



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

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

MATTER OF H-M-H-, LLC

DATE: MAR. 22, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a yacht management company, seeks to classify the Beneficiary as a foreign national of extraordinary ability in business. *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 Director, Vermont Service Center, denied the petition. The Director concluded that the record did not establish that the Beneficiary qualifies for the O-1 classification.

The matter is now before us on appeal. In its appeal, the Petitioner submits additional evidence and asserts that the Director erred in its consideration of the Petitioner's 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 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 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.

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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. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on March 3, 2015. The Director issued a request for additional evidence (RFE) on March 17, 2015, to which the Petitioner replied. We have considered the record in its entirety in reaching this decision.

The Petitioner explained that it is a yacht management company that controls a fleet of six private sailing vessels, including some "superyachts," which are yachts that are at least 100 feet in length. According to the record, the Petitioner intends for the Beneficiary to work as fleet purser, which will include:

management of racing crew travel, logistics, on-site support, housing, and the like; vessel support during regattas and other events, including but not limited to hiring, management, and support of onshore chefs and crew support, housing, and other logistics; and owner/ charterer shore support, including but not limited to logistics. In the immediate short-term, the Fleet Purser is needed to coordinate the activities of our boats [REDACTED] and [REDACTED] as they travel to the Caribbean for important events and regattas.

The Petitioner indicated it would pay the Beneficiary a salary of \$75,000 per year.¹ The record contains the required advisory opinion, copies of the Beneficiary's résumé and bachelor's degree in

¹ Although the Petitioner stated in the Form I-129 and its initial support letter that the proffered salary would be \$75,000 per year with no other compensation, in a letter dated June 4, 2015, provided in response to the Director's RFE, the Petitioner stated that the package offered to the Beneficiary included a salary of \$78,000 per year plus housing worth approximately \$20,000 per year and benefits. However, the Petitioner did not provide a copy of an employment contract or offer letter.

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business administration with translation, reference letters, and copies of articles regarding sailing events.

III. ANALYSIS

A. Evidentiary Criteria

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).

The Petitioner claims that the Beneficiary meets the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (1), (2), (3), (5), (7), and (8). In denying the petition, the director determined that the evidence submitted satisfied one of the eight evidentiary criteria. The Petitioner has not submitted sufficient evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (4) and (6), and raises no objection on appeal to the director's determination that these criteria have not been met. We will discuss the six criteria the Petitioner claims below. After careful review of the record and for the reasons discussed herein, the Petitioner has established eligibility under one of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

To meet this criterion, the Petitioner must submit documentation of the Beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor, which in this case was stated to be yacht operations. *See* 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The Petitioner asserts that the Beneficiary was part of teams that won prestigious field-related awards and "[a]s the beneficiary herself has been part of many successful teams, therefore, the honors and awards that the beneficiary's teams have won are attributable to her."

The Petitioner provided a letter from [REDACTED] a sailor from Switzerland, in which he stated that he worked with the Beneficiary on the [REDACTED] where she assisted him in trimming the spinnakers, operating the winch on his commands, and making sure the lines ran free, and that she was solely responsible for all below-deck activities. He also wrote that, during this period, the [REDACTED] placed [REDACTED] at two superyacht regattas.

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) specifically requires that the awards be nationally or internationally recognized in the field of endeavor and it is the Petitioner's burden to establish every element of this criterion. In this case, there is no supporting evidence

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showing that placing ██████ in the regattas constituted nationally or internationally recognized awards for excellence in the field of yacht operations.

Further, even if the Petitioner could demonstrate that the ██████ received nationally or internationally recognized prizes or awards, participation on the yacht as one of a 40-crewmember team, without more, is not sufficient for this criterion. The plain language of the criterion requires documentation “of the alien’s receipt” of the awards. The Petitioner submitted no documentation of the Beneficiary’s receipt of any award or that the Beneficiary played a primary or principal role in the success of the ██████. Accordingly, for the reasons stated above, the Petitioner has not submitted evidence that meets the plain language of this criterion.

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

For this criterion, the Petitioner submitted a letter from ██████ Director of ██████ which stated that there are no yacht associations, but that in the yachting world, the equivalent to such membership would be if an individual is “associated with elite endeavors involving major boats, accomplished crews, and high stakes.” ██████ also wrote that the Beneficiary “has *only* been part of yachting endeavors that reside at the top of our field - a field that is rarefied in the nautical world to begin with.”

The Petitioner’s implication is that the Beneficiary’s participation as one of a number of people on a crew in elite yachting endeavors is “comparable” to membership in an association in the field that requires outstanding achievements as judged by recognized international experts in the Beneficiary’s field, triggering an adjudication under 8 C.F.R. § 214.2 (o)(3)(iii)(C). That regulation provides “[i]f 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.” Thus, it is the Petitioner’s burden to explain why the regulatory criterion is not readily applicable to the Beneficiary’s occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

While it may be that the field of yacht operations does not have an association requiring outstanding achievements of its members, the Petitioner did not provide evidence that the Beneficiary was selected for her participation in the various “elite endeavors” by recognized or international experts in her field. Further, being an important part of elite yachting endeavors falls under a separate criterion, the critical or essential role criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Direct evidence for one criterion is not also presumptively comparable evidence for a separate criterion in a classification that requires “extensive documentation.” *See* section 101(a)(15)(o)(i) of the Act. We also note that, as stated previously, the Beneficiary’s field of endeavor is identified as “yacht operations,” which does not support the Petitioner’s argument that her “membership” as one of the crew during elite competitions required her to have outstanding achievements. In light of the above, the Petitioner has not established that the Beneficiary meets this criterion.

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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

In support of this criterion, the Petitioner included articles from several websites regarding boats on which it stated the Beneficiary was a crewmember or projects on which it claimed the Beneficiary had participated. For example, the Petitioner submitted articles from [REDACTED] Italian website [REDACTED] and from [REDACTED]. None of the articles submitted mention the Beneficiary by name. The Director determined that such evidence does not satisfy this criterion, and the record supports that conclusion.

[REDACTED] stated in his letter that “[i]ndividuals who own and race yachts are generally publicity-shy. They value their privacy and do not typically broadcast their identities and locations. Accordingly, whether an individual has received media coverage is not a criterion I would associate with being extraordinary in the yachting industry.” Nonetheless, the article [REDACTED] mentioned many names, including [REDACTED] and [REDACTED] as yacht crew members or owners. Additionally, articles submitted about the Petitioner’s President, [REDACTED] including [REDACTED] and [REDACTED] and [REDACTED] both of which were published in the [REDACTED] demonstrate that there are individuals who own and race yachts who are featured in major media. Further, while these articles relate to yacht racing or philanthropy, they do not address the Beneficiary or her field of endeavor.

We note that this criterion specifically requires that the publications or media be about the Beneficiary and relate to her field of endeavor. In light of the above, the Petitioner has not submitted evidence to satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

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

The Petitioner relies on testimonial evidence and information regarding an event called [REDACTED] to establish that the Beneficiary meets this criterion. The Petitioner provided recommendation letters from individuals who had employed or worked with the Beneficiary. Although the recommendation letters state that the Beneficiary is a “skilled representative,”² a person with “elite talents and unique experiences,”³ and an “elite steward,”⁴ none of these letters

² Letter from [REDACTED] (Feb. 5, 2015).

³ Letter from [REDACTED] ((Feb. 24, 2015).

⁴ Letter from [REDACTED] (Jan. 28, 2015).

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discussed any original business-related contribution of major significance in the field of yacht operations made by the Beneficiary.

The Petitioner also submitted a racing crew information package for [REDACTED] that it described in a June 4, 2015, letter as a typical document that the Beneficiary would need to create and that “[t]here are very few people in the world who are capable of generating a document such as this one – a document that reflects how the highest standards are met and how a career’s worth of knowledge and experience reaches its highest expression. [The Beneficiary] is one of those people.” The letter goes on to state that:

It may also be worth pointing out that, as may be evident from the foregoing, a tremendous amount of money is involved in these endeavors. [The Petitioner] spends nearly \$25 million annually to own and operate their boats, and to facilitate their participation in events such as the [REDACTED]. An individual in [the Beneficiary’s] position is essentially responsible for budgets in the high six figures in connection with such events.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), a foreign national’s contributions must be not only original but of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

Upon review, the preceding letters of recommendation and documentation regarding [REDACTED] demonstrate that the Beneficiary’s work has earned the respect and admiration of those with whom she has worked, but these documents do not establish that she has made original business-related contributions of major significance in her field. For example, the record does not indicate the extent of the Beneficiary’s influence on others in her field nor does it show that the field has somehow changed as a result of her work.

In this case, the documentation submitted by the Petitioner is not sufficient to meet this criterion. 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 demonstrated contributions of major significance because she did not demonstrate her impact in the field as a whole). Without extensive documentation showing that the Beneficiary’s work has been unusually influential, or has otherwise risen to the level of original contributions of major significance, the Petitioner has not established that she meets this criterion.

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). The Director determined that the evidence submitted was sufficient to satisfy this requirement. We agree.

Based on all of the information in the letters in the aggregate as well as the copies of articles regarding the Beneficiary's prior employers, the Petitioner has submitted evidence that satisfies 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

As discussed previously, the Petitioner initially offered the Beneficiary an annual base salary of \$75,000 for the proffered position and then, in response to the RFE, stated that it would offer the Beneficiary a salary of \$78,000 plus a housing allowance and benefits.

We note that the Petitioner did not submit any "contracts or other reliable evidence" as is required by the regulation. Accordingly, the Petitioner has not satisfied this criterion.

Further, the Petitioner did not establish that the Beneficiary will command a high salary as a fleet purser with the Petitioner. The proffered salary and benefits offered may be high for average level positions in the field, but may not be considered high for the Beneficiary, who has ten years of professional experience.

In light of the above, the Petitioner has not submitted evidence to satisfy that the Beneficiary has commanded or will command a high salary or remuneration, demonstrated by contracts or other reliable evidence, under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

B. Summary

Based on the foregoing, the Petitioner has not shown either that the Beneficiary meets the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iii)(A) or at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The appeal will be dismissed on this basis.

IV. CONCLUSION

The Beneficiary has not received a major, internationally recognized award, such as the Nobel Prize, and the record does not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in business.

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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 H-M-H-, LLC*, ID# 15897 (AAO Mar. 22, 2016)