



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF A-, INC.

DATE: APR. 23, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a hair salon, seeks to temporarily employ the Beneficiary as a hairstylist artist. It seeks to classify her as an O-1 nonimmigrant, a visa classification available to foreign nationals 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 the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: a significant national or international award or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner maintains that the decision was based upon an erroneous conclusion of law and fact and that the evidence satisfies the regulatory requirements.

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." 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. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C).

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).¹

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O foreign nationals shall be accompanied by a written advisory opinion(s) from the appropriate consulting entity or entities.

II. ANALYSIS

A. Introduction

The Petitioner is a hair salon that seeks to employ the Beneficiary as a hairstylist artist for a period of three years. The record shows that the Beneficiary has been employed as a hair designer specializing in styling and coloring at the Petitioner's affiliate in Japan, [REDACTED]. From December 2004 until March 2016, she was employed by [REDACTED] in Japan.

B. The Beneficiary's Eligibility under the Evidentiary Criteria

The Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to at least three of the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner met the criteria at 8 C.F.R § 214.2(o)(3)(iv)(B)(5) (significant recognition for achievements). On appeal, the Petitioner maintains that the evidence also meets the criteria at 8 C.F.R § 214.2(o)(3)(iv)(B)(1), (2), (3), and (4). We assess all five criteria below and conclude the Beneficiary has not satisfied any of them.

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.”

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).

The Petitioner submitted the Beneficiary's résumé, position description, and hair styling portfolio; photographs of her with clients; and letters of recommendation. In the appeal brief, the Petitioner contends that it has "submitted ample documentation clearly demonstrating the Beneficiary's participation as a lead and/or starring and/or critical role in multiple events." It also contends that the Director's decision "capriciously" selected only portions of evidence excluding that which demonstrates that the Beneficiary "will occupy a lead or starring role in her field."

First, we note that this criterion does not require a Petitioner to demonstrate that a Beneficiary will hold a lead or starring role in her *field*. Rather, it requires evidence that the Beneficiary has performed as a lead or starring participant in *productions* or *events* which have a distinguished reputation. Further, this evidence must be in the form of critical reviews, advertisements, publicity releases, publications contracts, or endorsements. As explained below, we agree with the Director that the Petitioner has not offered sufficient evidence to satisfy this criterion.

The record includes a letter from [REDACTED] the chief executive officer of [REDACTED] where the Beneficiary was employed as a stylist from 2004 until 2016. [REDACTED] notes that the Beneficiary worked full-time as a hair stylist as well as performing hair styling services on behalf of the salon for specific productions and events. For example, he states that the Beneficiary worked as a hair and makeup artist for the department store, [REDACTED], for its 2016 New Year's poster and commercial shooting work and as a hairstylist for a TV reporter's hair on a commercial broadcast production. He also indicated that the Beneficiary styled hair for photo shoots for the beauty magazine, [REDACTED] and for the opening ceremony of the [REDACTED]

In addition, [REDACTED] the President of [REDACTED] a manufacturer of beauty and hair care products, attests that his company works closely with [REDACTED] and that he became acquainted with the Beneficiary's work while serving as a supplier to the salon. He states that the Beneficiary was a "leader" who "always had a considerable influence on the entire environment of her salon due to her high skills." He also remarks that [REDACTED] experienced a 120% increase in sales volume in the last year that the Beneficiary was there and he attributes this increase to her professionalism. He does not offer additional evidence or information to support his statements.

The Petitioner also contends that the Beneficiary performed in a leading role for a professional support and teaching network in the salon industry, [REDACTED] the CEO of [REDACTED] explains that the company uses approximately 500 instructors to provide video training footage to students in Japan and abroad. He indicates that the Beneficiary was asked to appear in the company's footage as an instructor where she earned the distinction of having the "best viewing rating." Similarly, [REDACTED] the chief art director of an advertising company, [REDACTED], states that he and the Beneficiary were involved in a commercial shooting project for the [REDACTED] department store advertising campaign in November 2015 shooting in 24 separate locations over a three day

period. He commends her professionalism stating that she “developed an awesome technique, professional sense, and vital understanding of how personality, physical details, and one’s head shape must be viewed as one when styling a person’s hair and makeup.”

The record also includes a letter from [REDACTED] of [REDACTED] Japan, stating that his company held an event at the Petitioner’s [REDACTED] salon and the Beneficiary was helpful in promoting the event on social media and offering “great leadership” and “extraordinary skilled contributions,” and the record includes photographs of the Beneficiary styling client’s hair at this event. On appeal, the Petitioner maintains that [REDACTED] enjoys a distinguished reputation. While we agree that the record corroborates the organization’s reputation, we find that the Petitioner has not provided sufficient evidence that either the Beneficiary’s role in the [REDACTED] event was lead or starring or that the event enjoyed a distinguished reputation as required under this regulatory criterion.

Overall, while the Petitioner submitted photographs, online information, and other materials relating to the aforementioned projects in which the Beneficiary participated as a hair stylist, the documentation is not sufficient to demonstrate that she performed 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.

Furthermore, in addition to her past positions, this criterion requires that the Beneficiary “will perform” services as a lead or starring participant in productions or events with a distinguished reputation. On appeal, the Petitioner states that “evidence was submitted that the Beneficiary will perform as a lead role for the [Petitioner].” The position description offered by the Petitioner lists the responsibilities associated with the Beneficiary’s position at the salon and discusses the Petitioner’s business intentions, it does not identify specific productions or events in which she will participate or offer evidence that would denote her role as leading or starring within those upcoming events, and demonstrate their distinguished reputation. Thus, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

Evidence 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.
8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

We conclude that the Petitioner has not established that the evidence meets the plain language of this criterion. The Petitioner provided an article from a magazine [REDACTED]

[REDACTED] While the Petitioner contends that this article pertains to the Beneficiary’s work, it is not accompanied by a certified English translation. See 8 C.F.R. § 103.2(b)(3). Because the record does not include a properly certified English language translation of the document, we cannot meaningfully determine whether the submitted material supports the Petitioner’s claims. Further, the magazine’s editor, [REDACTED] provides a letter in which he maintains that the Beneficiary’s work was displayed in the March 2014 issue and that it “affected a lot of young people in Japan.” However, he also states that the publication enjoys a readership of 500 readers per month and that it

is currently suspended. The Petitioner does not offer evidence that this level of readership is commensurate with a major publication.

The Petitioner further avers that the Beneficiary meets this regulatory criterion through her appearance on a variety show called [REDACTED] airing on [REDACTED] Television. [REDACTED] general program director of TV program production for [REDACTED] offers a letter stating that the Beneficiary appeared on the program in December 2011 and March 2012 when it featured a competition among hair salons and the Beneficiary's model won first place in both competitions. [REDACTED] states that [REDACTED] is a "private local TV channel" and that the "audience rating went up to 8% whereas its usual rate is 5 to 6% since it is broadcast at midnight." Based upon her success, he contends that he offered the Beneficiary a spot to appear as a commentator in the same project in January 2013. [REDACTED] also states that the Beneficiary appeared on a "morning regional information show" for a project discussing what visitors to Asian countries do when they come to [REDACTED]. The record includes still shots purportedly of the television programs with the Petitioner styling hair, but the Petitioner did not provide a transcript of the program and the one-sentence captions are not accompanied by certified translations.² Thus, we cannot meaningfully determine whether the translated material is accurate and supports the Petitioner's claims. Further, the Petitioner has not established how coverage on two episodes of a local television station broadcast is indicative of national or international recognition for achievements in the field of hairstyling.³

Additionally, the record includes interviews appearing on the mobile application, [REDACTED], in which the Beneficiary discusses her work as a stylist. The Petitioner also provides a screenshot of the Beneficiary's profile page within the application indicating that it has received 2 million views. The Petitioner has not shown that [REDACTED] is a major newspaper, trade journal, magazine, or other publication or that this coverage or views of her profile page demonstrate national or international "recognition for achievements."

Finally, the Petitioner also contends that the Beneficiary's work appeared in hair catalogues such as [REDACTED] and [REDACTED]. The Petitioner has not shown that photographs in these catalogues featuring many different stylists' work are published material about the Beneficiary or that they are indicative of her national or international recognition, as required. Similarly, the record includes hair styling photographs from the magazine [REDACTED], along with a poster advertisement entitled [REDACTED] but neither publication is about the Beneficiary or her work. Also, the record does not contain probative evidence showing that the publications noted above qualify as a major newspapers, trade journals, or other publications.

² See 8 C.F.R. § 103.2(b)(3).

³ In response to the Director's RFE, the Petitioner maintains that the Beneficiary also meets the requirements of this criterion through her work in a commercial shooting project for the [REDACTED] department store advertising campaign in November 2015. However, since this was an event in which the Beneficiary worked as a hairstylist and make-up artist and the coverage was not about her, it is appropriately discussed under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), as we did above.

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).

To meet this criterion, the Petitioner cited the Beneficiary's past work for organizations including [REDACTED], [REDACTED], and [REDACTED] and submitted employment recommendation letters from representatives of those companies. Upon review, the evidence does not establish that the Beneficiary has held a lead or critical role with respect to an organization or establishment, or that she will hold such role with the Petitioner.

While the Beneficiary has been able to provide hairstyling expertise within the companies that have employed her, the evidence does not establish that her role as a hairstylist was a lead or critical role for those companies as a whole. For example, [REDACTED] praises the Beneficiary's abilities and professionalism as hairstylist and hairstyling instructor noting that she "made contributions of continuing, ongoing, and advanced complexity to the work of my group." [REDACTED] noted that the Beneficiary provided "great leadership" and "extraordinarily skilled contributions" to his company's event. The record shows that she was assigned projects as part of her normal responsibilities, and achieved results that met or exceeded her employer's expectations. The focus of this criterion, based on the plain language of the regulation, is the Beneficiary's role itself. We concur with the Director that the documentation does not establish the significance of the Beneficiary's role within the above companies to a degree consistent with the meaning of "lead, starring, or critical role."

Further, the evidence does not establish that the Beneficiary's prospective role with the Petitioner would satisfy the requirement that she will be performing in a lead, starring, or critical role for the organization. It has not offered information that would elucidate where her proposed position falls in the overall hierarchy of its organization or her proposed impact on the company. Finally, while on appeal, the Petitioner maintains that its organization has a distinguished reputation, it does not provide documentation supporting that claim.

Evidence 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 picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.
8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

The Director determined that the Petitioner's evidence does not satisfy this evidentiary criterion. The Petitioner did not provide sufficient information or evidence to establish that the Beneficiary has achieved "major commercial or critically acclaimed success" in the hairdressing industry. [REDACTED] offered evidence relating to the Beneficiary's earnings from March 2014 until March 2016, stating that she generated the second highest sales revenue in the salon, but it did not offer comparative statistics to

establish that earnings at this level constitute a record of major commercial success. Thus, we agree with the Director that the Petitioner has not met the requirements of this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

As noted above, the Petitioner submitted numerous testimonial letters in support of the petition. The Director determined, without discussion, that the Petitioner met this criterion. We find, however, that the submitted testimonials and other documentary evidence do not satisfy this criterion, and we will withdraw the Director's favorable determination on this issue.

The letters primarily discuss the Beneficiary's innate talent, work ethic, personal traits, and artistry rather than her achievements as a hairstylist. While some letters did address her specific achievements, such as her participation in marketing productions for [REDACTED] or [REDACTED] they do not explain how the Beneficiary's achievements to date have received significant recognition from organizations, critics, government agencies or other recognized experts in the field, nor has the Petitioner shown that the letters themselves constitute such recognition.

Although many of the testimonials mention the Beneficiary's winning of the [REDACTED] competition, as discussed above, the Petitioner has not corroborated the scope and significance of this competition in the field of hairstyling. It is the Petitioner's burden to establish the recognition that accrues from an award. The testimonial letters do not meet this burden, nor has the Petitioner provided other documentation evidencing "significant recognition for achievements from organizations in the field," pursuant to the plain language of the criterion. Overall, while the Beneficiary has earned the respect of her colleagues and employers in the hairstyling field, the exhibits are insufficient to demonstrate that she has received significant recognition for achievements in the field.

III. CONCLUSION

For the reasons discussed above, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of A-, Inc.*, ID# 1182901 (AAO Apr. 23, 2018)