U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-L-

DATE: MAY 7, 2018

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, an event agent, seeks to temporarily employ the Beneficiary as a talent curator and event specialist. It seeks to classify her as an O-1 nonimmigrant, a visa classification available to foreign nationals 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 initially approved the Form I-129, Petition for a Nonimmigrant Worker, granting the Beneficiary O-1 classification. The Director subsequently issued a notice of intent to revoke (NOIR) the approval of the petition based, in part, on the negative findings of a report from the U.S. Department of State Consulate General. After reviewing the Petitioner's response to the NOIR, the Director issued a notice of revocation (NOR), finding that the Beneficiary did not qualify for classification as an individual of extraordinary ability in the arts. *See* 8 C.F.R. § 214.2(o)(8)(iii)(A)(5).

On appeal, the Petitioner argues that the Director did not provide a copy of the United States Consulate General's report, preventing it from offering an informed response in violation of the regulation at 8 C.F.R. § 103.2(b)(8). Furthermore, the Petitioner contends that the Beneficiary's field falls within the arts as defined under the regulation at 8 C.F.R. § 214.2(o)(3)(ii).

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." 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. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B). If the petitioner demonstrates that the listed criteria do not readily apply to the beneficiary's occupation, it may submit comparable evidence to establish eligibility. 8 C.F.R. § 214.2(o)(iv)(C).

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]

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.

[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."

(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.

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, indicating that the Beneficiary qualified as an individual of extraordinary ability in the arts. In its accompanying cover letter, the Petitioner stated that it will "serve as [the Beneficiary's] agent for a series of talent curation engagements, including a series of concerts, festivals and productions on behalf of distinguished brands, entities and artist[s]." Moreover, the Petitioner asserted that the Beneficiary "is a renowned talent curator and event specialist, whose expertise and achievements in the advancement of electronic music events and the artist who participated in them is widely regarded internationally." Further, the Petitioner claimed that the Beneficiary met four of the six regulatory categories of initial evidence at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6), of which at least three are required.[2] The Director approved the petition and forwarded it to the United States Consulate General in St. Petersburg, Russia.

After interviewing the Beneficiary, the Consulate General concluded that she did not meet the requirements as an individual of extraordinary in the arts and returned the petition for reconsideration and possible revocation. The Director issued a NOIR, informing the Petitioner of the Consulate General's findings, and stating that upon further review, the record did not demonstrate the Beneficiary's profession falls within the arts or show that she satisfies any of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6).

In summarizing the findings of the Consulate General, the NOIR indicated that the Beneficiary stated during the consular interview that her field was "talent curation" and "event conceptualization." However, the Consulate General determined that her claimed field was indistinguishable from the work of a booking agent, who uses a budget provided by a venue or event sponsor to hire musicians to perform. Further, the consulate found that "talent curation" is not a defined and established art apart from booking and recruitment. Moreover, the Consulate General pointed out that the Beneficiary could not provide an example of an event concept that she had developed nor could she explain how her work in "event conceptualization" differed from booking agents.

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[2] The Petitioner claimed that the Beneficiary met the following four criteria: lead or starring participant in productions or events under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), national or international recognition evidenced by critical reviews or other published material under 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), lead, starring, or critical role for organizations or establishments under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), and significant recognition for achievements from organizations under 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

The Director also indicated that the Consulate General determined that in an interview with the Beneficiary posted on interview.ru, she described herself as a "booker," with no discussion in which she represented herself as an artist or that her work as a booking agent is considered an art. Furthermore, the article interview reflected that the Beneficiary focused on "creating artists line-ups for different events," and the Beneficiary described "what is required to book an in-demand act," is "stubbornness" and "it's always about the money," and that there is so little competition in Russia in the field of booking artists that "competition practically does not exist."

After reviewing the Petitioner's response to the NOIR, the Director issued a NOR concluding that the Beneficiary's role as a talent curator, event specialist, booking agent, or other similarly labeled occupation did not qualify as an individual of extraordinary ability in the arts, and she did not satisfy any of the regulatory categories of evidence at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6).

For the reasons discussed below, we find the Petitioner has not demonstrated that the Beneficiary's occupation, profession, or role falls within the arts, nor has it provided evidence satisfying any of the evidentiary criteria applicable to individuals of extraordinary ability in the arts. Accordingly, we find that the Director properly revoked the approval of the petition.

B. Proper Notice

Although the Director did not provide the Petitioner with a copy of the Consulate General's report, we find the NOIR offered adequate notice of the grounds for revocation, including any derogatory information that formed the basis of the decision. *See* 8 C.F.R. § 214.2(o)(8)(iii)(B); *see also* 8 C.F.R. § 103.2(b)(16)(i). For the reasons discussed below, we do not find support for the Petitioner's contention that the Director was required to present a copy of the report itself.

The Petitioner argues that the Director's failure to present it with a copy of the Consulate General's report violated the regulation at 8 C.F.R. § 103.2(b)(8). This regulation, however, is inapplicable as it relates to a director's discretionary authority to issue a request for evidence or notice of intent to deny prior to the approval or denial of a petition or an application. Accordingly, the Petitioner did not demonstrate that the Director violated the regulation at 8 C.F.R. § 103.2(b)(8). Instead, as noted above, the applicable regulation governing notice regarding revocation of an O-1 approval is 8 C.F.R. § 214.2(o)(8)(iii)(B), which requires an NOIR to "contain a detailed statement of the grounds for revocation" and to allow for a petitioner's rebuttal. In addition, the regulation at 8 C.F.R. § 103.2(b)(16)(i) states that a petitioner shall be advised of any derogatory information considered by USCIS of which he or she was unaware and offered an opportunity to rebut that information. Here the Director's NOIR provided sufficiently detailed information about the grounds for revocation to allow the Petitioner an opportunity for rebuttal.

In addition, the Petitioner contends that "[s]tandard practice is to include a redacted version of the Embassy's report as part of the [NOIR]." Further, the Petitioner provided a "sample of a redacted U.S. Embassy report received by Counsel in another Embassy challenge of an O-1 approval" and

states that "between the Embassy's report and the [NOIR], the Petitioner in the sample proceeding was afforded sufficient notice and information to meaningfully address the issues raised by the Embassy." The Petitioner, however, does not reference any regulation, memorandum, or policy to support his claim that standard practice dictates a copy of the consulate or embassy report must be included with a NOIR. Moreover, the Petitioner does not corroborate his assertion that in a different case, a director attached a U.S. Embassy report with a NOIR; the Petitioner did not show how he received the U.S. Embassy report. Regardless, even if a director provided the Petitioner with an embassy report relating to another petition, it does not demonstrate that such an action represents "standard practice."[3]

Furthermore, the Petitioner claims that the "Director has not explained why the initial approval was erroneously granted, relying entirely on the Embassy's opinion on [the Beneficiary's] eligibility" and cites to *Royal Siam Corp. v. Ridge*, 424 F. Supp. 2d 338, 343 (March 24, 2006), finding that "where USCIS rightfully denies a renewal of a visa that had initially been erroneously granted, the agency must provide an explanation why the previous grant of the visa was erroneous." Moreover, the Petitioner argues that "[a] respondent is not provided with adequate information when the Service withholds the very report that formed the basis of its [NOIR]." As discussed above, the Director issued a NOIR and NOR explaining the reasons for revocation, referencing the consulate's findings, and reviewing the record of proceedings. Moreover, while the Consulate General's report was the impetus for further reviewing the approval, the NOIR and NOR did not rely "entirely on the [Consulate General's] opinion." In addition, the Director adequately disclosed the Consulate General's findings in her notice and decision.

Moreover, the Petitioner argues that the NOIR "vaguely attributes answers and comments allegedly made by [the Beneficiary] during her visa interview," and "[t]he Director cannot rely on [the Beneficiary's] comments during her interview, not having quoted or referenced them in the [NOIR]." As indicated above, the Director did cite to specific information from the Consulate General's findings and interview. Furthermore, we do not agree with the Petitioner's contention that the Director cannot rely on the Beneficiary's comments at her consulate interview. Section 504.7 of Title 9 of the Foreign Affairs Manual (FAM) provides specific guidance to consular officers regarding placing individuals under oath and conducting interviews. Further, 9 FAM 504.7-4(A) provides:

> At the outset of the interview, inform the applicant that the interview will be based on answers given to the questions on Form DS-260, Online Application for Immigrant Visa and Alien Registration, and any others that might arise from examination of the supporting documents. Clarify that the applicant will be required to swear or affirm that all statements made during the interview and on the form are true.

[3] Each extraordinary ability petition is reviewed on its own merits, and we are not bound by decisions of a service center or district director. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

The responses at the consulate interview are both relevant and pertinent in determining her eligibility for a nonimmigrant visa. As evidenced at the interview, the Beneficiary's responses relating to her profession raised doubt by the Consulate General as to her eligibility for classification as an individual of extraordinary in the arts.

Finally, the Petitioner contends that "[i]t is unclear whether the Embassy's request for revocation was based on new information or discovery of fraud" and "by withholding the very report that promoted the [NOIR], the Director prevented the Petitioner from offering an informed response." Neither the Director's NOIR nor her NOR made any references to fraud, nor does the record reflect that the Director revoked the approval based on fraud. Rather, the Director's notice and decision detailed the ineligibility of the Beneficiary's occupation to be classified in the arts, as well as her failure to meet at least three criteria. Moreover, the Director supplied the Petitioner with a detailed statement of the grounds for revocation, thereby offering it an opportunity to respond and establish the Beneficiary's eligibility.

C. The Field of Arts

As noted above, the Director revoked approval of the O-1 petition based, in part, on a finding that the Beneficiary's area of expertise does not fall within "the arts." The Petitioner argues that the Beneficiary performs in an artistic role. In addition, the Petitioner contends that "[i]t is not the role that has to be artistic, but rather 'the field,' which include principal creators as well as 'other essential persons.'"

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) includes the following definition:

> *Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

The Petitioner indicates that the Beneficiary is "internationally known as a highly accomplished Talent Curator and Event Specialist in the electronic music scene.". Further, the Petitioner contends that the Beneficiary "has proven consequential to prominent music events . . ., by securing 'top talent,' without which the events would be neither distinguished nor newsworthy."

Although the Beneficiary, as a "talent curator," "event specialist," or "booking agent," works with artists, the Petitioner has not demonstrated that she is engaged in a "creative activity or endeavor." Specifically, the Petitioner has not demonstrated that her role securing musical acts is similarly artistic in nature to those "other essential persons" listed in the definition under the regulation at 8 C.F.R. § 214.2(o)(3)(ii) as opposed to falling within the field of business.

The regulations prescribe different evidentiary criteria and standards of review for individuals of extraordinary ability in the arts versus in business. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part: "[e]xtraordinary ability in the field of science, education, business, or athletics means 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."

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for individuals in the fields of business, education, athletics, and the sciences. *See* 59 Fed. Reg. 41818, 41819 (Aug. 15, 1994); 137 Cong. Rec. 818242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the "distinction" standard for the arts); *see also* Memorandum, Lawrence Weinig, Acting Asst. Comm'r, INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992) ("[T]he standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. . . . [o]fficers involved in the adjudication of these petitions should not 'water down' the classification by approving O-1 petitions for prominent aliens.").

While the Petitioner asserts that the Beneficiary should be evaluated based upon her role as an "essential person" in an artistic field, the record does not sufficiently establish that she is engaged in an artistic role rather than a business role. Upon review, the Petitioner has not demonstrated that it sought the appropriate O-1 visa classification for the Beneficiary, nor has it claimed or submitted evidence to establish that the Beneficiary meets the criteria and standards for individuals of extraordinary ability in business as set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B).

D. Extraordinary Ability in the Arts

Despite finding that the Beneficiary is not engaged in the field of arts, the Director appropriately reviewed the record in the revocation proceedings according to the classification requested on the Form I-129. USCIS will only consider the visa classifications that the petitioner annotates on the petition. As discussed, the Petitioner claimed at the initial filing that the Beneficiary satisfied four of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), in which she must meet at least three. In the NOIR and NOR, the Director found that the Petitioner did not establish the Beneficiary's eligibility for any of the criteria. On appeal, while the Petitioner argues that the Beneficiary qualifies under the arts, it does not specifically address the Director's findings for the criteria. Accordingly, the Petitioner did not demonstrate that the Beneficiary meets at least three criteria.

III. CONCLUSION

The record supports the Director's determination that the Petitioner did not establish that the Beneficiary qualifies as a foreign national with extraordinary ability in the arts. Accordingly, the Director properly revoked the approval of the petition.

ORDER: The appeal is dismissed.

Cite as *Matter of S-L-*, ID# 1094347 (AAO May 7, 2018)