U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF T-H-G-A-S-, LLC

DATE: MAR. 22, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, an art studio/gallery, 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 Director, California 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.[1]

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) states, in pertinent part: "*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."

[1] The Petitioner requested an extension of time in which to file a brief, which we granted until November 18, 2015. However, to date, the Petitioner has not submitted a brief or any other documentation in support of the appeal. As the Petitioner did not submit additional documentation as of the date of this decision, the record is deemed complete as currently constituted.

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)(3)(ii) defines, 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.

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) 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) 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.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on February 20, 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 an art gallery in California and a stop on the According to the record, the Petitioner intends for the Beneficiary to create art in its studio, which will then be displayed at the Petitioner's gallery exhibitions. The record contains a signed copy of the Petitioner's artist representation agreement with the Beneficiary dated February 16, 2015, and an itinerary of events for the period between July 2015 and February 2017, which indicates that during that period, the Petitioner will feature the Beneficiary's art work on a monthly basis. The Petitioner's evidence also included the required advisory opinion, a copy of the Beneficiary's bachelor's degree in fine art with transcripts and translation from Hebrew into English, copies of articles about the Beneficiary and her artwork, documentation of the Beneficiary's gallery shows, a copy of a poster showing the Beneficiary winning for a contest in Israel, and copies of photographs of the Beneficiary's work.

III. ANALYSIS

A. Evidentiary Criteria

At issue is whether the Petitioner documented that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The record included confirmation that the national Israeli business publication, nominated the Beneficiary for the The Petitioner noted that the Beneficiary did not win that competition, but "being nominated for such a prize was no small accomplishment for an artist who, at the time, was only in her of art school." The Petitioner, however, has not offered information to corroborate that this award is comparable to the types of significant national or international awards or prizes listed as examples in the regulation at 8 C.F.R § 214.2(o)(3)(iv)(A), namely an Academy Award, an Emmy, a Grammy, or a Director's Guild award. The Director determined that the Petitioner did not submit evidence to

satisfy this criterion, and the Petitioner raises no objection to this finding on appeal. Therefore, the Petitioner has abandoned her claim that she satisfies this criterion. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the Petitioner has not established that the Beneficiary has received or been nominated for a significant national or international prize or award that would qualify her for O-1 status under 8 C.F.R. § 214.2(o)(3)(iv)(A). 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.[2]

> *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 Director determined that the Petitioner did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*). The Petitioner asserts that the Beneficiary satisfies this criterion based upon her participation in which was "an art show dedicated to a select group of leading female artists in a prominent Israeli gallery" that took place in 2010. The evidence required under this criterion, namely critical reviews, advertisements, publicity releases, publications, contracts or endorsements, must document that the Beneficiary participated at the required level, i.e., a leading or starring role, and that the event has a distinguished reputation. The Petitioner submitted a copy of an invitation in Hebrew to and provided an English translation which indicates that the Beneficiary was female artists who participated in "an art show that was put together as a fundraising event where by women artists will present in different mediums the manner in which they cope with the experience of womanhood." This invitation does not demonstrate that the event has a distinguished reputation. Further, we note that most of the other documentation provided regarding this event is in Hebrew and is not translated into English. Because the Petitioner did not submit certified translations of the documents, the AAO cannot determine whether the evidence supports the Petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

Although the Beneficiary was featured in her own show, at the in Israel, having a starring role in one art show does not satisfy this criterion. The Petitioner must demonstrate that the Beneficiary has a past history as well as a future performing as the star or lead in productions or events with a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The Petitioner submitted documentation of other art shows in which the Beneficiary participated, but the Beneficiary was one of a number of artists in these shows. No evidence was provided to demonstrate that the Beneficiary held a lead or starring role. Further, the Petitioner has not provided any critical reviews, advertisements, publicity releases, publications, contracts, or endorsements demonstrating that the Beneficiary will hold a lead or starring art role in the future.

---

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

In light of the above, the material does not meet the plain language of 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 found that, although the articles submitted by the Petitioner mentioned the Beneficiary's name, they did not discuss, elaborate on, and establish that the Beneficiary received national or international recognition through her achievements. Upon review of the record we withdraw the Director's determination.

The article in is clearly about the Beneficiary and critiques her work in terms such as "provide[s] for a richly appointed array of shades, hues and textures and, at first glance, appear to be the result of a blatantly insouciant mind-set" but that the artist "is clearly high[ly] talented and blessed with a freely roaming mind and expansive imagination." While an article in was also about the Beneficiary and her work, the Petitioner submitted insufficient evidence to establish that is a major magazine. Nonetheless, based on the article in the Petitioner has sufficiently established that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

> *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 Petitioner relied on the publications previously discussed to fill this criterion. The Director determined that such evidence does not satisfy this criterion. The record supports that conclusion. We note that while criterion two was met through these publications, criterion four requires that the publications specifically document a record of major commercial or critically acclaimed success. Articles written about a limited number of art shows do not demonstrate a record of major commercial or critically acclaimed successes.

Additionally, to demonstrate that the Beneficiary meets this criterion, the Petitioner also submitted letters from the following individuals regarding the Beneficiary's work: artist Founder and Chief Executive Officer (CEO) of architect Managing Director of owner of in Israel; artist and art professor Professors at the

in Israel; and sculptor Although these writers indicate that the Beneficiary is talented as an artist, they do not provide specific and concrete examples demonstrating that the Beneficiary has a record of major commercial or critically acclaimed successes.

While other criteria may be satisfied through submission of testimonials and recommendations, this criterion specifically requires documentation of commercial or critically acclaimed successes as reported in published format.[3] In light of the above, the Petitioner has not submitted evidence to satisfy the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*).

> *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 determined that the record established that the Beneficiary meets this criterion. We agree with the Director's determination.

> *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 other in the field, as evidenced by contracts or other reliable evidence.*

The Director found that the Petitioner did not submit evidence that the Beneficiary either commanded a high salary or will command a high salary or other substantial remuneration. The Petitioner has not offered the Beneficiary a salary and there is no evidence submitted to show the Beneficiary received a high salary or substantial remuneration in the past. Therefore, our examination of this criterion will focus on the Beneficiary's potential to command substantial remuneration for her artwork.

The letter from states, "I believe that, commercially, [the Beneficiary's] work can be sold for anywhere from $3,000 to $20,000 depending on the size of the work. Potentially, she may be able to command much more than this once she becomes more well known." However, does not provide any objective evidence to demonstrate how she has determined that the Beneficiary's artwork will sell in this price range. The Beneficiary submitted no other evidence of the monetary value of her work.

Further, the evidence does not establish that the Beneficiary will command substantial remuneration for her artwork as a resident artist with the Petitioner as the Petitioner has not documented how

[3] In the statement of error provided with the appeal, the Petitioner implies that comparable evidence should be allowed under this criterion for artists as "[a]n actor would show box office receipts but a painter's income is dependent on the sale of each individual, distinct work of art to a single buyer." We note, however, that the Petitioner has not provided any evidence regarding the sale of any of the Beneficiary's art work.

many pieces of art the Beneficiary is likely to produce while a resident artist in its studio, nor the average remuneration amount she is likely to get per piece.

Again, going on record without support is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. In light of the above, the Petitioner has not submitted evidence to satisfy that the Beneficiary has received or will receive substantial remuneration for her artwork under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

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 T-H-G-A-S-, LLC*, ID# 15858 (AAO Mar. 22, 2016)