



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

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

MATTER OF L-O-O-I-S- PC

DATE: JUNE 4, 2019

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a law firm agent, seeks to extend the Beneficiary's classification 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.<sup>1</sup> *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 Form I-129, Petition for a Nonimmigrant Worker, concluding that the Petitioner did not establish that the Beneficiary satisfied 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. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(B).

On appeal, the Petitioner presents previously submitted documentation, as well as new evidence, and asserts that the Director did not properly consider the record and maintains that the Beneficiary fulfills the regulatory requirements.

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).

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<sup>1</sup> *See*  with a validity period of September 1, 2015 to July 18, 2018.

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).<sup>2</sup>

## II. ANALYSIS

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 at least three of the six initial evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner provided evidence relating to four criteria, but the Beneficiary did not satisfy any of them. The Petitioner maintains on appeal that the Beneficiary fulfills those four criteria. For the reasons discussed below, we find that the documentation does not meet any evidentiary categories.

*Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).*

The Petitioner contends that it submitted "screenshots attributing the highly distinguished work depicted to [the] Beneficiary," and "[t]he unreplaceable nature of [the] Beneficiary's work is further exposed when considered in light of the letters written by high level executives on his behalf." Moreover, the Petitioner argues that the "Beneficiary is clearly depicted as the creative director of a number of campaigns for household name companies such as [REDACTED]. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) requires the Petitioner to demonstrate that the Beneficiary "has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements." Here, the Petitioner has not established that screenshots portraying his work and recommendation letters confirming his work reflect "critical reviews, advertisements, publicity releases, publications contracts, or endorsements" as required by the regulation. We note that the Director indicated that "[t]he screenshots you provided were mostly

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<sup>2</sup> *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."

unreadable and did not appear to attribute the work to the beneficiary.” On appeal, the Petitioner offers the same blurry and illegible screenshots; and therefore, does not overcome the issues addressed by the Director.

Regarding the Petitioner’s reference to the campaign for [redacted] the Petitioner submitted two copies of checks from [redacted] Inc. on behalf of [redacted] INC.” to the Beneficiary’s company. While the checks signify payment, the Petitioner did demonstrate that the Beneficiary performed work as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by the required documentation consistent with this regulatory criterion. The Petitioner, for example, did not provide evidence identifying the production or event and showing the role the Beneficiary participated. In addition, the Petitioner did not establish that the particular [redacted] campaign resulted in a distinguished reputation. As it relates to the Petitioner’s claim regarding a [redacted] campaign, the Petitioner does not identify the evidence to support his assertions, nor does the record contain documentation relating to [redacted] or a [redacted] campaign.

Further, regarding [redacted] the Petitioner submitted a screenshot listing the Beneficiary as the director for the short film, “[redacted]” The Petitioner, however, offered no other evidence regarding the Beneficiary’s participation for the short film showing that it garnered a distinguished reputation “as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements.”

As it relates to the letters, they identify the various campaigns and highly praise his work without establishing that the productions or events received distinguished reputations as evidenced by the required regulatory documentation. For example, [redacted], style and image director for [redacted] [redacted] confirmed the Beneficiary’s work on [redacted] Campaign” and commented that “[the Beneficiary] is one of the best and most unique talents I have come across in my many years making films.”<sup>3</sup> However, [redacted] did not indicate whether the project received rave reviews or enjoyed a distinguished reputation. Moreover, the Petitioner did not provide the required “critical reviews, advertisements, publicity releases, publications contracts, or endorsements” for the [redacted] project, as well as for any of the other projects listed in the letters, regarding the reputations of the productions or events.

Finally, this regulatory criterion requires that the Beneficiary will prospectively perform for services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements. The Petitioner claims that “[t]his can be found, for example, in Exhibit I, J, K, and L attached herewith.” However, the Petitioner did not label its exhibits, identify the documentation, or discuss how the evidence meets the regulatory requirements of this criterion.

Nonetheless, some of the letters referenced above do specifically identify upcoming projects that the Beneficiary will participate as the creative director. However, the Petitioner did not demonstrate through the required regulatory evidence that the productions or events have distinguished reputations.

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<sup>3</sup> Although we discuss a sample letter, we have reviewed and considered each one.

For the reasons discussed above, the Petitioner did not establish that the Beneficiary satisfies this criterion.

*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).*

The Petitioner asserts that the Beneficiary “has been in charge of the vision of the brands he has worked for, such as [redacted],” “[redacted]. . . could have hired any number of creative directors for their campaign but chose [the Beneficiary],” and “[t]he success of hugely popular brands like [redacted] is . . . the successful and award winning advertising campaigns that . . . [the Beneficiary] is at the forefront of these efforts.” The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) requires a beneficiary’s leading, starring, or critical role for organizations and establishments that have a distinguished reputation “evidenced by articles in newspapers, trade journals, publications, or testimonials.” Here, the Petitioner has not supported its arguments through the required regulatory documentation.

As mentioned above, the Petitioner provided two checks from [redacted] Inc. on behalf of [redacted] INC.” The checks only reflect payment to the Beneficiary’s company and do not show that he has performed in a leading, starring, or critical role. Moreover, the Petitioner does not specifically identify any other evidence in the record that demonstrates the Beneficiary’s role with [redacted]. Furthermore, the Petitioner did not establish that he will perform in a leading, starring, or critical role for [redacted] as “evidenced by articles in newspapers, trade journals, publications, or testimonials.”

Regarding [redacted], the Petitioner submits a contract between the Beneficiary’s company and [redacted] [redacted] Ltd. that was dated after the filing of the petition. The Petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1). Regardless, the Petitioner did not show that he performed in a role for [redacted] prior to the filing of his petition, nor did he demonstrate that his participation in a “maximum of (6) video shoots” will reflect a leading, starring, or critical role for [redacted] overall.

As it relates to the Petitioner’s claim regarding [redacted], again the Petitioner does not identify the evidence to support his assertions, nor does the record contain documentation relating to [redacted]. Here, the Petitioner has not shown that he has performed, and will perform, in a leading, starring, or critical role for [redacted].

Finally, as discussed above, the Petitioner presented a screenshot listing the Beneficiary as the director for a [redacted] short film, [redacted]. However, the Petitioner did not establish how directing a short film for [redacted] represents the Beneficiary’s leading, starring, or critical role for the company overall. In addition, the Petitioner did not demonstrate that the screenshot shows the Beneficiary’s role as “evidenced by articles in newspapers, trade journals, publications, or testimonials.” Moreover, the Petitioner did not demonstrate that he will perform in a leading, starring, or critical role for [redacted].

As the record does not document a previous and future leading, starring, or critical role for organizations and establishments that have a distinguished reputation, the Petitioner has not demonstrated that the Beneficiary satisfies the requirements of this evidentiary criterion.

*Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).*

The Petitioner claims that “the fact the Beneficiary was hired as a creative director for high profile projects and that he was personally hired to do, instead of other creative directors can be seen through the testimonial letters written on his behalf, as well as in the nature of the projects submitted herewith.” As previously discussed regarding his letters, the authors briefly confirm the Beneficiary’s work on projects for various companies and comment on his talents and abilities. However, the letters do not demonstrate that the Beneficiary “has received significant recognition for achievements” consistent with this regulatory criterion. For example, [redacted] creative director for [redacted] indicated two projects that the Beneficiary worked on for the company and opined that his “finished works are all testaments of his singular and extraordinary talent” and “his productions are works of art filled with insight, detail, and visible hard work.” The issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. Here, [redacted] did not indicate, for instance, how the Petitioner’s work has been viewed by the overall field, if the Beneficiary’s projects received any awards or widespread media coverage, or whether his work has been otherwise significantly recognized. Accordingly, the record lacks documentary evidence showing that the Beneficiary has received such significant recognition.

*Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).*

The Petitioner contends that the Beneficiary’s “bank statements show that he has earned a high salary as compared to others in the same field,” and “[i]t can easily be seen that tens-of-thousands of dollars have been deposited in his accounts in the past year at regular intervals for individual projects.” Although the bank statements reflect payroll transactions, such as [redacted] LLC Payroll” and [redacted] Transfer,” the Petitioner did not show how much he earned for each project as the deposit transactions did not identify the project sources. Moreover, besides the two checks from [redacted] Inc. on behalf of [redacted] INC.” discussed earlier, the Petitioner did not provide any supporting evidence demonstrating the Beneficiary’s salary or remuneration for services, such as contracts or other reliable evidence. Furthermore, the Petitioner did not establish that the Beneficiary either commanded a high salary or other substantial remuneration for services in relation to others in the field. For example, the Petitioner did not offer comparative evidence, such as the high salaries of other creative directors, to show that the Beneficiary commanded a high salary.

In addition, the record contains contracts for future projects, including the amount that the Beneficiary will earn either per day or per project. Again, the Petitioner did not present comparative evidence demonstrating that the Beneficiary will command a high salary or other substantial remuneration for services in relation to others in the field.

Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

### III. CONCLUSION

The record does not contain evidence of the Beneficiary's nomination for or receipt of a significant national or international award or prize, at least three of six listed categories of documents, or comparable evidence of his eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C). Accordingly, the appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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 L-O-O-I-S- PC*, ID# 3426194 (AAO June 4, 2019)