



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

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

MATTER OF A-, INC.

DATE: DEC. 22, 2017

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a hair salon, seeks to temporarily employ the Beneficiary as a hair stylist. 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 of the Vermont Service Center denied the petition, concluding that the Petitioner did not satisfy, as required, the 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 asserts that the Director did not properly consider the record and maintains that the evidence satisfies the regulatory requirements. In addition, it contends that the Director erred in not considering comparable evidence under 8 C.F.R. § 214.2(o)(3)(iv)(C).

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 the evidentiary criteria for establishing a beneficiary’s sustained acclaim and the recognition of achievements. A petitioner must 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 of 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)(3)(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). In *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.” 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 provides the requisite initial evidence, we then determine whether the record, viewed in its totality, shows sustained national or international acclaim such that the individual is prominent in the field of endeavor.

II. ANALYSIS

Absent evidence the Beneficiary has been nominated for, or received, a significant national or international award or prize like the Academy Award, the Petitioner seeks to demonstrate the Beneficiary’s sustained acclaim and recognition of achievements through evidence corresponding to at least three of the six regulatory criteria at 8 C.F.R § 214.2(o)(3)(iv)(B). The Director determined that the Petitioner did not satisfy any of those criteria. The Petitioner maintains on appeal that the exhibits satisfy four of the aforementioned criteria.¹ It also avers that it submitted comparable evidence of the Beneficiary’s eligibility under 8 C.F.R § 214.2(o)(3)(iv)(C). Finally, the Petitioner contends that the Director did not thoroughly or properly consider all evidence in the record.

We have reviewed the record and, for the reasons discussed below, we find that the exhibits do not satisfy any of the evidentiary categories described at 8 C.F.R. § 214.2(o)(3)(iv)(B), or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C).

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 submitted the Beneficiary’s résumé, position description, and hair styling portfolio; photographs of her with clients; and letters of recommendation. In the appeal brief, the Petitioner contends that “[t]here is ample evidence to show that [the Beneficiary] played a lead role as being in

¹ The Petitioner does not claim to meet, or contest the Director’s findings regarding, the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) and (6), nor does the record demonstrate that it satisfies them. Accordingly, we will not further address those criteria in our decision.

charge of all hairstyling decisions for very big and distinct productions, including for famous actors who appear in nationally televised programming.”

The record includes letters from [REDACTED] a production agent with the [REDACTED] in [REDACTED] and [REDACTED] a Japanese actor. Their letters contend that the Beneficiary’s styling of [REDACTED] hair helped jumpstart and advance his movie and television career, but they do not describe specific productions or events in which the Beneficiary has performed services as a lead or starring participant. In addition, the Petitioner offers a letter from [REDACTED] a manager and publicist for [REDACTED] a talent agency that represents the Japanese music group [REDACTED]. [REDACTED] asserts that the Beneficiary “was a leading force behind [REDACTED] rise to [] popularity and fame.” He also discusses the group’s various music releases, including the album [REDACTED] and notes that the Beneficiary styled musician [REDACTED] hair for a photograph “specifically for the album release, although a different picture was used for the cover of the album.” The record, however, does not establish that the Beneficiary, as hair stylist of a band member, performed as a lead or starring participant for [REDACTED] productions or events.

Additional references praise the Beneficiary’s work as a stylist for [REDACTED] hair product commercials and for [REDACTED] online sportswear product catalog; her development of a line of hair care products for beauty salon she owns, [REDACTED], and her skills and talent in cutting and styling clients’ hair. For example, one of the Beneficiary’s clients, [REDACTED] an executive sports trainer for [REDACTED] a personal fitness company, indicates that the Beneficiary “defly styled” his hair and “has worked with [REDACTED] as a hair and makeup stylist” for its television program and commercials on [REDACTED]. The record also includes photographs that the Petitioner claims show the Beneficiary’s work for [REDACTED] (Japan) and documentation indicating that she styled hair for models in a [REDACTED] ad campaign in Japan. While the Petitioner submitted photographs, online information, and other materials relating to the aforementioned projects in which the Beneficiary participated as a hair stylist, the documentation is not sufficient to demonstrate that she performed 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.

Furthermore, in addition to her past positions, this criterion requires that the Beneficiary “will perform” services as a lead or starring participant in productions or events with a distinguished reputation. The Petitioner maintains that the “Position Offered” section of its initial letter accompanying the O-1 petition meets this requirement. While this section lists the responsibilities associated with the Beneficiary’s position at the salon and discusses the Petitioner’s business intentions, it does not identify specific productions or events in which she will participate. As the record does not document future productions or events or demonstrate that they have a distinguished reputation, the Petitioner has not established that the Beneficiary satisfies the requirements of this evidentiary 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.
8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

The Director determined that the record did not include critical reviews or other published materials by or about the Beneficiary in major newspapers, trade journals, magazines, or other publications. On appeal, the Petitioner does not point to specific published material that satisfies the plain language requirements of this criterion. Rather, the Petitioner contends that we should consider the Beneficiary's "obvious national recognition in Japan" as comparable evidence for this criterion. The Petitioner indicates that the Beneficiary "was [REDACTED] sole hair stylist for years" and that she "has arisen to a definable level of distinction."

As stated previously, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that comparable evidence "may" be submitted if the criteria in 8 C.F.R. § 214.2(o)(3)(iv) do not readily apply to the beneficiary's occupation. It is clear from the use of the word "must" in 8 C.F.R. § 214.2(o)(3)(iv), as opposed to the word "may" in 8 C.F.R. § 214.2(o)(3)(iv)(C), that the rule, not the exception, is that the petitioner is required to submit evidence to meet 8 C.F.R. § 214.2(o)(3)(iv)(A) or at least three of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). It is the Petitioner's the burden to articulate why a criterion does not readily apply and how the evidence submitted is "comparable."

Here, the Petitioner has not established that being the sole stylist of a popular musician's hair is comparable to achieving national or international recognition for achievements as evidenced by critical reviews or other published materials by or about the Beneficiary in major newspapers, trade journals, magazines, or other publications. For example, the record does not demonstrate that the Beneficiary's styling of [REDACTED] hair results in a comparable level of recognition as coverage of her achievements in major media. Accordingly, this criterion has not been satisfied through the Beneficiary meeting its plain language requirements or the submission of comparable evidence.

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 record shows that the Beneficiary owns a beauty salon in [REDACTED]. The Petitioner submitted [REDACTED] reviews for this salon and webpages relating its product offerings. In addition, the Petitioner offered a letter of recommendation and an employment certification from [REDACTED] indicating that the Beneficiary worked for its salon as a full-time beautician and manager. While the positions of salon owner and salon manager appear to be leading roles for these establishments, the aforementioned evidence is not sufficient to demonstrate that [REDACTED] salon and [REDACTED] have a distinguished reputation. For instance, while the [REDACTED] reviews reflect that the Beneficiary's salon received positive feedback from its customers, they do not attest to or establish its distinguished reputation.

The record also includes a letter from [REDACTED] chief executive officer of [REDACTED] [REDACTED] stating that he and the Beneficiary developed their own membrane hair care product and that “[s]he acted as a professional consultant for [his] company’s research and development efforts.” [REDACTED] [REDACTED] maintains that the Beneficiary’s “guidance and input have been instrumental in my company’s continued success and growth.” The record, however, does not include evidence showing that [REDACTED] has a distinguished reputation. Furthermore, while the Petitioner submitted documentation indicating that the Beneficiary provided hairstyling services for organizations in Japan including [REDACTED] and [REDACTED] the record does not include evidence demonstrating that her position constituted a leading, starring, or critical role for those companies.

Based on the foregoing, the Petitioner has not submitted evidence that the Beneficiary has held a lead or critical role with respect to an organization or establishment that has a distinguished reputation. In addition, the record does not demonstrate that she will prospectively serve as such a participant for the petitioning organization. The Petitioner’s offer of employment notes that she will be working in the role of “hairstylist” and includes a list of her responsibilities. The Petitioner has not provided, however, information that would elucidate where her proposed position falls in the overall hierarchy of its organization or demonstrate her proposed impact on the organization. For instance, the record lacks documentation differentiating the Beneficiary’s role from that of the salon’s other hair stylists. Finally, while the record includes information about the Petitioner from its website, USCIS need not rely on this self-promotional material. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO, *aff’d* 317 Fed. Appx. 680 (C.A.9). The Petitioner has not offered sufficient evidence to demonstrate that its organization has a distinguished reputation. For these reasons, the record does not establish that the Beneficiary meets this 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).

As evidence under this criterion, the Petitioner provided multiple recommendation letters. The Director considered the letters and concluded that, although they discussed the Beneficiary’s projects, talent, and skills as a hair stylist, they were insufficient to establish that her work has received significant recognition for achievements in the field. On appeal, the Petitioner asserts that Director did not “consider the actual text contained within the bodies of any of the letters submitted” and requests that we “review all recommendation letters in this case.”²

² The Petitioner also challenges the Director’s observations relating to irregularities and duplicate language within the recommendation letters. We find that the Petitioner’s explanation of this issue sufficient to overcome the Director’s concern about the source of the opinions in the letters.

The record includes letters of support from the Beneficiary's clients and their representatives, and those who have employed or collaborated with her.³ For example, [REDACTED] asserts that the Beneficiary's hair styling was "instrumental in [REDACTED] professional rise" in becoming "one of Japan's most popular/movie television stars." In addition, with respect to how the Beneficiary has helped his career, [REDACTED] states: "[The Beneficiary] always styles my hair in a way that is subtly handsome yet very youthful. . . . After [the Beneficiary] began styling my hair, my confidence actually increased. . . . I am a very happy and satisfied professional who performs quite regularly in front of a camera." [REDACTED] a professor of engineering at [REDACTED] also indicates that the Beneficiary has improved his professional look. He notes that the Beneficiary "always accomplishes a very tidy, adult style that subtly emphasizes my sex appeal, with long bangs as the leading style." [REDACTED] further contends that as a result of the Beneficiary's hair styling, he landed "work with some amazing television productions" as a consultant on "accurately portraying scientific matters." While the aforementioned references discuss how the Beneficiary has helped their careers, they do not explain how she has received significant recognition in the field for her hair styling achievements.

The Petitioner offers another letter from [REDACTED] who contends that he and the Beneficiary "have jointly developed what I consider to be one the best hair care products available." [REDACTED] however, does detail the success of their product or offer examples of how it has received significant recognition in the field. The record also includes a letter from [REDACTED] a producer for [REDACTED]. He explains that he contracted the Beneficiary's services as a hair stylist for a project involving [REDACTED] online sportswear product catalog. In addition, [REDACTED] states that he recalls "being so impressed by [the Beneficiary's] unique approach to evaluating her subjects and then styling their hair based on her evaluations She is able to perfectly balance the wild side of an athlete with the subtle side of a gentleman."

Upon review of all of the letters, we concur with the Director's determination that the Petitioner has not established that the Beneficiary satisfies this criterion. The authors do not attest to the Beneficiary's level of recognition beyond their own companies and organizations, nor do they explain in factual terms her recognized achievements in the field of hair styling. 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. The record lacks documentary evidence showing that the Beneficiary has received such recognition. Based on the foregoing, the Petitioner has not submitted evidence that the Beneficiary meets this regulatory 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 her eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(A)-(C). Accordingly, the Petitioner

³ We discuss only a sampling of these letters, but have reviewed and considered each one.

Matter of A-, Inc.

has not established that the Beneficiary is eligible for the O-1 visa classification as a foreign national with extraordinary ability in the arts.

ORDER: The appeal is dismissed.

Cite as *Matter of A-, Inc.*, ID# 737536 (AAO Dec. 22, 2017)