U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 20499000

Date: JUN. 23, 2022

Appeal of California Service Center Decision

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

The Petitioner, a fitness management company, seeks to classify the Beneficiary, a bodybuilder, as an individual of extraordinary ability. 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 initially approved the petition, granting the Beneficiary O-1 classification. Subsequently, the Director issued a notice of intent to revoke (NOIR) the approval of the petition, concluding that the statement of facts was not true and correct, and the record reflected gross error in classifying the Beneficiary as an individual of extraordinary ability. After reviewing the Petitioner's response to the NOIR, the Director issued a notice of revocation (NOR), determining that the Petitioner did not overcome the issues raised in the NOIR.

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).[1]

Finally, the regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the Director may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

> (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
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> (*1*) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
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> (*2*) The statement of facts contained in the petition was not true and correct;
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> (*3*) The petitioner violated the terms or conditions of the approved petition;
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> (*4*) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
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> (*5*) The approval of the petition violated paragraph (o) of this section or involved gross error.
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> (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

[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."

II. ANALYSIS

A. Initial Filing

The Petitioner filed the Form I-129, claiming that the Beneficiary qualified as an individual of extraordinary ability as a bodybuilder. In its accompanying cover letter, the Petitioner provided a job description:

> [The Beneficiary] will be representing [The Petitioner] at bodybuilding competitions and is expected to train, follow diet and supplement protocol as instructed in preparations for those competitions with the goal of attaining is [*sic*] professional status in the Bodybuilding arena.
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> As a sponsored athlete for [the Petitioner], [the Beneficiary] will also be required to represent brands of sponsoring companies . . . for photoshoots, open houses, product demonstrations, guest posing and any other publicity or media events.
>
> As a representative of [the Petitioner], she will also be asked to assist in training and preparation of [the Petitioner's] clients when [s]he is able to and when it does not interfere with her preparation for competition.
>
> She will also be responsible for several tasks as a member of our team, including attending scheduled practices and training sessions; participate in bodybuilding events and competitions according to established rules and regulations; exercise and practice under the direction of athletic trainers or professional coaches in order to develop skills, improve physical condition, and prepare for competitions; maintain her optimum physical fitness levels by training regularly, following nutrition plans, and consulting with health professionals; assess her performance following an athletic competition, identifying her strengths and weaknesses, and making adjustments to improve her future performance.
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> [The Beneficiary] will be paid a salary of $200,000 per year.

In addition, the Petitioner submitted an itinerary of tournament events in which the Beneficiary would compete from 2017 – 2019, a signed "Employment Agreement" (contract) between the Petitioner and Beneficiary reflecting a yearly salary of $200,000 and full coverage of health insurance, and documentation relating to the following categories of evidence: awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), memberships at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), published material at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*3*), and high salary at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*8*). Based on the submitted documentation, the Director determined that the Petitioner established the Beneficiary's eligibility for O-1 nonimmigrant classification and approved the petition.

B. NOIR

Based of newly received information, the Director issued a NOIR on the following grounds. First, the Director concluded:

> USCIS has determined that the Employment Agreement is fraudulent. USCIS investigations revealed that [the Petitioner] is a shell company that was formed by the [B]eneficiary and [the Petitioner's] attorney, [redacted] solely for the purpose of filing the Form I-129 O-1A petition on the [B]eneficiary's behalf. Since [the Petitioner is] not an operational and viable entity, [the Petitioner does] not have the ability to employ the [B]eneficiary under the terms and conditions provided in the Employment Agreement.
>
> Indeed, USCIS has learned that the [B]eneficiary has not been employed in accordance with the terms and conditions in the Employment Agreement and is, in fact, engaging in self-employment in violation of her O-1A status. Service records show that the [B]eneficiary submitted wage documents in support of her Form I-140 and Form I-485 indicating that she was self-employed as a personal trainer, nutritional coach, poser and choreographer, earning wages far less than the $200,000 provided on the Employment Agreement. In addition, public records indicate that the [B]eneficiary started a GoFundMe account to raise funds to pay for her surgery, which demonstrates that she was not provided health insurance in accordance with the Employment Agreement. Service records also show that the [B]eneficiary has provided services to a company that was not included in the Form I-129 petition. Finally, USCIS investigations also revealed that the [B]eneficiary has been self-employed as a web cam model and actor, performing services outside the scope of the employment provided on the Employment Agreement.

Second, the Director determined:

> USCIS found that the Employment Agreement [the Petitioner] issued is fraudulent, and the record lacks any other evidence to show that [the Petitioner] had a valid contract to employ the [B]eneficiary as a Bodybuilder. Without a valid contract, USCIS concludes that the [B]eneficiary did not have definite U.S. employment when [the Petitioner] filed this petition. Thus, the contract requirement has not been satisfied.

Third, the Director decided:

> [T]he itinerary states the [B]eneficiary would compete in events in 2017 to 2019, but [the Petitioner] did not provide any evidence to show that the [B]eneficiary was registered to participate in the listed competitions; in fact; documents in the [B]eneficiary's I-140 petition indicate that she only competed in two competitions in 2017 and competed in zero competitions in 2018 and 2019.
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> [T]he itinerary [the Petitioner] submitted is vague and does not provide specific competition locations nor specific event dates and locations for the photo shoots, open

houses, product demonstrations, guest posing and other publicity and media events [the Petitioner] claimed she would attend. The itinerary also lacks specific dates and locations for events during which the [B]eneficiary would assist in the training and preparation of [the Petitioner's] clients. Additionally, the itinerary lacks any information about where the [B]eneficiary will attend scheduled practices and training sessions. USCIS notes that the Form I-129 indicates the [B]eneficiary will work at 13410 Bellamy Bthrs Blvd, Dade City, FL 33525, but public records indicate that this is a residential property rather than a gym or other appropriate location. Thus, the events requirement has not been satisfied.

Finally, the Director concluded that the record reflected gross error in determining that the Beneficiary satisfied at least three of the categories of evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*)-(*8*). In fact, the Director found that the Beneficiary met only one criterion - awards, and she did not meet any of the other claimed criteria relating to memberships, published material, and high salary.

C. NOR

In response to the NOIR, the Director acknowledged the Petitioner's submission of a letter from its attorney; a letter from the Petitioner's vice-president, [redacted] and printouts from PayPal. However, the Director concluded:

> [redacted] letter is not sufficient. First, the letter is not independent and objective evidence to resolve the discrepancies pertaining to the [B]eneficiary's employment because she is associated with [the Petitioner]. Moreover, [redacted] explanation for the [B]eneficiary's webcam activities is not credible. Service investigators determined that the [B]eneficiary was engaging in pornographic activities when she appeared on the webcam. In addition, [redacted] does not explain why the [B]eneficiary had a GoFundMe account to raise funds to pay for her surgery if she was receiving full health coverage, as provided in the employment agreement. Additionally, [redacted] states that [the Petitioner] "obtain[ed] several sponsorships averaging $200,000" that "allowed [the [B]eneficiary] to travel for seminars, guest appearances, and competitions," but neither [redacted] letter nor any other evidence in the record sufficiently demonstrates that [the Petitioner's] company paid the [B]eneficiary $200,000 in wages and resolves the discrepancies found in the [B]eneficiary's wage documents. Also, [the Petitioner] did not provide additional evidence to explain why the [B]eneficiary reported to be self-employed as a personal trainer if she was [the Petitioner's] employee and engaging in valid U.S. employment for [the Petitioner's] company.
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> The PayPal statements are also insufficient to show that [the Petitioner is] a valid company that employed the [B]eneficiary. The address on the PayPal printouts do not correspond to the company address [the Petitioner] provided on the Form I-129. Also, the PayPal printouts do not demonstrate the nature of the payments made to and from [the Petitioner's] account; they only provide the payee and the amounts paid. Notably, none of the payments were made to the [Beneficiary], which further demonstrates that

> she was not engaged in valid employment with the [Petitioner's] company and receiving the wages provided in the employment agreement.
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> [The Petitioner] did not provide sufficient evidence to cure the deficiencies noted in the ITR and show, by a preponderance of the evidence, that the employment agreement [the Petitioner] submitted was valid. Thus, USCIS concludes that the employment agreement was not true and correct.

As it related to the contract, the Director referenced the submission of the letter from the Petitioner's attorney, the letter from [redacted] and the printouts from PayPal and concluded for the reasons discussed above that the response was "insufficient to show that the employment agreement [the Petitioner] submitted was valid and credibly established the terms and conditions of the [B]eneficiary's U.S. employment."

Regarding the Beneficiary's events, the Director again acknowledged the above-mentioned documentation, as wells as scorecards, an Instagram post, photos, flyers, and an article about home businesses. However, the Director found:

> [A]s previously discussed, the evidence is insufficient to show that the employment agreement [the Petitioner] submitted is valid, and USCIS thus concludes that the [B]eneficiary did not have events pursuant to legitimate, U.S. employment in accordance with the terms and conditions provided in the employment agreement. In addition, the scorecards indicate the [B]eneficiary competed in three competitions in 2017; inexplicably, [the Petitioner] provided a scorecard for a men's competition, as well as those that do not list the [B]eneficiary's name. Due to the limited nature of the scorecards, USCIS cannot determine that the [B]eneficiary competed in 2018, 2019, and 2020 in accordance with the events listed on [the Petitioner's] itinerary and the terms and conditions provided on the employment agreement. The flyers provide the event dates and locations for three publicity events, but [the Petitioner] did not provide specific event dates and locations for the [B]eneficiary's other activities, as listed in the ITR; these include photo shoots, product demonstrations, guest posing, training sessions, practices, and client training and preparation sessions. Finally, the article about home businesses does not reference [the Petitioner's] business and indicate that [the Petitioner] ran a valid gym and bodybuilding company from [the Petitioner's] residence.
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> [The Petitioner] did not satisfy this requirement by a preponderance of the evidence and show that the [B]eneficiary had definite, non-speculative events.

Finally, as it pertains to the Beneficiary's classification as an individual of extraordinary ability, the Director discussed the submitted evidence and concluded that the Beneficiary did not satisfy any additional criteria. Specifically, the Director determined that the Beneficiary's membership with the International Federation of Bodybuilding and Fitness (IFBB) did not meet the membership criterion, articles from MuscleMag and muscleinsider.com did not fulfill the published material criterion, and the issues with the Employment Agreement did not demonstrate the Beneficiary's eligibility for the high salary criterion.

D. Appeal

We adopt and affirm the Director's decision with the comments below. *See Matter of P. Singh, Attorney*, 26 I&N Dec. 623 (BIA 2015) (citing *Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994); *see also Chen v. INS*, 87 F.3d 5, 7-8 (1st Cir. 1996) ("[I]f a reviewing tribunal decides that the facts and evaluative judgments prescinding from them have been adequately confronted and correctly resolved by a trial judge or hearing officer, then the tribunal is free simply to adopt those findings" provided the tribunal's order reflects individualized attention to the case).

In the case here, the Petitioner submits on appeal the same documentation offered in response to the Director's NOIR and lists or references the evidence for some of the issues discussed in the Director's NOR. Moreover, the Petitioner does not explain how the Director erred in any of her findings. Further, the Petitioner does not address the Director's conclusion that [redacted] letter lacked independent, objective evidence, failed to explain the Beneficiary's pornographic activities, did not rectify the Beneficiary's GoFundMe account for surgery when the contract claimed full health coverage, lacked evidence showing that the Petitioner paid the Beneficiary $200,000 in wages as stipulated in the contract, and offered no explanation as to why the Beneficiary reported to be self-employed as a personal trainer in a separate immigration proceeding.

In addition, the Petitioner does not address the Director's findings as they related to the submitted PayPal statements. Specifically, the Petitioner does not dispute that the PayPal printouts do not correspond the Petitioner's address provided on Form I-129, they do not show the nature of payments to and from the Petitioner's account, and none of the payments were made to the Beneficiary.

We note here that the Petitioner submits a letter from [redacted] who stated:

> As a bodybuilding video producer, I have unfortunately found that users of my website: [redacted] have illegally uploaded content from the website to other platforms such as YouTube, Pornhub, and others. I have no control over what users upload; it is an illegal act and as such I issue Digital Millennium Copyright Act reports to have this content removed from these platforms, as I find it.
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> Furthermore, this is an ongoing and useless venture. The U.S. DMCA does not protect copyright holders; rather it enables piracy and illegal use of legitimately held copyrighted content to nefarious and illegitimate outlets. [The Beneficiary] is not in control and does not monetarily gain from these uploads and I am stating that in fact with this letter.

However, the letter does not resolve, or even dispute, that the Beneficiary was engaged in pornographic activities on the webcam rather than performing bodybuilding services for the Petitioner as outlined in the initial cover letter and Employment Agreement.

As it pertains to the Beneficiary's events, the Petitioner simply states "[a]attached please find documentation which clearly shows that the beneficiary participated in the listed events on the itinerary." Again, the Petitioner does not address any of the Director's findings or explain how the

Director erred. The Petitioner does not respond to the Director's evaluation of the scorecards, the flyers and other promotional material, and the home business articles.

The Petitioner must resolve inconsistencies in the record with independent, objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Unresolved material inconsistencies may lead us to reevaluate the reliability and sufficiency of other evidence submitted in support of the requested immigration benefit. *Id.* In general, a few errors or minor discrepancies are not reason to question the credibility of an individual or an employer seeking immigration benefits. *See Spencer Enterprises Inc. v. U.S.*, 345 F.3d 683, 694 (9th Circ. 2003). However, if a petition includes serious errors and discrepancies, the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. *Ho*, 19 I&N Dec. at 591.

Here, the Director outlined the serious errors and discrepancies in the record through the issuance of the NOIR. Furthermore, the Director thoroughly addressed the evidence in response to the NOIR and sufficiently explained why the evidence did not overcome the derogatory information. On appeal, the Petitioner submits the same documentation without explaining how the Director erred as a matter of law, statement of fact, or evaluation of the evidence. Because the Petitioner did not resolve the inconsistencies in the record, we agree with the Director's revocation of the petition's approval for the reasons discussed above.

Regarding the Beneficiary's eligibility for O-1 nonimmigrant classification, the Petitioner makes the identical arguments it used in response to the Director's NOIR. In fact, the Director's NOR discussed the submitted evidence and addressed the arguments and explained how the evidence did not show that the Beneficiary satisfied the membership, published material, and high salary criteria. Again, the Petitioner does not address any of the Director's specific findings or explain how the Director erred as a matter of law, statement of fact, or evaluation of the evidence. Accordingly, the Petitioner did not demonstrate that the Beneficiary's meets at least three criteria.

III. CONCLUSION

The record supports the Director's determination that the Petitioner did not establish eligibility for the benefit sought and that the Beneficiary qualifies as an individual of extraordinary ability. Accordingly, the Director properly revoked the approval of the petition.

ORDER: The appeal is dismissed.