



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

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

In Re: 29181081

Date: DEC. 13, 2023

Appeal of California Service Center Decision

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

The Petitioner, a music and entertainment agent, seeks to classify the Beneficiary as a professional pianist of extraordinary ability in the arts. 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 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).¹

II. ANALYSIS

The Petitioner indicates that the Beneficiary is a professional pianist. The Petitioner submitted contracts and an itinerary of tour dates which indicate that the Beneficiary will perform as a pianist in church services, rehearsals, concerts, and solo recital performances for [REDACTED] in [REDACTED], Florida, and as an accompanist for [REDACTED], Florida.

A. Evidentiary Criteria

The Director determined that the Petitioner submitted evidence related to the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), (3), and (5) but concluded that it did not satisfy any of those criteria. On appeal, the Petitioner maintains that the Beneficiary satisfies the four previously claimed criteria.² It also asserts that the Director omitted to consider documentation offered in support of the Beneficiary's extraordinary ability, such as a consultation letter, and provides additional arguments.

Upon review, we find that the Director's decision reflects a careful and thorough review and analysis of the Petitioner's claims and supporting evidence. Therefore, we adopt and affirm the Director's decision with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

¹ *See also Chawathe*, 25 I&N Dec. at 376, in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

² The Petitioner did not claim 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) or her eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) or (6) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these criteria on appeal, we consider these issues to be abandoned. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). *See also Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding plaintiffs claims abandoned as he failed to raise them on appeal to the AAO).

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 Petitioner has not identified a specific error related to this criterion but rather broadly disagrees with the Director's conclusion that it has not satisfied the criterion. In addition, the Petitioner maintains that it provided recommendation letters. However, the Petitioner did not demonstrate how they qualify under any of the evidentiary requirements for this criterion. To meet this criterion, a petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.³ Advertisements, publicity releases, and endorsements are promotional materials.⁴ Endorsements are public facing and serve a marketing purpose.⁵ This exhaustive list does not include unpublished testimonial or recommendation letters.⁶ The Petitioner does not provide any new arguments which overcome the Director's determination. Therefore, the Petitioner does not establish that the Beneficiary meets 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).

In its statement on appeal, the Petitioner requests that the submitted testimonials and the "no objection" letter from [REDACTED], which was contacted by the Petitioner for a consultation, be accepted as comparable evidence of critical reviews under this criterion, because "[r]eviews are just not done anymore by most newspapers or magazines anymore."

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." 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). The Director's decision noted that within its response to the Notice of Intent to Deny (NOID), the Petitioner requested that the documentation provided be considered as comparable evidence on behalf of the Beneficiary, but it did not indicate which of the listed criteria do not readily apply to the Beneficiary's occupation as a pianist. Therefore, the Director did not consider this documentation as comparable evidence.

Because the Petitioner did not articulate a comparable evidence claim of eligibility under one or more of the criteria at 8 C.F.R. § 214.2(o)(3)(iv) at initial filing, or in response to the Director's request for evidence or NOID, we will not consider this basis as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will

³ See also 2 USCIS Policy Manual M.4(D)(2)(appendix), <https://www.uscis.gov/policymanual>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

adjudicate the appeal based on the record of proceeding” before the Director); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

Nevertheless, we note that here, the Petitioner does not contend that this criterion does not apply to the Beneficiary’s occupation as a professional pianist.⁷ The Petitioner did not establish that pianists are unable to achieve national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major media. The fact that the Beneficiary did not receive such recognition for achievements is not evidence that the criterion does not apply to her occupation. Further, the Petitioner did not demonstrate that the statements in the letters are equivalent to receiving such recognition for achievements. Accordingly, the Petitioner has not established that this criterion does not apply to the Beneficiary’s occupation, nor has it shown that the letters reflect the same caliber of achievement and recognition as the evidentiary requirements for this criterion. Therefore, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

Finally, on appeal the Petitioner states that the “no objection” letter from the [redacted] which was not discussed by the Director, indicates “in the totality of the evidence that [the Beneficiary] met the O1 criteria.” As the Petitioner acknowledges, the letter from the [redacted] satisfies the Petitioner’s burden to submit a written advisory opinion from an appropriate consulting entity. 8 C.F.R. § 214.2(o)(2)(ii)(D). Consultations are advisory in nature, however, and are not binding on USCIS. 8 C.F.R. § 214.2(o)(5)(i)(D). Regardless, [redacted] letter concludes that upon review of the Beneficiary’s documentation, “[she] appears to meet the standard of distinction set forth at 8 C.F.R. S 214.2[(o)].” It is unclear on what [redacted] based this conclusion, and she does not offer an explanation as to how the Beneficiary’s achievements as a professional pianist are recognized in the field.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criteria relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) and (2). Although the Petitioner claims the Beneficiary’s eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and (5), we need not address these grounds 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).⁸ Accordingly, we reserve these issues.⁹ 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.

⁷*See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D) (instructing that a general unsupported assertion that the listed criterion does not readily apply to the beneficiary’s occupation is not probative, and officers do not consider comparable evidence if the petitioner submits evidence in lieu of a particular criterion that is readily applicable to the beneficiary’s occupation simply because the beneficiary cannot satisfy the criterion).

⁸ *Id.*

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

ORDER: The appeal is dismissed.