



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

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

In Re: 27773917

Date: AUG. 14, 2023

Appeal of Vermont Service Center Decision

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

The Petitioner, a restaurant and bakery, seeks to classify the Beneficiary as a pastry chef 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 Vermont Service Center denied the petition, concluding that the Petitioner did not establish the Beneficiary's satisfaction of 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. The matter is now before us on appeal.¹ 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter *de novo*. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). 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

¹ The Petitioner's appeal consists of the Form I-290B, Notice of Appeal or Motion, a cover letter, a copy of the Director's decision, and a brief statement identifying the basis for an appeal. The Petitioner indicated on the Form I-290B that he would submit a brief and/or additional evidence to this office within 30 calendar days of filing the appeal. The record does not reflect the Petitioner's subsequent submission of a brief or evidence in support of this appeal filed on April 3, 2023.

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).

II. ANALYSIS

The Director determined the Petitioner did not demonstrate the Beneficiary’s nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, the Director concluded the Petitioner provided evidence relating to three criteria, the leading or starring participant in productions or events criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the lead, starring, or critical role for organizations or establishments criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), and the significant recognition for achievements criterion under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), but the Beneficiary did not meet any of them.

On appeal, the Petitioner contends that the Beneficiary has received a significant national or international award or prize under 8 C.F.R. § 214.2(o)(3)(iv)(A) and, alternately, that he satisfies two of the previously claimed criteria.² As discussed below, we find that the exhibits do not satisfy any of the evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

A. Significant National or International Award

As noted above, a petitioner may demonstrate that a beneficiary qualifies as an individual of extraordinary ability in the arts through evidence of his nomination for, or receipt of, a significant national or international award or prize like the Academy Award, an Emmy, a Grammy, or a Director’s Guild Award. 8 C.F.R. § 214.2(o)(3)(iv)(A). The Petitioner did not specifically indicate before the Director whether it was

² On appeal, the Petitioner does not dispute the Director’s finding that he had not established the Beneficiary’s eligibility under the leading or starring participant in productions or events criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). Additionally, the Petitioner did not claim eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), (4), or (6) before the Director or on appeal. As the Petitioner provides no evidence or arguments addressing these four criteria on appeal, we consider these issues to be abandoned. See *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012) (stating that when a filing party fails to appeal an issue addressed in an adverse decision, that issue is waived). See also *Sepulveda v. U.S. Atty. Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding plaintiffs claims abandoned as he failed to raise them on appeal to the AAO).

claiming eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(A). On appeal, it indicates it provided evidence of the Beneficiary's receipt of a bronze medal at the 2011 [REDACTED] and argues the award is "the premier international cooking competition and is regarded as the equivalent of the Oscars or the Grammy's in the culinary world."

In support of this claim, the Petitioner references previously submitted documentation, including an award certificate indicating the Beneficiary was the recipient of a bronze medal in the [REDACTED] category of the 2011 [REDACTED] (Continental Edition). The certificate indicates the 2011 [REDACTED] was a three-day event held by the World Association of Chef Societies (WACS) at the [REDACTED], Costa Rica. The Petitioner also provided the Beneficiary's participation certificate for the event.

The aforementioned award and participation certificates are not sufficient to demonstrate that the 2011 [REDACTED] bronze medal received by the Beneficiary is a "significant national or international" award or prize that rises to the level comparable to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award, the examples provided in the regulations. The record contains insufficient evidence regarding the purpose of the award, the application, nominating, or selection process used by the issuing body, the eligibility criteria, or that the award has attracted significant recognition beyond the context of the event where it was presented. The winners and nominees of Emmy and Grammy awards, for example, receive significant national and international media attention as the result of their recognition, and the awards themselves are considered among the highest achievements attainable in the performing arts.

Without evidence establishing that the Beneficiary's award has garnered national or international recognition similar to an Academy Award, an Emmy, a Grammy, or a Director's Guild Award, the Petitioner's exhibits do not satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A).

B. Evidentiary Criteria

Absent evidence the Beneficiary has been nominated for, or received, a significant national or international award or prize, the Petitioner seeks to demonstrate the Beneficiary's sustained acclaim and recognition of achievements through evidence corresponding to two of the previously claimed criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will address these criteria below.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

This regulatory criterion requires a petitioner to show the beneficiary's past and future lead, starring, or critical roles. We agree with the Director's determination that the Petitioner has not demonstrated the Beneficiary's eligibility for this criterion. Here, the Petitioner maintains that since 2005 the Beneficiary performed in a lead, starring, or critical role as co-owner, with his wife, of [REDACTED]

[redacted] a baked goods catering business in [redacted] Costa Rica.³ Within its initial submission, the Petitioner submitted the articles of incorporation for the Beneficiary's company. It also provided his resume, which indicates that as a pastry chef with his business he has been responsible for "preparing events, budgets, inventories, managing staff, solving unforeseen events, innovating in pastry products and breads for restaurants as special events."

Within its response to the Director's request for further evidence (RFE), the Petitioner provided a letter from the Beneficiary, in which he asserts that his business "continues to thrive as the prominent bakery in [redacted] Costa Rica and nationwide" and is "the go-to for catering services, restaurants, clubs, as well as hotels." We acknowledge that the documentation submitted indicates the Beneficiary was employed in a critical or essential capacity for [redacted]. However, the record does not contain the required documentary evidence in the form of articles in newspapers, trade journals, publications, or testimonials pertaining to the reputation of [redacted]. Although the Beneficiary's uncle, E-S-G-, an executive pastry chef with [redacted] International, states that the Beneficiary has had his own company "for more than 16 years" and "is known for making innovative desserts of excellent quality for sale in hotels, restaurants, and clubs," his vague assertions regarding the company's renown are insufficient to establish the distinguished reputation of the establishment.

In addition, the Petitioner must establish that the Beneficiary will, prospectively, provide services in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation. Within the Petitioner's RFE response, it submitted a summary of the terms of the oral agreement between the parties dated December 13, 2022, which provides that the Beneficiary will "utilize his untouchable and unique ability to create and offer distinctive pastries to be served in my restaurants as well as to develop a standalone establishment connected to [the petitioning organization.]" However, the summary of the terms of the oral agreement is dated December 13, 2022, after the date the petition was filed in August 2022. 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).

Regardless, the record does not include evidence explaining how the Beneficiary's role as a pastry chef rises to the level of a lead, starring, or critical role for the petitioning restaurant and bakery. The submitted evidence does not describe how he will contribute to the petitioning business, or how his proposed positions fit within the hierarchy of the organization. Finally, the Petitioner did not provide any evidence demonstrating that it enjoys a distinguished reputation. As previously noted, the plain language of this criterion requires the submission of evidence in the form of newspapers, trade journals, publications, or testimonials. In light of the above, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary criterion.

³ The Petitioner previously claimed that the Beneficiary also meets this criterion based on his roles between 1992 and August 2022, the date the petition was filed, as a chief executive and chef for [redacted] International; pastry chef for [redacted] [redacted] trainer for the National Chef Association of [redacted] and culinary arts expert and lead chef for [redacted]. On appeal, the Petitioner claims eligibility based on the Beneficiary's roles with [redacted] and the petitioning organization, and does not address these other roles in the culinary field.

III. CONCLUSION

The record does not establish that the Beneficiary's nomination for, or receipt of, significant national or international awards or prizes under 8 C.F.R. § 214.2(o)(3)(iv)(A). In addition, we find that the Petitioner did not demonstrate that the Beneficiary meets the criterion relating to lead, starring, or critical role for organizations or establishments at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). Although the Petitioner claims the Beneficiary's eligibility for an additional criterion on appeal, relating to significant recognition for achievements at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), we need not reach this additional ground, because it cannot fulfill the initial evidentiary requirement of at least three criteria.⁴ 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, renowned, leading, or well-known 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).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.

ORDER: The appeal is dismissed.

⁴ Even if the Petitioner established on appeal that the Beneficiary met the lead, starring, or critical role and significant recognition criteria, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). As stated, although the Director determined that the Petitioner did not establish the Beneficiary's eligibility under the leading or starring participant in productions or events criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the Petitioner does not address this criterion on appeal.

⁵ *See generally* 2 *USCIS Policy Manual*, M.4(D), <https://www.uscis.gov/policy-manual>.

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