

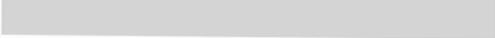


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **APR 10 2015** Office: VERMONT SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary: 

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:



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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, revoked the approval of the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will withdraw the director's decision; however, because the petition is not approvable, it is remanded for further action and consideration.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker (Form I-129), 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), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner operates a New York-based film and television production business. The petitioner seeks to employ the beneficiary as a film/television producer in the United States from August 1, 2013 until July 31, 2016.

The director initially approved the petition on August 19, 2013, granting the beneficiary O-1 classification. On April 16, 2014, the director issued a notice of intent to revoke (NOIR) the approval of the petition based, in part, on information the beneficiary provided to a U.S. consular officer during her interview for the O-1 visa. After receiving the petitioner's response to the NOIR, the director revoked the approval on July 15, 2014, concluding that the petitioner did not establish that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture and television industry. In the NOIR, the director determined that the petitioner did not establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A). The director also determined that the submitted evidence did not satisfy any of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B), of which three are required to establish eligibility. The NOR reaffirmed that conclusion without further discussion.

The matter is now before us on appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner asserts that industry experts recognize the beneficiary's "distinction as a content developer and producer." The petitioner also asserts that the director overlooked material evidence that was submitted in response to the NOIR. The petitioner has submitted a brief and additional evidence in support of the appeal.

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 extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(v) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's recognition in the field through evidence that the beneficiary has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(v)(A). If the petitioner does not submit this evidence, then a petitioner must submit

sufficient qualifying evidence that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6).

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 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. 369, 376 (AAO 2010).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

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.

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii), (5) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and two consultations, one from an appropriate union and one from an appropriate management organization.

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an O-1 petition may be revoked on notice under five specific circumstances. 8 C.F.R. § 214.2(o)(8)(iii)(A). To properly revoke the approval of a petition, the director must issue an NOIR that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal.

8 C.F.R. § 214.2(o)(8)(iii)(B). The regulation at 8 C.F.R. § 214.2(o)(8)(iii)(A) provides for revocation on notice if the director finds that:

- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
- (2) The statement of facts contained in the petition was not true and correct;
- (3) The petitioner violated the terms or conditions of the approved petition;
- (4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
- (5) The approval of the petition violated paragraph (o) of this section or involved gross error.

Further, by way of comparison, when denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

Finally, pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), an applicant must be informed of derogatory information to be used against him or her and must be given a reasonable amount of time to rebut the information. *See also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

II. Discussion

The record of proceeding contains the Form I-129, Petition for a Nonimmigrant Worker and supporting documentation, the director's NOIR, the petitioner's response to the NOIR, the director's notice of revocation, and the petitioner's appeal.

According to the summary of the beneficiary's most recent resume that the petitioner submits on appeal, she has been working in media and television for more than ten years, in the areas of production and content development. According to the same summary, the beneficiary formed the petitioning company in the United States in 2013. The evidence submitted in support of the petition includes numerous testimonial letters, articles regarding the beneficiary's film/television projects and companies with which the beneficiary has worked, and copies of award certificates the beneficiary received in Argentina. The petitioner has also provided its written agreements with the beneficiary, an itinerary, and contracts entered by the petitioner and the beneficiary with third parties pertaining to the beneficiary's services upon approval of the petition.

We note that the petitioner's initial letter referenced the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv), asserting that the beneficiary satisfies the criteria listed at 8 C.F.R.

§ 214.2(o)(3)(iv)(B) subparagraphs (1), (2), (3) and (5), and also asserts that “[the beneficiary’s] comparable evidence further supports her petition for classification as an alien of extraordinary ability in the arts.” Unlike the O-1 regulations applicable to aliens of extraordinary ability in the arts, the regulation at 8 C.F.R. § 214.2(o)(3)(v) pertaining to aliens of extraordinary achievement in the motion picture and television industry do not have a “comparable evidence” option. Compare 8 C.F.R. § 214.2(o)(3)(iv)(C). Therefore, as stated above, if the beneficiary is coming to the United States to work in the motion picture and television industry, the petitioner must submit sufficient qualifying evidence either that the beneficiary has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director’s Guild Award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or evidence that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6).

The director initially approved the petition on August 19, 2013. On April 16, 2014, the director issued an NOIR. The director notified the petitioner that the U.S. Consulate in Buenos Aires, Argentina interviewed the beneficiary in connection with her O-1 visa application and that “the interviewing officer found specific evidence of previously unknown facts, which may warrant revocation of the approval.” The director’s NOIR advised the petitioner that, upon further review of the beneficiary’s credentials it does not appear that she is qualified for the benefit sought. The director did not provide the specifics behind the consular officer’s conclusion that one of the beneficiary’s awards was “false,” but did provide the petitioner with a copy of the consular officer’s investigative memorandum.

The petitioner submitted a timely response to the NOIR, which included a brief and additional evidence pertaining to the beneficiary eligibility as an alien with extraordinary achievement in the motion picture or television industry, as defined in the regulations.

On July 15, 2014, the director revoked the approval of the petition. The director issued a one-page summary notice of revocation, in which the director stated:

On April 16, 2014, [USCIS] notified you of its intent to revoke the petition that you filed on July 31, 2013. You were granted the opportunity to submit any evidence you thought would overcome the grounds of revocation. *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987).

On May 19, 2014, USCIS received a response to that notice. The grounds of revocation have not been overcome and the approval of your petition is revoked.

The petitioner filed an appeal, which is now before us. On appeal, the petitioner reiterates the arguments made in response to the NOIR, asserting that the submitted evidence satisfies the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(v)(B) subparagraphs (1), (3) and (5). In addition, for the first time, the petitioner asserts that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. §§ 214.2(o)(3)(v)(B)(4). The petitioner notes that the director’s decision did not address the evidence the petitioner submitted in response to the NOIR, and asserts that the director’s decision did not provide it “with adequate notice and opportunity to appeal.”

Upon review, we find the director's NOIR and the summary NOR were deficient. With respect to the NOIR, the notice was good and sufficient with respect to all points other than the "false" award. Specifically, the director stated that conclusion without identifying the award or providing the basis for that conclusion, although the director did attach the consular officer's memorandum, which provided additional detail. With respect to the award in question, the petitioner initially asserted that the beneficiary received a general interest programming award from the [REDACTED] with respect to the program [REDACTED]. In support of that assertion, the petitioner submitted a list of honorable mentions at the [REDACTED] with a partial translation. The foreign language document and the partial translation both include an honorable mention for [REDACTED] a show with a similar name to another of the beneficiary's projects, *Recurso Natural*. The original foreign language document, however, also lists [REDACTED] as the recipient of an honorable mention. The consular officer noted that the beneficiary did not work on [REDACTED] and concludes that award is "false." The petitioner, however, has always claimed that in [REDACTED] the beneficiary received an honorable mention for [REDACTED] and has never asserted she was recognized in 2012 for her work on [REDACTED]. Accordingly, we withdraw that portion of the director's NOIR.

With respect to the NOR, this final notice did not explain the specific reasons for the revocation or discuss the petitioner's substantive response to the NOIR. As previously stated, a director has an affirmative duty to explain the specific reasons why a petition is not approvable; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *Cf.* 8 C.F.R. § 103.3(a)(1)(i). Accordingly, we remand the matter for the director to consider the evidence the petitioner submitted in response to the NOIR.

Finally, the director shall also consider whether the petitioner's status in New York as "INACTIVE – Dissolution" is another basis for revocation.¹ If the petitioner is no longer able to employ the beneficiary, as would be the case if the petitioner is no longer in business, that circumstance is a ground for revocation. 8 C.F.R. § 214.2(o)(8)(iii)(A)(i).

The matter is remanded to the director for a new decision in accordance with the above. If the new decision is adverse to the petitioner solely for reasons other than the petitioner's dissolution, the director shall certify that decision to us.

As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361 *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The director's decision is withdrawn; however, the petition is currently unapprovable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the

¹ See http://appext20.dos.ny.gov/corp_public/CORPSEARCH.ENTITY_INFORMATION?p_nameid=4749917&p_corpid=4420404&p_entity_name=%70%69%6E%6B%20%70%61%6E%64%61&p_name_type=%25&p_search_type=%42%45%47%49%4E%53&p_srch_results_page=0, accessed April 3, 2015 and incorporated into the record of proceeding.



petition is remanded to the director for issuance of a new, detailed decision. If the new decision is adverse to the petitioner solely for reasons other than the petitioner's dissolution, that decision is to be certified to the Administrative Appeals Office for review.