



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

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

MATTER OF A-M-, INC.

DATE: JAN. 11, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a production company, seeks to temporarily employ the Beneficiary as a stage manager. It seeks to classify him 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 Vermont 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: nomination for or receipt of 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). In addition, the Director noted that the record contained inconsistent information as to whether the Petitioner was filing as an agent or the Beneficiary's actual employer. Lastly, the Director found that the event calendar offered by the Petitioner was not sufficient to meet the requirements of the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C).

On appeal, the Petitioner submits additional evidence and maintains that the documentation satisfies the regulatory requirements. In addition, the Petitioner clarifies that it seeks to employ the Beneficiary for a term of three years.¹

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

¹ In Part 5 of the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner listed the "dates of intended employment" as covering a period from "02/12/2012" to "02/12/2023" (11 years). In its statement accompanying the appeal, the Petitioner states that "the correct term of the contract is for 3 years."

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 the evidentiary criteria for establishing a beneficiary’s sustained acclaim and the recognition of achievements. A petitioner must 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 of 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)(3)(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). In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.” That decision explains that, pursuant to the preponderance of the evidence standard, we “must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Id.* Accordingly, where a petitioner provides the requisite initial evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.

Furthermore, an O-1 petition “may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent.” 8 C.F.R. § 214.2(o)(2)(i). In addition, the petition must be accompanied by copies of any written contracts between the petitioner and the beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the individual will be employed. 8 C.F.R. § 214.2(o)(2)(ii)(B). The record should also include an explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities. 8 C.F.R. § 214.2(o)(2)(ii)(C).

II. ANALYSIS

A. Significant National or International Award or Prize

As noted above, a petitioner may demonstrate that a beneficiary qualifies as an individual of extraordinary ability in the arts through evidence of his nomination for, or receipt of, a significant national or international award or prize like the Academy Award, an Emmy, a Grammy, or a Director’s Guild Award. 8 C.F.R. § 214.2(o)(3)(iv)(A). The record includes three letters from the founder and

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president of [REDACTED] in Venezuela indicating that the Beneficiary was awarded the [REDACTED] prize on three different occasions. A September 2015 letter invites the Beneficiary to receive his [REDACTED] prize “[o]n the occasion of the [REDACTED] of the [REDACTED] on [REDACTED] 2015. Similarly, a January 2016 letter invites the Beneficiary to receive his [REDACTED] prize “[o]n the occasion of the [REDACTED] of the [REDACTED]” on [REDACTED] 2016. Lastly, the July 2016 letter invites the Beneficiary to receive his [REDACTED] prize “[o]n the occasion of the [REDACTED] of the [REDACTED] on [REDACTED] 2016 (emphasis added). We note that the anniversary number associated with the Beneficiary’s [REDACTED] 2016 [REDACTED] prize is not sequentially consistent with the anniversary number of his earlier prizes. A petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho.*, 19 I&N Dec. 582, 591-592 (BIA 1988). Here, the Petitioner has not resolved the inconsistent letters.

In addition, the Petitioner submits a certified English language translation of a Spanish language Gmail sent by an assistant to the manager of the Venezuelan [REDACTED] to the [REDACTED]. This email mentions that the Beneficiary and two other representatives from [REDACTED] would attend a government award ceremony on [REDACTED] 2010, but it does not identify the name of the award being given or the type of recognition. Furthermore, the original Gmail document in the Spanish language was not included with the translation.

Regardless, the aforementioned Gmail translation and letters from the founder and president of [REDACTED] are not sufficient to demonstrate that the Beneficiary’s awards rise to the level of significant national or international prizes or awards. For example, the record does not show that the above awards have attracted significant recognition beyond the context of the events where they were presented. Without evidence establishing that the Beneficiary’s awards have garnered national or international recognition similar to an Academy Award, an Emmy, a Grammy, or a Director’s Guild Award, the Petitioner’s exhibits do not satisfy the regulation at 8 C.F.R § 214.2(o)(3)(iv)(A).

B. Evidentiary Criteria

Absent evidence the Beneficiary has been nominated for, or received, a significant national or international award or prize, 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 did not satisfy any of those criteria. The Petitioner maintains on appeal that the exhibits satisfy all six of the aforementioned criteria. For the reasons discussed below, we find that the exhibits do not meet any of the evidentiary categories.

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, production staff identification badges, photographs of him working at music events, [REDACTED] compact disc covers listing him as a stage technician, and promotional flyers and posters relating to music performances he supported. The Director discussed this evidence and determined that it was not sufficient to demonstrate that Beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation. In its appeal brief, the Petitioner does not contest the Director's analysis of the aforementioned documentation. Rather, the Petitioner points to additional evidence it provides for this criterion.

The appellate submission includes two letters from the assistant manager of [REDACTED] to the [REDACTED] in Venezuela requesting O-2 nonimmigrant visas for 33 support staff in 2014 and 24 support staff in 2010. These letters list the Beneficiary among the music [REDACTED] numerous support staff, but they do not identify his position or indicate that he will provide services as a lead or starring participant. While the aforementioned letters note that [REDACTED] earned [REDACTED] [REDACTED] nominations (2014) and [REDACTED] nominations (2010), and that the [REDACTED] and its support staff planned to attend those ceremonies, the evidence is not sufficient to show that the Beneficiary performed as a lead or starring participant at those music events.

The record also contains an undated letter from [REDACTED] to the [REDACTED] requesting "the expedition of the tourist visa for [the Beneficiary] . . . for the evaluation of the events and recording to be realize[d] in Puerto Rico with [REDACTED]"² This letter does not state that the Beneficiary would provide services as a lead or starring participant, or list the specific music productions or events he evaluated. Nor is there documentary evidence of the productions or events' distinguished reputations as demonstrated by critical reviews, advertisements, publicity releases, publications contracts, or endorsements.

Furthermore, in addition to his 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. The record includes a letter from the Petitioner stating that the Beneficiary will serve as its stage manager of its productions "for the next three years." While this letter lists the responsibilities associated with the Beneficiary's position, it does not identify specific upcoming productions or events in which he will participate. As the record does not document future productions or events or demonstrate that they have a distinguished reputation as shown by critical reviews, advertisements, publicity releases, publications contracts, or endorsements, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

² The appellate submission includes a copy of the Beneficiary's 2008 "B1/B2" nonimmigrant visa, to which this letter appears to relate. The record does not indicate the relationship, if any, between [REDACTED] and the petitioning entity.

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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).

The Director determined that the record did not include critical reviews or other published materials by or about the Beneficiary in major newspapers, trade journals, magazines, or other publications. On appeal, the Petitioner does not point to specific published material that satisfies the plain language requirements of this criterion. Rather, the Petitioner references [REDACTED] compact disc (CD) covers which list the Beneficiary among multiple stage technicians and it contends that this music duo's [REDACTED] nominations meet this criterion. [REDACTED] CD covers and [REDACTED] nominations do not constitute critical reviews or other published materials by or about the Beneficiary in major publications. Accordingly, this criterion has not been satisfied.

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).

The Director found that the evidence did not establish that the Beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. In its appeal brief, the Petitioner does not contest the Director's analysis for this criterion or offer additional arguments to overcome her determination on this issue, and we agree with her findings.

The Petitioner offers an October 2016 letter from [REDACTED] manager of [REDACTED] (a Venezuelan singer), attesting that he has known the Beneficiary for more than nine years. [REDACTED] asserts that the Beneficiary is serious, responsible, and displays good moral character, but does not discuss how the Beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation.

The record includes an October 2016 letter from the Petitioner's General Manager, [REDACTED] indicating that the Beneficiary has been working "as a Stage Manager to the Worldwide Artist – [REDACTED] for his concert tours from 2012 to present. [REDACTED] describes the Beneficiary as diligent, dedicated, proactive, efficient, cooperative, knowledgeable, organized, and attentive to detail. She further states that her company is "grateful to have him as part of our team," but she does not discuss how his position as stage manager constituted a leading, starring, or critical role for the company as a whole. Furthermore, the record does not establish the petitioning organization's distinguished reputation.

Based on the foregoing, the Petitioner has not submitted evidence that the Beneficiary has held a lead, starring, or critical role with respect to an organization or establishment that has a distinguished reputation. In addition, the record does not demonstrate that he will prospectively serve as such a

participant for the Petitioner. [REDACTED] July 2017 letter indicates that the Beneficiary's prospective stage manager responsibilities involve "helping the artist in execution and realization of his job" and includes a detailed listing of the Beneficiary's pre-show, show time, and post-show duties. The Petitioner has not provided, however, information that would elucidate where his proposed position falls in the overall hierarchy of its organization or demonstrate his proposed impact on the organization. Finally, while [REDACTED] latest letter includes information about [REDACTED] and his recording achievements, she has not offered sufficient evidence to demonstrate that the petitioning organization has a distinguished reputation. For these reasons, the record does not establish that the Beneficiary meets this criterion.

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 record did not include documentation relevant to this evidentiary criterion. On appeal, the Petitioner does not specifically challenge this determination or point to indicators of the Beneficiary's record of major commercial or critically acclaimed successes. As evidence for this criterion, the Petitioner offers an Instagram post from [REDACTED] thanking his "team" for an excellent show. This evidence does not demonstrate the Beneficiary's record of major commercial or critically acclaimed successes, nor does the record contain other documentation satisfying the plain language requirements of this criterion. The Petitioner has not established therefore that the Beneficiary meets 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 evidence under this criterion, the Petitioner provided various recommendation letters. The Director considered the letters and concluded that, although they discussed the Beneficiary's skills and knowledge, they were insufficient to establish that his work has received significant recognition for achievements in the field.

The Petitioner resubmits the recommendation letters on appeal.³ For example, [REDACTED] manager of recording artist [REDACTED] for [REDACTED] states that he has known the Beneficiary "while working as a Stage Manager in many music shows for longer than ten (10) years," and that the Beneficiary demonstrates good moral character, strong values, honesty, integrity, and high standards of conduct in his work. In addition, [REDACTED] a musician and chief executive officer

³ We discuss only a sampling of these letters, but have reviewed and considered each one.

(CEO) of [REDACTED], a concert production company, asserts that the Beneficiary “knows what artists needs [sic] in all situations during all the productions and performance[s].” [REDACTED] further states that the Beneficiary “has helped to organize and produce multiple famous artist car[e]ers and concert management success.” The record also includes a letter from [REDACTED] stating that the Beneficiary’s knowledge has helped business for the team of [REDACTED] and generated positive worldwide exposure for that artist. [REDACTED] explains that the Beneficiary organized the cast and rehearsals, oversaw production responsibilities for each event, and forecasted production costs. While the aforementioned references discuss the Beneficiary’s knowledge, production experience, and personal qualities, they do not explain how he has received significant recognition in the field for his stage management work, nor do the letters themselves constitute such recognition.

Furthermore, while the record includes letters from the founder and president of [REDACTED] indicating that the Beneficiary was awarded the ‘[REDACTED]’ prize on three different occasions, as noted above, the Petitioner has not resolved inconsistencies within the letters. Regardless, the record does not include supporting evidence demonstrating the significance of the aforementioned prizes.

Upon review of all of the letters, we concur with the Director’s determination that the Petitioner has not established that the Beneficiary satisfies this criterion. The authors do not attest to the Beneficiary’s level of recognition beyond their own companies and organizations, nor do they explain in factual terms his recognized achievements in the field of stage management. The issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. The record lacks documentary evidence showing that the Beneficiary has received such recognition.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

The Director determined that the Petitioner had not demonstrated the Beneficiary’s high salary or other substantial remuneration for services in relation to others in the field. With respect to the Beneficiary’s compensation, the Petitioner offers a contract stating that he will receive \$28,000 years plus bonuses and extra payments.⁴ The appellate submission also includes a [REDACTED] bank reference, account confirmation, and customer registration form listing no balances or transactions. In addition, the Petitioner provides the Beneficiary’s Venezuelan tax registry information form and two certifications from the Integrated National Service of Customs and Tax Administration indicating that the agency received the Beneficiary’s income tax returns for 2015 and 2016. The aforementioned form and certifications, however, do not show the Beneficiary’s earnings.

⁴ The contract does not specify the amounts or frequency of these bonuses and extra payments.

Assuming that the Beneficiary's compensation will be \$28,000 per year as stated in the contract, the record does not demonstrate that this salary is considered high in relation to others in the field. The Petitioner does not offer salary statistics or other documentation as bases for comparison showing that the Beneficiary commands a high salary relative to other stage managers. The Petitioner has not established therefore that the Beneficiary meets this criterion.

C. U.S. Employer Versus U.S. Agent

The Director found that the record contained inconsistent information as to whether the Petitioner was filing as an agent or the Beneficiary's actual employer. The appellate submission includes a July 2017 "Contract Agreement" stating that the Beneficiary will "be represented by," and "will complete ARTISTIC work for," the petitioning organization. The "Compensation" section of the contract identifies the Petitioner "as Employer of the [B]eneficiary" and the "only employer that will pay" him. As this evidence sufficiently demonstrates that the Petitioner is an agent performing the function of an employer as described under 8 C.F.R. § 214.2(o)(2)(iv)(E)(I), the Director's finding on this issue is withdrawn.⁵

D. Events or Activities

The Director determined that the event calendar offered by the Petitioner was not sufficient to meet the requirements of the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C). The record includes monthly calendar printouts from December 2016 until September 2017. These monthly calendars bear a title of [REDACTED] and list various cities and countries, but they do not mention the Beneficiary or identify his events or activities. The Director stated that the Beneficiary's role was unclear from the event calendars and that this documentation did not show that work would be available to him "for the entire requested validity period." On appeal, the Petitioner does not contest the Director's finding on this issue or offer a sufficient itinerary for the Beneficiary's upcoming events or activities as required under 8 C.F.R. § 214.2(o)(2)(ii)(C). Accordingly, we affirm the Director's determination regarding this issue.

III. CONCLUSION

The record does not contain evidence of the Beneficiary's nomination for or receipt of a significant national or international award or prize, or at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). In addition, the Petitioner has not offered a sufficient itinerary for the Beneficiary's events or activities during the requested validity period. 8 C.F.R. § 214.2(o)(2)(ii)(C). Accordingly, 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.

⁵ As required by the regulation, the record includes a contractual agreement between the Petitioner and the Beneficiary which specifies the wage offered and the other terms and conditions of his employment.

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ORDER: The appeal is dismissed.

Cite as *Matter of A-M-, Inc.*, ID# 872846 (AAO Jan. 11, 2018)