



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

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

In Re: 30929017

Date: APR. 25, 2024

Appeal of Vermont Service Center Decision

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

The Petitioner, an interior design business, seeks to classify the Beneficiary as a senior interior designer 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 initially denied the petition and subsequently affirmed her decision on motion, 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. 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). 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).

II. ANALYSIS

According to the Beneficiary's resume, she earned a master's degree from [redacted] of Architecture and Engineering in 2017 and has since been working as an architect and interior/exterior designer as CEO of [redacted] studio in [redacted] Russia. The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary for a period of three years as a "senior interior designer" to "plan, design, and furnish the internal space of rooms or buildings" in collaboration "with many other professionals, such as the project manager, other interior designers and contractors."

Within its initial submission, the Petitioner provided its job offer letter, signed by the Beneficiary, for the position of senior interior designer to "undertake various design projects and see to them from concept to completion, work closely with architects, decorators, constructors, and designers, supervise the work in progress carefully." Within its response to the Director's request for evidence (RFE), it explained that it seeks to have the Beneficiary perform services "in the Interior design projects for 5 residential buildings in [redacted] Florida in the [redacted] community (implementation July 2023)."

A. Extraordinary Ability in the Arts

The Petitioner does 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). Instead, it maintains that she meets at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). The Director concluded the Petitioner established the Beneficiary's eligibility for only two criteria, published materials in major media under 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) and significant recognition under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). On appeal, the Petitioner contends the Beneficiary also satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) and (3), and requests that we consider comparable evidence for the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).¹

¹ On appeal, the Petitioner does not dispute the Director's finding that it had not established the Beneficiary's eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6), related to high salary. An issue not raised on appeal is waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)).

Upon review, we find that the Director's decision reflects a careful and thorough review and analysis of the Petitioner's claims and supporting evidence. Therefore, we adopt and affirm the Director's decision with the added comments below. *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (noting that the practice of adopting and affirming the decision below has been "universally accepted by every other circuit that has squarely confronted this issue"); *Chen v. INS*, 87 F.3d 5, 8 (1st Cir. 1996) (joining eight U.S. Court of Appeals in holding the appellate adjudicators may adopt and affirm the decision below as long as they give "individualized consideration" to the case).

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 both that the beneficiary has 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.* Although the Director found that the Beneficiary has performed as a leading participant in productions or events with a distinguished reputation, she determined that the record lacks evidence that the Beneficiary will do so. The Petitioner has not identified a specific error related to this criterion but rather broadly disagrees with the Director's conclusion that it has not satisfied the criterion.

As stated, the Petitioner explained that the Beneficiary will be working with its organization on approximately five interior design projects while in the United States, in residential buildings in [redacted] Florida in the [redacted] community. We agree with the Director's determination that the Petitioner did not establish how the evidence reflects the Beneficiary's anticipated role as a lead participant in the various design projects, or their distinguished reputation. The job offer letter does not contain information suggesting that the projects will have a distinguished reputation. For instance, it does not remark on the past successes of the Petitioner or other professionals with whom the petition indicates the Beneficiary will collaborate, such as project managers or contractors, or otherwise remark on the expectations for the projects.

In addition, the Director acknowledged that, although the Petitioner submitted recommendation letters in support of this criterion, it did not demonstrate how they qualify under any of the evidentiary requirements. To meet this criterion, a petitioner must submit evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.² Advertisements, publicity releases, and endorsements are promotional materials.³ Endorsements are public facing and serve a marketing purpose.⁴ This exhaustive list does not include unpublished testimonial or recommendation letters.⁵

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

³ *Id.*

⁴ *Id.*

⁵ *Id.*

Further, the Director noted that although the Petitioner's RFE response included job offer letters from [REDACTED] for the Beneficiary's proposed employment in the role of interior designer with those organizations, those job offer letters are dated after the date the petition was filed on December 27, 2022.⁶ The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Here, the Petitioner did not demonstrate that at the time of filing the petition the Beneficiary would be performing services at [REDACTED]. Moreover, the Director noted that the Petitioner has not submitted evidence to establish that it is authorized to act as an agent for those other architectural/interior design organizations for the purposes of filing this petition.⁷

In sum, the Director concluded that the Petitioner has neither identified, nor documented through submission of the evidence prescribed by regulation, the Beneficiary's forthcoming lead or starring role in events with a distinguished reputation. The Petitioner does not provide any new arguments which overcome the Director's determination. Therefore, the Petitioner does not establish that the Beneficiary meets 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).

A leading or starring role for an organization or establishment should be apparent by its position in the overall organizational hierarchy and through the role's matching duties. A critical role is evidenced from the beneficiary's impact on the organization or the establishment's activities. The beneficiary's performance in this role should establish whether the role was critical for the organization or establishment as a whole.⁸ The Director determined that the Petitioner has not sufficiently documented or explained how the Beneficiary will, prospectively, perform in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation.

As previously stated, the petition and the RFE response indicate that the Beneficiary will work for the Petitioner over a three-year period. The Director found that the record does not include evidence explaining how the Beneficiary's role as a senior interior designer rises to the level of a lead, starring, or critical role for the petitioning company. The submitted evidence does not describe how she will contribute to the petitioning company overall, or how her proposed position fits within the hierarchy of the organization. In addition, the Director determined that the Petitioner did not provide sufficient evidence demonstrating that it enjoys a distinguished reputation. As previously noted, the plain language of this criterion requires the submission of evidence in the form of newspapers, trade journals, publications, or testimonials.

Further, as mentioned above, although the Petitioner's RFE response included job offer letters from [REDACTED] for the Beneficiary's proposed

⁶ We note that although the letter from [REDACTED] is dated May 30, 2022, it indicates "this letter is in reference to your candidature submitted to our company in June 2023."

⁷ See generally 2 USCIS Policy Manual, *supra*, at M.3(C).

⁸ See generally 2 USCIS Policy Manual, *supra*, at M.4(D)(2) (appendix).

employment in the role of interior designer with those organizations, those job offer letters are dated after the date the petition was filed on December 27, 2022. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Regardless, the evidence does not establish how, in her proposed role as an interior designer on projects, she will perform in a leading role for those organizations or be responsible for their success or standing to a degree consistent with the meaning of a “critical role.”

In light of the above, the Director concluded that Petitioner has neither identified nor documented through submission of the evidence prescribed by regulation, the Beneficiary’s forthcoming lead, starring, or critical role for organizations with a distinguished reputation. The Petitioner does not provide any new arguments which overcome the Director’s determination. Therefore, the Petitioner 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).

In its statements provided on appeal and motion, the Petitioner maintains that we should consider comparable evidence for this criterion, because it claims that this regulatory criterion is not applicable to interior design. The regulation at 8 C.F.R. 214.2(o)(3)(iv)(C) provides that “[i]f the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence in order to establish the beneficiary’s eligibility.”⁹ Thus, a petitioner must demonstrate why the regulatory criterion does not pertain to a beneficiary’s occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iv).

On appeal, the Petitioner claims that the Beneficiary’s “scholarly articles published in internationally recognized scholar[ly] journals clearly evidence [the Beneficiary’s] record of major critically acclaimed successes.”¹⁰ The Petitioner’s initial submission included evidence that the Beneficiary’s articles were published in several journals, including *Design Review* and the proceedings of several professional conferences in the field, as well as in the 2nd International [redacted]. The Director determined that the Petitioner did not demonstrate that the Beneficiary’s articles are a comparable indicator of a record of major commercial or critically acclaimed successes to title, rating, standing in the field, box office receipts, motion picture or television ratings. There is no evidence that the articles reported on the Beneficiary’s record of major commercial or critically acclaimed successes in the field, or that the articles themselves reflect the same caliber of expertise and recognition as a record of such successes. The Petitioner does not provide any new arguments which overcome the Director’s

⁹ Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary’s occupation. However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary’s occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion. See 2 USCIS Policy Manual, *supra*, at M.4(D)(3).

¹⁰ We note that the Beneficiary’s articles were considered by the Director in her determination that the Beneficiary met the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

determination. Therefore, the Petitioner did not establish that the Beneficiary meets this criterion through the submission of comparable evidence.

B. Valid United States Employer

Finally, the Petitioner does not appear to be a valid United States employer. As noted above, 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). The Petitioner does not claim to be an agent and must, therefore, be a legal United States employer. However, publicly available documents show that the Petitioner is no longer a legal entity. The website of the Florida Secretary of State, Corporations Division, shows that an entity with the Petitioner's name was registered in 2020, but that company filed Articles of Dissolution, voluntarily dissolving the company on [redacted] 2024.¹¹ As a result, the record does not support a finding that the Petitioner is a legal entity or a valid United States employer eligible to seek O-1 classification for the Beneficiary. 8 C.F.R. § 214.2(o)(2)(i). As stated, the Petitioner must satisfy all eligibility requirements for the immigration benefit from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Here, it has not made such a showing.

III. CONCLUSION

For the reasons discussed, the Petitioner has not established that the Beneficiary meets at least three of the claimed criteria. As the Petitioner 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).¹² Accordingly, we reserve these issues.¹³ Further, the Petitioner has not demonstrated that it is a valid United States employer. As a result, it has not satisfied the requirements for the extraordinary ability nonimmigrant classification. 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.

¹¹See Business Search, State of Florida Secretary of State website, <https://search.sunbiz.org/Inquiry/CorporationSearch> [redacted] (last visited April 22, 2024, and incorporated into the record of proceedings).

¹² See generally 2 USCIS Policy Manual, *supra*, at M.4(D).

¹³ See *INS v. Bagambada*, 429 U.S. 24, 25-26 (1976) (“courts and agencies are not required to make findings on issues the decision of which is 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).