U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28511671

Date: OCT. 2, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, an agent, seeks to classify the Beneficiary, an animal science researcher, as an individual of extraordinary ability. This O-1 nonimmigrant visa classification is 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 initially denied the petition on the following three grounds: 1) the Petitioner did not meet the conditions as an agent, 2) the Petitioner did not satisfy the advisory opinion requirement, and 3) the Petitioner did not show the Beneficiary received a major a major, internationally recognized award or at least three of eight possible forms of documentation. On motion, the Director determined the Petitioner met the advisory opinion requirement but did not overcome the other two grounds. 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, the regulation at 8 C.F.R. § 214.2(o)(2)(i) provides that a petition may only be filed by a U.S. employer, a U.S. agent, or a foreign employer through a U.S. agent. In addition, a U.S. agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. 8 C.F.R. § 214.2(o)(2)(iv)(E).

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).

II. ANALYSIS

At initial filing, the Petitioner submitted an "AGENT – RESEARCHER IN ANIMAL SCIENCE REPRESENTATION AGREEMENT," signed by both the Petitioner and Beneficiary. Specific terms include:

- The Beneficiary "agrees to retain [the Petitioner] . . . in connection with the matter of representation in contracts and negotiations thereof as a RESEARCHER."
- The Petitioner "has agreed to negotiate contracts and agreements on [the Beneficiary's] behalf for the rendition of research services."
- The Petitioner "agrees to use all reasonable efforts to procure and negotiate employment for [the Beneficiary] as a Researcher in Animal Products."

In addition, the Petitioner provided an itinerary listing 19 anticipated events with organizations across the United States from September 2021 to April 2023. The Director issued a request for evidence stating, in part, that the Petitioner "did not submit documentation to demonstrate these organizations are aware of the agreement for your representation." In response, the Petitioner claimed that its submission of the agent agreement complied with the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(1). Further, the Petitioner asserted that the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C) relating to itinerary for events and activities "does not require evidence to document an established relationship with these entities."

In denying the petition, the Director found that "[b]ased on the verbiage in the contract, it appears [the Petitioner is] acting as an agent representing both the [Beneficiary] and the [Beneficiary's] employers," and "[i]n order to comply with the regulations, contractual documentation between the beneficiary and other employers is required." On motion, the Petitioner argued that "[i]n this agreement, the parties stipulate that the [Petitioner] will negotiate contracts and agreements on [the Beneficiary's] behalf for the research activities," and "[n]owhere in the contract it is shown or implied that the Petitioner will represent both the employer and the employee." In response, the Director stated:

> [The Petitioner's] statements indicate that "the [Petitioner] will negotiate contracts and agreements on Researcher's behalf for the research services." As such, [the Petitioner's] statements indicate that the role of the petitioner, U.S. Agent, is to represent the beneficiary and to arrange short-term employment on their behalf with numerous employers who wish to employ the beneficiary to render services as their employee. As such, the petitioner is the representative of both the employee and employer in contract negotiations for the beneficiary's services (employee) negotiating on the beneficiary's behalf to secure employment on agreed terms between both the employee and the employer. Therefore, [the Petitioner is] subject to requirements under 8 C.F.R. 214.2(o)(2)(iv)(E)(2) which states that a contract between the employers and the beneficiary is required.

On appeal, the Petitioner maintains that "[a] U.S. agent may petition for self-employed workers or for those who have many employers," and the agent agreement does not indicate the Petitioner would represent both the Beneficiary and the Beneficiary's employers. At the outset, we agree with the Petitioner that the agent agreement does not show or demonstrate that the Petitioner will represent both the Beneficiary and the Beneficiary's employers. However, the record does not establish that the Petitioner qualifies as a U.S. agent, as defined in the regulations. A U.S. agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. 8 C.F.R. 214.2(o)(2)(iv)(E).[1] A U.S. agent may be: 1) the actual employer of the beneficiary, 2) the representative of both the employer and the beneficiary, or 3) a person or entity authorized by the employer to act for, or in place of, the employer as its agent. *Id.*

Here, the Petitioner did not establish the actual employment of the Beneficiary. The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(1) requires "[a]n agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wages offered and the other terms and conditions of employment." Besides the agent agreement indicating the Beneficiary will pay the Petitioner "a one-time flat fee of [$1,000]," the agreement does not specify the wages offered to the Beneficiary by the Petitioner.[2] There is no indication the Petitioner will compensate the Beneficiary for his services at the events or activities listed on the itinerary, let alone evidence from any of the organizations of their intent or desire to render the Beneficiary's services. In fact, the Petitioner did not demonstrate how the agreement shows the Petitioner performing the function of an employer under the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(1).

Moreover, by the Petitioner's own admission, the Petitioner does not serve as an agent for both the Beneficiary and the Beneficiary's employers under 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). In addition, the record does not contain any regulatory required contracts between the Beneficiary and the employers. Further, the Petitioner did not show that he is in business as an agent and is authorized to act as an agent for the other employers for purposes of filing the petition.[3]

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

[2] The Petitioner indicated in Part 5 of Form I-129, Petition for a Nonimmigrant Worker, the Beneficiary will earn $75,000 per year. However, the record does not explain who, if any, will compensate the Beneficiary for these wages.

[3] *See* 2 *USCIS Policy Manual*, *supra*, at M.3(C).

For the reasons discussed above, the Petitioner did not establish the regulatory requirements as an agent under 8 C.F.R. § 214.2(o)(2)(iv)(E).[4]

III. CONCLUSION

The Petitioner did not demonstrate the conditions as an agent. Consequently, the Petitioner did not establish eligibility to act as an agent in order to seek the Beneficiary's O-1 visa classification as an individual of extraordinary ability.[5] 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] Although not applicable in this case, we note the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E)(3) relates to foreign employers who authorize U.S. agents to act on their behalf.

[5] We decline to reach and hereby reserve the Petitioner's other appellate arguments regarding the sufficiency of the evidentiary criteria applicable to individuals of extraordinary ability. *See INS v. Bagamasbad*, 429 U.S. 24, 25 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); s*ee also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where applicants do not otherwise meet their burden of proof).