



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **DEC 29 2014** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of business.¹ The petitioner, a fashion design house, seeks to employ the beneficiary in the position of Creative Pattern Maker for a period of three years. In response to the director's initial December 5, 2013 request for evidence (RFE), which noted that arts and business fall within separate O classifications, the petitioner reiterated that it sought to classify the beneficiary as an alien of extraordinary ability in the field of business, not art.

After issuing a subsequent January 15, 2014 RFE and then considering the evidence of record, the acting director denied the petition, finding that the petitioner did not establish that the beneficiary qualifies as an alien of extraordinary ability in business. The acting director determined that the petitioner did not establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and that the submitted evidence did not meet any of the eight evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which three must be met to establish eligibility.

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner asserts that it submitted sufficient evidence establishing that the beneficiary qualifies as an alien with extraordinary ability in the field of business. The petitioner notes that the acting director's decision did not mention the samples of the beneficiary's work which the petitioner initially submitted. As our review is conducted on a *de novo* basis, we will herein address the totality of the petitioner's evidence. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). For the reasons discussed below, the petitioner has not submitted probative evidence satisfying the plain language requirements of at least three criteria. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien 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

¹Self-styled immigration consultants provided some of the submissions in the record. The record, however, contains no Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, executed by the petitioner recognizing either of those individuals as its representative and the consultants have emphasized that the petitioner is not represented by counsel. Further, the record contains no evidence that either of these individuals is an attorney, and neither individual's name appears on the roster of accredited representatives maintained by the Executive Office of Immigration Review (EOIR). For all these reasons, neither consultant is recognized as the petitioner's representative of record. All representations in the record will be considered, but the decision in this matter will only be provided to the petitioner.

extraordinary ability. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part: “*Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.”

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien’s receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien’s work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien’s participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien’s authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

- (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) 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.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

II. Discussion

A. Extraordinary Ability in Business

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on November 19, 2013. The petitioner is in the business of fashion design. The initial cover letter, which immigration consultants prepared, described the beneficiary as "one of the world's foremost experts in the field of Creative Fashion Pattern Making" who has "unique and extraordinary abilities to both understand a sketch and delve into the vision of the designer . . ." The petitioner has not provided any further description of the job functions or duties required of the offered position. Specifically, the job offer does not list any job duties, only the job title.

The evidence of record establishes that the beneficiary has done fashion pattern making for the petitioner and several other fashion designers and entertainers. The evidence submitted in support of the petition includes numerous testimonial letters and documentation of the beneficiary's pattern-making work in the form of a portfolio. We will consider all of this evidence below in the context of the regulatory criteria.

The record consists of: the Form I-129 petition and supporting evidence; the acting director's requests for evidence dated December 5, 2013 and January 15, 2014, and the petitioner's responses; and, the acting director's decision dated March 14, 2014. We have reviewed the evidence of record in its entirety in reaching our decision.

1. Consideration of the Evidentiary Criteria

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, “truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the acting director 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.” *Matter of Chawathe*, 25 I&N Dec. at 376.

The sole issue is whether the petitioner submitted evidence to establish that the beneficiary enjoys the requisite sustained national or international acclaim. If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will have submitted the requisite initial evidence pertaining to the beneficiary’s acclaim and recognition. The regulations cite to the Nobel Prize as an example of a major award. *Id.* The petitioner does not claim that the beneficiary can meet this criterion. Instead, the petitioner has submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

At the time of filing, the petitioner claims that the beneficiary meets the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (5), (7), and (8).³ In denying the petition, the acting director determined that the evidence submitted did not satisfy any of the eight evidentiary criteria. The petitioner has not submitted any evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (2), (3), (4) and (6), and raises no objection to the acting director’s determination that these criteria have not been met. We will discuss the three criteria the petitioner claims below. After careful review of the record and for the reasons discussed herein, the petitioner has not established eligibility under any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field.

³ Although not addressed by the acting director, the petitioner asserted eligibility under a regulatory criterion not found at 8 C.F.R. § 214.2(o)(3)(iv)(B). In the petitioner’s initial letter in support of the petition, and again on appeal, the petitioner has characterized some of the submitted evidence under a regulatory criterion at 8 C.F.R. § 204.5 (h)(3), relating to immigrant visa petitions filed on behalf of aliens of extraordinary ability. Specifically, the petitioner indicated it was submitting the beneficiary’s portfolio as “evidence of the display of the alien’s work in the field of [sic] artistic exhibitions or showcases” consistent with 8 C.F.R. § 204.5 (h)(3)(vii). This criterion does not appear at 8 C.F.R. § 214.2(o)(3)(iii)(B) and the petitioner has not asserted that the portfolio constitutes comparable evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C), which requires a showing that the criteria are not readily applicable to the beneficiary’s occupation. Notably, we will consider the beneficiary’s portfolio under the nonimmigrant criteria for which the petitioner also submitted it, specifically under the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) and (7).

The fifth criterion requires the petitioner to submit evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). In support of this criterion the petitioner has submitted evidence in the form of the beneficiary's professional portfolio. The portfolio is written in the first person, reflecting that the beneficiary prepared the portfolio. It contains photographs of garments that the petitioner claims the beneficiary helped create for several designers. The photographs show garments being worn by celebrities including [REDACTED] at fashion events and professional events such as the [REDACTED] and by fashion models in designers' promotional materials and at various runway shows in Europe. The photographs also show the garments being worn by pop music performers at various stage performances. Other than the beneficiary's own statements in the portfolio, none of the documents in the portfolio mention the beneficiary or otherwise establish it was primarily the beneficiary who created these garments or their patterns, as the petitioner claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As such, this evidence does not provide evidence of the beneficiary's original business-related contributions to the field of fashion design.

The petitioner's initial evidence also included three testimonial letters, including a letter from [REDACTED] Head of [REDACTED] London, confirming the beneficiary's employment with that fashion house throughout 2011, "working on Gold Label runway collections and [REDACTED] collections." She describes the beneficiary as "a creative pattern cutter with great talent and innovative skill in innovative pattern cutting for Womenswear" with "strong abilities" and an "expert at historical corset making." She states that the beneficiary "showed she had a deep understanding and knowledge of garment construction and in Made to Measure Bespoke garments for our [REDACTED] Clients and Celebrities" and "achieved a level of prominence in garment construction."

The petitioner also submitted a letter from [REDACTED] the Pattern Room Manager at [REDACTED] London, stating that she has known the beneficiary since 2007, during which time she and the beneficiary worked together "for luxury labels like [REDACTED] and [REDACTED] Ms. [REDACTED] states that the beneficiary "has helped to create fantastic garments and phenomenal gowns with press coverage worldwide" and that garments the beneficiary helped create are worn by musicians and famous actresses and celebrities. The record does not include any press coverage of the beneficiary or her work. Specifically, the copied screen shots of website pages that appear in the portfolio do not specifically mention the beneficiary. Ms. [REDACTED] describes the beneficiary's skills in pattern cutting as "remarkable" and "extraordinary," and opines that "[t]here are very few pattern cutters working today that have her range of skills, experience, knowledge and intelligence to generate such complex garments." She concludes by stating that "[the beneficiary] contributes with her talent, her skills and exceptional experience to the luxury fashion world."

The petitioner further submitted a letter from [REDACTED], Atelier Director for the petitioner, where the beneficiary performed an internship. Ms. [REDACTED] states that the beneficiary "successfully developed several patterns for our Company that have resulted in increased precision and accurate information for our cutter and sample makers" and that the beneficiary was also helpful

to the company in “writing effective cutter’s musts for our production representatives.” She describes the beneficiary as a “team player” who “assumed a leadership role in inspiring and motivating other employees and interns.”

The petitioner did not provide any additional evidence in response to the RFE. The director found that the petitioner did not establish that the beneficiary meets this criterion. Upon review, the petitioner has not submitted sufficient evidence to satisfy this criterion. While the evidence establishes that the beneficiary has made valuable contributions to the employers for whom she has worked, the petitioner has not provided evidence of any original contributions of major significance made by the beneficiary to the field of fashion design. There is nothing in the evidence to suggest that the beneficiary introduced new pattern-making techniques to the field. While the letter from [REDACTED] Head of [REDACTED] deems the beneficiary to be “expert at historical corset making” and as having “achieved a level of prominence in garment construction,” the record does not establish that the beneficiary has received had the type of impact on the field that is indicative of an original contribution of major significance. Regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *Cf. Visinscaia v. Beers*, 4 F.Supp.3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not met a similarly worded criterion because she did not demonstrate her impact in the field as a whole). Ultimately, the letters are conclusory and unsupported. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Based on the foregoing, the petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

In order to meet the seventh criterion, the petitioner must submit evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). This criterion requires the petitioner to establish the beneficiary’s prior essentiality to and employment with such organizations. The petitioner asserts that the beneficiary has had a critical role in creating patterns for several fashion design organizations.

The letter from [REDACTED] stating that she and the beneficiary worked together “for luxury labels like [REDACTED],” does not constitute evidence of the beneficiary’s employment with those other organizations.

The petitioner documented the beneficiary’s prior employment with only the petitioner and one other organization. The letter from [REDACTED] specifically states the beneficiary was an intern at the petitioning organization without sufficiently explaining how that role may be considered critical or essential beyond the need for the organization to employ competent and creative interns. For example, Ms. [REDACTED] does not suggest that the beneficiary’s work resulted in more customers or press coverage or increased the company’s profits and the record contains no evidence to support

such an impact. The letter from [REDACTED] Head of [REDACTED] London, confirmed the beneficiary's employment with that organization throughout 2011, "working on Gold Label runway collections and [REDACTED] collections." She describes the beneficiary as "a creative pattern cutter with great talent and innovative skill in innovative pattern cutting for Womenswear" with "strong abilities" and an "expert at historical corset making." She states that the beneficiary "achieved a level of prominence in garment construction." Upon review, the petitioner has not submitted sufficient evidence establishing that the beneficiary was employed in a critical or essential capacity at [REDACTED]. While the beneficiary's former employer certainly conveys its satisfaction with her pattern cutting work and overall job performance, the record does not contain sufficient evidence to establish that the beneficiary's assignments in the organization were in a "critical or essential capacity" that significantly impacted the employer, such as, for example, its customer base or profits. Rather, the submitted letter conveys that beneficiary is a talented pattern cutter who performed her duties satisfactorily during her employment.

Based on the foregoing, the petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence

The eighth criterion requires the petitioner to establish that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

The petitioner has offered the beneficiary an annual base salary of \$70,000 for the proffered position "Creative Pattern Maker." In support of this assertion, the petitioner submitted an unexecuted copy of its employment offer to the beneficiary. The petitioner has not provided its contract with the beneficiary or other reliable evidence of the salary the beneficiary will receive, as required by the plain language of this criterion.

In the request for evidence, the director observed that the proffered salary does not appear to be high compared with others in the industry. On appeal, the petitioner asserts that it has documented that the proffered salary is high compared to others in the industry. Upon review, the evidence does not establish that the beneficiary will command a high salary as a creative pattern maker.

The petitioner submitted salary information from the websites [REDACTED]. The information provided from the website [REDACTED] for the occupation "Pattern Maker" indicates that the average salary in the field nationally is \$41,000. However, the documentation states, "[t]his salary was calculated using the average salary for all jobs with the term 'pattern maker' anywhere in the job listing," and does not provide a description of this occupation. The website further states: "Average pattern maker salaries can vary greatly due to company, location, industry, experience and benefits." Finally, providing the average salary does not establish what is considered "high" in the occupation.

The information provided from the website [REDACTED] provides a job description for the position of 'pattern maker', as follows: "[f]abricates foundry⁴ patterns from various materials, such as wood, metal, and plastic, for use in forming molds for castings, according to blueprint specifications, and using various machine tools, power tools, and hand tools. Assesses blueprint of part to be cast" This description does not appear to apply to the beneficiary's occupation as a fashion pattern maker. Thus, the petitioner has not established that the information from these websites provides a meaningful salary comparison with the beneficiary's position.

The information provided from the website [REDACTED] for the occupation "Fabric/Apparel Patternmaker" indicates that the median salary in the field nationally is \$43,885, while the top 90% wage level nationally is \$62,672. The petitioner did not submit evidence pertaining to the reliability of this website. In addition, the job description for this position states: "[f]abricates foundry patterns from various materials." Again, this description does not appear to apply to the beneficiary's occupation as a fashion pattern maker. As such, the petitioner has not established that the information from this website provides a meaningful salary comparison with the beneficiary's position. Regardless, while the proffered salary of \$70,000 may be high for average level positions in the field, which the website says requires only a high school diploma, it may not be considered high for those with the beneficiary's education and experience. The beneficiary has a master's degree and several years of professional experience.

Based on the above, the petitioner has not established that the beneficiary's proffered salary is high among similarly employed individuals. The petitioner has also not documented the salaries the beneficiary has received as a fashion pattern maker during her employment with various fashion houses in England.

Based on the foregoing, the petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

III. Conclusion

The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The evidence shows that the beneficiary is a skilled and experienced fashion pattern maker. Upon review of the totality of the evidence submitted, the petitioner has not established that the beneficiary has extraordinary ability as a fashion pattern maker, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of

⁴ According to *Webster's New World College Dictionary* (2010) a foundry is a place where metal is cast.

endeavor. 8 C.F.R. § 214.2(o)(3)(ii). Despite the recommendations and endorsements submitted, it must be concluded that the beneficiary's achievements have not yet risen to this level. The type of sustained national or international recognition of accomplishments necessary for O-1 classification has not been presented. Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act. For this reason, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed