



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

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

In Re: 24303378

Date: JAN. 17, 2023

Appeal of California Service Center Decision

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

The Petitioner, a martial arts academy and athletic training facility, employs the Beneficiary as a mixed martial arts (MMA) athletic trainer. The Petitioner seeks to extend the Beneficiary's classification as an O-1 nonimmigrant, a visa 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 on the following four grounds: 1) the Petitioner had not properly filed the petition, as the initial form submitted contains several incomplete sections, 2) the Petitioner did not demonstrate the Beneficiary's events or activities, 3) the Petitioner did not satisfy the advisory opinion requirement, and 4) the Petitioner did not show that the Beneficiary received a major, internationally recognized award, or satisfied at least three of eight possible forms of documentation. The matter is now before us on appeal.

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 withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

I. LAW

With respect to the filing of petitions, the instructions to the Form I-129 O-1 nonimmigrant petition state, on page 4, that the Petitioner must answer "all questions fully and accurately. If an item is not applicable or the answer is 'none,' type or print 'N/A.'" The regulation at 8 C.F.R. § 103.2(b)(1) states: "Each benefit request must be properly completed."

In addition, as relevant here, the regulation at 8 C.F.R. § 214.2(o)(2)(ii)(C) requires an explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities. Furthermore, section 214(c)(6)(A)(i) of the Act requires the petitioner to submit an advisory opinion from a peer group or a labor organization. *See also* 8 C.F.R. § 214.2(o)(2)(ii)(D) and 214.2(o)(5). If the petitioner establishes that an appropriate

peer group or labor organization does not exist, then a petition may be adjudicated without the advisory opinion. *See* section 214(c)(6)(C) of the Act and 8 C.F.R. § 214.2(o)(5)(i)(G).

As it relates to a beneficiary, 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

II. ANALYSIS

The Petitioner seeks to continue to employ the Beneficiary to perform services as an MMA athletic trainer for its president, [REDACTED] a professional MMA fighter for a period of one year. On the petition, filed in November 2021, the Petitioner did not fully complete section 3 on page 3, left blank most of section 4 on page 3, and provided unclear information on page 5, question 11. The initial supporting documentation consisted solely of the Beneficiary’s 2020 federal and state income tax returns and Form W-2, his most recent 2021 paystub, the Petitioner’s letter in support of the petition, the Petitioner’s contract with the Beneficiary, and [REDACTED] bout agreement for a fight in [REDACTED] 2021. The Petitioner’s additional submission dated December 2021 was accompanied by a letter from [REDACTED] a professional MMA athlete for whom the Beneficiary has provided services as a strength and conditioning coach, and additional documentation pertaining to her.

The Director issued a request for further evidence (RFE) in March 2022, offering the Petitioner an opportunity to cure the deficiencies on the petition; demonstrate the Beneficiary’s events including an itinerary; satisfy the advisory opinion requirement; and show that the Beneficiary received a major, internationally recognized award, or satisfied at least three of eight possible forms of documentation.

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.”

The Petitioner, through counsel, submitted a letter in response to the Director's RFE, which indicated it was accompanied by several exhibits, and which were referred to throughout the letter. The Director denied the petition, concluding that the Petitioner had not established the Beneficiary's eligibility for the requested classification. More specifically, the Director found that the Petitioner had submitted its RFE response with no supporting evidence and therefore did not sufficiently address the deficiencies noted in the RFE, noting that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On appeal, the Petitioner asserts that the RFE response was accompanied by documentation consisting of numerous exhibits in addition to the letter in support of the response. The Petitioner further argues that it meets the statutory and regulatory requirements, including at least three of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In support of the appeal, the Petitioner provides a copy of the FedEx Standard Overnight receipt indicating that counsel mailed a package weighing three pounds to the U.S. Citizenship and Immigration Services (USCIS) California Service Center on May 13, 2022. According to the FedEx website the package was delivered to USCIS on May 16, 2022, and was signed for by [REDACTED]. The evidence sufficiently establishes that the Petitioner submitted more than a letter in support of its RFE response. The Petitioner also provides the documentation it asserts was submitted in its RFE response. We therefore find it appropriate to remand the matter for the Director to consider its impact on eligibility. The Director's decision will be withdrawn, and the matter will be remanded for further consideration of all the arguments and documentation in the record, including in response to the Director's RFE and on appeal, and for the entry of a new decision.

ORDER: The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.