



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

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

MATTER OF K-!P-, LLC

DATE: APR. 28, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a film and video production and post production company, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The Petitioner requests that the Beneficiary be granted O-1 classification so that he may work as a producer and editor. The Director, California Service Center, denied the petition. The Director concluded that the Petitioner did not satisfy the evidentiary requirements applicable to a foreign national of extraordinary ability in the arts, and that it did not submit the required consultations for a foreign national of extraordinary achievement.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional documentation and asserts that the Director erred in her consideration of the evidence. Upon *de novo* review, we will dismiss the appeal.

I. PERTINENT LAW AND REGULATIONS

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified foreign national 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)(ii) provides, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. . . .

Extraordinary ability in the field of arts means distinction. Distinction means 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.

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)(iv) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's recognition in the field through documentation that the beneficiary has been nominated for, or is 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)(iv)(A). If a petitioner does not provide this information, then that petitioner must satisfy at least three of the six categories listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). If a petitioner shows that certain criteria in paragraph (o)(3)(iv)(B) of this section do not readily apply to the beneficiary's occupation, that petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(C).

The satisfaction of 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)(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) provides that petitions for O foreign nationals shall be accompanied by the following:

- (A) The evidence specified in the particular section for the classification;

(b)(6)

Matter of K-!P-, LLC

- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

Regarding the required advisory opinion from a consulting entity, consultation with a peer group in the area of the beneficiary's ability (which may include a labor organization), or a person or persons with expertise in that area, is required for an individual of extraordinary ability. 8 C.F.R. § 214.2(o)(5)(ii)(A). If the O-1 petition is for an individual with extraordinary achievement in motion picture or television, the petitioner must provide consultations from an appropriate labor union and a management organization with expertise in the beneficiary's area of ability. 8 C.F.R. § 214.2(o)(5)(iii).

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on October 17, 2014. The Director issued a request for additional evidence (RFE) on October 29, 2014, to which the Petitioner replied. The Petitioner also submits a brief and additional evidence on appeal. We have considered the record in its entirety in reaching this decision.

The Petitioner explained in an introductory letter that it is "a film and video pre/post production company founded and managed by [REDACTED] a television and radio host who also started a nonprofit foundation relating to breast cancer. According to the record, the Petitioner intends for the Beneficiary to work as a producer, field producer, and editor for several television, radio, DVD, and webcast productions. The event dates range from February 1, 2015, through December 15, 2017.

In addition to documentation about its founder, [REDACTED] the Petitioner provided evidence relating to the Beneficiary's credentials and background. The evidence reflects that the Beneficiary has a certificate in entertainment studies and the equivalent of a bachelor's degree in communications. The record includes copies of published material about two music videos he co-directed, copies of articles about the bands that performed in the music videos, documentation regarding award nominations for the two music videos, and reference letters discussing the Beneficiary's work as a producer and photographer for a documentary about individuals with hemophilia among other projects. The Petitioner also submitted consultations from [REDACTED] a non-profit artists' organization, and the [REDACTED]

(b)(6)

Matter of K-!P-, LLC

III. ANALYSIS

The two issues to be addressed in this matter are (1) whether the Petitioner documented that the Beneficiary satisfies the evidentiary requirements for classification as an individual of extraordinary ability in the arts, and (2) whether the Petitioner submitted the appropriate consultation as required by the regulations.

A. Evidentiary Criteria

If a petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in his field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of production with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to an Academy, Emmy or Grammy Award. *Id.* The Petitioner in this instance has not indicated or established that the Beneficiary has received a major, internationally recognized award. Therefore, the Petitioner must satisfy at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will address these criteria below.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

The plain language of this criterion requires a petitioner to show that the foreign national has not only performed services as a lead or starring participant in productions or events with a distinguished reputation in the past, but also that he will do so in the future. The Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) because, although the Beneficiary performed these services in the past, the Petitioner did not establish that the Beneficiary will perform services as a lead or starring participant in productions or events with a distinguished reputation in the future. We agree with the Director's findings.

The Petitioner indicated that the Beneficiary will be involved with its productions as follows: as field producer and editor for the television series [REDACTED] as field producer for the DVD [REDACTED] as field producer for the webcast series [REDACTED] as field producer and editor of "spots" on [REDACTED] and as producer and editor for the radio show [REDACTED]. On appeal, the Petitioner contends that these productions "derive their distinguished reputation" from the Petitioner's founder, [REDACTED]. The record includes copies of web pages from [REDACTED] website and [REDACTED] account as well as copies of two articles in Spanish (with translations) from the website of [REDACTED] a publication of the [REDACTED]. The statements from [REDACTED] websites are not objective and therefore carry little weight without supporting evidence. The articles, both of which are dated [REDACTED] 2013, introduce [REDACTED] as a "new program" and include quotes

¹ The Petitioner does not assert that it satisfies the regulatory categories of evidence not discussed in this decision.

(b)(6)

Matter of K-!P-, LLC

regarding its format and content from [REDACTED] who is described in one article as a “renowned television and radio presenter.”

The regulations require documentation to establish the distinguished reputation of the productions or events in which the Beneficiary will play a role. Accordingly, statements and evidence regarding the reputation of [REDACTED] are not sufficient. While the Petitioner did submit articles reflecting publicity for one of the programs on which the Beneficiary will work, the articles do not indicate or establish that the program has a distinguished reputation. We therefore find that the evidence does not demonstrate the distinguished reputation of the relevant productions.

Further, the record does not establish that the Beneficiary’s performance in the above productions will be “as a lead or starring participant.” The record includes little information about his proposed function on each production beyond his job titles. On appeal, the Petitioner states that the work of a producer, field producer, or editor is “an inseparable component of the show creation,” and that without such work “there can be no show.” While the Petitioner indicates that the Beneficiary’s role is essential to the production, it does not necessarily follow that this role is considered “lead or starring.” We note that unlike the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), the instant criterion does not include the term “critical” in describing the beneficiary’s role. As evidence that “occupations in picture editing have been recognized as of leading or critical nature by the Emmy awards,” the Petitioner submits a printout from *Wikipedia* listing [REDACTED] as among the categories of Emmy awards. We will not assign weight to information from *Wikipedia*, which is an open, user-edited Internet site with no assurances about the reliability of its content. *See Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Regardless, even assuming that Emmy awards are presented for this type of position, the Petitioner has not explained how this establishes that the position constitutes a “lead or starring” role in a production.

For the reasons discussed above, we find that the Petitioner has not satisfied the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

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

The Director determined that the petitioner did not satisfy the evidentiary requirements of this criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2). In general, in order for published material to demonstrate national or international recognition, it must be about the Beneficiary and be printed in major newspapers, magazines or other major publications with significant national or international distribution.

The Petitioner provided an article from [REDACTED] magazine dated [REDACTED] 2013, about the Venezuelan music group [REDACTED] and their music video, [REDACTED]. The article features an interview with the musicians and the directors of the video, and it identifies the Beneficiary as one of the two directors at the beginning of the article. While the Petitioner attests that [REDACTED] is an iconic digital youth oriented magazine in Venezuela and across Latin America, the record does not include

(b)(6)

Matter of K-P-, LLC

sufficient documentation to support that statement. Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The Petitioner provided evidence regarding the reputation and circulation of [REDACTED] magazine, which it contends is a comparable English-language publication. Regardless of any claimed similarities in content and target audience between [REDACTED] the Petitioner has not established that they enjoy a similar reputation or distribution. Accordingly, we find the evidence insufficient to demonstrate that the article in [REDACTED] represents national or international recognition of the Beneficiary's work on the music video.

Additionally, the Petitioner has provided articles announcing the release of [REDACTED] and a second music video co-directed by the Beneficiary, [REDACTED] by the Venezuelan band [REDACTED]. The articles are from publications and websites including, but not limited to [REDACTED]

[REDACTED] While many of these announcements name the Beneficiary as one of the directors of the video, they are not publications "by or about" the Beneficiary as required by the regulation. The articles do not recognize the Beneficiary's individual achievements or the national/international recognition he received for such achievements. In addition, the record does not include sufficient circulation data or other documentation about the publications and websites to establish that they represent national or international recognition. The Petitioner provided circulation information for [REDACTED] from the website [REDACTED] which indicated that [REDACTED] is ranked [REDACTED] in Venezuela for website traffic. However, the Petitioner did not explain how being ranked [REDACTED] in Venezuela demonstrates that [REDACTED] is a major national publication source. In light of the above, the Petitioner has not established that the evidence satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

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.

In order to establish that the Beneficiary meets the third criterion, the Petitioner must submit 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). The Director found that the Beneficiary did perform such a role in the past, but that the Petitioner did not satisfy the evidentiary requirements of this criterion because it did not establish that he will perform in a lead, starring, or critical role for organizations and establishments with a distinguished reputation in the future.

Regarding the Beneficiary's prospective work, the Petitioner has demonstrated that his position as a producer and editor on its television shows, DVD, web series, and radio show qualifies as a critical role for the company. As noted above, the Petitioner indicates on appeal that this role is essential to

(b)(6)

Matter of K-!P-, LLC

its productions. However, the Petitioner did not provide sufficient evidence to demonstrate that the Petitioner has a distinguished reputation. Although the Petitioner has provided documentation regarding its founder, as discussed previously, this documentation is insufficient to establish the distinguished reputation of the organization itself. The only published articles about [REDACTED] in the record were the aforementioned articles from [REDACTED] which do not mention the name of the petitioning production company.

Further, we will withdraw the Director's finding regarding the Beneficiary's past performance in a lead, starring, or critical role. As evidence of such performance, the Petitioner provided letters regarding the Beneficiary's work on a documentary for the [REDACTED] which was funded by [REDACTED] and [REDACTED]. The Petitioner stated that the Beneficiary played a "leading and crucial role in the project" as its creator, producer, and photographer, and it submitted documentation relating to the reputation of the sponsoring organizations. The submitted testimonials support the Petitioner's statements regarding the importance of Beneficiary's role in the documentary. They do not demonstrate, however, that his work on that single project constituted a lead, starring, or critical role for the organizations themselves as required under the regulation.

The Petitioner also submitted a copy of a 2014 job offer letter and a testimonial from [REDACTED] a Spanish-language television network in [REDACTED] California. The testimonial discusses the Beneficiary's past work as a producer and technical director on [REDACTED] stating that he was "a great asset to the production team" and his work "influenced the project in a very positive way." These statements do not establish that the Beneficiary played a lead, starring, or critical role at [REDACTED]. In addition, while the Petitioner provided information about [REDACTED] from the *Wikipedia* website, we find this documentation insufficient to demonstrate the distinguished reputation of the organization. In light of the above, the Petitioner has not submitted evidence to satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

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

In order to satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4), the Petitioner must submit evidence that the Beneficiary 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. The Director found that the Beneficiary did not meet this criterion. We will withdraw the Director's finding on this issue.

In support of this criterion, the Petitioner stated that the Beneficiary co-directed two music videos that were nominated for the [REDACTED] in Venezuela in [REDACTED] demonstrating his commercial successes. Specifically, [REDACTED] was nominated for the Best [REDACTED]

(b)(6)

Matter of K-!P-, LLC

Video of the Year and [REDACTED] was nominated as the Best [REDACTED] Video of the Year. The Petitioner submitted documentation from the [REDACTED] website, with translation. Additionally, the Petitioner submitted articles about [REDACTED] the band that performed [REDACTED] from the websites *Wikipedia* and [REDACTED] and letters from [REDACTED] Manager for [REDACTED] and [REDACTED] Production Executive for [REDACTED] which discuss the success of [REDACTED]. The Petitioner also provided pages from several websites stating that this video was the first by a Venezuelan band to be commercialized on an [REDACTED] worldwide. We find the record sufficient to demonstrate that the Beneficiary's music video [REDACTED] was a commercial or critically-acclaimed success.

We note, however, that we do not find the evidence sufficient to establish that [REDACTED] also became a commercial or critically-acclaimed success. While [REDACTED] was nominated for a [REDACTED], the Petitioner did not provide evidence to establish the significance of this nomination or the [REDACTED] generally. In addition, the two news articles about [REDACTED] in [REDACTED] magazine and [REDACTED] which carry little evidentiary weight for the reasons provided in our discussion of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), do not demonstrate commercial or critically-acclaimed success of that video. The Petitioner also provided a printout from [REDACTED] indicating that [REDACTED] had 49,730 hits, but there was no explanation of how such evidence indicates a commercial or critically-acclaimed success of the Beneficiary's work.²

As discussed above, the Petitioner has satisfied the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) based on the success of his music video [REDACTED]

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

The Director found that the record established that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), but did not specifically discuss or identify the evidence upon which this conclusion was based. Upon review of the record we withdraw the Director's determination.

As evidence under this criterion, the Petitioner provided testimonial letters from various colleagues and acquaintances of the Beneficiary. While these letters praise the Beneficiary's abilities and his work on individual projects, they do not demonstrate significant recognition outside of his circle of

² In addition, the Petitioner provided letters, discussed previously, regarding the Beneficiary's work on the documentary [REDACTED] his work on [REDACTED] at [REDACTED]. However, while letters state that the documentary was screened at the [REDACTED] in Argentina, the record does not include supporting evidence demonstrating that either of these projects were major commercial or critically acclaimed successes. *Matter of Soffici*, 22 I&N Dec. at 165.

(b)(6)

Matter of K-!P-, LLC

contacts or explain how his achievements to date have received significant recognition from organizations, critics, government agencies, or other recognized experts in the field.³

For instance, [REDACTED] project manager at [REDACTED] praised the Beneficiary's work on the documentary [REDACTED] and stated that his photographs from the project were "sent to the press and distributed internationally to hemophilia organizations all over the world." He did not, however, indicate that the Beneficiary's work on the documentary or photographs had been recognized by organizations, critics, agencies, or experts in his field. In addition, [REDACTED] director of [REDACTED] stated that he worked with the Beneficiary on the music video for [REDACTED] and was impressed with his vision, approach and innovative ideas. While he discussed the success of the video, he did not explain whether the Beneficiary had received significant recognition for the project.

In another letter, [REDACTED] a scriptwriter and television director, indicated that he is familiar with the Beneficiary's work through his previous collaborations with the Beneficiary's father. He stated that the Beneficiary's "creative growth in the entertainment field is rapid and admirable," and that "his up and coming professional audiovisual work provides a solid foundation for social contribution in the entertainment field." These statements indicate [REDACTED] favorable assessment of the Beneficiary's abilities and potential, but do not demonstrate that he has already received significant recognition for his work. For the reasons discussed above, we find that the letters, considered in the context of the totality of the evidence submitted, do not satisfy this criterion.

As noted above, the documentation provided does not satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the three required criteria listed at 8 C.F.R. § 214.2(o)(3)(iv)(B). The Petitioner has therefore not established that the Beneficiary qualifies for classification as an individual of extraordinary ability.

B. Consultation

The remaining issue to be discussed is whether the Petitioner satisfied the relevant regulatory requirements regarding advisory opinions from consulting entities. The Petitioner initially submitted a consultation letter from a peer group, a non-profit artists' organization called [REDACTED]. The Director found that this letter "satisfies the consultation requirement for an individual of extraordinary ability in the arts." She stated, however, that as the Beneficiary "will also be working on a television production," the Petitioner is required to submit consultations from an appropriate labor union and from a management organization. On appeal, the Petitioner submits a consultation letter from the [REDACTED]

We will withdraw the Director's findings on this issue. The regulation at 8 C.F.R. § 214.2(o)(5)(iii) requires letters from an appropriate labor union and a management organization when a petitioner seeks to classify a beneficiary as an individual with extraordinary achievement in motion picture or

³ We discuss only a sampling of these letters, but have reviewed and considered each one.

television. In this instance, however, the Petitioner indicated in response to the Director's request for evidence that it seeks to classify the Beneficiary as an individual of extraordinary ability in the arts. Accordingly, we find the Petitioner satisfied the relevant regulatory requirements at 8 C.F.R. § 214.2(o)(5)(ii).

IV. CONCLUSION

The Beneficiary has not been nominated for or received a qualifying award under 8 C.F.R. § 214.2(o)(3)(iv)(A) and the record does not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in the arts.

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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of K-!P-, LLC*, ID# 16221 (AAO Apr. 28, 2016)