



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

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

In Re: 7632395

Date: FEB. 26, 2020

Appeal of California Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a real estate development company, seeks to classify the Beneficiary, an architectural designer, as a foreign national of extraordinary ability in the arts. To do so, the Petitioner seeks O-1 nonimmigrant 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 California Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts, either 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).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. 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 the evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner must submit evidence either of "significant national or international awards or prizes" such as "an Academy Award, an Emmy, a Grammy, or a

Director's Guild Award," or of at least three of six listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

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

The record reflects that the Beneficiary attained a bachelor's degree in architecture at the University of [REDACTED] in 2012, and a master's degree in architecture at [REDACTED] University Graduate School of Design [REDACTED] in 2016. Between October 2016 and the date when the instant petition was filed on October 26, 2018, the Beneficiary engaged in optional practical training with the petitioning company. The Petitioner asserts that it employs the Beneficiary as a design specialist, where he has worked on more than 10 of its architectural projects in California. It describes him as an "eminent artist" who is "among a handful of the foremost architectural designers in the industry."

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has been nominated for or received a significant national or international award or prize, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). The Director found that the Petitioner met two of those evidentiary criteria, relating to significant recognition for achievements under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) and high salary under 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). On appeal, the Petitioner asserts that it also meets the evidentiary criteria relating to lead or starring role in distinguished productions or events under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) and national or international recognition for achievements under 8 C.F.R. § 214.2(o)(3)(iv)(B)(2). After reviewing all of the evidence in the record, we find that the exhibits do not satisfy at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will analyze the evidence submitted under each of those 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

The Petitioner maintains that it satisfies the requirements of this criterion based upon the Beneficiary's past work on projects including the 2015 [REDACTED] project, the [REDACTED]

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."

² On appeal, the Petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

[redacted] project, the 2016 [redacted], the book [redacted], and the 2016 [redacted] Forum. The Petitioner's evidence included articles pertaining to several of the Petitioner's past productions and events. From the items submitted it does not appear the Beneficiary was a lead or starring architectural designer in those productions or events.

For example, articles and press releases from the websites www.nytimes.com and www.designmiami.com about the 2015 [redacted] annual fair mention that it contains the [redacted] pavilion of "unrealized" design projects by students of [redacted]. Those items describe [redacted] as a school-wide competition open to all [redacted] students, but do not mention the Beneficiary by name, or indicate that he was a member of the competition's winning team that designed and built the pavilion. In addition, a press release from [redacted] provides general information on [redacted] project, and indicates that the Beneficiary was among more than 40 members of the design team. The record also contains a press release from [redacted] indicating that [redacted] Development was one of the participating developers in the 2016 [redacted], and that the Beneficiary was among ten student members of that developer's team. Based on the foregoing, the Petitioner has not offered evidence that would distinguish the Beneficiary from any other architectural designers who performed services at the above-referenced productions or events.

Additionally, articles from www.atlantamagazine.com, www.architects.org, www.nicholasdeklerk.com, and www.architecturalrecord.com mention or review the book [redacted] by the Dean of [redacted]. The record shows the book contains a chapter titled [redacted]" which includes a one-page essay by the Beneficiary. Those articles do not mention the Beneficiary by name, and do not otherwise establish the Beneficiary's lead or starring role in that production.

Further, the Petitioner contends that several testimonial letters from the Beneficiary's colleagues and mentors support the Beneficiary's eligibility under this criterion. The plain language of the regulation, however, mandates that the evidence supporting this criterion consist of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.³ Regardless, the authors of the letters do not indicate that the Beneficiary performed a role as a leading architectural designer within the scope of those productions, or their distinguished reputations. For example, the Petitioner provided a letter from [redacted] an architect who was previously employed with the architectural design firm [redacted] in [redacted]. The Beneficiary's resume indicates that between June and August 2013 he was an architectural intern with that firm. [redacted] the lead design developer of the showcase [redacted] project, asserts that the Beneficiary's "involvement in my team was at a pivotal stage of the project and his contribution was very necessary" and "very significant." His letter does not explain, however, the importance of the Beneficiary's role as an intern on that specific project.

[redacted] the former co-president of the [redacted] Forum, a student-run annual [redacted] conference, indicates that the Beneficiary participated as a graduate design student in improving the

³ We will consider the letters under the significant recognition for achievements criterion at 8 C.F.R § 214.2(o)(iv)(B)(5), below.

brochure design for the 2016 [redacted] Forum, and calls him “a critical part leading our design team.” The Petitioner provided a copy of the program for the 2016 [redacted] Forum, showing that the event was a three-day conference that featured an opening ceremony and multiple panel discussions on current events in [redacted] in the areas of talent, investment, and technology. The program indicates that the Beneficiary was one of two designers in the event’s seven-person marketing staff, and that [redacted] was the director of the marketing staff. This evidence does not establish that the Beneficiary performed in a lead or starring role in that production.

[redacted] a doctoral candidate in architecture at [redacted], indicates he worked with the Beneficiary on the 2016 [redacted]. He credits the Beneficiary’s “leading influence in the competition team” with helping to create “a sophisticated design package . . . in less than 2 months,” with the result that their team was “among one of the six final teams” in the competition. [redacted]’s letter does not detail how the Beneficiary’s role on the competition team rose to the level of performing services as a “lead or starring participant” for that production.

Moreover, in order to meet this criterion, the Petitioner must establish that the Beneficiary *will perform* services as a lead or starring participant in productions or events which have a distinguished reputation upon approval of the petition. The Petitioner indicated that the Beneficiary will be a “design specialist” but has not offered any information regarding his proposed roles in any upcoming productions or events to establish his role as leading or starring. In sum, the Petitioner has neither identified nor documented through submission of the evidence prescribed by regulation the Beneficiary’s previous or forthcoming lead or starring role in events with a distinguished reputation.

Based on the foregoing, the submitted evidence does not satisfy this 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).

To meet this criterion, the Petitioner cites published material pertaining to the Beneficiary. The Director determined, and we agree, that those materials did not satisfy this criterion. The Petitioner provided the previously discussed articles and press releases from [redacted] and the websites www.nytimes.com, www.designmiami.com, [redacted] www.atlantamagazine.com, www.architects.org, www.nicholasdeklerk.com, and www.architecturalrecord.com. Those published materials are not specifically “about” the Beneficiary but about the events and productions.

Further, the Petitioner provided a letter from the publication *Luminocity*, indicating that “on [redacted] 2018, [redacted] Press published on the front page of its official WeChat platform . . . a.k.a. ‘LUMINOCITY’ . . . [the Beneficiary’s] article [redacted] [redacted].” While this article may qualify as published material by the Beneficiary, the publication of this work occurred after the date the petition was filed on October 26, 2018. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1).

For these reasons, the Petitioner has not submitted documentation that satisfies this criterion.

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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

In support of this criterion, the Petitioner submitted various testimonial letters from architecture professionals and those working in the field of architectural design, stating that the Beneficiary has extraordinary skills in the field of architectural design.⁴ The Director determined, without discussion, that the Petitioner met this criterion. We determine that those testimonials do not satisfy this criterion. Upon review of the evidence, we note that the letters submitted are from the Beneficiary's own current and former colleagues and, therefore, do not demonstrate his significant recognition outside of that circle. In addition, while the authors discuss his talent and dedication, the letters do not discuss the Beneficiary's achievements in the field beyond confirming that he performed his work admirably in prior projects. Because the record does not reflect that the Petitioner demonstrated that he meets this criterion, we will withdraw the findings of the Director for this criterion.

For instance, within the Petitioner's initial submission, it provided a letter from [redacted] the Petitioner's vice-president of design and development, who describes the Beneficiary as "an extraordinary architectural designer," "among a handful of the foremost architectural designers in the industry," whose "designs have received substantial media reports," and who "has already made an impact on the field." She states that the [redacted] project in [redacted] "was featured in Archdaily.com and Dezeen.com," and the [redacted] Project in [redacted] 2015 "was widely reported by major media such as *The New York Times*." She also notes that the Beneficiary's research was included in the book [redacted], published in 2017, and the Beneficiary's work "as Lead Designer . . . was the finalist" at the 2016 [redacted]. Although the Petitioner has provided the aforementioned articles pertaining to projects on which the Beneficiary has worked, they do not recognize his achievements in the field of architectural design.

In addition, in his aforementioned letter, [redacted] praised the Beneficiary's "ability to synthesize complex information into comprehensive packages that included great graphical skills" and calls him "one of the most talented designers I have worked with." [redacted] of [redacted] based in [redacted] indicates he studied with the Beneficiary at [redacted] and invited him to be a consultant with his company. He asserts that the Beneficiary's ability to "fit the seemingly cold-feeling technological features into the more artistic and humane design process is among the top tier I have known." [redacted], an architectural designer with [redacted] indicates that his company provides consulting services to the Petitioner and that he has worked with the Beneficiary on several of the Petitioner's large-scale architectural projects. He states that the Beneficiary "has demonstrated extraordinary ability to perform design tasks, exceeding most of the designers and architects I have ever encountered or worked with."

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately

⁴ Although we discuss a sampling of letters, we have reviewed and considered each one.

responsible for making the final determination regarding a foreign national's eligibility for the benefit sought. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the foreign national's eligibility. USCIS may give less weight to an opinion that is not corroborated, or in accord with other information. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990). The reference letters all praise the Beneficiary's talent and abilities. Such letters can provide useful information about a foreign national's qualifications or help in assigning weight to certain documents. Here, they do not explain how the Beneficiary's achievements to date have received significant recognition from organizations, critics, government agencies, or other recognized experts in the field for those achievements. Overall, while the Beneficiary has earned the respect of his colleagues in the field of architectural design, the exhibits are insufficient to demonstrate that he has received significant recognition for achievements in the field.

For these reasons, the Petitioner did not show that the Beneficiary satisfies this criterion.

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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

The Director determined, without discussion, that the Petitioner met this criterion. Within the initial filing, counsel asserted that the Petitioner employs the Beneficiary in "the position of design specialist at the annual salary of \$80,000 which is a high compensation." The record does not contain, however, any documentation from the Petitioner corroborating the salary or remuneration, if any, the Beneficiary received from the company. In addition, although not mentioned by the Director, we note that the record contains the Beneficiary's Training Plan for STEM OPT Students, completed by the Petitioner's [redacted] and dated January 2018, indicating the Beneficiary's annual salary at that time was \$60,000. The inconsistency between the salary stated on that form and the salary provided by counsel prevents us from determining the Beneficiary's past salary and whether it is considered high in relation to others in the field.

Regarding the Beneficiary's future salary, assuming that his annual salary will be \$80,000 per year as stated on the Form I-129, the Petitioner's evidence does not demonstrate that this salary is high in relation to others in the field. Within the Petitioner's initial submission, it provided screenshots from www.payscale.com and www.glassdoor.com showing that the average salary for an architectural designer is \$51,068 and \$63,727, respectively. The Petitioner also submitted screenshots from www.bls.gov regarding 2017 Occupational Employment and Wages, reflecting that the 90th percentile of Commercial and Industrial Designers earned approximately \$106,950 per year, and the 90th percentile of Designers, All Other earned approximately \$126,460 per year.⁵ Based on the above, the Petitioner has not shown the proposed salary on the Form I-129 constitutes a high salary in relation to others in the field.

⁵ The Petitioner further provided a screenshot from www.bls.gov regarding 2017 Occupational Employment and Wages reflecting that the 90th percentile of Graphic Designers earned approximately \$83,140 per year. However, the position description for Graphic Designers does not establish that its job responsibilities are comparable to those of the proffered position of architectural designer.

III. CONCLUSION

The record does not satisfy, as required, the evidentiary criteria applicable to individuals of extraordinary ability in the arts: 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). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.