



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

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

In Re: 25937392

Date: MAR. 15, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a recording and production services business, seeks to classify the Beneficiary as an audio, mixing, and recording engineer 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 Vermont 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 one criterion, significant recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). On appeal, the Petitioner contends the Beneficiary satisfies two additional criteria. 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 regulatory criterion requires a 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, a petitioner must submit documentation of critical reviews, advertisements, publicity releases, publications contracts, or endorsements. *Id.*

The Petitioner indicates that “the Service acknowledges that [the Beneficiary] has performed as a lead or starring participant in productions or events. However, it incorrectly determined that the previously submitted evidence was insufficient to show that those productions were ones with distinguished reputations.” Moreover, the Petitioner makes specific arguments relating to prior productions with [redacted] and the Petitioner and future productions with the Petitioner. For the reasons discussed below, the Petitioner’s evidence does not comply with the regulatory documentation establishing that the Beneficiary has performed, and will perform services, as a leading or starring participant in productions or events with distinguished reputations.

At the outset, the Petitioner makes additional eligibility claims and provides documentation for the first time on appeal. However, we will not consider these claims and evidence as they were 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 adjudicate the appeal based on the record of proceeding” before the Director); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).<sup>1</sup>

As it relates to [REDACTED] the Petitioner initially submitted a letter from [REDACTED] and copies of two compact disc covers. In response to the Director’s RFE, the Petitioner presented a letter from the Beneficiary claiming his roles performed for [REDACTED] an unidentified screenshot indicating [REDACTED] intends to share schedules, photos, and videos; a screenshot of an article from [jornalnopalco.com.br](http://jornalnopalco.com.br) reporting [REDACTED] in which [REDACTED] is a member, performed at [REDACTED] and an unidentified screenshot of an article reporting [REDACTED] will be recording a program commemorating the 80th anniversary of [REDACTED] in which [REDACTED] will be one of the performers.

Here, the Petitioner did not demonstrate how the letters from [REDACTED] and the Beneficiary, copies of compact disc covers, and article screenshots qualify as “critical reviews, advertisements, publicity releases, publications contracts, or endorsements.” To meet this criterion, the petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, contracts, or endorsements. *See generally 2 USCIS Policy Manual*, M.4(D)(2)(appendix), <https://www.uscis.gov/policymanual>. Advertisements, publicity releases, and endorsements are promotional materials. *Id.* Endorsements are public facing and serve a marketing purpose. *Id.* This exhaustive list does not include unpublished testimonial or recommendation letters. *Id.* Even if we considered the screenshots as eligible evidence, none of them mention the Beneficiary, relate to the Beneficiary’s productions or events with [REDACTED] and indicate distinguished reputations of [REDACTED] productions or events in which the Beneficiary collaborated.

Similarly, regarding the Beneficiary’s past services with the Petitioner, the Petitioner initially submitted a copy of the Beneficiary’s master of fine arts degree from [REDACTED] State University; a claimed list of performers and musicians with whom the Beneficiary has worked; copies of two album covers; and several photographs. In response to the Director’s RFE, the Petitioner provided letters from artists, such as [REDACTED] indicating their work on songs with the Beneficiary. Again, the Petitioner did not establish how the documentation qualifies as “critical reviews, advertisements, publicity releases, publications contracts, or endorsements” as required by this regulatory criterion. Moreover, while the Petitioner offered screenshots relating to the artists, the evidence does not mention the specific productions or events in which the Beneficiary performed services.

Likewise, the petitioner references a letter from [REDACTED] who recounted the Beneficiary’s work him for his latest album. Once again, the Petitioner did not show how the letter qualifies as one of the types of evidence enumerated under 8 C.F.R. § 214.2(o)(3)(iv)(B)(I). Furthermore, although the record contains copies of album covers, they do not indicate that the Petitioner performed services as a leading or starring participant, nor do they reflect the distinguished reputation of the productions or events.

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<sup>1</sup> The Petitioner had the opportunity to make eligibility claims and submit documentation at both the initial filing of the petition and in response to the Director’s request for evidence (RFE).

In regard to the Beneficiary's future services, the Petitioner initially submitted agreements with the Beneficiary indicating he would serve as its recording engineer, mixing engineer, live sound engineer, and audio engineering instructor for different companies, would serve as a recording and mixing engineer to produce recordings for artists [REDACTED] and would work during live music events for [REDACTED]. In addition, the accompanying itineraries indicated: scheduled musical projects with various artists for the Petitioner; various wedding, charity, and other events for [REDACTED] live performances at [REDACTED] in [REDACTED] Tennessee for [REDACTED] Professional Services; and an audio adjunct instructor position for [REDACTED] Institute.

In response to the Director's RFE, the Petitioner provided an updated agreement with the Beneficiary reflecting he will work as a recording engineer, mixing engineer, and live sound engineer for different companies and submitted studio photographs. The Petitioner also offered a summary of the terms of an oral agreement with [REDACTED] Professional Services reflecting the Beneficiary would be employed as a live sound engineer and would work during live performances at [REDACTED]. In addition, the Petitioner submitted an article from The Tennessee Tribune reporting on mayoral candidates discussing issues at the [REDACTED].

Again, this regulatory criterion requires evidence of the Beneficiary's leading or starring participation in productions or events rather than leading, starring, or critical role for organizations or establishments. *Compare* 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).<sup>2</sup> In evaluating the totality of the contractual evidence indicated above, the Beneficiary would perform services in a lead for the recording and mixing sessions for the various artists, including the live music events and performances. However, the Petitioner did not show the distinguished reputations of the upcoming events. The Petitioner did not provide any of the required regulatory documentation establishing the distinguished nature of the productions or events. 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. *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D)(2)(appendix).<sup>3</sup> As it relates to the [REDACTED] event, the article mentioned above discusses the political event and indicates the venue rather than the actual music event, let alone showing the musical event's 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.

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<sup>2</sup> *See generally* 2 *USCIS Policy Manual*, M.4(D)(2)(appendix) (providing that this criterion differs from the third criterion, which is specific to organizations and establishments).

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

### III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criterion relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). 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 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).<sup>4</sup> Accordingly, we reserve these issues.<sup>5</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>4</sup> *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D).

<sup>5</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).