



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

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

In Re: 22935724

Date: NOV. 22, 2022

Appeal of California Service Center Decision

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

The Petitioner, a live music entertainment promoter, seeks to classify the Beneficiary, a musical artist, as a noncitizen 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 denied the petition, concluding that the record 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. 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." *See* 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. *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).¹

II. ANALYSIS

Because the Petitioner has not indicated or established that the Beneficiary has been nominated for, or is the recipient of, significant national or international awards or prizes in his field, it must satisfy at least three of the six regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner established that the Beneficiary fulfilled only one of the initial evidentiary criteria, high salary at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). We do not agree with the Director's finding relating to the high salary criterion, discussed later. On appeal, the Petitioner maintains that the Beneficiary satisfies five additional criteria, and provides additional evidence and evidence previously submitted into the record. After reviewing all the evidence in the record, we conclude that the Petitioner does not demonstrate 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).

The record indicates that the Beneficiary is a popular music singer and songwriter who has performed since the 1990s on his own productions, including the albums [REDACTED] and [REDACTED] and the singles [REDACTED] and [REDACTED]. The submitted documentation included press releases, album covers, promotional posters, and photographs. On appeal, the Petitioner submits additional posters for the Beneficiary's past performances. The promotional posters specifically mention the Beneficiary by name, either as the solo artist or as one of several artists at events at which the Beneficiary has performed in Colombia. A 2018 press release on the website www.colombia.com for the Beneficiary's single [REDACTED] indicates the Beneficiary is currently promoting it and asserts it "has been very well received by the public and the media."² In addition, online printouts show that the Beneficiary's albums and singles are available on digital streaming services such as Spotify, Apple Music, Tidal, Deezer, and iHeartRadio.

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 We note that the translator's certification that accompanies the press release does not include the translator's statement that she is competent to translate from the foreign language into English, as required by under 8 C.F.R. § 103.2(b)(3). Accordingly, this translation has diminished probative value.

Upon review, although we find that the evidence establishes that the Beneficiary has performed in a lead or starring role for productions or events, the Petitioner has not submitted critical reviews, advertisements, publicity releases, publications, or other evidence to establish that the events themselves have a distinguished reputation, as required pursuant to the plain language of this criterion. As described above, the press release and posters regarding events at which the Beneficiary has performed do not establish that the productions have distinguished reputations in the Beneficiary's genre of music. The Petitioner did not document the reach of the website www.colombia.com such that a promotion on the website is indicative of the distinguished reputation of the event. In addition, while the Petitioner submitted evidence that the Beneficiary's music is available on digital streaming services, the Petitioner has not demonstrated how this evidence demonstrates that those productions have a distinguished reputation. The Petitioner has not established that publication on online streaming services is evidence of the distinguished reputation in the field of musical works posted on those sites.

Based on the foregoing, the Petitioner has not submitted evidence that the Beneficiary has served as a lead or starring participant in productions or events that have a distinguished reputation and, therefore, does not satisfy this criterion, which requires evidence of both past and upcoming lead or starring participation in distinguished productions. Nonetheless, the Director also considered whether the Beneficiary will perform services as a lead or starring participant in events or productions with a distinguished reputation upon approval of the petition. The record indicates that if the requested classification is granted the Beneficiary, as a singer, will perform at a ballroom in Massachusetts and a theater and an American Legion post in New Jersey. The Petitioner has not submitted critical reviews, advertisements, publicity releases, publications, or other evidence to establish that the productions on the Beneficiary's proposed itinerary have a distinguished reputation. 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 above, the Petitioner has not established that the Beneficiary satisfies the requirements of this regulatory 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 did not satisfy this criterion. An article from the website www.caucaextremo.com indicates an upcoming performance by the Beneficiary and [REDACTED] at a concert in [REDACTED] Colombia. An additional article from the website www.eje21.com.co dated [REDACTED] 2022 provides that the Beneficiary, [REDACTED], [REDACTED] and [REDACTED] performed at the [REDACTED] Fair at the [REDACTED] in [REDACTED] Colombia.³ The Petitioner has not demonstrated how these two brief mentions of the

³ We note that the record lacks the original untranslated document corresponding to the article from www.eje21.com.co. Regarding the submission of foreign language documents, the regulation provides that the Petitioner shall submit such documents accompanied by a full English language translation. See 8 C.F.R. § 103.2(b)(3). It does not indicate that English language translations may be provided in lieu of foreign language documents. As the record does not include the foreign language document, we are unable to confirm the authenticity of the English translation. In addition, neither of the

Beneficiary provide evidence of his national or international recognition for achievements in the music arts.

Further, the record contains the above 2018 press release from the website www.colombia.com for his single [REDACTED] which asserts that the Beneficiary is a popular music singer with “more than 16 record productions in his 27 years of artistic life” who “stood out nationally and internationally,” and provides a list of singles. A screenshot submitted from the Beneficiary’s website, [REDACTED] contains nearly identical language. The fact that these two items provide a list of singles does not establish that the achievements are nationally or internationally recognized in the Beneficiary’s field. Further, the Petitioner did not offer any evidence to establish that www.caucaextremo.com, www.eje21.com.co, www.colombia.com, or the Beneficiary’s website represents a major medium.

Based on the above, the Petitioner has not established that the Beneficiary satisfies the eligibility requirements of this regulatory 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).

As evidence under this criterion, the Petitioner provided two letters.⁴ The Director considered the letters and concluded that, although they mentioned the Beneficiary’s skills, they were insufficient to establish that the Beneficiary has received significant recognition for achievements in the field. This evidence includes letters from [REDACTED] manager of [REDACTED] [REDACTED] who states that the Beneficiary “is an original, versatile and unique artist at the national level and his musical style is currently taken into account by other Colombian artists.” [REDACTED] [REDACTED] director of the Colombian radio station [REDACTED] states that the Beneficiary is a singer “of national trajectory” and “an artist of great recognition and success in our country.”

The regulation at 8 C.F.R. § 214.2(o)(2)(iii)(B) provides that “[a]ffidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien’s recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.” Upon review of the letters, we agree with the Director’s determination that the Petitioner has not established that the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Although the aforementioned letters from [REDACTED] and [REDACTED] praise the Beneficiary’s originality and versatility and generally assert his national recognition they do not describe in factual terms the Beneficiary’s

a forementioned articles is accompanied by the translator’s certification that she is competent to translate from the foreign language into English, as required by under 8 C.F.R. § 103.2(b)(3).

⁴ We note that the recommendation letters are in the Spanish language and are not accompanied by the translator’s certification that she is competent to translate from the foreign language into English, as required by under 8 C.F.R. § 103.2(b)(3). Accordingly, these translations have diminished probative value

achievements in the popular music field. Further, the record contains no evidence of their authors' specific credentials as recognized experts. The Petitioner has, therefore, not established that the Beneficiary satisfies this evidentiary 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).

As discussed earlier, the Director found that the Petitioner satisfied this criterion. For the reasons outlined below, the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that the Beneficiary meets this criterion, and we will withdraw the Director's determination on this issue.

The record reflects that the Petitioner claimed eligibility for this criterion based on evidence the Beneficiary earned royalties from the [REDACTED]

[REDACTED].⁵ As evidence of the Beneficiary's past earnings the Petitioner included a letter dated February 2022 from [REDACTED] of [REDACTED] stating that the Beneficiary earned royalties of COL \$74,618 in 2020, COL \$78,003 in 2021, and COL \$45,786 in 2022.⁶ However, the Petitioner did not provide appropriate salary and wage data for comparison purposes. The plain language of this regulatory criterion requires evidence of a high salary "in relation to others in the field." The Petitioner did not provide data regarding the salaries of others working in the Beneficiary's occupation and geographic area in Colombia, and thus did not provide a basis of comparison to allow a determination that his past salary is high.⁷

Finally, regarding the Beneficiary's prospective salary, assuming that the Beneficiary's compensation will be \$72,000 per year as stated in the contract, the Petitioner has not established this salary is considered high in relation to others in the field. The Petitioner does not offer salary statistics or other documentation as bases for comparison showing that the Beneficiary will command a high salary relative to others working in the Beneficiary's occupation. Without corroborated, reliable evidence, such as statistical documentation reflecting the salaries of others working in the Beneficiary's occupation, the Petitioner did not demonstrate that the Beneficiary will command a high salary.

⁵ We note that in response to the Director's request for evidence (RFE), the Petitioner also asserted that the evidence offered in support of this criterion demonstrated the Beneficiary's "Memberships in Associations." The Petitioner referenced regulatory language applicable to individuals of extraordinary ability in the field of science, education, business, or athletics – 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), a separate and distinct nonimmigrant classification. The Director ultimately considered the evidence as it related to 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). Because this proceeding is based on the Petitioner seeking nonimmigrant classification for the Beneficiary as an individual of extraordinary ability in the arts under 8 C.F.R. § 214.2(o)(3)(iv), we will only consider those applicable arguments and decline to reach determinations on irrelevant eligibility claims.

⁶ We note that [REDACTED] letter is in the Spanish language and is not accompanied by the translator's certification that she is competent to translate from the foreign language into English, as required by under 8 C.F.R. § 103.2(b)(3). Accordingly, this translation has diminished probative value.

⁷ Although the Petitioner also provided an invoice for COL \$70,000 addressed to [REDACTED] for the Beneficiary's December 2021 performance, the record does not contain evidence that the Beneficiary received payment for the invoice.

The Petitioner has not submitted any additional evidence or arguments on appeal. For the reasons discussed above, the Petitioner did not establish that the Beneficiary commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in his field. Accordingly, we withdraw the decision of the Director for this criterion.

III. CONCLUSION

The Petitioner did not establish that the Beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), (5), and (6). Although the Petitioner claims the Beneficiary's eligibility for two additional criteria on appeal, relating to lead, starring, or critical role for organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and record of major commercial or critically acclaimed successes at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4), 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 and has achieved distinction in the field of arts. *See* section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii) and (iv).⁸ Accordingly, we reserve these issues.⁹ 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.

ORDER: The appeal is dismissed.

⁸ *See also* 2 *USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policymanual>.

⁹ *See INS v. Bagamasbad*, 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).