



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

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

In Re: 28840908

Date: NOV. 16, 2023

Appeal of California Service Center Decision

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

The Petitioner seeks to classify the Beneficiary, a master automotive technician and test driver, 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 California Service Center denied the petition, concluding that although the Petitioner satisfied the initial evidentiary requirements for this classification, it did not establish, as required, that the Beneficiary has sustained national or international acclaim and is among that small percentage at the very top of his field of endeavor. The matter is now before us on appeal. 8 C.F.R. § 103.3. On appeal, the Petitioner asserts that the Director did not properly weigh the entirety of the record in her totality determination.

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).

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 claimed or established that the Beneficiary received a major, internationally recognized award, it must satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The Petitioner asserted that the Beneficiary fulfilled six criteria. The Director determined that the Petitioner met three of the claimed evidentiary criteria, relating to nationally or internally recognized awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), published material at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), and judging at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). The Petitioner's documentary evidence indicates that the Beneficiary placed first in the 2017 Ecuadorian [REDACTED] [REDACTED] Tour of the Republic of Ecuador in the [REDACTED] and third in the 2008 [REDACTED] Tour of the Republic of Ecuador in the [REDACTED].² While we agree with the Director's determination that the record therefore demonstrates the Beneficiary's eligibility under the awards criterion, we do not agree with the Director's findings relating to the published material and judging criteria, discussed later.³ Upon review of all the evidence, we conclude that the record does not support a finding that the Petitioner meets the plain language requirements of at least three criteria.

¹ *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, "truth is to be determined not by the quantity of evidence alone but by its quality."

² The evidence indicates that the Tour of the Republic of Ecuador motorsport event is a seven-day road race that vertically crosses the country and consists of seven categories: N4 turbocharged, +2000cc; T4 1650-2000cc; T3 1401-1650cc; T2 1251-1400cc; T1 0-1250cc; BUGGYS; and TT All-Terrain.

³ On appeal, the Petitioner does not dispute the Director's finding that it had not established the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) and (5), relating to membership in associations and original contributions. Additionally, the Petitioner did not claim the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) or (7) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these four 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 plaintiff's claims abandoned as he failed to raise them on appeal to the AAO).

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the material.⁴ In support of this criterion, the Petitioner submitted four foreign-language articles dated 2022 and published on Vistazo.com, Eltelegrafo.com, Quenoticias.com, and in the print publication *Carburando*. The articles mention his degree in automotive engineering and experience as the owner of a “conventional and competition car workshop” in Ecuador. They also mention his work building race cars with his father, teaching automotive electronics, developing a tractor for harvesting African palm, and modifying a Honda Civic SI 2007 to meet the specifications of international rally competition rules.

In this case, the documentation provided does not meet all the specific requirements of the criterion. The articles from Vistazo.com, Eltelegrafo.com, and *Carburando* do not include the required authors of the material. As those materials do not include an author, we need not make a determination regarding their status as professional or major trade publications or other major media.⁵ In addition, although the remaining article from Quenoticias.com includes the required author, the Petitioner did not present sufficient evidence showing that it constitutes a professional or major trade publication or major medium. As evidence of a major medium, the Petitioner offered screenshots from Similar Web regarding rankings and traffic overview for Quenoticias.com. For example, Similar Web reflects that the website has a global ranking of 51,942, a country ranking of 520, and total visits of 1.3M. The Petitioner, however, did not demonstrate the significance of the Internet rankings and viewing statistics or show how such information reflects status as a major medium. Specifically, it did not establish that the global or country rankings indicate major international or national media.

For these reasons, the Petitioner did not show that the Beneficiary satisfies this criterion. Accordingly, we withdraw the decision of the Director for this criterion.

Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

As previously discussed, the Director found that the Petitioner satisfied this criterion. To satisfy this criterion, the evidence must show that the Beneficiary has participated, either individually or as part of a panel, as a judge of the work of others in the same or an allied field of specialization.⁶ The record reflects that the Petitioner claimed the Beneficiary's eligibility for this criterion based on his having been “invited to be the director of graduation projects in the field of mechanical engineering” at

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

⁵ See 2 USCIS Policy Manual, *supra*, at M.4(C)(2) (reflecting that in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media)).

⁶ See also 2 USCIS Policy Manual, *supra*, at M.4(C)(2).

[redacted] The Petitioner's initial evidence included a letter dated 2022 from J-C-R-, coordinator of automotive engineering at [redacted] who states that the Beneficiary taught electronic injection, aerodynamics, and engine preparation at the College of Automotive Engineering at [redacted] between 2008 and 2010. He also indicates that the Beneficiary "was invited to direct several graduation projects which are required for students to obtain the engineering degree." He further provides that "only a very outstanding group of professors is honored with the direction of the graduation projects of the students, overseeing the evaluation and direction of undergraduate projects as a requirement for obtaining the university degree."

In order to meet this criterion, the Petitioner must show that the Beneficiary has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization.⁷ Here, the above letter does not demonstrate that the Beneficiary actually completed the judging of graduation projects of automotive engineering students. Instead, as indicated above, the letter reflects that the Beneficiary was invited to direct several graduation projects, which would involve "overseeing the evaluation and direction of undergraduate projects."

Moreover, the Petitioner did not present any supporting evidence establishing that the Beneficiary, in fact, performed the evaluation of graduation projects. Further, the Petitioner did not submit corroborating documentation showing how many or which graduation projects the Beneficiary evaluated between 2008 and 2010, and the nature of his participation.⁸ Finally, the prospective graduation candidates were undergraduate students who were not yet employed in the field of automotive engineering or an allied field. Without further information or corroborating documentation, the Petitioner did not demonstrate that the letter is sufficient to establish that the Beneficiary judged the work of others consistent with this regulatory criterion. Accordingly, we withdraw the decision of the Director for this criterion.

III. CONCLUSION

The Petitioner established that the Beneficiary met the awards criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), but it did not demonstrate that he meets the criteria regarding published material at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) and judging at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). Although the Petitioner claims the Beneficiary's eligibility for one additional criterion on appeal, relating to high salary at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8), we need not reach this ground because the Petitioner cannot fulfill the initial evidentiary requirement of at least 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

⁷ *See also* 2 USCIS Policy Manual, *supra*, at M.4(C)(2)

⁸ *Id.* (providing an example of peer reviewing for a scholarly journal, as evidenced by a request from the journal to the beneficiary to do the review, accompanied by proof that the beneficiary actually completed the review).

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

¹⁰ *See INS v. Bagambashad*, 429 U.S. 24, 25-6 (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).

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.