



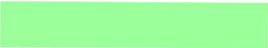
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: JAN 20 2015

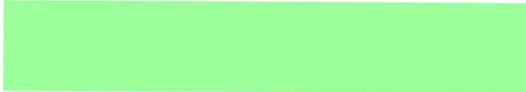
Office: CALIFORNIA SERVICE CENTER

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. 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 Director, California 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, acting as an agent, seeks to classify the beneficiary as an O-1B 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 with extraordinary achievement in the motion picture or television industry.

After issuing a request for evidence and then considering the evidence of record, the director denied the petition, finding that the petitioner did not establish that the beneficiary qualifies as an alien with extraordinary achievement in the motion picture or television industry. The director determined that the petitioner did not establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A), and that the submitted evidence only satisfied one of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B), of which the petitioner must meet three to establish the beneficiary's eligibility.

On appeal, the petitioner submits a brief which generally asserts that the director erred based upon a "misapplication of the legal standard for O-1 artists found at 8 C.F.R. [§] 214.2(o)(3)(iv)(B) and its failure to fully recognize the finite field of endeavor," without providing any evidence to support such claims or addressing any of the evidentiary criteria. As will be discussed below, the petitioner initially claimed that the beneficiary is an alien with extraordinary achievement in the motion picture or television industry, not an alien of extraordinary ability in the arts. For the reasons discussed below, we will uphold the director's decision and dismiss the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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)(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.

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

Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry. To qualify as an alien of extraordinary achievement in the motion

picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

- (A) Evidence that the alien has been nominated for, or has been 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; or
- (B) At least three of the following forms of documentation:
 - (1) 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;
 - (2) 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;
 - (3) 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;
 - (4) 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;
 - (5) 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; or
 - (6) 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.

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.

In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) 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, and an itinerary. The petitioner must also submit two consultations, one from an appropriate union and one from an appropriate management organization. 8 C.F.R. § 214.2(o)(5)(iii).

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). We have held that the "truth is to be determined not by the quantity of evidence alone but by its quality." Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS 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).

II. Discussion

A. The Beneficiary's Field

As previously stated, on appeal, the petitioner generally asserts that the director did not "fully recognize the finite field of endeavor (Experimental/Independent Acting in the Media of Stage and Screen) [which] resulted in an erroneous decision" and that the director "misappli[ed] [] the legal standard for O-1 artists found at 8 C.F.R. § 214.2(o)(3)(iv)(B)." The petitioner is requesting classification for the beneficiary as an alien of extraordinary achievement in the motion picture or television industry. The director appropriately reviewed the petition according to the classification requested on the O and P Classifications Supplement to Form I-129. Regardless, the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv) and (v) are identical.

The petitioner does not provide an example of how the director's conclusions were incorrect or would have been different if the beneficiary's field were limited to the more finite field of "experimental/independent acting" or even demonstrate that the director did not consider the beneficiary's role in experimental and independent productions. Regardless of whether the beneficiary's

field is limited to such a finite field, the petitioner must still satisfy the evidentiary requirements at either 8 C.F.R. § 214.2(o)(3)(v)(A) or (B).

B. The Evidentiary Criteria

The petitioner does not claim that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A). Thus, the petitioner must establish that the beneficiary meets at least three of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B). In denying the petition, the director determined that, based upon the submitted evidence, the petitioner established that the beneficiary met the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5). Regarding the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(3), the director thoroughly discussed the submitted evidence and found that the petitioner did not establish that the beneficiary met these criteria. The director also found that the petitioner had not claimed that the beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(4) or (6). As previously stated, the petitioner does not contest the findings of the director for any of the evidentiary criteria on appeal. Instead, the petitioner suggests the director reached an erroneous conclusion by not taking into account the beneficiary's "finite field of endeavor (Experimental/Independent Acting in the Media of Stage and Screen)." Essentially, the petitioner requests that we reconsider the director's decision based on a vague assertion that the director "misappli[ed] [] the legal standard for O-1 artists found at 8 C.F.R. § 214.2(o)(3)(iv)(B)," rather than the legal standard for aliens of extraordinary achievement in the motion picture or television industry, the requested classification.

A review of the director's decision reveals that the director addressed each criterion and the submitted evidence at length. For example, in discussing the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1), the director found that while the petitioner had established the beneficiary's past lead or starring roles, the petitioner had not established the distinguished reputation of the productions. In addition, the director found that the petitioner had not established that the beneficiary has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation, as required by the plain language of the criterion. Regarding the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2), the director found that "the published materials and reviews are from local publications with [a] limited scope and audience...[and] [t]hus...do not establish that the beneficiary has achieved national or international recognition," as required by the plain language of the regulation.

The petitioner has not explained on appeal how any of the director's analyses demonstrate that the director did not "fully recognize the finite field of endeavor." For example, the petitioner does not assert or document that the publications and websites that featured reviews of the beneficiary's work or listed it among other ongoing productions, including [www](#)

have a wider audience than the director stated or are otherwise indicative of national or international recognition within the experimental theater/independent film industry for achievements as required under 8 C.F.R. § 214.2(o)(3)(v)(2). Similarly, the petitioner has not specifically addressed the director's conclusion that the petitioner had not demonstrated how the beneficiary's work on various productions impacted the relevant venues, such as consistent with a lead, starring or critical role for an organization or establishment.

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If it is the petitioner's position that the director's analysis must be in the context of "the finite field of endeavor," it is still the petitioner's burden to submit independent, objective evidence that the shows for which the beneficiary held a lead or starring role enjoy a distinguished reputation; that the roles the beneficiary performed were lead, starring, or critical for organizations and establishments with a distinguished reputation; and that she achieved national or international recognition for her achievements among critics of independent and experimental productions. Ultimately, after careful review of the entire record, we conclude that the record supports the director's ultimate finding that the petitioner did not establish that the beneficiary meets at least three of the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B) and the reasoning underlying that finding.

Based on the foregoing, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary achievement in the motion picture or television industry. Therefore, the petition may not be approved.

III. Conclusion

The petitioner has not established the beneficiary's eligibility by demonstrating that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). In addition, the evidence in the aggregate does not establish that the beneficiary has a degree of skill and recognition significantly above that ordinarily encountered to the extent that she is recognized as outstanding, notable, or leading in the motion picture or television field.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. 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.

ORDER: The appeal is dismissed.