn an average of at least \$29.80 per hour, which equals an annualized full-time amount of at least \$62,000 per year.

....

It is the standard in our industry of BIR that, once a BIR technician employed in a BIR shop (i.e., not the owner of the shop) has achieved a certain level of “productivity,” (which [the Beneficiary] has clearly achieved), they are paid fully on a commission basis. Those of us in the BIR industry use the term “commission” to mean that a BIR technician’s compensation will be equal to a percentage of the total labor charge we bill to the customer for the repairs that BIR technician makes to the customer’s instrument. We have found in our industry that this incentive method of pay a BIR technician results in the highest productivity for the shop and the BIR technician, resulting in higher revenue for the shop and higher pay for the BIR technician.

Further, the Petitioner submitted a “Copy of page in Bureau of Labor Statistics [BLS] website” purportedly reflecting the occupational employment and wages for musical instrument repairers and tuners. The evidence appears to have copied the material from BLS’ website into the Petitioner’s self-compiled document. The copy, however, does not contain the URL address or other indicators establishing the origin and true nature of the material. Because it did not submit the actual screenshots from BLS’ website, the self-compiled and copied information has diminished probative value.⁵

Notwithstanding the above, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6) requires “[e]vidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.” Here, the Petitioner claimed the Beneficiary’s eligibility for this criterion based on the earnings that she will command from the Petitioner. Specifically, the Petitioner asserts that it will fully compensate the Beneficiary based on 50% of the labor, which will be about \$62,000 per year. As indicated, this regulatory criterion requires a petitioner to establish that a beneficiary will command a high salary or other substantial remuneration for services “as evidenced by contracts or other reliable evidence.” The record, however, does not reflect that the Petitioner submitted any contracts with the

⁵ We note here that the previously discussed testimonials contain a prepared question asking whether \$62,000 is a high salary for BIR technicians in which they indicated “Yes.”

Beneficiary, setting forth any salary or compensation conditions. Furthermore, the Petitioner provided an unsigned “Payment Terms (Salary for Beneficiary)” document and made unsupported assertions regarding the Beneficiary’s compensation and salary expectations, which do not constitute “other reliable evidence.” In this case, the Petitioner has not shown that it will compensate the Beneficiary based on 50% labor, “as evidenced by contracts or other reliable evidence” consistent with this regulatory criterion.

Moreover, the Petitioner did not provide any corroborating evidence to support its assertions. The Petitioner indicated that “[i]t is the standard in our industry of BIR that, once a BIR technician employed in a BIR shop . . . has achieved a certain level of ‘productivity,’ . . . they are paid fully on a commission basis.” However, the Petitioner did not point to evidence that affirms its claims. Furthermore, the regulation requires “other substantial remuneration for services.” The Petitioner did not show how the Beneficiary will be commanding other substantial remuneration for services if the industry standard is 50% of labor and the Petitioner is offering compensation at 50% of labor. In addition, the Petitioner did not present any payroll, tax, financial, or other business records demonstrating its history of compensating its productive BIR technicians at 50% of labor. Further, the Petitioner did not establish that based on BIR requests or sales receipts, the Beneficiary has the potential to earn \$62,000, or that the Petitioner has the ability to compensate the Beneficiary at 50% of labor.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. Accordingly, the Petitioner did not show that the Beneficiary satisfies this criterion.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets any of the claimed categories of evidence. Therefore, 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 her 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).⁶ Accordingly, we reserve this issue.⁷ 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.

⁶ *See also* 2 *USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policymanual>.

⁷ *See INS v. Bagamashad*, 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, 526 n.7. (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).