



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

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

In Re: 20970187

Date: JUN. 22, 2022

Appeal of California Service Center Decision

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

The Petitioner, a boutique pastry shop, seeks to classify the Beneficiary as an executive head pastry chef. To do so, the Petitioner pursues O-1 nonimmigrant classification, available to individuals 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 establish that the Beneficiary satisfied the initial 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.

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.¹

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." *See* 8 C.F.R. § 214.2(o)(3)(ii).

¹ Appeals filed by representatives must contain a new, properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. 8 C.F.R. § 292.4(a). At the time of filing the appeal, the Petitioner provided a copy of a prior Form G-28 for [REDACTED] pre-dating the appeal. We sent a notice advising the Petitioner that since the appeal did not contain a new Form G-28, we must treat the appeal as self-represented. In response, the Petitioner presented the same copy of the previous Form G-28, pre-dating the appeal. Because this appeal does not contain a new Form G-28, we consider it to be self-represented.

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. *See* 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).²

II. ANALYSIS

The Director determined that the Petitioner did not demonstrate that the Beneficiary has been nominated for, or has been the recipient of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, the Director concluded that the Petitioner did not establish the Beneficiary's eligibility for any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). On appeal, the Petitioner contends that the Beneficiary satisfies five criteria. For the reasons discussed below, the Petitioner did not establish that the Beneficiary meets at least three of the evidentiary categories.

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).

As evidence of the Beneficiary's past services in productions or events that have a distinguished reputation, the Petitioner claimed eligibility based on the submission of recommendation letters from [REDACTED] [REDACTED] and [REDACTED]. However, the Petitioner did not establish how recommendation letters qualify as "critical reviews, advertisements, publicity releases, publications contracts, or endorsements" consistent with this regulatory criterion. Nevertheless, none of the letters specifically identify any "productions or events which have a distinguished reputation" and explain how the Beneficiary has performed services as a lead or starring participant. Instead, the letters reference the Beneficiary's skills, abilities, and attendance at culinary schools and workshops. Because the Petitioner did not comply with the evidentiary requirements under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the Petitioner did not show that the Beneficiary has performed 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. As such, we need not address whether the Petitioner demonstrated that the Beneficiary

² *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."

will perform as a lead or starring participant in production or events that have a distinguished reputation, and we reserve this issue.³

Accordingly, the Petitioner did not show that the Beneficiary fulfills 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).

Initially, the Petitioner provided an article from [redacted] entitled, [redacted].
[redacted] The article relates to the [redacted].
[redacted]
[redacted] Moreover, a portion of the article discusses the Beneficiary's creation of the [redacted]. Although the article indicates that "she recently received an order for 900 cakes" and "received an invitation to display her products [redacted]" the article does not reflect that her [redacted] resulted in national or international recognition. The article, for instance, does not indicate that the Beneficiary garnered national or international recognition or became nationally or internationally known for her [redacted].
[redacted] Furthermore, in response to the Director's request for evidence (RFE), the Petitioner submitted three internet articles relating to *The Tico Times*. However, the Petitioner did not demonstrate that the article was published in *The Tico Times*. Rather, as indicated above, the article was posted on [redacted] and the Petitioner did not establish the major standing of the website. Here, the Petitioner did not show that the Beneficiary "has achieved national or international recognition for achievements . . . in major newspapers, trade journals, magazines, or other publications" consistent with this regulatory criterion.

We note that in response to the Director's RFE, the Petitioner claimed to submit an article from *Sabores* and screenshots from an unidentified website. However, the Petitioner did not accompany the foreign language documentation with certified English language translations. Any document in a foreign language must be accompanied by a full English language translation. See 8 C.F.R. § 103.2(b)(3). Accordingly, we will not consider this evidence.

For the reasons discussed above, the Petitioner did not demonstrate 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).

At initial filing, the Petitioner provided a letter stating that "[t]he offered position [the Beneficiary] will be filling it at a salary of \$45,000.00 per year, with the benefits of \$5,000.00 (housing and transportation)."

³ See *INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

The Petitioner also submitted an unsigned job offer letter to the Beneficiary reflecting that “[w]e will be offering you an annual gross salary of \$45,000.00.” In response to the Director’s RFE, the Petitioner presented an updated and unsigned job offer letter claiming that the Beneficiary’s “[a]nnual base salary of \$45,000 per year” “will increase up to \$57,000.00 per year according to performance.” In addition, the job offer letter asserts that the Beneficiary will receive other compensation for expenses, such as relocation, housing, and meals, which “equals to a minimum annual income of \$64,580.” The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Thus, we will only consider the Petitioner’s salary claims at initial filing.⁴ Moreover, because the Petitioner did not provide a contract, the Petitioner did not show that its unsigned job offer letter to the Beneficiary constitutes “other reliable evidence.”

Notwithstanding the above, in response to the Director’s RFE, the Petitioner submitted annual mean wage data for “Chefs and Head Cooks” from bls.gov and salary data for pastry chefs in Wyoming from ziprecruiter.com. However, the Petitioner does not seek to employ the Beneficiary as a chef, head cook, or pastry chef. Instead, the record reflects that the Petitioner intends to employ the Beneficiary as an “Executive Head Pastry Chef.” Thus, consistent with this regulatory criterion, the Petitioner must demonstrate that the Beneficiary will command a high salary in relation to other executive head pastry chefs. The record does contain screenshots from payscale.com showing that executive pastry chefs in [redacted] Wyoming earn a median wage of \$44,000 per year, with the 90th percentile earning \$59,000. Furthermore, a screenshot from ziprecruiter.com indicates that head pastry chefs in [redacted] Wyoming receive annual average salaries of \$45,430 with the top earners receiving \$96,705. Based on the evidence provided by the Petitioner, the Beneficiary will earn the average salary compared to other executive head pastry chefs in Wyoming, with the high earners receiving substantially higher salaries than the Beneficiary.

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criteria relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), and (6). Although the Petitioner claims the Beneficiary’s eligibility for two additional criteria on appeal, relating to 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and (5), we need not reach these grounds because the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B). We also need not provide a totality determination to establish whether the Beneficiary has sustained national or international acclaim, has received a high level of achievement, and has been recognized as being prominent in her field of endeavor. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).⁵ Accordingly, we reserve these issues.⁶ Consequently, the Petitioner has not demonstrated the Beneficiary’s eligibility 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.

⁴ We note that on Form I-129, Part 5, the Petitioner indicated the Beneficiary’s wages would be \$45,000 per year.

⁵ *See also* 2 *USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policymanual>.

⁶ *See Bagamasbad*, 429 U.S. at 25-26; *see also L-A-C-*, 26 I&N Dec. at 516, n.7.

ORDER: The appeal is dismissed.