U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 28694430

Date: OCT. 18, 2023

Appeal of California Service Center Decision

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

The Petitioner, an entertainment group, seeks to classify the Beneficiary as a singer 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 California Service Center denied the petition, determining the improper filing of O-2 Beneficiaries with the O-1 Beneficiary. In addition, the Director concluded that the Petitioner did not establish the O-1 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

A. O-2 Beneficiaries

The regulation at 8 C.F.R. § 214.2(o)(2) provides that "O-2 aliens must be filed for on a separate petition from the O-1 alien."[1] However, at initial filing, the Petitioner filed for the O-1 Beneficiary and five accompanying O-2 Beneficiaries on the same petition. In response to the Director's request for evidence (RFE), the Petitioner submitted a copy of Form I-129 for the five accompanying individuals and stated:

> . . . If we must file another petition on the group's behalf, it will be extremely costly, cause significant delays, and ultimately destroy the event. We would have chosen a P3 visa if we had known in advance that we would need to submit two petitions, each of which is costly. USCIS makes no note of this requirement on its website and does not have a separate form for the O-2 petitioners.
>
> We would be pleased if they are all considered for the P3 instead in order to avoid loss to the petitioner. Time is of the essence for this matter so we will also be filing a second petition as USCIS has requested. We are happy with any outcome if they are accepted for the P3 or O2 it is perfectly okay as long as they perform.

The Director determined the presented copy did not show the Petitioner actually filed a separate petition for the five accompanying individuals.[2] Furthermore, the Director denied the Petitioner's request to consider the accompanying individuals for P-3 classification due to a material change of the original benefit request.[3]

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[1] *See also generally* 2 *USCIS Policy Manual*, M.5(A), https://www.uscis.gov.policymanual (stating that although multiple beneficiaries may be included on a single O-2 Petition for a Nonimmigrant Worker (Form I-129), they cannot be included on the O-1 beneficiary's petition); Instructions for Form I-129, https://www.uscis.gov/i-129.

[2] USCIS electronic records do not reflect that the Petitioner filed a separate petition for the accompanying individuals, including the payment of the required fee, nor did the Petitioner present a receipt for Form I-129, evidencing proper filing of the petition for the O-2 Beneficiaries.

[3] The Director also indicated that the Petitioner did not submit any of the required evidence to establish the individuals' eligibility for P-3 nonimmigrant classification.

On appeal, the Petitioner contends:

> In our case, the band was to be performing at the same period of time and at the events on stage with [the Beneficiary]. The service is the same, and they have received the same training. They have done this before and have been approved more than once. USCIS could have offered the group a P3 visa instead and they would have accepted that. Evidence for a P3 visa is not much different from evidence for an O-1B. USCIS had more then [sic] enough evidence to award the beneficiaries a P3 visa.

We adopt and affirm the Director's decision for this issue. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Dir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted the issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight circuit courts in holding that appellate adjudicators may adopt and affirm the decision below as along as they give "individualized consideration" to the case). Here, O-2 beneficiaries must be filed on a separate petition from the O-1 beneficiary. *See* 8 C.F.R. § 214.2(o)(2). Moreover, the Petitioner's request to adjudicate nonimmigrant classifications from O-2s to P-3s results in a material change to the petition. A petitioner may not make material changes to a petition that has already been filed in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izzumi*, 22 I&N Dec. 169, 175 (Assoc. Comm'r 1998). Notwithstanding, the record does not show that the Petitioner properly filed a petition, with fee, for the accompanying Beneficiaries. The burden remains on the Petitioner to establish eligibility for the benefit. 8 C.F.R. § 103.2(b)(1); *Chawathe*, 25 I&N at 375-76. Further, P-3 classification requires "a support relationship with a P-3 entertainer or P-3 entertainment group." 8 C.F.R. § 214.2(p)(6)(iii)(A). In this case, the Petitioner seeks to classify the Beneficiary as an O-1B rather than as a P-3. Thus, the accompanying Beneficiaries cannot be considered for P-3 classification.

B. O-1B Extraordinary Ability

1. Nomination or Receipt of Significant National or International Award or Prize

The Director determined the Petitioner did not establish 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). Specifically, the Director acknowledged the Petitioner's initial submission of "numerous volunteer and recognition awards" and stated:

> In response to the USCIS's RFE, you submitted a statement in which you say the [redacted] Award is an internationally recognized award easily compared to a Grammy or an Oscar. You cite further evidence in Exhibit A. Exhibit A contains a Wikipedia Printout about [redacted] Company. It makes no mention of the [redacted] Award and provides no evidence that the award is comparable to a Grammy or Oscar Award. Further, USCIS does not consider documents from Wikipedia to be reliable evidence because individuals may contribute content to the site, without demonstrating their

expertise or qualification. Consequently, USCIS will be unable to determine the relevance of Wikipedia printouts as they relate to the O-1B criteria.

On appeal, the Petitioner lists the Beneficiary's awards and briefly claims that "[m]ore than half of these are internationally recognized" and "[l]ike the [redacted] Best Song Award, it was the most prestigious award in the Middle East at the time." The Petitioner does not elaborate on the "[m]ore than half" of the awards, nor does the Petitioner articulate which award, if any, it compares to the [redacted] Best Song Award. Moreover, the Petitioner does not point to evidence or explain how the [redacted] Best Song Award qualifies as "the most prestigious award in the Middle East" or how any of the other awards are "internationally recognized" or are tantamount to significant national or international awards, such as the Academy Award, consistent with the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A).

2. At Least Three Forms of Documentation

The Director also concluded the Petitioner did not demonstrate the Beneficiary's eligibility for any of the categories of evidence under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*)-(*6*).[4] On appeal, the Petitioner claims:

> . . . The National News wrote an article on [the Beneficiary] which we included in the original petition. The National News is a member of the Independent Press Standards Organization (which regulates the UK's magazine and newspaper industry). They abide by the Editors' Code of Practice and are committed to upholding the highest standards of journalism. We included 10 of his Album covers, and pictures of his music video "[redacted]" which has reached 15 million views. We have also included the music video clip [redacted] which has reached 30 million views on YouTube. We have proved that [the Beneficiary] had sustained his success by showing he has monthly listeners on Spotify of 159.9K. [The Beneficiary's] most recent event was last month in Canada and was a successful event, which shows he is maintaining his wide fame and success.

The Petitioner does not specifically identify the contested criteria, if any, from the Director's decision.[5] Instead, it appears the Petitioner's arguments about *The National News* and views and listeners relate to two categories, 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) and (*4*), respectively.[6] If the Petitioner intended to

[4] The Director determined the Petitioner submitted evidence relating to four criteria: 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*), (*2*), (*4*), and (*5*).

[5] The Petitioner offers additional documentation on appeal. Again, the Petitioner does not explain how the evidence relates to a particular criterion, if any. Regardless, because the Petitioner was put on notice and given a reasonable opportunity to provide this evidence we will not consider it for the first time on appeal. *See* 8 C.F.R. § 103.2(b)(11) (requiring all requested evidence be submitted together at one time); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (declining to consider new evidence submitted on appeal because "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial").

[6] The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*) requires "[e]vidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications." In addition, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*) requires "[e]vidence that the alien has a record of major commercial or critically acclaimed successes, as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion pictures or

contest other criteria from the Director's decision, it did not identify the criteria and explain how the Director erred. Further, 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). The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B) requires at least three forms of documentation. Because the Petitioner does not identify or claim the Beneficiary's eligibility for at least three categories of evidence on appeal, we need not make a determination on the apparent arguments relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)*(2)* and *(4)*. *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); *see also Matter of L-A-C*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternate issues on appeal where applicants do not otherwise meet their burden of proof).

III. CONCLUSION

The Petitioner did not properly file for the accompanying O-2 Beneficiaries. In addition, because the Petitioner did not establish the O-1 Beneficiary's satisfaction of a nomination for or receipt of a significant national or international award or at least three of six possible forms of documentation, we 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, renowned, leading, or well-known in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).[7] Accordingly, we reserve this issue.[8] 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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television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications."

[7] *See generally* 2 *USCIS Policy Manual*, *supra*, at M.4(D).

[8] *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 526 n.7.