



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

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

In Re: 25592192

Date: FEB. 22, 2023

Appeal of California Service Center Decision

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

The Petitioner, an entertainment business, seeks to classify the Beneficiary as a singer 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 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).

II. ANALYSIS

The Director determined that 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).¹ In addition, the Director concluded that the Petitioner established the Beneficiary's eligibility for only one criterion, high salary under 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). On appeal, the Petitioner contends that the Beneficiary satisfies three additional criteria. For the reasons discussed below, the Petitioner did not establish that 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 regulatory criterion requires the beneficiary to have both previously performed and will perform services as a lead or starring participant in productions or events, which have a distinguished reputation. *See* 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). As evidence, the Petitioner must submit documentation of critical reviews, advertisements, publicity releases, publications contracts, or endorsements. *Id.*

As it relates to the Beneficiary's prior productions or events, the Petitioner claims the Beneficiary's eligibility based on a [redacted] 2018 concert at [redacted] concert hall of [redacted] Resort Casino Spa.² In addition, the Petitioner asserts that [redacted] is a well-known venue where many renowned musicians performed live concerts" and [redacted] was organized by [redacted]. The record contains screenshots advertising his [redacted] 2018 show; photographs of the Beneficiary performing at [redacted], including standing next to his concert poster, with the Petitioner highlighting that [redacted] had also performed at the venue; entertainment contracts between [redacted] Casino Resort Spa; deals memos between [redacted] and the Beneficiary; and a photograph of the Beneficiary with the general producer of [redacted]. While the totality of the evidence demonstrates that the Beneficiary performed as a starring participant, the Petitioner did not establish the distinguished reputation of his concert. Here, the Petitioner focuses on the venue, [redacted] concert hall, rather than the Beneficiary's [redacted] 2018 event. Consistent with

¹ The Petitioner confirms on appeal that it "never claimed [t]he [B]eneficiary's eligibility under this requirement."

² The Petitioner indicates that the Beneficiary also performed on [redacted] 2018 and [redacted] 2019, at the same venue.

this regulatory criterion, the Petitioner must demonstrate that the Beneficiary performed services as a lead or starring participant “in productions or events” rather than performing at a venue with a distinguished reputation. Furthermore, while the Petitioner indicates that the Beneficiary’s concert was sold-out, it does not establish how the production garnered a distinguished reputation; the Petitioner did not demonstrate how the evidence reflects the distinguished reputation of the Beneficiary’s concert. For example, none of the submitted documentation discusses or covers the standing or stature of the event. Simply performing in concert, even at a sold-out event, does not automatically establish the distinguished nature of the engagement. Here, the record does not contain the required evidence of critical reviews, advertisements, publicity releases, publications contracts, or endorsements showing the distinguished reputation of the Beneficiary’s [] 2018 event.

The Petitioner also contends that the Beneficiary meets this criterion based on his role on the Armenian television series, []. Initially, the Petitioner provided a translation for a posting on aysor.am that appears to be from an interview of a screenwriter describing the show and a translation of a posting on bravo.am indicating the release of wedding photos for the show. In response to the Director’s RFE, the Petitioner submitted two postings from lurer.com and bravo.am regarding an interview of the general producer of the show. The Petitioner did not demonstrate, however, how these article postings qualify as critical reviews, advertisements, publicity releases, publications contracts, or endorsements, as required by this regulatory criterion. Similarly, the Petitioner references a recommendation letter from [] general manager of [] who indicated that the Beneficiary “was invited to perform in the TV series.” Again, the Petitioner did not show how this reference letter is tantamount to a critical review, advertisement, publicity release, publications contract, or endorsement.

Likewise, the Petitioner asserts that the Beneficiary’s music, which was featured on [] is posted on YouTube; the television series can be streamed on various portals, such as YouTube and merojax.me; and the show has been translated into Russian and posted on 1plus1tv.ru. The availability of the Beneficiary’s work, however, is not the issue for this criterion. Rather, the issue is whether the required regulatory documentation has been presented to demonstrate a beneficiary’s leading or starring services for productions or events with distinguished reputations. Here, the Petitioner did not establish how the availability of the series on YouTube, merojax.me, and 1plus1tv.ru commensurate with a critical review, advertisement, publicity release, publications contract, or endorsement, as required by this regulatory criterion.

In regard to the Beneficiary’s future services, the Petitioner cites to its letter in response to the Director’s request for evidence (RFE), indicating the Beneficiary will perform Armenian songs and music within the Armenian community in Southern California. Again, the Petitioner did not establish how its letter qualifies as a critical review, advertisement, publicity release, publications contract, or endorsement, as required by this regulatory criterion. Moreover, the Petitioner did not show that its productions or events have a distinguished reputation.

In this case, the Petitioner did not demonstrate that the Beneficiary has performed, and will perform, services as a lead or starring participant in productions or events having a distinguished reputation through the required regulatory documentation. Accordingly, the Petitioner did not establish the Beneficiary’s eligibility 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).

In order to meet this criterion, a petitioner must show that a beneficiary 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. *See* 8 C.F.R. § 212.2(o)(3)(iv)(B)(6). Although the Director determined that the Beneficiary satisfied this criterion, we will withdraw the Director's decision for this criterion, discussed below.

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 that the Beneficiary "will command a high salary relative to that of others working in the field." The Petitioner referenced its initial submission of a "Deal Memo" reflecting that the Petitioner would pay the Beneficiary \$15,000 per performance. In addition, the Petitioner offered screenshots from fldatacenter.com and bls.gov showing hourly and yearly wages for musicians and singers in the [redacted] California area earning between \$17 - \$64 per hour or \$36,000 - \$133,000 per year, depending on the level wage category.

At the outset, the Petitioner did not show how the Deal Memo qualifies as a contract or other reliable evidence, as required by this regulatory criterion. The Petitioner did not offer evidence demonstrating its ability to pay the Beneficiary \$15,000 per concert, including information supporting the terms, events, and venue contained in the document. Notwithstanding, according to the Deal Memo, the Petitioner will not be compensating the Beneficiary based on an hourly wage or yearly salary. Rather, the Beneficiary will compensate the Beneficiary based on performing services at concerts. Thus, in order to satisfy this criterion, the Petitioner must demonstrate that the Beneficiary will command substantial remuneration for services in relation to others in the field. However, the Petitioner's comparative salary information does not show figures for concert performances. Here, the Petitioner did not establish that the Beneficiary's payment of \$15,000 per concert will be a substantial remuneration for services in relation to other singers who are similarly compensated per concert performance.

Because the Petitioner did not establish that the Beneficiary has either commanded or will command a high salary or other substantial remuneration for services in relation to other singers, we withdraw the Director's favorable finding for this criterion.

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 (6). Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) 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 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).³

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

Accordingly, we reserve these issues.⁴ 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.

⁴ 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).