

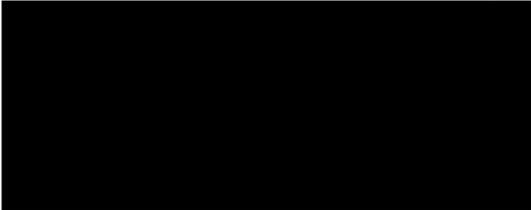
Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

88



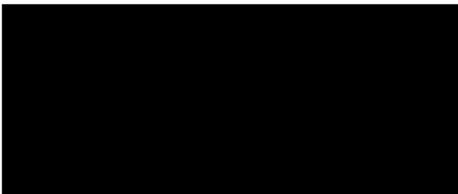
FILE: SRC 06 138 52302 Office: TEXAS SERVICE CENTER Date: NOV 07 2007

IN RE: Petitioner:
Beneficiary



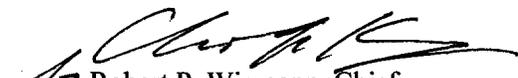
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the nonimmigrant visa petition. The petitioner filed an appeal and a motion to reopen and reconsider. The director denied the motion on technical grounds and forwarded the appeal to the Administrative Appeals Office (AAO). The AAO will dismiss the appeal.

The petitioner is the owner and president of [REDACTED] a polo team and management company. The petitioner seeks to change the beneficiary's nonimmigrant classification to that of an O-1 alien with extraordinary ability under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), in order to employ him temporarily in the United States as a polo horse rider and trainer for a period of three years at an annual salary of \$37,716.00 plus travel expenses and bonuses.

The director denied the petition, finding that the petitioner failed to submit the required peer group consultation or to establish that the beneficiary has received sustained national or international acclaim and is one of the small percentage who has risen to the very top of his field of endeavor.

On appeal, the petitioner submits a brief from counsel supported by various exhibits.

The first issue under discussion concerns the requirement of a peer group consultation. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines "peer group," in pertinent part, as "a group or organization which is comprised of practitioners of the alien's occupation."

The regulation at 8 C.F.R. § 214.2(o)(5)(i) reads, in pertinent part:

(A) Consultation with an appropriate U.S. peer group (which could include a person or persons with expertise in the field), labor and/or management organization regarding the nature of the work to be done and the alien's qualifications is mandatory before a petition for an O-1 or O-2 classification can be approved.

(B) Except as provided in paragraph (o)(5)(i)(E) of this section, evidence of consultation shall be in the form of a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor and/or management organization with expertise in the specific field involved.

(C) Except as provided in paragraph (o)(5)(i)(E) of this section, the petitioner shall obtain a written advisory opinion from a peer group (which could include a person or persons with expertise in the field), labor, and/or management organization with expertise in the specific field involved. The advisory opinion shall be submitted along with the petition when the petition is filed. If the advisory opinion is not favorable to the petitioner, the advisory opinion must set forth a specific statement of facts which supports the conclusion reached in the opinion. Advisory opinions must be submitted in writing and must be signed by an authorized official of the group or organization.

On the O and P Classifications Supplement to Form I-129, under "Name of Recognized Peer Group," the petitioner identified the United States Polo Association (USPA). Exhibit 12 of the petitioner's initial

submission is a facsimile copy of a letter from [REDACTED] of the USPA Handicap Committee. The letter attests to the beneficiary's "exceptional competence and skill . . . in the uncommon field of polo pony training and schooling." The letter contains no reference to the beneficiary as a polo player. Rather, [REDACTED] repeatedly described the beneficiary as an assistant to polo player [REDACTED]. The letter appears to have been prepared in conjunction with a prior nonimmigrant visa petition, to classify the beneficiary as a P-1 nonimmigrant as part of [REDACTED] organization. According to documents provided by the petitioner, that petition was filed in July 2005, and it was approved with validity through May 30, 2009.

On April 10, 2006, the director issued a request for evidence (RFE), instructing the petitioner to "[s]ubmit a letter from the United States Polo Association stating that [REDACTED] is authorized to write on behalf of their Association." In response, counsel stated:

When the letter was prepared, [REDACTED] was the Handicap Chairman for the U.S. Polo Association. In that capacity, he had the authority to write a letter on behalf of the U.S.P.A. Therefore, the USPA cannot provide a letter attesting to his current signing authority. He is now the Gold Cup Tournament director, one of the sport's most prestigious events.

Please note that the Petitioner . . . is on the Board of Governors of the U.S. Polo Association and he has already attested to the Outstanding Ability of [the beneficiary].

Counsel does not explain why [REDACTED] current position would preclude the USPA from affirming that Mr. [REDACTED] used to have signing authority on behalf of the USPA.

8 C.F.R. § 214.2(o)(5)(i)(A) requires that the advisory letter must relate to "the nature of the work to be done." [REDACTED]'s letter, prepared in 2005 for a P-1 petition, relates to the beneficiary's work as an assistant to [REDACTED]. The letter does not relate to the different position, with different duties, to which the new O-1 petition pertains.

While defending [REDACTED] letter, the petitioner also submitted a new affidavit (Exhibit 27) from [REDACTED] a self-described "internationally renowned actor and polo enthusiast" and "the sponsor and captain of the San Saba Polo Team in the United States, and the CuluCulu Polo Team in Argentina." [REDACTED] asserted that he has "served on many United States Polo Association (USPA) committees," but he did not claim to be a USPA official as of the date of his affidavit. He wrote in the capacity of a person with expertise in the beneficiary's field.

The director denied the petition on July 12, 2006, stating that the "letter from [REDACTED] . . . is undated and appears to be an advisory opinion written in support of a P-2 [*sic*], essential support alien petition filed on behalf of the beneficiary." Regarding the subsequent letter from [REDACTED], the director stated that the petitioner had submitted "no evidence that [REDACTED] is an expert in the field of polo, therefore the petitioner fail[ed] to submit an advisory opinion from a peer group, labor and/or management group with expertise in the area of the field involved." The director asserted that "a consultation from the United States Polo Association would have been appropriate."

On appeal, counsel states “an Advisory opinion from the USPA Board of Governors would simply be self-serving, as the Petitioner . . . is on the Board of Governors of the USPA.” It remains that the petitioner chose, at the outset of the proceeding, to identify the USPA as the “Recognized Peer Group” that would be providing the advisory letter. Counsel adds that “the Association is not currently providing advisory opinions,” although the record contains nothing from the USPA to confirm this assertion. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel protests that the director found that [REDACTED] is allegedly not ‘an expert in the field of polo.’” The director made no such finding or allegation. The director made no finding of fact about whether or not [REDACTED] is an expert in the field of polo. The director found only that the petitioner had submitted “no evidence that Mr. [REDACTED] is an expert in the field of polo.”

Counsel notes that [REDACTED] in his affidavit, listed his qualifications relating to polo. [REDACTED] affidavit reads, in part:

I have played polo for over thirty years and am internationally recognized as a prominent polo player. I have participated in over one hundred tournaments world wide, which qualifies me as an authority to judge the polo abilities of other players. Currently, I am the sponsor and captain of the San Saba Polo Team in the United States, and the CuluCulu Polo Team in Argentina. I have served on many United States Polo Association (USPA) committees, including the Polo Training Foundation and the Disciplinary Committee of the Palm Beach International Polo Club.

Exhibit E of the appellate submission is an interview with [REDACTED] in the polo publication *PoloLine*. Exhibit F is a cover article about [REDACTED] (including an interview) in *Polo* magazine, which indicates that [REDACTED] is in the upper 10 percent of the U.S.P.A.” Exhibit G is an article from *POLO Players Edition* that previews “the 2006 high-goal season in Florida,” discussing numerous teams including [REDACTED] San Saba team. The article mentions, but does not focus on [REDACTED]

The available evidence tends to support the conclusion that [REDACTED] is a qualified expert in the sport of polo, rather than a casual enthusiast. Upon consideration, we find that the petitioner has met his burden of proof with respect to the consultation from a recognized peer group or person with expertise in the field.

There remains the more involved issue of the beneficiary’s extraordinary ability in athletics.

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides nonimmigrant classification to a qualified alien who has extraordinary ability in 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.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states: “*Extraordinary 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.”

In a letter accompanying the initial filing, the petitioner states:

[The beneficiary] has an outstanding reputation as a Polo Horse Expert. He is internationally recognized as both a Polo Horse Player and Trainer on the international polo circuit. . . .

[The beneficiary] has been working in P-1 status in support of an internationally recognized polo player since July of 2005. In that capacity, [the beneficiary] has utilized his valuable experience with some of polo's top teams and players. [The beneficiary] has participated in some of polo's most prestigious international tournaments. He has worked closely with top players in the high-goal polo community of the world. He has worked with the top clubs and teams. To mention a few, they include, but are not limited to the following clubs and teams:

1. Pegasus Polo Team
2. Mt. Liar Ville Polo Team
3. ERG Polo Team
4. Lockton Polo Club

[The beneficiary] has also participated in high-goal tournaments, which include, but are not limited to the following:

1. Par Avion
2. The Governor's Cup
3. The Mother's Day Cup
4. The Stanford Cup
5. The USPA Governor's Cup

[The beneficiary's] extraordinary abilities as an internationally recognized polo horse player and trainer have been recognized internationally for well over a decade. The polo horses that [the beneficiary] has trained for competition have been used by him in his tournaments, as well as have been sold as top dollar prestigious polo horses to other high-goal international players.

We acknowledge the petitioner's statement, but at the same time we must stress that this statement amounts to a series of claims rather than evidence to support those claims. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Pursuant to 8 C.F.R. § 214.2(o)(3)(iii), an alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of either: (A) receipt of a major, internationally recognized award, such as the Nobel Prize; or (B) at least three of eight other specified forms of documentation.

The petitioner claims to have met the following regulatory criteria. We will discuss several of the eight specified criteria further below, but first we must address an alternative regulatory clause.

8 C.F.R. § 214.2(o)(3)(iii)(C) states that, if the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B) do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. This clause applies only when the eight listed evidentiary criteria do not readily apply to the beneficiary's occupation. If the listed criteria do readily apply to the beneficiary's occupation, but the beneficiary cannot meet those criteria, the petitioner does not have the discretion arbitrarily to substitute different standards tailored to the beneficiary's accomplishments.

In the letter accompanying the initial submission, counsel stated that the petitioner "wishes to offer the position of Expert Polo Horse Player and Trainer to" the beneficiary. The wording of counsel's letter is significant for reasons that will become clear during the discussion of the appeal.

Counsel's opening letter mentions "comparable evidence," but there is no showing that the specified regulatory criteria do not readily apply to the beneficiary's occupation. (Indeed, counsel claimed that the beneficiary meets many of those criteria.) Counsel stated that the initial submission included "[c]omparable evidence establishing [the beneficiary's] eligibility as an internationally recognized polo player, who has played with the most elite polo players of the world." Specifically, the petitioner submitted photographs showing that the beneficiary has posed with actor [REDACTED] Prince of Wales and heir to the British throne.

We note here that, while both [REDACTED] are, without question, international celebrities, neither of them earned their fame by playing polo. Therefore, it does not necessarily follow that a polo player who plays on the same team as [REDACTED] or [REDACTED] must, himself, rank among "the most elite polo players of the world." The photographs do not show how the beneficiary ranks when compared to individuals who became famous by playing polo (rather than famous people who happen to play polo).

In response to the director's RFE, counsel maintained that the petitioner has submitted comparable evidence because the regulatory criteria do "*not readily apply* to Polo Horse Playing or Training" (counsel's emphasis). Counsel failed to provide any arguments or evidence to support the conclusion that the standard criteria do not apply to the beneficiary's occupation. Counsel simply declared the criteria to be inapplicable, and then proceeded from that *a priori* assumption.

The RFE response included, as Exhibit 26, copies of the same photographs showing the beneficiary with [REDACTED]. Counsel claimed that these photographs demonstrate the beneficiary's involvement in "prestigious international tournaments," with no evidence of the prestige of the tournaments except that the beneficiary played "on the same teams as [REDACTED] of England and [REDACTED]."
Counsel argued:

the fact that the Beneficiary has been able to play on the same team with the world's most famous polo enthusiasts, such as [REDACTED] of England and [REDACTED] both who [*sic*] are very prominent international polo figures, in itself demonstrates that [the

beneficiary] has risen to the top of the field. Under 8 C.F.R. § 214(o)(C) [*sic*], no further documentation should be required, as those two exhibits speak volumes.

(Counsel's emphasis.) Counsel failed to explain why the beneficiary should be presumed to be a top polo player because he has played polo with individuals who are famous for reasons other than playing polo (specifically, an acting career and a hereditary title of nobility).

The director, in the denial notice, rejected counsel's attempt to invoke the "comparable evidence" clause, stating: "[o]f the eight criteria . . . at least five readily apply to the beneficiary's occupation."

On appeal, counsel claims that, in the photographs, the beneficiary and [REDACTED] are "wearing the same uniform." In the photographs, [REDACTED] is wearing a green shirt with a red collar and the red numeral "4" prominently emblazoned on the left chest and sleeves. Other players, wearing red-collared green shirts showing numbers 1 through 3, stand beside him. The beneficiary is not one of these three individuals. The record indicates that polo teams have four players, and it therefore appears that the four individuals with numbered shirts constituted the four-player team. In the same photograph, the beneficiary and several others each wear a blue jacket with a red and yellow crest on the left chest. The beneficiary's green shirt collar is visible beneath the jacket. Therefore, the beneficiary and [REDACTED] are clearly not "wearing the same uniform," even if sharing a uniform were presumptive evidence of eligibility (which it is not). Given the presence of four players in numbered, red-collared shirts, surrounded by a larger number of individuals in green-collared shirts, a more reasonable conclusion is that the green-collared individuals (including the beneficiary) are the supporting staff assisting the four numbered, red-collared players.

Counsel protests that the adjudicating officer's

burden of proof exceeds a reasonable standard. Again, the evidence speaks for itself. To require further documentation is not only unreasonable, but it would be impossible. The Officer is apparently unduly unaware of the extremely strict requirements and security required to be anywhere near [REDACTED]. To expect further documentation from the world's most renowned royal prince is not only unreasonable, but it is naïve.

(Counsel's emphasis.) The above passage is problematic for numerous reasons. First and foremost, the evidence does not speak for itself. The evidence shows that the beneficiary posed with [REDACTED] in a group much larger than a four-man polo team. The photograph, standing alone, does not even show that the beneficiary ever actually played polo with [REDACTED] much less that the beneficiary earned that privilege by virtue of his own acclaim as a polo player. Counsel claims that the very existence of the photograph "clearly demonstrates the polo affiliation between the Beneficiary and the Prince," but an "affiliation" does not compel the inference that the two individuals played together in the Gold Cup. Furthermore, in making this argument, counsel repeats the demonstrably false assertion that the beneficiary and the Prince are "wearing the same uniform."

Also, while counsel rightly asserts that access to [REDACTED] is so restrictive that we cannot reasonably expect further evidence from the Prince himself, this assertion would be relevant only if we were to assume

that [REDACTED] himself were the only source of reliable information about the circumstances under which the photograph was taken. The petitioner does not explain the unavailability of other evidence placing the beneficiary and the Prince on the same team such as statements from any of the numerous other unidentified people shown in the photograph and published articles or copies of internal team documents.

Given these factors, we cannot accept counsel's claim that the photographs showing the beneficiary, [REDACTED] and numerous other individuals are obvious evidence of the beneficiary's eligibility.

With regard to the "comparable evidence" clause, counsel states, on appeal, that the beneficiary seeks classification as "a Polo Horse Trainer, not a Polo Player." Elsewhere in the same brief, counsel states that the director "overlooked the most important fact: the petition is for a Trainer, not a Player." The Form I-129 petition referred to the beneficiary as a "Polo Horse Rider & Trainer" who "Trains and rides horses for polo competitions." The description on the Form I-129 was arguably ambiguous, but in correspondence accompanying the initial filing, counsel stated that the petitioner sought to employ the beneficiary in "the position of Expert Polo Horse Player and Trainer," and in response to the RFE, counsel claimed that the standard eight regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) were not applicable "to Polo Horse Playing or Training." Only on appeal does counsel attempt to shift the emphasis primarily to the beneficiary's training duties, stating that the beneficiary's "polo horse playing is merely and [sic] adjunct to his training duties." Nowhere in counsel's previous correspondence can we find an emphasis on the beneficiary's training duties over his playing. Counsel does not explain why, in previous submissions (and even in parts of the appellate brief), counsel placed so much emphasis on the beneficiary as a polo *player*.

The petitioner's own introductory letter appears to place equal emphasis on playing and training, repeatedly referring to the beneficiary as a "Player and Trainer." Even the affidavit from [REDACTED] which counsel claims the director disregarded, devotes considerable space to the beneficiary's career as a polo *player*, with only four sentences mentioning that the beneficiary "is also a top horse trainer." Whatever the beneficiary's other intended duties, it is clear that the petitioner intends for the beneficiary to play on the petitioner's polo team, and therefore it is entirely appropriate to consider evidence relating to the beneficiary's recognition as a polo player.

Counsel contends "[t]he regulations do not require that the Petitioner submit evidence that the criteria 'do not readily apply to the beneficiary's occupation,' but rather that the 'petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.'" The full text of 8 C.F.R. § 214.2(o)(3)(iii)(C) reads: "If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility." The wording implies that there must be some showing that the criteria "do not readily apply to the beneficiary's occupation." As to who must make that showing, there is no presumption in the petitioner's favor. Section 291 of the Act, 8 U.S.C. § 1361, places the burden of proof on the party seeking benefits. It is the petitioner's burden to show that the criteria do not readily apply to the beneficiary's occupation, and it is also the petitioner's burden to establish that the alternative evidence is, indeed, comparable to the caliber of evidence described in the standard criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B).

Furthermore, whether or not one relies on the “comparable evidence” clause, the burden is still on the petitioner to show that the beneficiary “is one of the small percentage who have arisen to the very top of the field of endeavor” as required by 8 C.F.R. § 214.2(o)(3)(ii) and has earned “sustained national or international acclaim” as required by section 101(a)(15)(O)(i) of the Act and 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). The petitioner cannot meet this threshold with photographs of the beneficiary with celebrities.

The petitioner has, throughout the proceeding, submitted evidence categorized according to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B). Having rejected counsel’s attempt to rely on the “comparable evidence” clause, we will now turn to these criteria.

8 C.F.R. § 214.2(o)(3)(iii)(A) indicates that “[r]eceipt of a major, internationally recognized award, such as the Nobel Prize” is, by itself, sufficient to establish sustained acclaim and extraordinary ability. The petitioner initially did not claim that the beneficiary met this requirement, but on appeal, counsel states that “the Beneficiary’s participation in some of the world’s most prestigious Polo tournaments and working with some of the world’s most famous polo figures” is “comparable evidence applicable to the world of Polo.” The AAO rejects categorically the assertion that “participation” of this kind is comparable to “a major, internationally recognized award, such as the Nobel Prize.” The record appears to indicate that prominent polo players at major tournaments are routinely attended by trainers and other support staff, such that the support staff outnumber the players themselves. Such individuals are not, by mere association, akin to international prize winners.

Counsel also cites “documentation of the Beneficiary’s receipt of a Groom Award from the U.S. Polo Association, which is an internationally recognized award from the highest polo authority in the United States.” The record is devoid of evidence that this award is a major, internationally recognized award. The regulatory reference to “the Nobel Prize” gives some indication of the caliber of prize that would merit consideration under the “major award” clause. From the structure of the regulations, it is clear that not every internationally recognized award is a *major* internationally recognized award. Furthermore, the USPA is a national, rather than international association. We will discuss the award further in the context of the first of the lesser regulatory criteria, below.

Documentation of the alien’s receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)

The petitioner cited several exhibits as evidence that the beneficiary meets this criterion. Exhibit 9 is a copied page from a publication apparently called *The Blue Book*, said to date from late 1998, indicating that the beneficiary “was named Most Valuable Player” in “the final of the Dominican Cup at Houston Polo Club,” before a crowd of “hundreds of polo enthusiasts.”

Exhibit 10 is a certificate from the USPA, showing that the beneficiary won “the [REDACTED] Award for 2000.” The certificate was signed by [REDACTED] as “Chairman – USPA” and by the petitioner as “Club President,” which indicates that the award was presented by the club under the USPA’s authority, rather than directly by the USPA as a national organization. If every USPA member club presents

its own [REDACTED] Groom Award each year, as appears to be the case, then the award is local and does not establish recognition beyond the individual club that presented the award.

Exhibit 11 is an undated page from what appears to be a brochure or magazine, with the legend [REDACTED] [REDACTED] Open – Founder’s Cup – Polo Español” at the bottom of the page. The page shows eight group photographs, including a photograph captioned “Team Cyberonics Takes Home the Gold at the Brinker Cup!” The photograph shows seven people, including the beneficiary.

Exhibit 13, a copy of a page from *POLO Players Edition*, indicates that Spencer Farms (for which the beneficiary was then playing) defeated Lockton in the 2001 Southwest Circuit Governor’s Cup final at the Houston Polo Club. The reference to the “Southwest Circuit” suggests a regional rather than national or international competition.

Exhibit 14 is a document bearing the heading “Houston High-Goal Series Polo Teams 2001.” The document lists the rosters of eight four-man teams, including the beneficiary as a member of [REDACTED]. There is no particular reference to any prize or award, and the petitioner did not explain how this document relates to prizes or awards.

The petitioner’s initial submission established the beneficiary’s receipt of awards and his membership on winning teams, but it did not establish their required national or international recognition. The record contains no documentation about the awards, apart from the materials described above.

In the RFE, the director requested “evidence that the Houston Polo Club’s Recognition, the U.S. Polo Association’s Groom Award, and the Brinker Cup are nationally or internationally recognized prizes or awards for excellence.” The director also requested “evidence that these tournaments [in which the beneficiary played] are prestigious international tournaments.”

In response, the petitioner submitted three new exhibits. Exhibit 20 contains printouts from the web site of the Houston Polo Club, [REDACTED]. The site includes a quotation from the *Robb Report*, stating that the club was “[v]oted [o]ne of the top 5 high-goal polo clubs in the country.” The record contains no background information about the *Robb Report*, nor does it say who did the voting. Counsel stated that, given the reputation of the Houston Polo Club, “any recognition from the Houston Polo Club is recognition from one of the U.S.’ most formidable Polo Clubs.” Counsel’s conclusion does not follow from the premises. The reputation of a given polo club does not imply that each and every form of recognition bestowed by that club is a nationally or internationally recognized prize or award for excellence.

Exhibit 21 consists of a printout of [REDACTED] detailing the history of the USPA, “the governing body of polo in the United States.” Counsel stated that “an award from the U.S. Polo Association is a national honor/award.” This argument fails because an award from a national organization is not necessarily a nationally recognized award, and it does not necessarily establish national acclaim. The submitted materials from the USPA’s web site do not mention the [REDACTED] award.

Counsel stated that the documents in exhibit 22 establish that “the Brinker Cup . . . is one of the most formidable polo competitions in the U.S.” The documents in question, more printouts from various web sites, mention the Brinker Cup but do not show the tournament’s standing in relation to other competitions. A printout of [REDACTED] refers to the “3rd Annual Land Rover Dallas Brinker Cup [on] Sunday, June 13, 2004,” which would place the first annual event in 2002. Nevertheless, the “Social Calendar” for the Houston area on October 29, 1997, published at [REDACTED] refers to “the Houston Polo Club’s Brinker Polo Cup competition.” Either the Brinker Cup moved from Houston to Dallas or there is more than one local Brinker Cup competition. Although the printouts date from 2006, nothing in the record refers to any Brinker Cup at any location after 2004.

The director, in denying the petition, found that the petitioner failed to establish the importance of the awards, and in some cases that the petitioner had not even confirmed the beneficiary’s receipt of the awards claimed. The director also noted that the beneficiary’s award from the USPA is for his work as a groom, not as a player or trainer.

On appeal, counsel states that the terms “groom” and “trainer” are synonymous in polo. Counsel cites no documentary support for this contention, but even assuming it to be true, the petitioner has not established the national or international recognition of the [REDACTED]. The director’s failure to equate the terms “groom” and “trainer” did not prejudice the outcome of the decision in this regard.

We affirm the director’s finding under this criterion.

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)

Counsel asserted that the petitioner’s initial submission included evidence to fulfill this criterion. Counsel, however, did not identify the associations in question. A detailed list of exhibits accompanying that submission matched each exhibit to a regulatory criterion, but the exhibit list makes no mention of membership in associations, and the exhibits themselves refer to no such memberships.

In response to the RFE, counsel cited “[p]reviously submitted Exhibit 14,” the list of “Houston High-Goal Series Polo Teams 2001” that identified the beneficiary as a member of [REDACTED]. The record contains no evidence that membership in [REDACTED] requires outstanding achievements as judged by national or international polo experts.

The director, in the denial notice, found that the petitioner had not satisfied this criterion. The director also observed that membership in the Houston Polo Club is open to non-polo players, but the petitioner had not claimed that the beneficiary was a club member or that such membership qualified under the regulation.

On appeal, counsel does not contest the director's finding. Instead, counsel acknowledges that this criterion is "[n]ot readily applicable to this occupation," without explaining the repeated prior attempts to satisfy the 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)

Some of the petitioner's initial exhibits (numbered 10, 11, 13 and 18), described elsewhere in this decision, take (or appear to take) the form of published materials. The petitioner did not establish that all of these documents appeared in professional or major trade publications or other major media. Furthermore, none of the articles were about the alien. Rather, they were about particular polo tournaments, with brief, passing references to the beneficiary and to other competitors.

The petitioner's list of exhibits also, for some reason, identified exhibit 12 (the letter from Jimmy Newman of the USPA) as "published materials," a description that clearly does not apply.

In response to the director's RFE, the petitioner submitted (as exhibit 23) copies of previously submitted materials, along with copies of additional articles. Some of these materials had been submitted previously, but were not initially associated with the "published material" criterion. The new articles follow the same pattern as those submitted previously. Some report the results of competitions, and mention of the beneficiary himself is generally limited to identifying the team members.

Some of the "published material" amounts to little more than team rosters. Even more general is a printout from [REDACTED] an alphabetical list of hundreds of polo players in the United States whose surnames begin with the letter S. Counsel failed to explain how the beneficiary's inclusion in a large, alphabetical directory could possibly establish national acclaim, extraordinary ability, or any other attribute necessary for the classification sought.

The caption of a photograph states that the beneficiary "performs his duties as a polo groom by warming up a polo pony before a practice match." Another caption indicates that the beneficiary "'tacks up' a polo pony before a workout." These captions contain no information except that the beneficiary is a polo groom, an assertion that the director never contested. The petitioner did not provide the required title, date, or author. A captioned photograph showing the beneficiary and another polo player "do[ing] some reaching in the last Commuter League tournament" shows a photographer's credit but no publication title, date, or author.

The director found that the submitted "articles are not written about the beneficiary and his extraordinary ability, and it has not been shown that these articles are from professional or major trade publications or major media."

On appeal, counsel states that the above materials were "intended to be 'comparable evidence' considering the unique nature of the beneficiary's position. Therefore, the evidence submitted should not be expected to

fully comply with the criteria stipulated in the regulations.” It does not follow that non-qualifying evidence that superficially relates to parts of certain criteria constitutes “comparable evidence.” As we have already explained, the “comparable evidence” must still establish that the beneficiary enjoys national or international acclaim and is at the very top of his field. Fleeting mentions, often in unidentified publications, are not “comparable” to the caliber of published material that the regulation demands.

We affirm the director’s finding under this criterion.

Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5)

Under this criterion, the petitioner initially cited three letters (exhibits 15-17) from polo players and an article from a polo publication (exhibit 18). The article, “Brinker Cup: Fast Polo and Record Funds,” appeared in the December 18, 1999 issue of *Sidelines*. The article reads, in part:

One point handed eatzi’s, sponsored by the Brinker International-owned food chain, the Brinker Cup in Houston Polo Club’s third annual Brinker Cup Polo Tournament.

In a match that raised more than \$32,000 for The Epilepsy Foundation of Southeast Texas, Team eatzi’s . . . narrowly defeated The Palm, sponsored by Houston’s leading steak and lobster restaurant.

The petitioner emphasized the fund-raising aspect of the tournament, but did not explain how raising these funds amounted to an “original contribution,” or, for that matter, why the beneficiary in particular deserved credit for the “original contribution.” While the *Sidelines* article identified the beneficiary as “the day’s high-scorer,” the article also indicates the beneficiary did not play for the winning team. The implication is that the beneficiary somehow made an “original contribution” simply by being one of numerous players in a charity tournament, but the petitioner did not explain how or why this should be so.

The three witness letters are facsimile copies of letters dated between June 17 and 23, 2005. These dates coincide with the filing of the prior P-1 nonimmigrant visa on the beneficiary’s behalf, under the terms of which the beneficiary sought admission as [REDACTED] assistant. The letter signed by [REDACTED] (exhibit 15) described the beneficiary as “an excellent polo groom/rider, as well as being one of the most talented trainers on the international polo circuit.” Stuart “Sugar” Erskine (exhibit 16) placed the beneficiary among “top international polo grooms/trainers/riders.” The text of the letter signed by Brad Blake (exhibit 17) is identical to the letter signed by [REDACTED]. None of these letters identifies any “original contribution” by the beneficiary, or even identifies the beneficiary as a player in his own right. Rather, the letters focus on the beneficiary’s role as [REDACTED] assistant.

In the RFE, the director stated: “[i]n order to meet this criteria [sic], the beneficiary must have made major significant contributions of a scientific, scholarly, or business related nature. If you maintain that the beneficiary meets this criteria [sic], explain specifically how this is met by the beneficiary. Submit evidence of this.” In response, counsel again cited the beneficiary’s participation in a charity tournament as evidence of an original

contribution of major significance. Counsel did not explain how playing polo in a polo tournament amounted to an original contribution of major significance.

Furthermore, counsel disregarded the director's specific instruction to explain how this contribution was "of a scientific, scholarly or business related nature." When considering the petitioner's claim that the beneficiary meets this criterion, we cannot ignore the wording of the regulation. Whereas other regulatory passages refer to "extraordinary ability in the fields of science, education, business, or athletics," 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) refers to "the alien's original scientific, scholarly, or business-related contributions." The omission of "athletic contributions" is a realistic reflection of the nature of athletic competition. Winning a competition is not an "original contribution;" it is expected that any given athletic event will have a winning athlete or team that outscores or outperforms rival competitors. Similarly, possessing a high level of the skills needed to succeed in a particular sport is generally a matter of degree, rather than an "original contribution" to the sport. Therefore, attestations regarding the beneficiary's talent and success will not satisfy 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) as evidence of the beneficiary's original contributions. Competitive success is already covered by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), pertaining to prizes and awards, and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) covers any media attention that an athlete may earn by standing out from others in a particular sport.

The director, in the denial notice, stated that "[t]he beneficiary's participation in a tournament which raised funds for charity . . . fails to demonstrate that the beneficiary made a contribution of major significance." On appeal, counsel offers no response to the director's findings except to acknowledge that the criterion is "[n]ot readily applicable to this occupation." We affirm the director's finding under 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 originally cited two exhibits as evidence that the beneficiary meets this criterion:

Exhibit 7. Picture of [the beneficiary] with [REDACTED] when they played together on the San Saba Team in November 1997 in the Isla Carrol [sic] Cup at Old Pueblo Farm in Houston, Texas.

Exhibit 8. Pictures of [the beneficiary] with [REDACTED] when they played together in London, England for the Gold Cup, July 1991.

(Emphasis in original.) The photographs contain no internal evidence that they were, in fact, taken at the Isla Carroll Cup or the Gold Cup (respectively). Furthermore, the initial submission contained no evidence to establish the distinguished reputations of the Isla Carroll Cup or the Gold Cup. The petitioner cannot establish the reputations of these events simply by naming them. Finally, the photographs do not establish that the beneficiary was employed in a critical or essential capacity at the events in question. Participation alone is not inherently a critical or essential capacity.

In response to the director's RFE, counsel cited the same photographs but did not identify any organization or establishment with a distinguished reputation for which the beneficiary had been employed in a critical or essential capacity. The director concluded as much in the denial decision.

On appeal, counsel states: "[m]ultiple sources of evidence have been provided to show the alien's association with persons of distinguished reputation." Counsel asserts that the beneficiary meets this criterion because "having your picture taken with the Prince of England . . . carries with it a prestige that only few of even the most elite have enjoyed." The requirement is employment in a critical or essential capacity for an organization or establishment with a distinguished reputation, not association with persons of distinguished reputation.

By training horses for top polo players, a polo trainer (or groom) may work in a critical or essential capacity for polo teams with distinguished reputations. Nevertheless, the record contains little documentation regarding the particular players and teams for whom the beneficiary trained horses. Instead, counsel has consistently focused on the photographs of the beneficiary with [REDACTED]. The petitioner has submitted lists of players for whom the beneficiary is said to have served as a trainer, but the record contains no supporting documentation to establish the accuracy of these lists.

Whether one relies on the standard regulatory criteria or on comparable evidence, the petitioner must show that the beneficiary has earned sustained national or international acclaim at the very top of his field. Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(ii), (iii). Most of the available documentary evidence (as opposed to testimonial evidence, solicited especially to support this petition) concerns the period from 1998 to 2001, or earlier. Assuming, for the sake of argument, that the beneficiary achieved some degree of acclaim during that short period, the record does not contain similar documentation showing that the beneficiary continued to enjoy that level of acclaim during the five years leading up to the filing of the petition in 2006. The dearth of recent documentary evidence indicates that whatever acclaim the beneficiary may have earned in the past has not been sustained.

The record does not establish that the beneficiary is an alien of extraordinary ability in athletics, which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O)(i) of the Act. The petitioner failed to establish that the beneficiary has received a major, internationally recognized award or that he satisfies at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner likewise failed to establish that those criteria did not readily apply to his occupation and provide comparable evidence in lieu of the specified criteria. Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O)(i) of the Act and the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.