



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

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

In Re: 19601420

Date: JUNE 2, 2022

Appeal of California Service Center Decision

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

The Petitioner, a [REDACTED] breeding business, seeks to classify the Beneficiary, a stallion manager, as an alien of extraordinary ability. To do so, the Petitioner seeks O-1 nonimmigrant classification, available to aliens 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 demonstrate that the Beneficiary satisfied the initial evidentiary criteria applicable to individuals of extraordinary ability in athletics: either receipt of a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner submits additional documentation and asserts that the Beneficiary satisfies at least three of the eight regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii)(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 that 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 science, education, business, or athletics" as "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." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner may submit evidence either

of “a major, internationally recognized award, such as a Nobel Prize,” or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(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 sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).<sup>1</sup>

## II. ANALYSIS

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). The Petitioner asserted in response to the Director’s request for evidence (RFE) that the Beneficiary fulfilled seven criteria, but the Director determined that the Beneficiary did not meet any of them. The Petitioner contends on appeal that the Beneficiary satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), (3), (4), (7), and (8), and requests that we consider comparable evidence for the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). For the reasons discussed below, we conclude that the documentation fulfills only one of the evidentiary categories.<sup>2</sup>

*Documentation of the alien’s receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)*

In its statement provided on appeal, the Petitioner argues that we should consider comparable evidence for this criterion. The regulation at 8 C.F.R. 214.2(o)(3)(iii)(C) provides that “[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.”<sup>3</sup> Thus, a petitioner must demonstrate why the regulatory criterion does not pertain to a 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).

The Petitioner claims that “[t]he stallion manager is the lynch pin to a top-rated breeding farm. It is the breeder who gets the awards, the statistics, and accolades, but it is the stallion manager behind the breeder that makes it all happen.” The Petitioner further contends that it provided three letters from breeders who discuss “the extraordinary talent of [the Beneficiary]. If in that particular category, there are not trophies

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<sup>1</sup> *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.”

<sup>2</sup> Specifically, the Beneficiary meets only the critical or essential capacity criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

<sup>3</sup> Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary’s occupation. However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary’s occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion. *See 2 USCIS Policy Manual* M.4(C), <https://www.uscis.gov/policy-manual>.

or awards, then letters from top people in the industry should be weighted heavily.”<sup>4</sup> The Petitioner, however, did not support its assertions with documentation. Furthermore, the Petitioner did not establish that stallion managers are unable to receive nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The fact that the Beneficiary did not receive such an award is not evidence that the criterion does not apply to his occupation. In addition, the Petitioner did not demonstrate that the statements in the letters of support are equivalent to receiving nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the Petitioner has not established that this criterion does not apply to the Beneficiary’s occupation, nor has it shown that the testimonials reflect the same caliber of expertise and recognition as garnering nationally or internationally recognized prizes or awards for excellence in the field.

*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 national or international experts in their disciplines or fields.*  
8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

The Petitioner claims on appeal that the Beneficiary fulfills this criterion because he is a member of [REDACTED]. The record includes a webpage from [REDACTED] listing the Beneficiary’s “contact” information at the [REDACTED] but this evidence does not state that he is a [REDACTED] member. Regardless, in order to meet this criterion, the Petitioner must establish the Beneficiary’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts. Here, the Petitioner did not offer evidence to demonstrate that the requirements for becoming a member of [REDACTED] are outstanding achievements. Additionally, the Petitioner has not presented documentation indicating that recognized national or international experts judge the outstanding achievements for membership in [REDACTED] as required by the regulation. Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

*Published material in professional or major trade publications or other 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.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

In order to fulfill this criterion, the Petitioner must demonstrate published material about the Beneficiary in professional or major trade publications or other major media, as well as the title, date, and author of the material. In the decision denying the petition, the Director determined that the articles presented by the Petitioner did not meet the requirements of this criterion (such as being “about” the Beneficiary). The Petitioner’s appellate submission includes a previously submitted [REDACTED] 2020 article, entitled “[REDACTED]”. The Petitioner contends on appeal that this article is about the Beneficiary and was published by [REDACTED], but the author of the article was not identified, and the Petitioner has not shown that [REDACTED]’s website is a professional or major trade publication or other major medium. In addition, the Petitioner provides a

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<sup>4</sup> We note that the letters of support from experts in the [REDACTED] industry were considered by the Director under the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) and (5), and we have also considered them under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

[redacted] 2021 article in *TDN Headline News*, entitled [redacted] This article, however, was published seven months after the initial filing of the petition. The Petitioner must establish eligibility at the time of filing. See 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner did not present evidence demonstrating *TDN Headline News*' status as a professional or major trade publication or other major medium. For these reasons, the Petitioner did not show that the Beneficiary satisfies this criterion.

*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.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The Petitioner contends on appeal that the Beneficiary "has judged the work of others in the same field in his consultation work," but it does not identify the evidence that meets the requirements of this criterion. To satisfy this criterion, the evidence must show that the Beneficiary has participated as a judge of the work of others, either individually or as part of a panel. Here, the Petitioner has not presented documentation identifying whose work the Beneficiary judged and the instances of his participation. The Petitioner therefore did not demonstrate that the Beneficiary fulfills this criterion.

*Evidence that the alien 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 evidence adequately demonstrates that the Petitioner has a distinguished reputation and that the Beneficiary has performed in a critical or essential capacity as its stallion manager and consultant. For example, the Petitioner provided letters discussing the importance of his role and documentation showing the distinguished reputation of the Petitioner. Accordingly, we conclude that the Petitioner has established the Beneficiary meets this criterion.

*Evidence that the 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.* 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

This criterion requires the Petitioner to show that the Beneficiary has either commanded a high salary or will command a high salary or other remuneration for services. At initial filing, the Petitioner did not claim the Beneficiary's eligibility for this criterion. The Director's RFE informed the Petitioner that it "did not submit evidence for this criterion" and it "may still submit evidence to satisfy it." The RFE instructed the Petitioner to provide evidence to establish that the Beneficiary's compensation is high relative to others in his field and provided examples of documentation that could be offered (such as statistical comparisons of salaries in the field, compensation surveys, or salary data compiled by federal agencies). In response, the Petitioner submitted a January 2021 "Employment Contract" stating that the Beneficiary will receive a wage in the amount of "\$75,000.00 per year" as "Stallion Manager," but it did not offer evidence that his compensation is high relative to others working in the same capacity.

With the appeal, the Petitioner submits information from ZipRecruiter.com listing "average" salary amounts for "Horse Farm Managers" in the United States; Salt Lake City, Utah; and Hudson, New

York.<sup>5</sup> As the Petitioner did not present this evidence to the Director after being afforded an opportunity to do so in response to the Director's RFE, we will not consider this evidence for the first time in our adjudication of this appeal. *See Soriano*, 19 I&N Dec. at 766; *see also Obaigbena*, 19 I&N Dec. at 533. The Petitioner therefore did not demonstrate that the Beneficiary meets this criterion.

### III. CONCLUSION

We conclude that the Petitioner did demonstrate that the Beneficiary meets the criterion relating to employment in a critical or essential capacity for an organization with a distinguished reputation. *See* 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The evidence, however, does not satisfy at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Even if these initial evidentiary requirements had been met, the cumulative record does not demonstrate the Beneficiary's sustained national or international acclaim and recognition for achievements. 8 C.F.R. § 214.2(o)(3)(iii). Nor does the evidence show a level of expertise indicating that the Beneficiary is one of the small percentage at the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as an individual with 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.

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<sup>5</sup> The ZipRecruiter information relates to the general category of "Horse Farm Managers" rather than to the Beneficiary's occupation as a "Stallion Manager" in the   industry. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Additionally, while the ZipRecruiter information reflects "average" compensation, it does not show the range of salaries from lowest to highest to demonstrate where the Beneficiary's salary falls within that scale.