



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

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

MATTER OF M-P-, LLC

DATE: APR. 23, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a talent agency, seeks to classify the Beneficiary as a foreign national of extraordinary ability in business. To do so, the Petitioner seeks O-1 nonimmigrant 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 of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the alternative evidentiary criteria applicable to individuals of extraordinary ability in business, either a major, internationally recognized award or at least three of eight possible forms of documentation. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B).

On appeal, the Petitioner maintains that the evidence satisfies the regulatory requirements and thus the Beneficiary is eligible for O-1 classification.

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 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). 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)(iii)(C).¹

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).²

II. ANALYSIS

A. Introduction

The Petitioner, a talent agency, seeks classification of the Beneficiary as an alien with extraordinary ability in business in the areas of renewable energy and clean water solutions. It seeks to represent him during his temporary employment in the United States as a business operations execution manager for [REDACTED] for a period of three years. The Beneficiary is the COO of [REDACTED] in Laos. His resume indicates he holds a Master of Science in Environmental Policy and Sustainability Management from [REDACTED] and a Bachelor of Science in International Business Management from [REDACTED].

B. Evidentiary Criteria

The Petitioner has not established that the Beneficiary has received a major, internationally recognized award, and so must show that it satisfies at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). In her decision, the Director found that the Petitioner met only one of the evidentiary criteria: 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) (employment in a critical or essential capacity). On appeal, the Petitioner maintains that it also satisfies the requirements of the criteria relating to membership in associations and media about the Beneficiary. We will analyze the evidence submitted under each of these criteria below.³

¹ While not at issue here, there are other evidentiary requirements for O foreign nationals, including documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate. 8 C.F.R. § 214.2(o)(2)(ii).

² *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.”

³ The Petitioner does not contest the Director's finding that it has not met the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) or (6), and has not claimed to satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), (5), or (8). Accordingly, we will not address these criteria in the decision.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

The Petitioner asserts that the Beneficiary satisfies this criterion based upon his having been chosen to be a mentor by two associations: [REDACTED] a graduate business school in France, and [REDACTED], a mentoring association in Thailand. In order to demonstrate that membership in an association meets this criterion a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based only on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue is membership requirements rather than the association's overall reputation. On appeal, the Petitioner maintains that both organizations require outstanding achievements of their members. Upon review, we concur with the Director's determination that the evidence submitted does not satisfy the requirements of this criterion.

The Petitioner submitted two letters from [REDACTED] the executive director of [REDACTED] confirming that the Beneficiary became an [REDACTED] in 2015, through the recommendation of a colleague. In her first letter, [REDACTED] states that the program connects "expert entrepreneurs" with MBA students to share their expertise and provide students with direct feedback on entrepreneurial topics. She indicates that [REDACTED] are selected "based on recommendations from our network of alumni, faculty, stakeholders and partners," and that "candidates should be . . . [f]ounders, directors, CEOs or investors who are recognized experts in business, management, leadership and/or an entrepreneurial field." Her second letter emphasizes that the selection criteria are "minimum criteria," and that the organization requires "outstanding achievements" and is "extremely selective" of its members."

The record supports the Director's finding that the Petitioner did not establish that membership in [REDACTED] program requires outstanding achievements or that eligibility for membership is determined by recognized national or international experts in their respective fields. The fact that [REDACTED] candidates "should be" founders, directors, CEOs or investors who are "recognized experts" is insufficient to establish that selection for the program requires outstanding achievements in the field of business. Nor does the fact that selection for the program is based on recommendations from the organization's "network of alumni, faculty, stakeholders and partners" demonstrate, as required, that such selection is judged by experts in the business field. The Petitioner has not provided the credentials of the persons who make the determination of eligibility for the position.

The Petitioner also provided two letters from [REDACTED] the co-founder of [REDACTED] and documentation about the association. The materials show that [REDACTED] provides young women with "strong leadership potential" from underprivileged Asian communities with mentorship and financing options to complete higher education and develop leadership skills. [REDACTED] first letter states that the Beneficiary became a mentor with the association in 2014 and a Leadership Ambassador in June 2016. He explains the responsibilities of a Leadership Ambassador include organizing community engagement activities and

representing the association at events. He indicates that the selection criteria for a Leadership Ambassador including the following:

- Locally, nationally, and globally highly-acclaimed change-maker, organizational leader and/or professional practitioner
- Outstanding track record in effective and meaningful community engagement and exceptional leadership skills and stakeholder management
- Willingness to provide lifelong mentorship and contribute to innovative financing options for [REDACTED]
- Confident engagement with members and the public
- Exceptional contribution to [REDACTED] mission to unlock the leadership potential of young women in Asia, enabling them to become leaders of their own development and that of their community
- Deep engagement as a mentor with high satisfaction levels, as well as personal and professional recommendations

His second letter characterizes the selection criteria as “outstanding.” The Petitioner has also submitted [REDACTED] 2015 Annual Report, which includes an article about the Beneficiary’s positive experiences as a mentor of a graduate student from Bangladesh, with an accompanying photograph of him.

The evidence submitted does not satisfy the requirements of this criterion. First, the Petitioner did not establish that the Beneficiary’s selection as a Leadership Ambassador for [REDACTED] requires outstanding achievements as an essential condition for participation in the program. Membership criteria such as having been a “highly-acclaimed change-maker, organizational leader and/or professional practitioner” falls short of establishing that outstanding achievements in the business field are a prerequisite for representation. Further, the record does not demonstrate, as required, that selection is determined by recognized national or international experts in their respective field, as it is lacking evidence of who makes the determination of eligibility and their credentials. Based on the foregoing, the Petitioner has not established eligibility under this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien’s work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

For purposes of this criterion, the Petitioner has submitted copies of online articles pertaining to the Beneficiary and relating to his work in the field, published on the webpages www.cnn.com, www.dailybeast.com, and www.dwell.com. He also has provided a printout of his profile on the [REDACTED] webpage at [REDACTED]

First, the Director determined that the above-referenced published materials do not meet this criterion because they do not identify the Beneficiary “as a person who has risen to the very top of the field.” In response to the Director’s request for further evidence (RFE), the Petitioner submitted expert letters from two journalists who discuss the level of the Beneficiary’s expertise as demonstrated in the articles. However, we find that the level of his expertise as shown in those materials should not be the determining factor of whether the published materials meet this criterion. If the Petitioner submits

published material in professional or major trade publications or other major media about the Beneficiary relating to his work in the field, we will conclude that the evidence satisfies the requirements of this criterion.⁴ In this case, however, the majority of the published materials are not “about” the Beneficiary, and the Petitioner did not present information regarding the general online readership of the websites on which these articles appeared, or other evidence showing that they constitute professional or major trade publications or major media, per the requirements of this criterion.

First, the Petitioner provided an article from CNN dated 2013 and titled [REDACTED]. In the article, the Beneficiary discusses improvements his company made to the energy infrastructure in Laos. Although the article quotes him and others in discussing the problem in Myanmar and suggesting possible solutions, the article is not about him. The article is about possible solutions for Myanmar’s old, neglected energy network.

In addition, the record contains a press release from the [REDACTED] dated 2010 from the Daily Beast. It provides several photos, each showing dozens of products the museum utilized when it “went green” for its design Triennial. Although one of the photo captions indicates that the exhibition included a rechargeable battery lantern designed by the Beneficiary and his colleagues at [REDACTED] this press release was about the exhibition, not the Beneficiary. The Petitioner also provided a listing about that lantern from the Dwell online catalogue, showing it is part of its collection of products.

Further, while the Beneficiary’s profile from the [REDACTED] webpage is “about” him, like the items from CNN, Daily Beast, and Dwell, it did not include the author of such published material, as required by the plain language of this criterion. Finally, as noted by the Director, the Petitioner did not present information regarding the general online readership of the websites on which the published materials appeared, or other evidence showing that they constitute professional or major trade publications or major media, per the requirements of this criterion. In light of the above, the Petitioner has not submitted evidence that meets this criterion.

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

The Petitioner has submitted recommendation letters detailing his role as COO for [REDACTED] as “the mastermind behind [its] Singapore office,” and leader of its international expansion efforts to establish additional offices in [REDACTED] and [REDACTED]. The letters indicate that in those roles he has played a critical role in shaping the future of the company by pioneering a new organizational structure that moved international sales to the forefront, doubled revenues, and increased capital investments. The

⁴ The level of the Beneficiary’s expertise would be more relevant to an examination of the totality of the evidence. As discussed above, 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 that the beneficiary has achieved a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor and that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise through extensive documentation. 8 C.F.R. § 214.2(o)(3)(ii), (iii).

record also includes evidence of the distinguished reputation of [REDACTED]. The Director determined that the Petitioner satisfied this criterion, and we concur with that determination.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the exhibits do not satisfy at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in business. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Here, that burden has not been met.

ORDER: The appeal is dismissed.

Cite as *Matter of M-P-, LLC*, ID# 2917405 (AAO Apr. 23, 2019)