U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 24810333

Date: JAN. 24, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, a basketball player, as an O-1 nonimmigrant, a visa 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 on the following three grounds: 1) the Petitioner did not provide a sufficient contract, 2) the Petitioner did not demonstrate the Beneficiary's events or activities, and 3) the Petitioner did not show that the Beneficiary received a major, internationally recognized award, or at least three of eight 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.

As relevant here, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(B) requires any written contracts between the petitioner and the beneficiary or, if there are not any, a summary of the terms of the oral agreement. In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C) requires an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities.

As it relates to a beneficiary, 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).

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).

On appeal, the Petitioner submits a brief addressing only one of the three grounds for the Director's denial. Specifically, the Petitioner contends that the Beneficiary meets at least three of the categories of evidence. However, the Petitioner does not dispute or contest the Director's decision regarding the contractual requirement and the nature of the Beneficiary's events or activities.[1]

Accordingly, we will not address these two uncontested grounds on appeal, and we deem them to be waived. If the affected party does not address issues raised by the director, and those issues are dispositive of the case, the appeal will be dismissed based on those waived issues. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009). Moreover, since the identified bases for denial are dispositive of the Petitioner's appeal, we decline to reach and hereby reserve the Petitioner's appellate arguments regarding the Beneficiary's satisfaction of at least three categories of evidence. *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).

The Petitioner did not demonstrate that he satisfied the statutory and regulatory requirements to establish the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary. 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.

[1] Although the Petitioner provides additional documentation on appeal, he did not explain if, or how, the evidence relates or addresses the Director's findings regarding the contractual and event requirements. Regardless, we will not consider new eligibility claims or evidence for the first time on 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). Here, the Director afforded the Petitioner an opportunity to present additional evidence through the issuance of a request for evidence.