



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

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

In Re: 23133704

Date: DEC. 7, 2022

Appeal of Vermont Service Center Decision

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

The Petitioner, a restaurant and catering business, seeks to classify the Beneficiary as a culinary director. 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 that 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.

In these proceedings, it is the petitioner’s burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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).¹

II. ANALYSIS

The Director determined that the Petitioner did not demonstrate 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 that the Petitioner established the Beneficiary’s eligibility for only one criterion, high salary under 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). On appeal, the Petitioner contends that the Beneficiary satisfies four additional criteria. For the reasons discussed below, the Petitioner did not establish that 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 regulatory criterion requires the beneficiary to have both previously performed and will perform services as a lead or starring participant in productions or events, which have a distinguished reputation. *See* 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). As evidence, the Petitioner must submit documentation of critical reviews, advertisements, publicity releases, publications contracts, or endorsements. *Id.* At initial filing, the Petitioner claimed that “[a]s [a] Culinary Director for [redacted] [redacted] [the Beneficiary] oversaw all culinary aspects of the dinners served” at various events or for individuals. In support, the Petitioner provided numerous flyers highlighting or advertising almost entirely [redacted] but making no mention of the Beneficiary. For instance, the record contains a flyer for a “Fundraiser for [redacted] Research” reflecting that the event took place at [redacted] without showing the Beneficiary’s performance in a role at the event, let alone as a lead or starring participant. In fact, the record comprises of only three flyers specifically mentioning the Beneficiary: “Mother’s Day Special Lunch,” “Feast of the Favourites,” and “Indian Grill by Alfresco.” Although the flyers feature the Beneficiary, the Petitioner did not establish that these events have distinguished, eminent, or prestigious reputations consistent with this regulatory criterion.

In response to the director’s request for evidence (RFE), the Petitioner stated that “[w]ith regard to the evidence previously submitted about events at [redacted]; we respectfully withdraw those documents, which took place prior to [the Beneficiary] joining that illustrious restaurant” and “[t]hose events were included due to Law Office error.” Further, the Petitioner resubmitted the flyers relating to the “Mother’s Day Special Lunch” and “Feast of the Favourites” and offered an article from *919 Magazine*

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.”

regarding [redacted] However, the article makes no mention of, or discuss, the “Mother’s Day Special Lunch” and “Feast of the Favourites” events. Without evidence, such as a critical review of the events, the Petitioner did not establish that the “Mother’s Day Special Lunch” or “Feast of the Favourites” represents a distinguished reputation.

Moreover, the Petitioner asserted that the Beneficiary “oversaw the planning and execution of numerous food festivals and events which took place at the [redacted] [redacted] in [redacted] India]”: [redacted] Food Festival [redacted], [redacted]), [redacted]), and [redacted] Festival [redacted]. As it relates to [redacted], the Petitioner submitted several posts and articles announcing the upcoming festival. The material, for instance, indicates the Beneficiary as the chef and announces the dates, places, and course offerings. However, the Petitioner did not show how the evidence demonstrates the distinguished reputation of [redacted]. The evidence does not discuss or establish the status or stature of [redacted] to show its distinguished reputation. Similarly, the Petitioner offered a letter from [redacted] a food critic for the *Times of India*, who stated that he attended [redacted] many times, including during the Beneficiary’s tenure, and congratulated him on his dish. Although [redacted] praised the Beneficiary, he did not comment on [redacted] reputation or standing, to reflect the distinguished nature of the festival.

Likewise, the Petitioner provided posts and articles announcing the upcoming [redacted], [redacted] and [redacted]. The documentation advertises the upcoming festivals, indicates the Beneficiary as the chef, and lists some of the dishes. However, the Petitioner did not demonstrate how the evidence shows the distinguished reputations for any of the festivals. Besides announcing the upcoming events, the evidence does not discuss their respective reputations or otherwise show how they are considered to be distinguished. Accordingly, the Petitioner did not establish that the Beneficiary has performed services as a lead or starring participant in productions or events having a distinguished reputation.

In regard to the Beneficiary’s future services, the Petitioner did not initially make such a claim. However, in the RFE response, the Petitioner asserted that the Beneficiary “will perform a Lead and Starring Role for events which will be held in the ballrooms of the Sheraton, Hilton, and other prestigious hotels and venues throughout the U.S.” The Petitioner submitted contracts for 14 events; specifically, the evidence relates to catering services between the Petitioner and wedding parties. The evidence, however, does not mention the Beneficiary, nor does it show that he will perform services as a lead or starring participant at any of these wedding reception events. Furthermore, the Petitioner did not establish how the evidence reflects the distinguished reputation of the various wedding events. Although the Petitioner claims that “[o]nly a distinguished catering service is regularly engaged to cater events for hundreds of guests at major hotels around the country for tens of thousands of dollars per event,” the Petitioner does not support its assertions with probative, corroborating evidence. The Petitioner did not demonstrate, for instance, that wedding receptions held at recognized hotel chains automatically show the distinguished nature of the events or productions.

The Petitioner also asserts on appeal that “[a]s weddings typically do not accrue ‘critical reviews, advertisements, publicity releases, publications contracts, or endorsements,’ we rely on ‘Comparable Evidence’ to demonstrate they are ‘distinguished events,’ i.e., the prestige of the venue where the

event will take place, the number of guests and cost.”² Because the Petitioner did not claim eligibility for comparable evidence at initial filing or in response to the Director’s RFE, we will not consider this basis as it was not presented before the Director. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if “the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose” and that “we will adjudicate the appeal based on the record of proceeding” before the Director); *see also Matter of Obaighbena*, 19 I&N Dec. 533 (BIA 1988). As such, the Petitioner did not demonstrate that the Beneficiary will perform services as a lead or starring participant in productions or events having a distinguished reputation.

For the reasons discussed above, the Petitioner did not demonstrate the Beneficiary’s eligibility for this 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).

The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) requires evidence of a beneficiary’s national or international recognition for achievements evidenced by critical reviews or other published materials in major newspapers, trade journals, magazines, or other publications. Initially, the Petitioner provided articles from *The Hindu*, *919 Magazine*, *Daily Post India*, and *Yugmarg*. In the RFE, the Director informed the Petitioner that the submitted articles published by the *Daily Post India* and *Yugmarg* were not legible and could not be considered. Moreover, Director pointed out that the article from *The Hindu* appeared to cover a different individual with the same name as the Beneficiary. Further, the Director determined that “the documents you provided demonstrating the circulation data for each of the article sources suggest that the respective publications are comparatively small and do not have the reach that could provide the beneficiary with the requisite national or international recognition,” and “[m]any publications are capable of reaching millions of readers daily, whereas the documents you provided each reflect a fraction of those numbers with their circulation figures.”

The RFE response letter stated “[o]ur Law Office withdraws the article . . . in *the Hindu*” “[a]s the Service noted, this article is not about the Beneficiary,” and “[w]e regret submitting the article, which was due to Law Office error.” In addition, the Petitioner claimed that the Beneficiary “has been featured in articles in major media in India” and offered additional material with “About Pages” for the publications.

² The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that if the criteria do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence in order to establish the beneficiary’s eligibility. Here, the Petitioner does not contend that the criterion does not apply to the Beneficiary’s occupation as a culinary director; rather, the Petitioner claims that the regulatory documentation does not apply to wedding events. *See generally 2 USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policymanual> (instructing that a general unsupported assertion that the listed criterion does not readily apply to the beneficiary’s occupation is not probative, and officers do not consider comparable evidence if the petitioner submits evidence in lieu of a particular criterion that is readily applicable to the beneficiary’s occupation simply because the beneficiary cannot satisfy the criterion).

In denying the petition, the Director determined:

The response received on February 10, 2022, also included the submission of promotional materials and what would appear to be local or regional articles regarding culinary events the beneficiary participated in However, the record as submitted, to include the response request, does not include sufficient independent, objective evidence demonstrating the significance of the published material submitted. USCIS does acknowledge the submission of background materials that originate from the publications themselves. However, this evidence alone, is not sufficient to establish the significance of a having a publicity release, advertisement or one's work discussed in these published sources. As noted in the request, you did not provide evidence showing that the articles you submitted are from major media sources or publications with the breadth of coverage and readership capable of conferring national or international recognition for achievements. In fact, the documents you provided continue to demonstrate that the circulation data for each of the article sources suggest that the respective publications are comparatively small and do not have the reach that could provide the beneficiary with the requisite national or international recognition. As noted in the request, many publications are capable of reaching millions of readers daily, whereas the documents you provided each reflect only a fraction of those numbers with their circulation figures.

We adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2105) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) (“[I]f a reviewing tribunal decides that the facts and evaluative judgments rescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings” provided the tribunal's order reflects individualized attention to the case). Although the Petitioner argues that the “About Pages” must be reliable, or the website/publication will lose its credibility, reputation and revenue,” the Petitioner did not supplement the record with independent, objective evidence to support the publication or website's claims. *Cf., Braga v. Poulos*, No. CV 06 5105 SJO (C.D.C.A. July 6, 2007), *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliant evidence of a major medium).

In addition, the Petitioner indicates that “[w]hile some of the publications have a more local or regional circulation, those publications have arguably high circulation for those areas of the country.” Even if a publication has high local or regional circulation numbers, the Petitioner did not establish how local or regional media coverage translates into national or international recognition. Furthermore, the record reflects that the Petitioner provided circulation data for only one of the publications, *The New Indian Express* from *Wikipedia*. As there are no assurances about the reliability of the content from this open, user-edited Internet site, we will not assign weight to information from *Wikipedia*. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Regardless, the Petitioner did not demonstrate the significance of the circulation figures, to demonstrate the major medium standing of the publication.

Finally, the Petitioner indicates that the Director did “not discuss the obvious merit of the *New York Times*, which published an article that discusses the Petitioner’s enterprise.” Again, this criterion requires evidence that the Beneficiary has achieved national or international recognition. The Petitioner did not explain or show how an article in the *New York Times* about the Petitioner, without any discussion or indication of the Beneficiary, shows the Beneficiary’s national or international recognition.

For the reasons discussed above, the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

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).

In order to meet this criterion, a petition must show that a beneficiary 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. *See* 8 C.F.R. § 212.2(o)(3)(iv)(B)(6). Although the Director determined that the Beneficiary satisfied this criterion, we will withdraw the Director’s decision for this criterion, discussed below.

At initial filing, the Petitioner claimed that the Beneficiary “will receive \$102,000 per year as Culinary Director with the Petitioner.” The Petitioner submitted a letter stating:

[The Petitioner] wishes to employ [the Beneficiary] as Culinary Director for both our restaurants and catering services. [The Beneficiary] will oversee all food preparation for our restaurants and our catering services, whether in-house or on-site at the event location. [The Beneficiary] will be responsible for creating menus and dishes with unique recipes, ensuring all ingredients meet . . . standard, and will oversee our cooks and support staff as they cook and plate dishes. At all times, [the Beneficiary] will ensure the quality and artistic design of each menu item, using his trained palate, experience, and knowledge of Indian cuisine, with a view towards consistently enhancing our reputation as a premiere caterer. He will direct our cooks and other kitchen staff in crafting exquisite, delicious and appealing dishes, and serving the dishes in an impeccable and friendly manner to dining guests.

According to the “Employment Agreement” between the Petitioner and the Beneficiary, the Beneficiary will be employed as a culinary director and:

[The Beneficiary’s] duties shall include creating unique menus and dishes for [the Petitioner’s] two restaurants and catering services; [the Beneficiary] shall create new recipes in North & South Indian, Indo-Chinese, Street Food, Pan Asian cuisines and an exquisite array of desserts; [the Beneficiary] shall oversee [the Petitioner’s] kitchen staff in cooking, plating and serving the dishes. [The Beneficiary] will be expected to exercise excellent managerial skills to ensure [the Beneficiary’s] staff creates exquisite dishes as per the recipes, and serves the dishes in an impeccable and friendly manner to [the Petitioner’s] dining and catering service guests.

The Petitioner also submitted wage data from the Foreign Labor Certification Data Center (FLCDC) and the U.S. Bureau of Labor Statistics (USBLS) for the occupations of “Chefs and Head Cooks,” defined as “[d]irect and may participate in the preparation, seasoning, and cooking of salads, soups, fish, meats, vegetables, desserts, or other foods. May plan and price menu items, order supplies, and keep records and accounts.”

In response to the Director’s RFE, the Petitioner also claimed the Beneficiary’s eligibility based on his current salary with [redacted] as a culinary director. The Petitioner submitted [redacted] “Culinary Director Offer of Employment” to the Beneficiary reflecting:

In the position of Culinary Director, [the Beneficiary] will be expected to create unique menus for [redacted] events, designing distinctive recipes for [redacted] events, and overseeing the creation of these recipes for [redacted] events. As the Culinary Director, [the Beneficiary] will be expected, through your trained palate and experience, to ensure the quality and artistic significance of all contributions made in [redacted] restaurant. [The Beneficiary] will be expected to utilize knowledge of Indian cuisine and individualistic creativity to accomplish the task of conceptualizing and implementing food displays.

The employment offer letter also indicates additional responsibilities: demonstrating leadership; thinking creatively; exceeding customer expectations; improving service; managing daily operations of the area or department; supervising associates; coaching and developing others; training and teaching others; making decisions and solving problems; and organizing, planning, and prioritizing. Further, the Petitioner submitted the same comparable salary data for “Chefs and Head Cooks” from the FLCDC and USBLS.

Although the Petitioner claims the Beneficiary’s eligibility for this criterion based on his previous and future salary as a culinary director, the Petitioner offered comparative wage data for chefs and head cooks. The Petitioner did not demonstrate that the Beneficiary has either commanded a high salary or will command a high salary in relation to other culinary directors. Both precedent and case law support this application of 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering a professional golfer’s earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App’x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In light of the different responsibilities and duties indicated above, the Petitioner did not show that the occupation of a culinary director is the same as a chef or head cook. Therefore, the Petitioner did not establish that the comparative salary data for chefs and head cooks is relative to the earnings of culinary directors.

Because the Petitioner did not establish that the Beneficiary has either commanded or will command a high salary in relation to other culinary directors, we withdraw the Director’s favorable finding for this criterion.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criteria relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), and (6). Although the Petitioner claims the Beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and (5), we need not address these grounds 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 in his field of endeavor. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).³ Accordingly, we reserve these issues.⁴ 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.

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

⁴ *See INS v. Bagambashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *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 an applicant is otherwise ineligible).