



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

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

In Re: 28491366

Date: OCT. 26, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a beauty salon, seeks to classify the Beneficiary as a hairstylist 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 claim 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 an additional four.¹ 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 criterion requires evidence of the beneficiary's past lead or starring participation in distinguished productions or events, and the beneficiary's prospective lead or starring participation in distinguished productions or events.² Regarding the Beneficiary's past services, the Director determined the Petitioner established the Beneficiary's eligibility for this portion of the criterion.

As it relates to the Beneficiary's prospective services, the Petitioner argues:

. . . [W]e provided extensive explanations and clear documentary evidence showing that the [P]etitioner has [a] distinguished reputation; and further explain that given the high repute of [the Petitioner], any event hosted by such a prestigious high-end salon would be one of distinguished reputation, for the prestige any events are fueled by the host and its reputation.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) specifically requires the person's services as a leading or starring participant in "productions or events." This criterion differs from the third criterion,

¹ The Petitioner also submits new evidence. However, 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").

² *See generally* 2 *USCIS Policy Manual*, M.4(D)(2)(appendix), <https://www.uscis.gov/policymanual>.

which is specific to organizations and establishments.³ Although the Petitioner repeatedly asserts and emphasizes its distinguished reputation, the issue here is not the reputation of the Petitioner but rather the distinguished reputation of the productions or events. Furthermore, the Petitioner claims that “[g]iven the high repute of the petitioner, the petitioner will continue to participate or host such events in the future.” Again, the reputation of the Petitioner is not the issue here but the reputation of the productions or events. Moreover, we are not persuaded that a distinguished reputation of an organization or establishment automatically establishes the distinguished reputation of its productions or events.⁴

In addition, at initial filing, the Petitioner did not identify any prospective productions or events the Beneficiary would perform services as a lead or starring participant. Instead, the Petitioner exclusively discussed and submitted evidence regarding the Beneficiary’s prior services for productions or events. In response to the Director’s request for evidence (RFE), the Petitioner made the same arguments discussed above relating to the reputation of the Petitioner, which we already addressed above. Furthermore, the Petitioner argued and submitted evidence regarding the request of the Beneficiary’s services for two fashion shows. However, the requests occurred after the filing of the petition. The Petitioner must establish all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. *See* 8 C.F.R. § 103.2(b)(1).

Although the Petitioner claims it “will continue to host such events in the future,” the record does not reflect the Petitioner specifically identified an event or production and established how the Beneficiary would perform services as a lead or starring participant in the future. As such, the Petitioner did not establish the Beneficiary meets all requirements for this criterion.

Evidence that the beneficiary has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications.
8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

To meet this criterion, the petitioner must provide evidence that demonstrates the beneficiary is recognized for achievements nationally or internationally, in the form of critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications, which may include online publications or transcripts of radio or video coverage.⁵ The Petitioner contends it submitted two articles published in Uluslararası Haber Ajansı (UHA) that qualify for this criterion. In addition, in response to the Director’s RFE, the Petitioner submitted two additional articles from different websites; however, the Director determined they were published after the initial filing of the petition. On appeal, the Petitioner requests that we consider them since the interviews for the articles were “scheduled well in advance of the actual publication date.” The Petitioner did not provide any evidence to support its assertions regarding the scheduling of the interviews. Regardless, the articles were published after the initial filing of the petition and will not be considered on appeal. *See* 8 C.F.R. § 103.2(b)(1).

³ *See generally* 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

⁴ For example, a distinguished motion picture company could produce a movie that commercially and critically “bombs” at the box office.

⁵ *See generally* 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

In determining whether the submitted evidence demonstrates the beneficiary has achieved national or international recognition for achievements, officers consider both the content of the published material and the level of recognition enjoyed by the publication in which it appears.⁶ For example, favorable coverage or publication of the beneficiary's work in major media, as demonstrated by high relative circulation, readership, or viewership figures, could establish national or international recognition of the beneficiary's achievements.⁷ The record reflects the Petitioner provided screenshots of two articles posted on UHA's website, uhahaberjansi.com. Both articles reflect interviews with the Beneficiary relating to donating hair for cancer patients and women and hair in the pandemic, respectively. However, the Petitioner did not show how two articles interviewing the Beneficiary about various topics, but are not about the Beneficiary or discusses his achievements, show evidence of achieving national or international recognition for achievements.

Furthermore, the Petitioner did not establish that uhahaberjansi.com is a major publication. Although the Petitioner made claims in its cover letter at the initial filing of the petition about UHA, the Petitioner did not submit supporting evidence before the Director to corroborate its claims. Moreover, the assertions relate to UHA rather than uhahaberjansi.com, to show the website is a major publication. The Petitioner, for instance, did not submit circulation, readership, or viewership figures demonstrating the standings of the website as major online publication.⁸

Accordingly, the Petitioner did not establish the Beneficiary satisfies this criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

This criterion requires evidence of: the beneficiary's current or past lead, starring, or critical role for a distinguished organization or establishment, including a distinguished division or department of such an entity; and the beneficiary's prospective lead, starring, or critical role for a distinguished organization or establishment, including a distinguished division or department of such an entity.⁹ This criterion differs from the first criterion, which is specific to productions or events.¹⁰ The Director's decision indicated the Petitioner demonstrated the Beneficiary's prior performance for organizations or establishments with distinguished reputations.

Evidence may demonstrate a lead role by establishing that the person has a principal role in the organization or establishment.¹¹ A starring role means a position of great prominence relative to others in the organization.¹² To show a critical role, the evidence should establish that the beneficiary has contributed or will contribute in a way that is of significant importance to the organization or

⁶ See generally 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

⁷ *Id.*

⁸ *Id.*

⁹ See generally 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

¹⁰ *Id.*

¹¹ See generally 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

¹² *Id.*

establishment's activities.¹³ Officers consider factors such as whether the beneficiary's performance in the role has been or will be integral or important to the organization or establishment's goals or activities, especially in relation to others in similar positions within the organization.¹⁴

In regard to the Beneficiary's prospective role, the Petitioner claimed at initial filing:

. . . [The Beneficiary] will continue to serve in a leading and critical role and will demonstrate his extraordinary creativity and success as a Hair Stylist through his prospective employment with the petitioner, a top-rated and distinguished salon. [The Beneficiary] will be joining [the Petitioner] as a Hair Stylist with the important role of styling cutting-edge, fun, and highly artistic hairstyles that will complement our client's attributes. He will also bring his expertise in creative and concept styling to give the petitioner an extra edge in this competitive industry.

As evidence, the Petitioner submitted an "Employment Agreement" between the Petitioner and the Beneficiary and screenshots from the Petitioner's website and Instagram account and screenshots from yelp.com. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) requires evidence in the form of "articles in newspapers, trade journals, publications, or testimonials." Here, the Petitioner did not demonstrate how the employment agreement and its website screenshots meet any of the required regulatory documentation. Moreover, while the Instagram and yelp.com screenshots contain clients' reviews of the salon, the Petitioner did not establish how the documentation shows that the Beneficiary will perform in a lead, starring, or critical role.

In response to the Director's RFE, the Petitioner provided additional screenshots from yelp.com, ranking the salon second in the [redacted] New Jersey area by clients and screenshots of demographics from the U.S. Census Bureau for [redacted] New Jersey. Again, none of the evidence mentions the Beneficiary, and the Petitioner did not demonstrate how the evidence indicates the Beneficiary will perform in a lead, starring, or critical role.

The Petitioner also referenced a previously submitted letter from H-K- who stated:

. . . [The Beneficiary] is superbly qualified to fulfill such a highly demanding position, which requires extraordinary talent and experience in providing outstanding professional hair styling work and technique. His reputation is based on his demonstrated admirable and distinctive hair styling skills and ability to produce exceptional results. Clients in New Jersey are extremely demanding and will accept nothing less than perfection. We are confident that [the Beneficiary] will live up to the task and perform superbly and will generate a significant amount of business for [the Petitioner].

Although the letter praises the Beneficiary for his skills and opines of his future success at the salon, the letter does not describe how the Beneficiary will perform in a lead, starring, or critical role for the Petitioner. The letter, for example, does not explain how the Beneficiary's role as a hair stylist would

¹³ *Id.*

¹⁴ *Id.*

differentiate or distinguish from the other hair stylists at the salon. Detailed letters from persons with personal knowledge of the significance of the beneficiary's role can be particularly helpful in addressing this criterion.¹⁵ Letters and testimonials should provide as much detail as possible about the beneficiary's role and the reputation of the organization or establishment and give the credentials of the author, including the basis of the author's knowledge of the beneficiary's role.¹⁶ Without specific, detailed information explaining how the Beneficiary will perform in a lead, starring, or critical role, the Petitioner did not establish the Beneficiary meets this aspect of the criterion.

Similarly, while the letter mentions the Petitioner's high quality and positive reputation in the country" and "one of the leading hair salons in the United States," the letter does not further elaborate and justify its claims with specific, detailed information establishing the distinguished reputation of the Petitioner. In addition, although the rankings from certain clients indicate a favorable rating of the Petitioner in the [] New Jersey area, the Petitioner did not show the overall distinguished reputation of the Petitioner. Accordingly, the Petitioner did not demonstrate the Beneficiary satisfies this portion of the criterion.

III. CONCLUSION

The Petitioner did not establish the Beneficiary meets any additional criteria discussed above. Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(6), we need not address this ground, as well as the favorable finding of the Director for 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), 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, 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).¹⁷ Accordingly, we reserve these issues.¹⁸ 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.

¹⁵ *See generally* 2 USCIS Policy Manual, *supra*, at M.4(D)(2)(appendix).

¹⁶ *Id.*

¹⁷ *See generally* 2 USCIS Policy Manual, *supra*, at M.4(D)(4).

¹⁸ *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (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 alternative issues on appeal where applicants do not meet their burden of proof).