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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

D8

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2010

IN RE: Petitioner: [redacted]
Beneficiary: [redacted]

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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, a gymnastics center, filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics. The beneficiary was previously granted O-1 status for a period of three years and the petitioner seeks to extend his status so that he many continue to serve in the position of head gymnastics coach for three additional years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim in his field or that he is one of the small percentage who have risen to the very top of the field of gymnastics coaching. The director found that the evidence submitted failed to satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the petitioner provided ample evidence that the beneficiary's students, both within and outside the United States, have achieved sufficient acclaim and ranking on the national and international level to support approval of the petition. Counsel further emphasizes that the instant petition was a request for an extension of a previous approved petition and as such, the petition "should have been approved without questioning the prior adjudicator[']s determination." Counsel cites to an April 23, 2004 agency memorandum from William R. Yates, which states that in matters related to an extension of nonimmigrant petition validity involving the same parties and the same underlying facts, deference should be given to an adjudicator's prior determination of eligibility.[1] Counsel submits a brief and additional evidence in support of the appeal.

For the reasons discussed below, our assessment of the petition and support evidence leads us to conclude that the petitioner has not demonstrated that the beneficiary has the necessary national or international acclaim as a gymnastics coach. Accordingly, we will uphold the director's decision.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

> has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability . . . .

[1] Memorandum of William R. Yates, Associate Director for Operations, *The Significance of a Prior CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility of Petition Validity*, (April 23, 2004).

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts). In a policy memorandum, the legacy Immigration and Naturalization Service emphasized: "It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession." Memorandum, Lawrence Weinig, Acting Asst. Comm'r., Immigration and Naturalization Service, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

> *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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

> *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business or athletics.* 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:
>
> (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
>
> (B) At least three of the following forms of documentation:
>
> (*1*) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (*2*) 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 or international experts in their disciplines or fields;
>
> (*3*) 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;
>
> (*4*) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

(5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

(6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;

(7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

(8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) 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 decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Specifically, the *Kazarian* court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary ability" as "one of that small percentage who have risen to the very top of the field of endeavor."

Although the director's decision pre-dates the *Kazarian* decision, AAO finds the *Kazarian* court's two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

In the present matter, the petitioner has submitted evidence pertaining to several of the evidentiary criteria, but has not established that the beneficiary has risen to the very top of his field or that he has achieved sustained national or international acclaim. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

II. Analysis

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and brief, and additional evidence supporting the appeal. The beneficiary in this case is a 47-year-old native and citizen of [redacted] who has been coaching gymnastics for over 20 years. The beneficiary also appears to have some experience as a competitive gymnast as a member of the [redacted] from 1976 to 1980.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). While a gymnastics competitor and an instructor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and gymnastics instruction are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence demonstrating that the beneficiary intends to continue to compete in the United States in his role as a gymnast for the petitioner.

U.S. Citizenship and Immigration Services (USCIS) will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. While the beneficiary's competitive accomplishments as a gymnast are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(iii) through his achievements as a coach.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The petitioner does not claim that the beneficiary qualifies for O-1 classification on the basis of his receipt of a major, internationally recognized award.

Accordingly, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). At the outset, it is critical to note that simply submitting evidence to satisfy the evidentiary criteria will not automatically establish eligibility for this visa classification. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg. 41818, 41820 (August 15, 1994). The petitioner has submitted evidence pertaining to the following categories of evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B). [2]

Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor

To meet criterion number one, the petitioner must submit 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 stated that the beneficiary meets this criterion based on the following awards:

- 1976 – 3rd Place – [redacted].
- 1982 – [redacted]
- 1994 – 2nd Place, [redacted]
- 2000 – [redacted]

The petitioner failed to establish the significance of these awards. There are only two awards, one of which appears to be in the field of aerobics. The awards must be in the beneficiary's field of endeavor in order to

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

establish that he has sustained acclaim in that field. Furthermore, as noted above, awards the beneficiary received as a competitive athlete do not establish his eligibility for this criterion as a gymnastics coach. Similarly, the beneficiary's "Master of Sport" designation, while nationally recognized, is not an award or prize, but rather, according to counsel, an "honorary title." Regardless, the beneficiary's receipt of this designation precedes the beneficiary's coaching career and appears to have been granted to him as a result of his achievements as a youth gymnast.

The beneficiary's Honorary Diploma is also not an award or prize, and the petitioner did not establish how the diploma is nationally or internationally recognized. The diploma states that it was issued to reward "longstanding and conscientious work," and no further explanation or documentation regarding its significance has been provided.

The petitioner also claims that the beneficiary, as a gymnastics coach, has achieved national and international success both in the United States and prior to his entry to the United States. Specifically, counsel states:

> [The beneficiary] has trained six Kyrgyzstan Masters of Sports and one Master of Sports of International Class. Students that he has coached outside the U.S. who have achieved international acclaim include [redacted] who competed at the [redacted] in [redacted] and placed third in Vault at the [redacted] of [redacted] in 2000.
>
> Gymnasts that [the beneficiary] has coached in the U.S. include [redacted], [redacted], [redacted], [redacted] and [redacted]. The meet results for the gymnasts trained by [the beneficiary] show that they are placing in the top tiers of the competitions. . . . For example, [redacted] and [redacted] placed 3 and 4 in the Level 9 field. [redacted] placed 1 and [redacted] placed 2 in the [redacted] for USA Gymnastics. On the [redacted], [redacted] placed 1. The [redacted] will be able to move to the next rung of the Olympic qualifying meets.

The petitioner submitted copies of awards and evidence of rankings for athletes coached by the beneficiary. The plain language of this regulatory criterion, however, requires evidence of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The submitted awards were not received by the beneficiary, and the record contains no evidence of any nationally or internationally recognized awards the beneficiary has received as a gymnastics coach. The petitioner has not established that the beneficiary meets this criterion. Nevertheless, the achievements of the beneficiary's coached athletes will be considered under comparable evidence pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C).

> *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*

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience,

standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

At the time of filing the petitioner stated that the beneficiary meets this criterion based on the following:

> [The beneficiary] is a Professional Member of the [redacted] and the [redacted]. Specifically, [the beneficiary] was the Vice President of [redacted] from February 2000 to January 2003 . . . In order to have attained the level of Vice President in of this organization at a national level, [the beneficiary] had to demonstrate superior skills and outstanding achievement in the field. . . .

In response to the director's request for evidence ("RFE"), counsel stated that the beneficiary meets this criterion based on his Master of Sport designation, and his membership in the [redacted]. Counsel explained that this federation is "the highest authority for the sport in the country and is the official representative/member for the country with the [redacted]"

The petitioner submitted a letter from [redacted], President of the [redacted], who states that in order to become a member "one must be outstanding and demonstrate the highest skill and knowledge in the sport." [redacted] further states that "membership in this organization is awarded by vote of other high achievers in the sport," and that "to be Vice President of this organization requires superior skills in the field of gymnastics and outstanding achievement."

The AAO acknowledges the petitioner's claim that the beneficiary is a "Professional Member" of [redacted][3] The petitioner provided no independent evidence of the beneficiary's membership in this association, nor does the record contain evidence (such as bylaws or rules of admission) showing that professional membership in [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. 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)).

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[3] The internet site for [redacted] lists the following requirements for Professional Membership:

- Individuals applying for Professional Membership must be **18 years of age or older**
- [redacted] **Safety Certification** (must re-certify every 4 years)
- **Background Check** (must complete screening process every 2 years)

Professional membership will be granted after the application is processed and the individual has successfully completed the Safety Certification Course and the background screening process.

See [redacted] accessed on September 13, 2010, copy incorporated into the record of proceeding. Accordingly, we cannot conclude that "Professional Membership" in [redacted] requires outstanding achievements.

The record also contains no current evidence of the beneficiary's membership in the [redacted] or evidence showing that membership in this association requires outstanding achievements of its members as recognized by national or international experts in the field. [redacted] statements regarding membership in the organization are vague and insufficient to establish with specificity the actual membership requirements. The AAO acknowledges that the beneficiary has held national-level positions with [redacted], but cannot conclude based on the evidence submitted that his positions as a national coach or as Vice President of the organization equate to "membership in an association." Rather, the AAO will consider the beneficiary's roles as coach and Vice President with this organization under the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*), as the petitioner claims eligibility under that criterion based, in part, on this evidence. We are not persuaded that evidence submitted for that criterion must also meet this or other criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria. *See* section 101(a)(15)(O)(i) of the Act.

The petitioner also relies on the beneficiary's "Master of Sport" designation awarded in 1982 as evidence that the beneficiary meets this criterion. However, as noted by the director, this title is a level in a classification system for achievement in athletics rather than evidence of membership in an association. Furthermore, according to the evidence provided, the requirements for classification change every four years. The beneficiary's classification was awarded 27 years before the filing of the petition and was never updated, presumably because he stopped competing in the sport. The petitioner has not established that such classifications are awarded for athletic coaching.

Regarding the evidence submitted for the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*), it is the petitioner's burden to demonstrate that the beneficiary meets every element this criterion including that he is a member of associations that require outstanding achievements of their members, as judged by recognized national or international experts. Aside from the lack of primary evidence regarding the beneficiary's current membership in the U.S. and Kyrgyzstan national gymnastics associations, there is no evidence showing the official selection requirements for coaches in the aforementioned programs and the petitioner's specific achievements that resulted in his selection as a coach and Vice President in the Kyrgyzstan organization. In this case, the submitted evidence does not establish that the petitioner holds 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 the petitioner's field or an allied one. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought

To meet the third criterion, the petitioner must submit 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*).

At the time of filing, the petitioner stated that the beneficiary meets this criterion based upon one published newspaper article and his thesis. Specifically, the petitioner stated:

> [The beneficiary] was featured in a newspaper article. This article stated that [the beneficiary], "[a] well known and highly respected gymnastic trainer. . . [was forced] to leave Kyrgyzstan, where he was the only coach of the [redacted] for men and women . . . . He received an invitation to work in Kazakhstan. . . due to his excellent. . . reputation. . . ." Enclosed as Exhibit C is a copy of that article. Also enclosed as Exhibit D is evidence of a theoretical paper written by [the beneficiary] and reviewed by [redacted], the Senior Instructor of the Department of DGIFKiS and a Distinguished Master of Sport of the USSR. [redacted], in his review, stated that [the beneficiary's] paper held "practical and theoretical significance for the theory and methodology of physical education [and] . . . methodological recommendations that have been incorporated in the instructional training process of the [redacted] ([redacted]).

Upon review of the petitioner's initial evidence, the AAO notes that the referenced newspaper article was not submitted for review. A copy of [redacted] review was submitted as part of Exhibit N. Specifically, the review pertained to the beneficiary's thesis, "[redacted]" and indicates that the beneficiary's work was done "in accordance with the requirements of the Higher School and State Examination and deserves a positive grade." The AAO notes that completion of a thesis for review to fulfill an academic requirement does not amount to 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.

To qualify as major media, a publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[4]

In response to the RFE, the petitioner did not further address this criterion. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The petitioner has not submitted any publications or other major media about the beneficiary's accomplishments as a gymnastics coach, or regarding the accomplishments of the beneficiary's students. Accordingly, the petitioner failed to submit evidence that satisfies this criterion.

> *Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought*

The petitioner states that the beneficiary was awarded the certification of [redacted] in February 2002 by the [redacted]

[4] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

[redacted]. The petitioner submitted a letter from the [redacted] Republic of Kyrgyzstan, which states that requirements for serving as a national judge in the [redacted] include the following practical experience: (1) hold a position of head judge or assistant head judge not less than three times; (2) participate in two seminars with international judges; and (3) present independently not less than two seminars for judges of the first category.

The petitioner submitted a second letter from this organization, the translation for which states:

> To receive the national category in judging, [the beneficiary] who was a [redacted], organized and conducted two required seminars during 2000-2001. These seminars were held in [redacted] [*sic*] of Kyrgustan [*sic*] for judges of first category.
>
> [The beneficiary] is the only national category judge in [redacted] [*sic*] for men's gymnastics.

The petitioner also submitted a record of the events at which the beneficiary served as head judge, referee or head judge deputy between April 1999 and August 2001. These events at which the beneficiary served as head judge or deputy included the [redacted], the [redacted] qualification tournament, a competition in tribute to [redacted]" the Open Tournament of the [redacted] and a tournament in commemoration of [redacted].

The evidence submitted appears meet the plain language of this regulatory criterion. The weight to be given to the beneficiary's judging qualifications will be considered below in our final merits determination.

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field

At the time of filing the petitioner stated that the beneficiary meets this criterion based on the following qualifications:

- Certificate of Trainer – Instructor of Sport (highest qualification category) awarded by the [redacted].
- [redacted] of the [redacted] from 1996 to 1999.
- Superior Trainer of the [redacted] 1999 to 2003.
- "[redacted] from 1996 to 2000.

The petitioner also listed the achievements of athletes coached by the beneficiary, noting:

> As a coach, [the beneficiary] has trained [redacted] and [redacted] for the Asia Championships in China held in 1996, trained the [redacted] for the Islamic Games held in 1976 in Tehran (at which the team won 16 medals and received first place), trained the [redacted] held in Moscow in 1999 and acted as the Head Trainer at the games, trained [redacted] for the World Championships in

2004, prepared [redacted] for the Nelly Kim Championships held in Shimkent in 2000 at which [redacted] won third place on vault, coached and trained the [redacted] for the International Sport Youth Games of Commonwealth of Independent State, Baltic, and Russian regions held in 2002, and has been the coach for [redacted], [redacted], and [redacted] who are international champions in both individual and all-around competitions.

As discussed further below, many of the beneficiary's achievements and the achievements of athletes he is purported to coach are not well-documented in the record. Furthermore, while the petitioner's account of the beneficiary's employment history as stated above appears to describe him as a successful gymnastics coach, the petitioner has not specified exactly what his original contributions in the sport have been, nor is there an explanation indicating how any such contributions were of major significance in his field. The beneficiary's claimed roles as a coach of athletes who compete at an international level and as head coach of a national team are more appropriately considered under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(7) and 214.2(o)(3)(iii)(C).

The petitioner has also submitted a letter dated March 27, 2004 from [redacted], Senior Director Women's Programs, USA Gymnastics. She states that the beneficiary is "an internationally known coach from Russia, a strong gymnastics country in Eastern Europe." The AAO notes that this statement is factually inaccurate as the beneficiary is not from Russia. While [redacted] is generally supportive of the beneficiary's petition, she provides no additional insight into the beneficiary's qualifications or contributions to the sport of gymnastics.

Moreover, it is not enough to be a talented coach and to have others generally attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has achieved success within his home country's coaching ranks and the support of [redacted], there is no evidence demonstrating that he has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the beneficiary's influence on other coaches nationally or internationally, nor does it show the field has specifically changed as a result of his work.

Without extensive documentation showing that the beneficiary's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner initially stated that the beneficiary meets this criterion based on: (1) his role as [redacted] for the Artistic Gymnastics Federation, Republic of Kyrgyzstan; (2) his receipt of an [redacted] from the Republican Children's and Youth's Sport School of Artistic Gymnastics and Acrobatics of Olympic Reserve; and (3) his certification as a [redacted] by the Federation Sport Gymnastics of Kyrgyzstan.

The AAO notes that the petitioner has submitted what appears to be a translation of a certificate regarding the beneficiary's role as [redacted]. The petitioner has not provided the original Russian-language source document, nor has it provided any explanation regarding the nature of the role. The

AAO notes that the beneficiary does not list this position among his work experience on his resume, and it is unclear that the holder of the position is considered to be an employee of Kyrgyzstan gymnastics at the national level.

The beneficiary's receipt of an honorary diploma from a children's sport school does not appear to be equivalent to employment in a leading or critical role for that establishment, nor has the petitioner established the school's distinguished reputation. Finally, the beneficiary's certification as a National Judge has not been shown to be equivalent to employment with the issuing organization, nor has the petitioner provided any evidence of events at which the beneficiary has served as a judge subsequent to receiving the elite level National Judge certification in 2002. The only judging and refereeing record submitted includes events at which the beneficiary judged or refereed between 1999 and 2001. The petitioner's claims that such roles meet this evidentiary criterion are inadequately documented. Again, 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. at 165.

In response to the RFE, counsel for the petitioner stated that the beneficiary meets this criterion based on the following:

> [The beneficiary] was employed as the [redacted] for the [redacted] Republic for the period of 1996 to 1999 and [redacted] of the [redacted] from 1999 to 2003. See Exhibit 13. As [redacted] for the [redacted], he trained gymnasts for the highest level of competition in the field of gymnastics.

Exhibit 13 of the petitioner's RFE response contains what appears to be the beneficiary's college diploma. The dates 1980 and 1984 are clearly legible on the document, and the AAO notes that the beneficiary received his Bachelor's degree from the [redacted] in 1984, after commencing studies at this school in 1980. However, this document was accompanied by an uncertified English translation which states:

> Diploma
>
> [The beneficiary] is awarded this diploma for his service as the [redacted] for the Olympic Team for the [redacted] for the period of 1996 to 1999.
>
> [The beneficiary] is awarded this diploma in recognition as the [redacted] of the [redacted] from 1999 to 2003.
>
> [The beneficiary] is classified as the [redacted] in the country for the period of 1996 to 2000.

This same combination of the Russian document dated 1984 and the above-referenced translation was submitted together at the time of filing and in response to the RFE. Upon thorough review of the record, the AAO cannot find a Russian-language source document that appears to coincide with this English translation,

and therefore the beneficiary's claimed Olympic and national team coaching experience remains uncorroborated.

Furthermore, the petitioner has submitted a copy of the beneficiary's resume, in which he summarizes his work experience as follows:

> Head coach of the combined youth team (girls)
> Coach for boys ages 7-13
> Leader of Youth Women's Combat Team

The beneficiary further lists his coaching achievements as developing six gymnasts to [redacted] and two gymnasts to Master of Sports, International Class, and receiving his [redacted]. It is reasonable to believe that if the beneficiary was the head trainer for his country's Olympic team, he would have clearly mentioned this among his coaching or work experience. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The record does contain a credible letter confirming the beneficiary's work as head coach of the women's department of "gymnastics school," specifically as leader of the "Youth women's combat team." However, it is unclear to which school the letter refers and the distinguished reputation of the unidentified school has not been documented.

The submitted evidence does not clearly establish the beneficiary's employment history, nor does it demonstrate that the beneficiary has been responsible for the success or standing of a distinguished organization to a degree consistent with the meaning of "leading or critical role."

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

> *Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence*

The petitioner has offered the beneficiary an annual salary of $40,000. It did not initially claim to meet the criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(*8*). In response to the RFE, counsel for the petitioner stated:

> As the [redacted] of [redacted], [the beneficiary] commanded a salary of 13,500 som per month. See Exhibit 14. The average monthly salary in Kyrgyzstan for gymnastics coaches at that time was 2000 som per month. See Exhibit 15.
>
> [The petitioner] has offered [the beneficiary] an annual salary of $40,000. . . . The Foreign Labor Certificate Data Center Online Wage Library for the period of 7/2009-6/2010 lists a range of wages for Coaches from $14,160/year for Level 1 to $31,150/year for Level 4. See Exhibit 16. The offered salary of $40,000/year exceeds the Level 4 wage.

The petitioner also submitted a publication issued by the United States Elite Coaches of America which indicates the average yearly wage for head coaches as $30,288.70, and a Gymnastics industry survey which indicates that 82 percent of full-time key staff are paid below $36,000 annually.

The petitioner provided a letter from [redacted] and [redacted], which states that the beneficiary earned a salary of 2,500 som as head trainer of artistic gymnastics and 7,000 som as a physical trainer. The petitioner also submitted a translated page titled "information" that states that the "average salary of workers in the Republic of Kyrgustan is 2000 som." It is not clear if the petitioner is comparing the beneficiary's wage against all workers in his home country or against fellow gymnastic coaches. To evaluate whether the salary is high, USCIS needs to compare it to the median and highest wages offered nationwide to gymnastic coaches. The petitioner submitted other letters attesting to the wages of a "head trainer of combined team," a "national level Head Coach for sport of Gymnastics," and various positions within the [redacted] and acrobatics, but none of these letters actually identify the beneficiary by name or the specific terms of his employment. The petitioner has not established through the submission of reliable evidence that the beneficiary has received a high salary for his services in the past.

Moreover, the AAO concurs with the director's determination that the petitioner failed to establish that the beneficiary's proffered annual salary of $40,000 is a "high salary" compared to all gymnastics coaches. While this wage offered is higher than the Level 4 wage for experienced coaches in the geographic location of the proposed employment, the AAO is not persuaded that the offered wage is high among all experienced gymnastics coaches. Overall, the evidence does not establish that the beneficiary has earned or will earn a level of compensation that places him among the highest paid coaches in the sport. The petitioner has not established that the beneficiary meets this criterion based on his past or proffered wages.

B. Comparable Evidence Under 8 C.F.R. § 214.2(o)(3)(iii)(C)

Finally, the AAO will consider whether the claimed achievements of the beneficiary's students should be considered as comparable evidence of his extraordinary ability. The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) allows for the submission of "comparable evidence" only if the eight categories of evidence "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for O-1 classification in the beneficiary's occupation cannot be established by the categories of evidence specified by the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). In fact, documentation from counsel and the petitioner specifically addresses more than half of the preceding regulatory criteria. When an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 214.2(o)(iii)(B), the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) does not allow for the submission of comparable evidence.

Nevertheless, with regard to the competitive achievements of the beneficiary's gymnasts, we acknowledge that the beneficiary notes in his resume the achievements of gymnasts [redacted], [redacted], and [redacted]. The beneficiary indicates that these athletes competed, respectively, in the 1998 International [redacted] Tournament in Moscow, the 1998 [redacted], the 1999 [redacted] in [redacted], and the 2002 World Championships held in [redacted]. The beneficiary's resume does not identify any awards or prizes received by his athletes in these international competitions.

As supporting evidence of the beneficiary's students' achievements, the petitioner submitted: (1) a Diploma issued to [redacted] for a third place finish in vault at the '[redacted] for the Prize of [redacted]," awarded in Kazakhstan in June 2000; (2) a certificate confirming [redacted] participation in the 1999 [redacted] held in China in 1999; and (3) a certificate confirming [redacted] participation in the [redacted] held in Ghent, Belgium in 2001. The petitioner also submitted a letter from the [redacted] which states that the beneficiary "worked as the main coach from 1998 to 2003." The letter mentions that [redacted] and [redacted] competed in the above-referenced world championship events.

As noted above, the petitioner also claimed that the beneficiary's coaching experience includes the following:

> As a coach, [the beneficiary] has trained [redacted] and [redacted] for the Asia Championships in China held in 1996, trained the [redacted] for the Islamic Games held in 1996 in Tehran (at which the team won 16 medals and received first place), trained the [redacted] for the Universal Youth Games held in Moscow in 1999 and acted as the Head Trainer at the games, trained [redacted] for the World Championships in 2004, prepared [redacted] for the Nelly Kim Championships held in Shimkent in 2000 at which [redacted] won third place on vault, coached and trained the National Team for the International Sport Youth Games of Commonwealth of Independent State, Baltic, and Russian regions held in 2002, and has been the coach for [redacted]., [redacted]., and [redacted] who are international champions in both individual and all-around competitions.

Other than providing a copy of [redacted] award for third place in vault at the Nelly Kim championship, the petitioner has not documented any of the above-referenced experience. Furthermore, it remains unclear at what level the beneficiary's athletes have competed given that he indicates in his resume that he has been a head coach for a girls' "youth team" and for boys ages 7-13. We cannot conclude that awards won or results achieved by athletes in junior, age group, or pre-elite competition would indicate that the beneficiary "is one of that small percentage who have risen to the very top of the field of endeavor." Nevertheless, the petitioner has not documented any awards achieved by the beneficiary's students in nationally or internationally recognized competition. Merely coaching an athlete who makes an appearance at a world championship event is insufficient to establish the beneficiary's eligibility.

The petitioner also submits evidence regarding its own gymnasts, noting that the beneficiary has served as its head coach since the approval of his initial O-1 petition in 2006. The director noted that credit for the achievements of such athletes is credited to they petitioner's gym, rather than to the beneficiary personally. The director further noted that the petitioner's athletes appear to be placing in regional, rather than national or international competitions.

The petitioner claims that its gymnasts have received nationally or internationally recognized prizes or awards, and indicates that the beneficiary has personally coached [redacted], [redacted], [redacted], [redacted] and [redacted]. Specifically, the petitioner stated that the submitted meet results show that these athletes are placing in the "top tiers" of competitions. Upon review of the submitted rankings and results, the AAO cannot find that the beneficiary has coached athletes who have received nationally or internationally recognized awards or prizes in gymnastics. The AAO does note, however, that

the beneficiary's name is listed as the sole coach for the petitioner's gym on the submitted [redacted] directory, and the AAO finds no reason to doubt the beneficiary's role in coaching the petitioner's athletes.

The petitioner submitted a chart ranking 54 "Level 9" female gymnasts competing in the age categories between "12 and under" and "16 and up." Eight of the listed gymnasts compete for the petitioner's gym, including [redacted] and [redacted], who are ranked numbers 4 and 5. It is not clear whether this chart reflects a meet result or a cumulative ranking as the chart is not labeled, nor is it clear whether the rankings or results listed are regional, statewide or national. The petitioner also submitted evidence that several of the petitioner's male gymnasts are "Indiana Regional Qualifiers." The petitioner explained that these qualifiers "will be able to move to the next rung of the Olympic qualifying meets." The list of qualifiers indicates that [redacted], age 8, qualified first among Level 6 gymnasts in his age group and [redacted] age 7, qualified second among Level 5 gymnasts in his age group. Finally the petitioner submitted evidence that [redacted] finished first in the Level 8 – 11 years and under category at the "The R5 Cup Scoreboard" event.

The AAO concurs with the director that these results appear to be for competitions at the regional or state level. Furthermore, there is no indication that the petitioner's very young gymnasts competing below Level 10 have faced competition from throughout their field (including elite level gymnasts), rather than limited to their particular age group or skill level within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[5] Likewise, it does not follow that a coach who has had past success coaching in junior, age group, or Level 5 though Level 9 competition should necessarily qualify for an extraordinary ability nonimmigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 214.2(o)(that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." 8 C.F.R. § 214.2(o)(3)(ii). While it appears that the beneficiary is coaching a group of promising young athletes, the petitioner has not established that they have won national or international competitions.

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[5] While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the Court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

In this case, we concur with the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that the beneficiary meets at least three of the eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(iii).

C. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has achieved a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise, pursuant to 8 C.F.R. § 214.2(o)(3)(iii) and section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). *See Kazarian*, 2010 WL 725317 at *3. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

While the petitioner submitted documentation establishing that the beneficiary has been granted certification as a national judge at the elite level of gymnastics competition, the record is devoid of any evidence that the beneficiary has actually served as a judge at the highest levels of competition since receiving the certification in 2002. It appears that the beneficiary's judging experience between 1999 and 2001, prior to the elite certification, was at the pre-elite level and not indicative of his national or international recognition in the sport.

As discussed above, the petitioner's claims that the beneficiary has coached his home country's national team, Olympic team, and athletes who have been awarded nationally and internationally recognized prizes are simply not adequately documented in the record, particularly in light of the beneficiary's statements in his own resume that he has coached boys between the ages of 7 and 13 and a "combined youth team." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The beneficiary's coaching career has been poorly documented in the record and the petitioner relies upon questionable translations to support its claims with respect to the beneficiary's most impressive alleged achievements. The petitioner has submitted little testimonial evidence and no published evidence in support of the petition to confirm that the beneficiary is recognized in the sport as the coach of his country's Olympic gymnastics team.

The AAO acknowledges [redacted] opinion that the beneficiary is "an internationally known gymnastics coach." However, she fails to address any of the beneficiary's accomplishments as a coach, and simply notes that he holds a Master of Sports from both Russia and Germany, a statement that is not supported by any evidence in the record. USCIS may, in its discretion, use as advisory opinion statements as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may evaluate the content of submitted letters as to whether they support the alien's eligibility. *See id.*

at 795. The content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. [redacted] conclusory statement does not reflect that she is aware of any national or international recognition the beneficiary has achieved as a gymnastics coach. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The record is nearly devoid of primary evidence of the beneficiary's achievements and recognition as a gymnastics coach. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of sustained national or international acclaim. *See* section 101(a)(15)(O) of the Act. The petitioner failed to submit evidence pertaining to the beneficiary's coaching career demonstrating that the beneficiary "is one of that small percentage who have risen to the very top of the field."

Therefore, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who have risen to the very top of the field of endeavor. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

C. Prior O-1 Approval

On appeal, counsel for the petitioner noted that the beneficiary was previously granted O-1 status and referred to the 2004 Yates memorandum to support her assertion that it is USCIS policy that prior approvals should be given deference in matters relating to an extension of nonimmigrant petition validity involving the same parties and the same underlying facts. The memorandum provides that exceptions to this policy should be made where: (1) it is determined that there was a material error with regard to the previous petition approval; (2) a substantial change in circumstances has taken place; or (3) there is new material information that adversely impacts the petitioner's or beneficiary's eligibility.

While USCIS previously approved a petition for O-1 status filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the petitioner failed to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A) or three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), and is thus insufficient to establish that the beneficiary qualifies as an alien of extraordinary ability in the field of athletics. Further, the AAO notes that the petitioner has submitted a total of four O-1 classification petitions on the beneficiary's behalf, and USCIS has denied three of them, including the instant petition.[6] The AAO also upheld the denial of one of the previous O-1 petitions.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

ORDER: The appeal is dismissed.

[6] *See* [redacted], [redacted]