



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

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

In Re: 26061862

Date: APR. 13, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a management business, seeks to temporarily employ the Beneficiary as a director in the motion picture or television industry. To do so, the Petitioner seeks O-1 nonimmigrant visa classification, available to foreign nationals who can demonstrate a record of extraordinary achievement, 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 the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary achievement in the motion picture or television industry: nomination for or receipt of a significant national or international prize or award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(v)(A)-(B). The matter is now before us on appeal. 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.

## **I. LAW**

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievements that 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 achievement. Department of Homeland Security (DHS) regulations include the following definition: “[e]xtraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.” 8 C.F.R. 214.2(o)(3)(ii).

Next, DHS regulations set forth the initial evidentiary criteria for establishing an individual's record of extraordinary achievement. First, a petitioner can demonstrate the beneficiary's nomination for, or receipt of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(v)(A). If the petitioner does not offer this information, then it must submit sufficient qualifying exhibits that satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6).

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 eligibility under section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (v).

## II. ANALYSIS

Absent evidence of a nomination for or receipt of a significant national or international prize or award, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to the six categories of evidence under 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6). The Director determined the Beneficiary satisfied only one criterion – significant recognition under 8 C.F.R. § 214.2(o)(3)(v)(B)(5). On appeal, the Petitioner maintains the documentation satisfies five additional categories of evidence. As discussed below, we find the evidence does not fulfill at least three criteria, as required.

*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)(v)(B)(1).

This criterion requires evidence of the beneficiary's past lead or starring participation in distinguished productions or events, and the beneficiary's prospective lead or starring participation in distinguished productions or events.<sup>1</sup> The Director determined the Petitioner established the Beneficiary's past services in productions with distinguished reputations. Although the Director found the Beneficiary would perform in a lead or starring role in productions or events, the Director concluded the Petitioner did not show the distinguished reputations of those prospective productions or events.

On appeal, the Petitioner argues the Beneficiary "will perform services as a leading and starring participant for [redacted] future distinguished productions and events, including the production of [redacted]". Moreover, the Petitioner asserts that "[redacted] is certainly a distinguished organization," and "[t]he fact that the production of [redacted] is being undertaken by such a distinguished organization as [redacted] . . . attests to the future distinguished nature of the productions." This criterion differs from the third criterion, which is specific

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<sup>1</sup> *See generally* 2 USCIS Policy Manual, M.4(E)(2)(appendix), <https://www.uscis.gov/policymanual>.

to organizations and establishments.<sup>2</sup> Further, the Petitioner has not demonstrated that every upcoming production from a distinguished organization automatically establishes the distinguished nature of those productions.<sup>3</sup>

Notwithstanding, at initial filing, the Petitioner submitted a “Deal Memo” from [redacted] [redacted] for the Beneficiary to serve as a “writer-director” for [redacted]. While the Deal Memo is sufficient to serve as a contract indicating the Beneficiary’s leading roles in the films, it does not reflect the distinguished reputations of the upcoming productions. Further, the Petitioner submitted a few articles reporting on [redacted] however, none of the material mentions [redacted] as upcoming projects. In fact, the articles specifically mention other projects currently in production, such as [redacted] and [redacted]. The omission of *The* [redacted] when others are explicitly indicated does not show the distinguished reputation of the Beneficiary’s prospective productions.

In response to the Director’s request for evidence (RFE), the Petitioner provided recommendation letters. However, the Petitioner did not demonstrate how they qualify under any the evidentiary requirements for this criterion. To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.<sup>4</sup> Advertisements, publicity releases, and endorsements are promotional materials.<sup>5</sup> Endorsements are public facing and serve a marketing purpose.<sup>6</sup> This exhaustive list does not include unpublished testimonial or recommendation letters.<sup>7</sup> Furthermore, the Petitioner provided documentation reflecting the Beneficiary qualified as a quarterfinalist for the [redacted] regarding her script for [redacted] as well as background information about the fellowship. Again, the Petitioner did not show how this material meets any of the categories of evidence under this regulatory criterion.

The Petitioner also claims the Beneficiary “will perform services as a leading and starring participant for [redacted] future distinguished productions and events,” and “productions or events that are hosted, produced, distributed, conceptualized, or created by a distinguished organization, are distinguished productions or events by their very nature.” For the reasons discussed above, the Petitioner did not demonstrate that every production for a distinguished organization automatically shows the distinguished nature of upcoming productions. In addition, while the record contains a recommendation letter from [redacted] the Petitioner did not establish how this document qualifies for any of the evidentiary requirements of critical reviews, advertisements, publicity releases, publications contracts, or endorsements under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(I).

Accordingly, the Petitioner did not show the Beneficiary meets this criterion.

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<sup>2</sup> See also generally 2 USCIS Policy Manual, *supra*, at M.4(E)(2)(appendix).

<sup>3</sup> For instance, a recognized studio may release a movie garnering negative reviews with critics or “bombs” at the box office, which would not be indicative of a distinguished movie.

<sup>4</sup> See also generally 2 USCIS Policy Manual, *supra*, at M.4(E)(2)(appendix).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

*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)(v)(B)(2).

The Petitioner offered material posted on [REDACTED]  
[REDACTED] To meet this criterion, the petitioner must provide evidence demonstrating the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in a major newspaper, trade journals, magazines, or other publications, which may include online publications.<sup>8</sup> In determining whether the submitted evidence demonstrates the beneficiary has achieved national or international recognition for achievements, officers consider both the content of the published material and the level of recognition enjoyed by the publication in which it appears.<sup>9</sup>

As it relates to the content, the material does not represent the Beneficiary's achievement of national or international recognition for achievements. For instance, regarding the article posted on [REDACTED] the item reflects an interview with the Beneficiary but does not show she has attained national or international recognition. In fact, the author opines the Beneficiary's "work is new on my radar, but I firmly believe in her potential to become a household name." Here, the material speculates the Beneficiary may, at some time in the future, reach a level of popularity without establishing the Beneficiary has already achieved national or international recognition for her achievements.

Similarly, the material from [REDACTED] reflects interviews with the Beneficiary in which she responds to the interviewers' questions without any indication of national or international recognition for achievements. Here, the content of the questions and articles do not discuss or demonstrate national or international recognition of the Beneficiary's achievements. Likewise, the item from [REDACTED] represents a snippet about the Beneficiary pointing out that she "is a Russian photographer and filmmaker in [REDACTED] CA" and uses photography as a "mean of exploring unfamiliar territory as well as meet new people." The screenshot makes no reference to, nor is there an indication of, the Beneficiary achieving national or international recognition for achievements.

Regarding [REDACTED] although the article briefly mentions the Beneficiary's work as having been shown at film festivals and indicates receipt of awards, the material does not contain sufficient information evidencing her achievement of national or international recognition. Moreover, the Petitioner did not demonstrate [REDACTED] constitutes a major newspaper, trade journal, magazine, or other publication. Although the Petitioner submitted a screenshot from similarweb.com relating to viewership statistics for [REDACTED] the Petitioner did not establish how the figures show the website's status as a major online publication. For instance, according to similarweb.com, [REDACTED] received 7,400 visits and had a global ranking of 3,490,674 and a country ranking of 223,138. Here, the Petitioner did not demonstrate the significance, if any, of these statistics to indicate that [REDACTED] qualifies as a major online publication.<sup>10</sup>

<sup>8</sup> See also generally 2 USCIS Policy Manual, *supra*, at M.4(E)(2)(appendix).

<sup>9</sup> *Id.*

<sup>10</sup> Likewise, the Petitioner presented screenshots from similarweb.com for [REDACTED] and [REDACTED] without further explaining and establishing the significance of the figures in showing the major

For the reasons discussed above, the Petitioner did not establish 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)(v)(B)(4).

The Petitioner contends the Beneficiary received critically acclaimed successes based on her films being screened at festivals. In addition, the Petitioner maintains the importance of film screenings at festivals, indicates the Beneficiary's placement as a quarterfinalist for the [REDACTED] and points to the Beneficiary's receipt of awards and nominations at festivals and award showcases. Furthermore, the Petitioner asserts that "since the regulations do not state that letters cannot be evidenced of critical acclaim, [the Petitioner] requests that the letters [previously] submitted . . . be considered as evidence of [the Beneficiary's] standing in the field."

This criterion requires evidence in the form of publications establishing the beneficiary's record of major commercial or critically acclaimed success.<sup>11</sup> A publication reporting the commercial success of the beneficiary or the beneficiary's work should reflect that the ratings, receipts, sales, revenue, standing, or other occupational achievement represent major successes in the relevant field.<sup>12</sup> If demonstrating critically acclaimed success, the evidence should demonstrate that the beneficiary's work has received public-facing praise or positive reviews in the relevant field, such as from professional art, television, or film critics.<sup>13</sup>

Although the Petitioner provided evidence for this criterion at both the initial filing and in response to the Director's request for evidence (RFE), the Petitioner did not demonstrate how the documentation qualifies under the regulatory requirement of "trade journals, major newspapers, or other publications" consistent with the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(4). Instead, the Petitioner submitted reference letters, background information relating to various film festivals and award showcases and competitions, and articles opining on the importance of film festivals. The Petitioner did not offer evidence in the form of publications reporting on the Beneficiary's major commercial or critically acclaimed successes, as required by this regulatory criterion.

Because the Petitioner did not comply with the evidentiary requirements, the Petitioner did not establish the Beneficiary meets this criterion.

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standings of the online publications. *See also generally 2 USCIS Policy Manual, supra*, at M.4(E)(2)(appendix) (providing that favorable coverage or publication of the beneficiary's work in major media, as demonstrated by high relative circulation, readership, or viewership figures, could establish national or international recognition of the beneficiary's achievements).

<sup>11</sup> *See also generally 2 USCIS Policy Manual, supra*, at M.4(E)(2)(appendix).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

*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)(v)(B)(6).*

To demonstrate eligibility for this criterion, the petitioner should provide appropriate evidence establishing that the beneficiary's past or future compensation is or will be high relative to others working in the field.<sup>14</sup> At initial filing, the Petitioner did not claim the Beneficiary's eligibility for this criterion. In response to the Director's RFE, the Petitioner indicated the Beneficiary "will command a high salary for her works compared to other Filmmakers (Directors and Writers) in her field." The Petitioner referenced a "Deal Memo" from [REDACTED] (August 1, 2022 – August 1, 2025); [REDACTED] (August 2022 – August 2025); and [REDACTED] (August 1, 2022 – December 18, 2022) reflecting the Beneficiary would be compensated \$1,000 "per day worked."<sup>15</sup> In addition, the Petitioner offered screenshots from bls.gov for hourly and yearly wages for producers/directors and writers/authors showing 90th percentile hourly and annual wages of \$99/\$206,860 and \$64/\$133,580, respectively.

As indicated above, the Beneficiary will not be compensated based on an hourly wage or yearly salary. Rather, the Beneficiary will be compensated on a per daily basis. Thus, the submission of hourly and annual salary information is generally not probative evidence since the Beneficiary will be compensated on a daily wage. Furthermore, the Petitioner did not offer evidence comparing the daily rates of directors and writers to the Beneficiary's daily rates. Many artists (including motion picture and television) are not paid an hourly rate but instead are paid a daily rate (which may not be equivalent to 8 hours) or are paid a certain amount for a project (involving an unknown number of hours).<sup>16</sup> However, hourly wage data may still be probative if the petitioner submits documentation regarding the number of hours worked.<sup>17</sup> Here, none of the Deal Memos specify the number of hours, or even days, the Beneficiary will work on each project in order to provide an accurate projection of the Beneficiary's salary. In fact, the Petitioner did not demonstrate the Beneficiary has the capability of earning a high annual salary according to bls.gov figures.

For the reasons discussed above, the Petitioner did not demonstrate the Beneficiary fulfills this criterion.

### III. CONCLUSION

The Petitioner did not establish the Beneficiary meets four additional criteria. Although the Petitioner claims the Beneficiary's eligibility for an additional criterion on appeal, relating to lead, starring, or critical role for organizations or establishments under 8 C.F.R. § 214.2(o)(3)(v)(B)(3), we need not reach this additional ground because it cannot fulfill the initial evidentiary requirement of at least three criteria under 8 C.F.R. § 214.2(o)(3)(v)(B). We also need not provide a totality determination to establish whether the Petitioner has demonstrated the Beneficiary's very high level of accomplishment evidenced by a degree or skill and recognition significantly above that ordinarily encountered to the extent that the Beneficiary is recognized as outstanding, notable, or leading in the field. *See* section

<sup>14</sup> *See also generally 2 USCIS Policy Manual, supra, at M.4(E)(2)(appendix).*

<sup>15</sup> The Petitioner also submitted a Deal Memo with [REDACTED] however, the memo is dated after the initial filing of the petition. Eligibility must be established at the time of filing the benefit request. *See* 8 C.F.R. § 103.2(b)(1).

<sup>16</sup> *See also generally 2 USCIS Policy Manual, supra, at M.4(E)(2)(appendix).*

<sup>17</sup> *Id.*

101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (v).<sup>18</sup> Accordingly, we reserve these issues.<sup>19</sup> Consequently, the Petitioner has not shown the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary achievement. 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>18</sup> See also 2 USCIS Policy Manual, *supra*, at M.4(B).

<sup>19</sup> 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).