



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

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

MATTER OF A-A-P-A-F-, LLC

DATE: OCT. 20, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a film and video production company, seeks to classify the Beneficiary as an individual of extraordinary achievement in the motion picture or television industry. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals whose achievements in this industry have been recognized in the field through extensive documentation.

The Petitioner seeks to employ the Beneficiary as a filmmaker/film editor and to act as his agent on behalf of multiple employers, representing both him and the employers, pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). The Director, Vermont Service Center, denied the petition concluding that the Petitioner did not establish that it is authorized to act as an agent on behalf of the Beneficiary's other employers for the purposes of filing the instant petition. The matter is now before us on appeal. The Petitioner submits a brief and maintains that the Director erred in denying the petition.

We will withdraw the Director's decision and remand the matter for further proceedings.

I. LAW

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified beneficiary who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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.

An O-1 petition "may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent," and must be accompanied by:

- (A) The evidence specified in the particular section for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;

- (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

8 C.F.R. § 214.2(o)(2)(i)-(ii).

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) imposes the following requirements on petitions filed by United States agents:

Agents as petitioners. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary; the representative of both the employer and the beneficiary; or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.
- (2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.
- (3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the act and 8 CFR part 274a.

II. ANALYSIS

The Petitioner is a film and video production company seeking to hire the Beneficiary as a filmmaker and film editor for a period of three years. In its initial submission the Petitioner stated

Matter of A-A-P-A-F-, LLC

that “[i]n addition to acting as Petitioner-Agent on behalf of [the Beneficiary’s] other employers in this [petition], [we seek] to employ [him] for a number of projects . . . as detailed in the enclosed itinerary.” The Petitioner describes the Beneficiary as “amongst many of today’s most influential contemporary [REDACTED] specifically in independent film editing.”

The Petitioner avers that it will be acting in this matter both as the Beneficiary’s employer and as an agent on behalf of multiple employers, as the representative of both him and the employers, pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). In its initial submission, the Petitioner included an itinerary showing that it will employ the Beneficiary as a producer, director, writer, editor, cinematographer, colorist, sound designer, and/or sound recordist on a dozen specified projects during the requested validity period, including documentaries, short/feature films, and promotional/music videos. The itinerary also listed work that the Beneficiary will perform for other employers during the requested period as follows:

1. [REDACTED] – August 2015 to December 2016:
 - a. Cinematographer, Editor, Colorist – feature-length documentary [REDACTED]
2. [REDACTED] – August 2015 onward :
 - a. Director, Cinematographer, Editor – ongoing documentary film series
3. [REDACTED] – October 2015 onward:
 - a. Director, Main Videographer, Editor – music event video series [REDACTED]
4. [REDACTED] – September 2015 to March 2017
 - a. Colorist – documentary [REDACTED]
 - b. Editor Colorist – feature-length documentary [REDACTED]

The Petitioner submitted a signed deal memo summarizing the terms of its oral agreement with the Beneficiary, and signed deal memos from four additional employers pertaining to the work he will perform for them. The record also includes signed letters from those employers authorizing the Petitioner to act on their behalf for the purpose of filing the instant petition.¹

The Director issued a request for evidence (“RFE”), specifically requesting that the Petitioner submit documentation to establish both that the Beneficiary qualifies as an individual with a demonstrated record of extraordinary achievement in the motion picture or television industry, and that the Petitioning employer is duly authorized to act as an agent for the other employers for the purposes of filing the instant petition. In response, the Petitioner submitted, *inter alia*, an additional letter, clarifying that it was filing the instant petition both as the Beneficiary’s employer and as an agent on behalf of him and his other employers, and maintaining that the record established its eligibility to

¹ See generally 62 FR 18508, *18509 (April 16, 1997) (explaining that “the term ‘agent’ need not be limited to a person or entity who has entered into a formal agency agreement with the employer,” but rather, “can be someone authorized to represent and act for another, to transact business for another, or manage another’s affairs.”).

act as an agent. The Director denied the petition, finding that the Petitioner did not establish that it is authorized to act as an agent on behalf of the Beneficiary's other employers for the purposes of filing the instant petition.

On appeal, the Petitioner maintains that the Director erred in determining that the submitted documentation does not establish that it is authorized to act as an agent. The Petitioner further argues that "even if authorization to a[c]t as an Agent cannot be satisfied in the record, [U.S. Citizenship and Immigration Services] policy suggests that this should not be the sole grounds to warrant a denial when the [P]etitioner is also the Employer," as such petition may be approved with a validity period limited to the duration of the petitioning employer's event. The Petitioner submits supporting documentation from the USCIS website.

The Petitioner further avers that as no other deficiency in the record was addressed in the decision to deny the petition, it should be assumed to have been established that the Petitioner has successfully demonstrated the Beneficiary's record of extraordinary achievement in film. We disagree. The Director found dispositive the issue of whether the Petitioner has established that it was authorized to act on behalf of the other employers, and did not address the issue of the Beneficiary's eligibility as an individual with a demonstrated record of extraordinary achievement in the motion picture or television industry.

After careful review, we will withdraw the Director's decision and remand the matter for further proceedings. The Petitioner has submitted a summary of the terms of the oral agreement under which it will employ the Beneficiary, as well as additional deal memos from the Beneficiary's other employers, as required at 8 C.F.R. § 214.2(o)(2)(ii)(B). The submitted itinerary and deal memos provide an explanation of the nature of the Beneficiary's proposed activities, including the beginning and ending dates and the specific locations of those activities, required evidence in all O-1 visa petitions. 8 C.F.R. § 214.2(o)(2)(ii)(C). The Petitioner has established that it is authorized to act as an agent for the purposes of filing the instant petition on behalf of the Beneficiary's other employers, as the evidence shows that it has obtained authorization from the other employers to file a petition on their behalf for the services that are the subject of the petition. As this finding was the sole basis for denial of the petition, we will remand the matter for a new decision regarding eligibility for the classification sought.

ORDER: The decision of the Director, Vermont Service Center, is withdrawn. The matter is remanded to the Director, Vermont Service Center, for further proceedings consistent with the foregoing opinion and for the entry of a new decision, which, if adverse, shall be certified to us for review.

Cite as *Matter of A-A-P-A-F-, LLC*, ID# 10305 (AAO Oct. 20, 2016)