



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

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

MATTER OF L-C-S-O-

DATE: JULY 10, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a symphony orchestra, seeks to temporarily employ the Beneficiary as a pianist. It seeks to classify him as an O-1 nonimmigrant, a visa classification 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. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: nomination for or receipt of a significant national or international award, or at least three of six possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner submits additional documentation.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual 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. Department of Homeland Security (DHS) regulations define “extraordinary ability in the field of arts” as “distinction,” and “distinction” as “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.” 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative initial evidentiary criteria for establishing a beneficiary’s sustained acclaim and the recognition of achievements. A petitioner may submit evidence either of nomination for or receipt of “significant national or international awards or prizes” such as “an Academy Award, an Emmy, a Grammy, or a Director’s Guild Award,” or at least three of six listed

categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) (“The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.”). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows extraordinary ability in the arts. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iv).¹

II. ANALYSIS

A. Significant National or International Award or Prize

As noted above, a petitioner may demonstrate that a beneficiary qualifies as an individual of extraordinary ability in the arts through evidence of his nomination for, or receipt of, a significant national or international award or prize like the Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R § 214.2(o)(3)(iv)(A). The Petitioner submits a certificate for the [REDACTED] from the [REDACTED] and a [REDACTED] from the [REDACTED]. The Petitioner, however, did not present any supporting evidence, such as substantial media coverage, showing the national or international significance of the awards or prizes. Without evidence establishing that the Beneficiary's awards or prizes have garnered national or international recognition similar to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award, the Petitioner's exhibits do not satisfy the regulation at 8 C.F.R § 214.2(o)(3)(iv)(A).

B. Evidentiary Criteria

Absent evidence the Beneficiary has been nominated for, or received, a significant national or international award or prize, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to at least three of the six initial evidentiary criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner provided evidence relating to four but did not satisfy any of them. Although the Petitioner provides additional documentation on appeal, it does not specify how the evidence relates and to which criteria it pertains. Therefore, we have considered the evidence submitted under the criterion that we find to be most applicable. For the reasons discussed below, we find that the exhibits do not meet any evidentiary categories.

¹ *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.”

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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

The Director found that the Petitioner's submission of screenshots discussing the Beneficiary and his music did not demonstrate that he has performed as a leading or starring participant in productions or events that have distinguished reputations.² Furthermore, the Director determined that the Petitioner's contract with the Beneficiary reflecting that he will be a guest artist did not establish that he will perform as a lead or as a starring participant. In addition, the Director concluded that the Petitioner did not show that its productions or events have a distinguished reputation.

On appeal, the Petitioner does not contest the Director's findings, and the record supports her determination. The Petitioner submits flyers for the Beneficiary's past concerts, such as [REDACTED]

[REDACTED] Although the evidence advertised the Beneficiary as the featured performer, the Petitioner did not provide any supporting evidence showing that the productions or events have distinguished reputations.

In addition, the Petitioner presents a 2015 letter inviting the Beneficiary "to perform for our special 2014-2015 [REDACTED] Concert on March 5, 2015." The letter, however, does not establish that the Beneficiary's performance will be in a leading or starring capacity at a future production or event. Moreover, the Petitioner does not offer documentation showing that its inaugural concert enjoys a distinguished reputation. Similarly, the Petitioner submits a contract between [REDACTED] and the Beneficiary reflecting [REDACTED] "professional management services" for him. The contract does not identify specific productions or events, let alone indicate whether the Beneficiary will perform as a leading or starring participant in productions or events that have a distinguished reputation. As the record does not document future productions or events or evince that they have a distinguished reputation as shown by critical reviews, advertisements, publicity releases, publications contracts, or endorsements, the Petitioner has not demonstrated that the Beneficiary satisfies the requirements of this evidentiary criterion.

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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

The Director determined that the Petitioner submitted screenshots that mentioned the Beneficiary and his music but did not show that he has achieved national or international recognition for achievements evidenced by published materials in major newspapers, trade journals, magazines, or

² The Director also indicated that the Petitioner provided foreign language documents without English language translations. 8 C.F.R. § 103.2(b)(3).

other publications. On appeal, the Petitioner does not contest the Director's conclusion, and the record supports her findings. The Petitioner provides two articles from *Corriere Adriatico AP*. The first article does not mention the Beneficiary, and the second article indicates that the Beneficiary will be performing at a concert and will meet and speak to the public about his artistic experience. The Petitioner, however, does not provide supporting evidence showing that *Corriere Adriatico AP* is a major newspaper. Accordingly, the Petitioner did not demonstrate that the Beneficiary received national or international recognition for achievements evidenced by published material in a major newspaper consistent with the regulation 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.
8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

Similar to the first criterion discussed above, the Director concluded that screenshots discussing the Beneficiary and his music did not establish that he has performed in a leading, starring, or critical role for organizations and establishments that have a distinguished reputation. In addition, the Director determined that the Petitioner's contract with the Beneficiary reflecting that he will be a guest artist did not show that he will perform as a leading, starring, or critical participant. Moreover, the Director found that the Petitioner did not demonstrate that it has a distinguished reputation.

On appeal, the Petitioner does not contest the Director's determination, and we agree with her conclusion. The Petitioner does not offer evidence reflecting his past performances in a leading, starring, or critical role for organizations and establishments that have a distinguished reputation, as evidenced by articles in newspapers, trade journals, publications, or testimonials. Further, the Petitioner's letter does not indicate that the Beneficiary will perform in a leading, starring, or critical role for its organization. In addition, the Petitioner does not provide sufficient supporting evidence regarding its reputation. Moreover, the contract does not show that the Beneficiary will perform in a leading, starring, or critical role for [REDACTED] or for any other organizations and establishments that have distinguished reputations, as shown by articles in newspapers, trade journals, publications, or testimonials. Accordingly, the Petitioner did not demonstrate that the Beneficiary meets this criterion.

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 pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.
8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

The Director determined that the Petitioner's submission of documentation reflecting that the Beneficiary's music is available for sale on [REDACTED] and reviews of his music did not establish his record of major commercial or critically acclaimed successes. On appeal, the Petitioner does not contest the Director's decision and does not provide indicators such as title, rating, standing

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in the field, box office receipts, motion pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications. For these reasons, we agree with the Director's decision, and the Petitioner did not demonstrate that the Beneficiary satisfies this criterion.

III. CONCLUSION

The record does not contain evidence of the Beneficiary's nomination for or receipt of a significant national or international award or prize, at least three of six listed categories of documents, or comparable evidence of his eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C). Accordingly, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of L-C-S-O-*, ID# 1500932 (AAO July 10, 2018)