



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

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

MATTER OF B-H-P-, LLC

DATE: DEC. 14, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a motion picture production company, seeks to classify the Beneficiary as an individual with a demonstrated record 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 Director, Vermont Service Center, denied the petition. The Director concluded that the exhibits did not satisfy the evidentiary requirements applicable to foreign nationals of extraordinary achievement in the motion picture or television industry, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A) (a significant national or international prize or award) or (B) (at least three of six possible forms of documentation).

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence and maintains that the Director erred in determining that the Beneficiary is not eligible for the classification sought.

Upon *de novo* review, we will dismiss the appeal.

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. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) clarifies, in pertinent part: “*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.”

The implementing regulation at 8 C.F.R. § 214.2(o)(3)(v) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's recognition in the field through the beneficiary's nomination for, or the receipt of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(v)(A). If the petitioner does not offer this information, then that petitioner must submit sufficient qualifying exhibits that satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6).

The submission of documents relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we "must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Id.* Accordingly, where a petitioner submits qualifying evidence under at least three criteria, we will determine whether the totality of the documentation shows a demonstrated record of extraordinary achievement and establishes that the individual is recognized as outstanding, notable, or leading in the motion picture or television field.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O foreign nationals shall be accompanied by the following:

- (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;

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- (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.

II. ANALYSIS

A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary as a Feature Film Director for a period of approximately seven weeks. According to the Beneficiary's curriculum vitae (CV), he has been working as a film director in Brazil since at least 2000, having founded the film and theater production company [REDACTED]. His CV listed directing/screenwriting credits on 11 productions between 2000 and 2013 including the feature length films [REDACTED] (2009) and [REDACTED] (2012). The CV also indicated that the Beneficiary has been a theater director, a drama/film professor at the [REDACTED] and the head of the [REDACTED].

In its initial letter the Petitioner explained that it seeks to have the Beneficiary perform services as the director of the feature film [REDACTED]. It described the Beneficiary as having "international acclaim and achievements in the motion picture industry." The evidence submitted in support of the petition included the Petitioner's deal memo with the Beneficiary, the required consultations, and several testimonial letters. The Petitioner also provided articles and promotional materials pertaining to films the Beneficiary has directed, and information pertaining to film festivals in the United States and abroad at which the films have been screened.

Preliminarily, the Petitioner maintains on appeal that we should view the Beneficiary's field of endeavor or field of expertise as "horror movies," because of the "marginalization of horror films within the motion-picture field." The Petitioner submits articles discussing why so few horror films have received best picture nominations at the Academy Awards. However, the Beneficiary's field is that of a motion picture director. As previously noted, within the initial petition filing, the Petitioner clearly indicated in the Form I-129, Part 5 that the Beneficiary's job title is that of a 'Feature Film Director.' We are not persuaded by the Petitioner's attempt to narrow the Beneficiary's general field of motion picture directors down to directors of a specific genre.

B. Extraordinary Achievement in the Motion Picture or Television Industry

The sole issue addressed by the Director is whether the Petitioner offered evidence to establish that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three of the six

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categories listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6). In denying the petition, the Director determined that the Petitioner did not claim to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A). Regarding the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6), the Director discussed the submitted evidence and found that the Petitioner did not establish that the Beneficiary met these criteria. On appeal, the Petitioner does not contest the findings of the Director for the criteria at 8 C.F.R. §§ 214.2(o)(3)(v)(A) or (o)(3)(v)(B)(5) and (6), or offer additional relevant evidence or arguments, and we agree with the Director's findings on those issues. We will address the remaining criteria below. After careful review, the evidence does not establish that the Petitioner has overcome the grounds for denial.

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

The Director determined that the record does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1). The Beneficiary's CV lists a total of 11 director credits between 2000 and 2013. However, the record does not contain documentary evidence pertaining to the Beneficiary's role in the films ' [REDACTED] (2000),' ' [REDACTED] (2013),' and ' [REDACTED]

Therefore, we will direct our attention to the Beneficiary's feature films [REDACTED] and "[REDACTED] The Beneficiary's role as director of these productions may be categorized as providing services as a lead participant. However, the Petitioner must also establish through the submission of critical reviews, advertisements, publicity releases, contracts, or endorsements that the films themselves have a distinguished reputation. Within its initial submission and response to the RFE, the Petitioner provided documentation that the Beneficiary's films were the official selection of various film festivals in the United States and abroad, and received various awards including, but not limited to:

- [REDACTED] (2013);
- [REDACTED] (2012);
- [REDACTED] (2012);
- [REDACTED] (2012);
- [REDACTED] (2012);
- [REDACTED] (2009);
- [REDACTED] (2009);

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- [REDACTED] (2009);
and
- [REDACTED] (2009).

The scope and significance of these awards has not been explained or documented. The record contains information about the above festivals from their websites; material from the websites [REDACTED] and published articles primarily related to the Beneficiary's work on the films [REDACTED] and [REDACTED]. On appeal, the Petitioner provides letters from the organizers of two of the above festivals, and articles from [REDACTED] and [REDACTED] listing the premiere [REDACTED] and the [REDACTED] as [REDACTED] "to die for" and in the "top 100." The Petitioner has not, however, submitted critical reviews, advertisements, publicity releases, publications or other evidence to establish the distinguished reputation of the film festivals.

The Petitioner also submitted a positive review of [REDACTED] published on the website [REDACTED], summarizing the film's plot, noting that it is the Beneficiary's debut feature film and praising it as "Brazilian bad-taste comedy" that is "ingenious enough to please . . . sophisticated horror fans." The review predicts that "the future looks bright for niche small screen sales, and for [the Beneficiary] in general." The review does not, however, establish the distinguished reputation of the film. Rather, the article reflects that the film has recently premiered and shows promise regarding its future sales. The record further contained a screenshot of Beneficiary's biographical page on the review aggregator website [REDACTED] which identified him as the director of [REDACTED] and the director/screenwriter of [REDACTED]. This document does not establish the distinguished reputation of those films.

The Petitioner's initial submission also contained copies of the Beneficiary's agreements with [REDACTED] pertaining to the licensing rights for [REDACTED] and [REDACTED] and a letter from the company's executive producer, [REDACTED] indicated that her company previously worked with the Beneficiary regarding his feature films and "had the rights of television viewing . . . with [REDACTED]. On appeal the Petitioner provides a screenshot from the website of [REDACTED] indicating that the company is involved in the development of audiovisual content and the executive production/distribution of film/TV productions. The Petitioner has not provided documentary evidence relating to [REDACTED] showing that it has been associated with distinguished productions in the past.

In addition to his past positions, the Petitioner must establish that the Beneficiary "will perform" services as a lead or starring participant in productions or events with a distinguished reputation. As set forth in the petition and the deal memo, the Beneficiary will work as a film director on the feature film [REDACTED]. Within its RFE response, the Petitioner submitted a page from the website of the [REDACTED] indicating that in 2013 [REDACTED] won the festival's [REDACTED]. Within the appeal brief the Petitioner avers that in 2013 the "same screenplay beat out over 5,000 scripts, advancing to the second round of the [REDACTED]. The record does not contain sufficient corroborating evidence for this

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statement. Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)) Regardless, while the exhibits indicate that the Beneficiary will play a lead role in directing the film ' [REDACTED] ' the submission does not establish that the upcoming film is a production or event that enjoys a distinguished reputation, as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. Regarding the film's receipt of the [REDACTED] in 2013, as previously discussed, although the record contains promotional materials from the festival's website, the Petitioner has not provided documentation establishing that the film festival has a distinguished reputation in the field.

At the time the petition was filed, it appears that the project " [REDACTED] " was in its nascent stages, and that investment for the project was secured later. On appeal, the Petitioner provides a copy of its [REDACTED] campaign for the project published on the website [REDACTED]. The campaign contains a copy of a letter from [REDACTED] confirming the intention of [REDACTED] "to become [the Petitioner's] distributor in Latin American Territory," and stating that the company "will agree in good faith on contractual terms when [the Petitioner has] a rough cut of the film." It is not unusual for a distinguished motion picture or television production to generate press within the industry during pre-production, such as when it casts lead roles or hires a director. Here, although the record on appeal demonstrates that a production/distribution company has an interest in distributing the Beneficiary's film it does not establish the distinguished reputation of the project itself. Further, as discussed above, the Petitioner has not provided documentary evidence relating to the production company showing that it has been associated with distinguished productions in the past. We cannot conclude based on the limited evidence submitted that [REDACTED] is of such renown that any project it considers placing into development can also be considered to have a distinguished reputation. Overall, the evidence does not establish that the Beneficiary will perform in a lead or starring role for productions or events which have a distinguished reputation. In light of the above, the Petitioner has not established that the Beneficiary satisfies the plain language requirements of this regulatory criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications

The Director determined that the Petitioner did not satisfy the evidentiary requirements of the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2). The Petitioner submitted the pages from the website [REDACTED] for the films ' [REDACTED] and ' [REDACTED] and a review of ' [REDACTED] published on the website [REDACTED]. On appeal, the Petitioner provides several press releases and articles from the Brazilian websites [REDACTED] and [REDACTED] showing that the Beneficiary's film " [REDACTED] " was screened in theaters and film festivals in Brazil in celebration of the [REDACTED] anniversary of his production company, [REDACTED]. The Petitioner also submits an interview with the Beneficiary titled

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‘ [redacted] published on the [redacted] blog to accompany the short film’s screening. In the interview the Beneficiary describes the film as a mockumentary of [redacted] story ‘ [redacted]’. He also discusses his film ‘ [redacted]’ explaining how he adapted it from a stage play, recast the production, created a particular feel, and devised special promotional events including “an ongoing [redacted] campaign.”

While some of the above-referenced published materials are about the Beneficiary, the Petitioner has not established that they were published in major publications, as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(2). The record does not contain sufficient evidence (such as objective circulation information or internet readership statistics from an independent source) showing the distribution or readership of these publications relative to other print or online media to demonstrate that these publications can be considered “major” newspapers or magazines.¹

Finally, as discussed previously, the Petitioner has submitted a review of ‘ [redacted]’ published on the website [redacted]. The review summarizes the film’s plot, noting that it is the Beneficiary’s debut feature film and praising it as “Brazilian bad-taste comedy” that is “ingenious enough to please . . . sophisticated horror fans.” The article predicts that “the future looks bright for niche small screen sales, and for [the Beneficiary] in general.” Upon review, this article satisfies the plain language requirements of the criterion, and we therefore withdraw the Director’s determination on this issue.

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.

The Director determined that the Petitioner did not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(3). The Petitioner maintains on appeal that the Beneficiary satisfies this criterion based upon his performance as a professor of drama and film at the [redacted] [redacted] the founder and current director of [redacted] the head of the [redacted] and the curator of the [redacted] in [redacted]. Upon review, the Petitioner has provided insufficient corroborating information regarding those entities or the Beneficiary’s other past employers.

The Petitioner’s submission on appeal includes a letter from [redacted] of the [redacted] stating that the Beneficiary “is a valued member of our Faculty for over twenty years,” “a very active Professor for the [redacted]” and “a central part in the foundation of the Cinema course in 2005.” The Petitioner also attaches an advertisement for the stage production [redacted] published on the blog [redacted] describing the project as presenting three short stage pieces plus the film

¹ We also note that the Petitioner has submitted testimonial evidence in order to satisfy this criterion. Testimonial evidence cannot be used to satisfy this criterion, which requires submission of published materials by or about the Beneficiary in major newspapers, trade journals, magazines or other publications.

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██████████ in celebration of ██████████ anniversary. The advertisement mentions that the Beneficiary is the director of ██████████ and the creator of one of the stage pieces, and notes that the project is a partnership between ██████████ and a California company involving actors from both companies. The Petitioner further includes materials from ██████████ website showing the company's projects on since its formation in 1996.

The Petitioner also submits a press release for ██████████ described as “[t]he first show of zombie films and horror,” showing 14 films including “██████████ at the ██████████. The press release identifies the Beneficiary as the curator of the show, but the Petitioner does not explain how a show constitutes an “organization or establishment.” The Petitioner further provides a screenshot from the website ██████████ describing the ██████████ as a cinematic institution with a focus on the preservation and dissemination of “art cinema” which also offers film courses. This document does not mention the Beneficiary.

A leading role should be apparent by its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. A critical role should be apparent from the beneficiary's impact on the organization or the establishment's activities. A beneficiary's performance in this role should establish whether the role was critical for an organization or establishment as a whole. In addition, we may, in our discretion, use as advisory opinion statements offered as expert testimony. *See Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters of support from the Beneficiary's personal contacts is not presumptive evidence of eligibility; we may evaluate the content of those letters as to whether they support the foreign national's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500 n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the Beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by a foreign national in support of a petition are of less weight than preexisting, independent evidence.

Based on the above, we affirm the Director's finding that the Petitioner did not submit evidence demonstrating that the Beneficiary has performed in a lead, starring or critical role for organizations or establishments that have a distinguished reputation. While the evidence establishes that the Beneficiary previously performed as a professor for the ██████████ and a director and founding member of ██████████ the submitted evidence does not describe the duties he performed for either organization, or elucidate how his position fit within the overall hierarchy of the organizations or his impact on the organizations.

Further, even accepting that the Beneficiary's experience constitutes a leading role for those organizations, the Petitioner did not corroborate that they enjoy a distinguished reputation. The Petitioner provided materials from ██████████ website showing projects the company has worked on since its formation in 1996, and information from the ██████████ indicating it is one of the ██████████ universities in Brazil. The record does not contain corroborating

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documentary evidence in the form of articles in newspapers, trade journals, publications or testimonials pertaining to the reputation of the [REDACTED] or [REDACTED]

The Petitioner must also establish that the Beneficiary will, prospectively, provide services as a lead or starring participant for organizations or establishments that have a distinguished reputation. As previously stated, the petition and the deal memo indicate that the Beneficiary will work for the Petitioner for a seven-week period as the director of the feature film “[REDACTED]

[REDACTED] The Petitioner’s submission on appeal contains a copy of a letter from [REDACTED] confirming the intention of [REDACTED] “to become [the Petitioner’s] distributor in Latin American Territory,” and stating that the company “will agree in good faith on contractual terms when [the Petitioner has] a rough cut of the film.”

The Petitioner has not demonstrated how the Beneficiary’s role as a director on a film rises to the level of a lead, starring or critical role for the petitioning production company, or for the film’s intended distribution company, [REDACTED]. While the Petitioner has established the Beneficiary’s job title on the upcoming film project, the submitted evidence does not describe how the Beneficiary will contribute to the petitioning production company as a whole, or how his position fits within the overall hierarchy of the company.

Finally, the Petitioner did not provide sufficient evidence to demonstrate that it enjoys a distinguished reputation. As previously noted, the plain language of this criterion requires the submission of evidence in the form of newspapers, trade journals, publications or testimonials. Statements made without supporting documentation are of limited probative value and are not sufficient for purposes of meeting the burden of proof in these proceedings. *Soffici*, 22 I&N Dec. at 165. In light of the above, the Petitioner has not established that the Beneficiary satisfies the plain language requirements of this evidentiary criterion.

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications

The Director determined that the Petitioner’s evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4). In the Beneficiary’s field, evidence satisfying this criterion would reasonably include evidence of box office revenue, video sales, and similar evidence of tangible achievements in the motion picture industry.

The Petitioner avers on appeal that the Beneficiary satisfies this criterion based upon a letter from [REDACTED] stating that “[a]ll of [the Beneficiary’s] productions have been broadcasted in Latin America territory, and are within the [REDACTED] films in TV programming having garnered around 5 million viewers in Latin America territory.” The Petitioner also provides a screenshot from the website of [REDACTED] containing a synopsis of the film [REDACTED] and indicating that the film is “current[ly] running at [REDACTED] (in Brazil and all Latin America).” The Petitioner has not,

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however, provided evidence corroborating [REDACTED] statement. *See Soffici*, 22 I&N Dec. at 165. Assuming that this had been established, the record does not include evidence that such critical or commercial success was memorialized in trade journals, major newspapers, or other publications such that the Beneficiary's achievement was acknowledged in the industry at-large. In light of the above, the Petitioner has not established that the Beneficiary satisfies the plain language requirements of this evidentiary criterion.

III. CONCLUSION

The Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). Accordingly, it has not established eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013).

ORDER: The appeal is dismissed.

Cite as *Matter of B-H-P-, LLC*, ID# 76774 (AAO Dec. 14, 2016)