U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 23925002

Date: JAN. 04, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, an education counseling business, seeks to classify the Beneficiary, a school and career counselor, as a person of extraordinary ability. To do so, the Petitioner seeks 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 Vermont Service Center denied the petition, concluding that the Petitioner did not demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in education: either receipt of a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). The Director also determined that the Petitioner did not satisfy the advisory opinion requirement at 8 C.F.R. § 214.2(o)(5)(ii)(A). On appeal, the Petitioner submits additional documentation. It asserts that it satisfies the advisory opinion requirement, that the Beneficiary satisfies at least three of the eight regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii)(B), and requests that we consider comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C).

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 that 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 science, education, business, or athletics" as "a level of expertise indicating that the

person is one of the small percentage who have arisen to the very top of the field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C).

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 sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).[1]

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). The Petitioner asserted that the Beneficiary fulfilled seven criteria, but the Director determined that the Beneficiary did not meet any of them. The Petitioner contends on appeal that the Beneficiary satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*), (*6*), and (*8*), and requests that we consider comparable evidence.[2] After reviewing all the submitted evidence, the record does not reflect that the Beneficiary meets the requirements of at least three criteria.

> *Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field*. 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*).

In order to meet this criterion, the Petitioner must demonstrate that the Beneficiary has not only made original scientific, scholarly, or business-related contributions but those contributions have been of major significance.[3] For example, a petitioner may show that the beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or

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[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] While the Petitioner previously claimed the Beneficiary's eligibility for nationally or internally recognized awards, membership in associations, published material, and employment in a critical or essential capacity under 8 C.F.R § 214.2(o)(3)(iii)(B)(*1*), (*2*), (*3*), and (*7*), it does not continue to do so on appeal, nor does the record support a finding that she meets them. Accordingly, we will not further address these criteria in our decision.

[3] *See also* 2 *USCIS Policy Manual*, M.4(C)(2), https://www.uscis.gov/policymanual.

have otherwise risen to a level of major significance in the field. The Petitioner contends on appeal that previously submitted testimonial letters from [redacted], [redacted] and [redacted] demonstrate the Beneficiary's business-related contributions of major significance in the field.[4] The Director's decision concluded that the Petitioner did not submit any evidence under this criterion and did not discuss those letters.

In an undated letter, [redacted] the director of the Youth Career Connect (YCC) Program at the [redacted] Department of Education's Office of Postsecondary Readiness, states that she worked with the Beneficiary to plan and co-host many "K12" student events, including a talk at the Teen STEAM Youth Conference, and describes her as "one of the best multi-cultural cross-discipline educators" who possesses "insight of modern technology and media platform[s]." Although [redacted] praises the Beneficiary's contributions to the YCC Program her letter does not show how the Beneficiary's knowledge and expertise have significantly influenced the overall field in a major way.

[redacted] a business professor at [redacted] College of Business at University of [redacted] asserts that the Beneficiary's "outstanding experience and significant contributions and achievements in the field of school and career counseling have established [her as] one of the top educator[s] with international acclaim." He cites to her having "mentored hundreds of students to apply for the world's top MBA programs and fortune 500 company jobs after MBA," having been "a keynote speaker at [redacted] for MBA tour in 2018," and having published her research [redacted] at the 72nd [redacted] Communication Association Conference. The record does not contain, however, documentation from the Petitioner corroborating those claimed contributions. Nonetheless, the letters do not discuss, for instance, the significance of the Beneficiary's published work or conference presentations, if the field views them as authoritative, whether they have been extensively referenced or cited by others, or other evidence that they were of "major significance."[5]

[redacted], vice chairman of [redacted] provides that the Beneficiary was a mentor in helping students to prepare for a journalism career at [redacted]. He further asserts that her research articles provide "an important hypothesis" for media reform and are "perceptive and original." As stated, in order to meet this criterion, the Petitioner must demonstrate that the Beneficiary has not only made original scientific, scholarly, or business-related contributions but those contributions have been of major significance. Moreover, the above letters do not establish that the impact of the Beneficiary's student mentoring is consistent with contributions of major significance in the field. For the reasons discussed above, the Petitioner did not establish that the Beneficiary satisfies this criterion.

> *Evidence that the alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*).

[4] Although we discuss only the letters the Petitioner refers to on appeal, we have reviewed and considered each one.
[5] See 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2) (providing that submitted letters should specifically describe the beneficiary's contribution and its significance to the field).

If the petitioner is claiming to meet this criterion, then the burden is on the petitioner to provide appropriate evidence establishing that the beneficiary's compensation is high relative to others working in similar occupations in the field.[6] At initial filing, the Petitioner indicated in a summary of the terms its oral agreement with the Beneficiary and on Form I-129, Part 5 that it would pay her an annual salary of $60,000. The Petitioner also submitted annual wage data for "School and Career Counselors" showing they earned a median wage of $56,310 in May 2018. Within its response to the Director's request for evidence (RFE), the Petitioner provided a letter stating that "after working for our company for six months she will be interviewed for a promotion" and "she may be subjected to a promotion." The Director concluded that based on the evidence provided by the Petitioner, the Beneficiary will earn the average salary compared to other school and career counselors, and the evidence regarding "additional compensation appears to be conditional and speculative."

On appeal, the Petitioner does not contest the Director's specific findings for this criterion. Instead, the Petitioner offers a letter that states that the Beneficiary "was qualified and approved for a raise of annual salary to $72,000, effective as of January 1, 2020." However, the Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1). Moreover, we will not consider new eligibility claims or evidence in our adjudication of this appeal. *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 of any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). Accordingly, the Petitioner did not show that the Beneficiary meets this criterion.

B. Comparable Evidence

On appeal, the Petitioner requests for the first time that we consider the Beneficiary's two patent applications, pertaining to a "multi-media educational/training APP" and filed with the Chinese Intellectual Property Bureau, as comparable evidence of "the Beneficiary's extraordinary ability in the field of education, specifically in the field of education and career counseling . . . ." As stated, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides that "[i]f the criteria in paragraph (o)(3)(iii) 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."[7] For comparable evidence to be considered, the petitioner must explain why a particular evidentiary criterion listed in the regulations is not readily applicable to the beneficiary's occupation as well as why the submitted evidence is "comparable" to that criterion.[8] Here, the Petitioner did not assert or demonstrate that a particular regulatory criterion does not readily apply to the Beneficiary's occupation as a school and career counselor. Therefore, the Petitioner did not demonstrate that the two patent applications should be considered as comparable evidence "of the Beneficiary's extraordinary ability in the field of education" as claimed. Regardless, the patent applications were filed in September 2019, after the

[6] *See* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(2).
[7] Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary's occupation. However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary's occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion. *See* 2 *USCIS Policy Manual*, *supra*, at M.4(C)(3).
[8] *Id.*

filing of the petition. As stated, eligibility must be established at the initial filing of the petition. See 8 C.F.R. § 103.2(b)(1), and we will not consider new claims and new evidence for the first time on appeal. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533.

C. Consultation

The regulation at 8 C.F.R. § 214.2(o)(5)(ii)(A) requires documentation of consultation "with a peer group in the area of the alien's ability (which may include a labor organization), or a person or persons with expertise in the area of the alien's ability." Within its RFE response, the Petitioner presented a letter from [redacted] membership director of [redacted] raising no objection to the requested visa classification. She explains that her organization was founded "to recognize and promote creative excellence in advertising" and "is the premier association and an established peer group of advertising creatives and students of the industry." The record does not reflect that [redacted] is a peer group in the area of education, the Beneficiary's occupation. Accordingly, the letter is not a proper consultation from a qualifying peer group.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*5*) and (*8*) and the Petitioner has not submitted the required consultation. Although the Petitioner claims the Beneficiary's eligibility for one additional criterion on appeal, relating to her authorship of scholarly articles in the field at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*6*), we need not reach this ground because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim and is one of the small percentage who has arisen to the very top of the field. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iii).[9] Accordingly, we reserve these issues.[10] 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.

[9] *See also* 2 *USCIS Policy Manual*, *supra*, at M.4(B).

[10] *See INS v. Bagamasbad*, 429 U.S. 24, 25 (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).