



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

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

In Re: 26532104

Date: APR. 20, 2023

Appeal of California Service Center Decision

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

The Petitioner, a restaurant, seeks to classify the Beneficiary as a chef of extraordinary ability. 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 the Petitioner did not establish the Beneficiary's satisfaction of 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. 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 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).

## II. ANALYSIS

The Director determined the Petitioner did not demonstrate the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, the Director concluded the Petitioner established the Beneficiary's eligibility for only two criteria, organizations and establishments under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and significant recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). On appeal, the Petitioner contends the Beneficiary satisfies an additional three. For the reasons discussed below, the Petitioner did not establish the Beneficiary meets at least three of the regulatory 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).*

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> Regarding the Beneficiary's past services, as cited in the initial cover letter, the Petitioner claimed the Beneficiary's eligibility based on:

- [A]n invitation to be a Judge on the panel of judges in the Seventh Century Food and Beverage and Hospitality (Professional Chef Competition) in 2019 held by the [REDACTED] Nepal,
- [S]ervices as a Chef during the different events organized by the five-star hotels, such as [REDACTED] various conferences held at the hotels, UAE [United Arab Emirates] cabinet ministers retreat and ninth session of the [REDACTED] conference,
- [E]vents that were of importance to UAE, such as the [REDACTED] world cup events, serving the [REDACTED] during the [REDACTED] air show, UAE [REDACTED] festivities, and for making the [REDACTED] event successful which was held by celebrity chef [REDACTED]
- [S]uccess of [REDACTED] hotel where they received nine (9) awards with Beneficiary's assistance, and
- [A] brand ambassador for two (2) years for [REDACTED]

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

As evidence, the Petitioner provided appreciation letters and certificates. In response to the Director's request for evidence (RFE), the Petitioner claimed:

The [ ] Air Show for [ ] UAE [ ] Festivities, and [ ] Police College Graduation Ceremony are distinguished events with distinguished reputation where Beneficiary was the lead chef who made these events successful. Beneficiary also participated in [ ] event hosted by Celebrity Chef – [ ] making the event successful. In such ways, Beneficiary was a lead or starring participant in the [ ] World Cup 2009 and 2012, and UAE [ ] [ ] – these are distinguished productions or events that have a distinguished reputation, making it a success.

In support of its claims, the Petitioner offered additional testimonial and appreciation letters and certificates. To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.<sup>2</sup> Advertisements, publicity releases, and endorsements are promotional materials.<sup>3</sup> Endorsements are public facing and serve a marketing purpose.<sup>4</sup> This exhaustive list does not include unpublished testimonial or recommendation letters.<sup>5</sup> Here, the Petitioner did not explain or show how the submission of appreciation and testimonial letters and certificates qualifies as “critical reviews, advertisements, publicity releases, publications contracts, or endorsements” as required under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(I). Because the Petitioner did not provide any of the required regulatory evidence, we need not make a determination on whether such documentation reflects the Beneficiary's past services as a lead or starring participant in productions or events, which have distinguished reputations.<sup>6</sup>

As it relates to the Beneficiary's prospective services, the Petitioner's initial cover letter did not assert the Beneficiary would perform services as a lead or starring participant in productions or events with distinguished reputations. However, in response to the Director's RFE, the Petitioner claimed:

The itinerary submitted states that Beneficiary will be promoting the restaurant by introducing different cuisines, and is planning and hosting the Nepali food festival in California, Baltimore, and Maryland, and is promoting Nepali food in the United States. Beneficiary will be taking part in various cooking events that are going to be held in the future.

Although the Petitioner presented an itinerary at initial filing, similar to the discussion above, the Petitioner did not demonstrate how an itinerary qualifies as a critical review, advertisement, publicity

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

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

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

<sup>6</sup> *Id.* (providing that evidence may demonstrate a lead role by establishing that the person has a principal role in the events or production, and a starring role means a position of great prominence relative to others in the event or production; in evaluating the distinguished reputation of a past production or event, officers may consider factors such as favorable critical reception, high attendance levels, commercial success, or another indicator that the petitioner establishes would tend to distinguish the reputation of an event or production in the relevant field).

release, publication, contract, or endorsement as required under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). We note the Director's decision acknowledged the Petitioner's initial submission of an "Employment Agreement" between the Petitioner and the Beneficiary. However, the document makes no references to the Beneficiary's services in upcoming productions or events, including "the Nepali food festival" and "various cooking events." Regardless, the employment agreement does not establish the Beneficiary will serve as a lead or starring participant in productions or events.<sup>7</sup> Nor does the agreement reflect productions or events with distinguished reputations.<sup>8</sup>

For the reasons discussed above, the Petitioner did not show the Beneficiary satisfies this criterion.

*Evidence that the beneficiary has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications.*  
8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

The Director concluded the Beneficiary fulfilled this criterion without any explanation or discussion of the evidence. To meet this criterion, the petitioner must provide evidence that demonstrates the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, which may include online publications or transcripts of radio or video coverage.<sup>9</sup> Because the record does not establish the Beneficiary qualifies for this criterion, we will withdraw the Director's favorable determination, discussed below.

The Petitioner provided material posted on nepallive.com, bizshala.com, abudhabitalking.com, [REDACTED]com, and dubaitravelblog.com.<sup>10</sup> In determining whether the submitted evidence demonstrates that 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>11</sup> For example, 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>12</sup> Here, the postings on nepallive.com and bizshala.com contain sufficient information reflecting the Beneficiary

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<sup>7</sup> See generally 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix) (instructing that in evaluating whether the beneficiary's participation in a past or future event or production qualifies as a lead or starring, officers may consider, for example, whether the beneficiary's role is highlighted or featured in advertisements, publicity releases, critical reviews, or other materials, and the contractual terms offered to the beneficiary may also be relevant to establishing the lead or starring nature of the beneficiary's participation, especially with regard to a prospective event or production).

<sup>8</sup> *Id.* (providing that with regard to demonstrating the distinguished reputation of a prospective event, a petitioner may submit documentation such as advance publicity, endorsements, or other evidence regarding the level of anticipation of the relevant event or production; however, as the available evidence relating to the reputation of a prospective production or event will often be limited, officers may also consider factors such as the reputation of similar past events or productions by the same individuals or entities).

<sup>9</sup> See generally 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

<sup>10</sup> In the Petitioner's initial cover letter, the Petitioner also listed "[REDACTED] https://www.youtube.com." However, the Petitioner did not provide screenshots or transcripts of material to support his claim; and therefore, the Petitioner did not show this item qualifies for this regulatory criterion.

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

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

and his work, evidencing national or international recognition for his achievements.<sup>13</sup> However, the record does not reflect the Petitioner offered evidence establishing nepallive.com and bizshala.com represent “major newspapers, trade journals, magazines, or other publications.”<sup>14</sup> The Petitioner, for instance, did not submit circulation, readership, or viewership figures demonstrating the standings of the websites as major online publications.<sup>15</sup> Because the Petitioner did not show the level of recognition of nepallive.com and bizshala.com, we withdraw the Director’s favorable finding for this criterion.

Accordingly, the Petitioner did not establish the Beneficiary satisfies 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).*

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>16</sup> At initial filing, the Petitioner did not claim the Beneficiary’s eligibility for this criterion. However, in response to the Director’s RFE, the Petitioner indicated the submission of evidence “to show that as a chef [the Beneficiary] has commanded a high salary and is going to command a high salary in the current position as chef as well.”

As evidence of the Beneficiary’s past compensation, the Petitioner submitted employment offer and certificate letters from three hotels/resorts in the UAE, indicating the Beneficiary’s monthly salaries for various chef positions. However, the Petitioner did not demonstrate that he earned a high salary compared to other chefs in the UAE. Although the Petitioner offered comparable salary data for chefs in the United States, which will be discussed below, the Petitioner did not provide comparable wage information for chefs in the UAE.<sup>17</sup> Accordingly, the Petitioner did not establish that the Beneficiary commanded a high salary in relation to others in the field.

Regarding the Beneficiary’s future compensation, the Petitioner referenced the previously discussed “Employment Agreement” in which the Petitioner agrees to compensate the Beneficiary \$60,000 per year. In addition, the Petitioner provided screenshots from fldatacenter.com reflecting chefs and head cooks in [redacted] Ohio earn a Level 4 Wage (fully competent) of \$69,701, with a Mean Wage of \$59,613. Further, the Petitioner submitted screenshots from glassdoor.com for chefs in the [redacted] Ohio area

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<sup>13</sup> The remaining postings on abudhabitalking.com, [redacted].com, and dubaitravelblog.com briefly mention the Beneficiary but do not further elaborate and discuss the Beneficiary’s achievements, indicating his national or international recognition. *See Id.* (instructing that published material that cover a broader production, exhibition, or topic, but includes a discussion of the beneficiary, or includes a discussion of the beneficiary’s work or achievement and mentions the beneficiary in connection to the work, may be considered material about the beneficiary).

<sup>14</sup> The Petitioner also did not demonstrate the level of recognition for abudhabitalking.com, [redacted].com, and dubaitravelblog.com, qualifying them as major newspapers, trade journals, magazines, or other online publications.

<sup>15</sup> *Id.*

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

<sup>17</sup> *See generally 2 USCIS Policy Manual, supra*, at M.4(E)(2)(appendix) (instructing that officers evaluate persons working outside of the United States based on the wage statistics or comparable evidence relevant to the applicable work location, rather than by simply converting the salary to U.S. dollars and then viewing whether that salary would be considered high in the United States).

showing an average wage of \$41,794, with median pay for chef de cuisine salaries of \$64,832 and corporate chefs of \$93,215.<sup>18</sup> The Petitioner also presented screenshots from zippia.com indicating average chef salaries in [redacted] Ohio of \$36,614, including an average range of sample salaries from \$36,000 to \$58,000.

Some of the presented evidence shows the Beneficiary will earn a slightly larger salary than the average salary of chefs in the [redacted] Ohio area. However, the Petitioner did not demonstrate the Beneficiary will command a high salary. In fact, the evidence from fldatacenter.com and glassdoor.com indicates significantly higher median and Level 4 wages compared to the wage offered to the Beneficiary.<sup>19</sup> Here, the Petitioner has not shown the Beneficiary's salary would be a high one, only an above average or medium one. Thus, the Petitioner did not establish the Beneficiary will command a high salary in relation to others in the field.

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 any of the criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), we need not address this ground, as well as the favorable finding of the Director for 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), because it cannot fulfill the initial evidentiary requirement of at least three criteria. We also 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, renowned, leading, or well-known 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).<sup>20</sup> Accordingly, we reserve these issues.<sup>21</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>18</sup> Glassdoor.com salary information is self-reported and not verified. *Cf. Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008) (finding that an open, user-edited internet site, *Wikipedia*, lacks reliability of the content); *see also generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix) (indicating that some websites provide user-reported salary data, which may not be a valid comparison if, for example, too few users reported their salaries or the data is otherwise not credible or reliable).

<sup>19</sup> According to the fldatacenter.com screenshot, the Beneficiary's salary would fall around the Level 3 Wage (experienced) and Mean Wage.

<sup>20</sup> *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D).

<sup>21</sup> *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) ("courts and agencies are not required to make findings on issues the decision of which is 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).