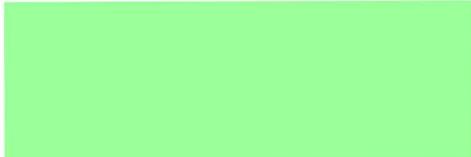


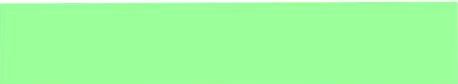


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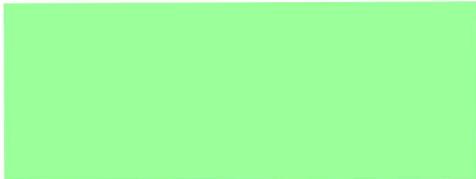


DATE: **JUN 12 2013** Office: VERMONT SERVICE CENTER FILE: 

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, initially approved the nonimmigrant visa petition. The director subsequently issued a notice of intent to revoke, and upon review of the petitioner's response, revoked approval of the petition. The director granted the petitioner's subsequent motion to re-open and affirmed the revocation of the petition approval. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner, an architectural and interior design firm, filed this nonimmigrant petition seeking to classify the beneficiary pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O), as an alien with extraordinary ability in the arts. The petitioner seeks to employ the beneficiary in the position of designer for a period of three years.

The director approved the petition on September 5, 2008, granting the beneficiary O-1 classification for the requested three-year period. On April 30, 2009, the director issued a notice of intent to revoke, and, after review the petitioner's rebuttal evidence, revoked the approval of the petition on June 22, 2009, concluding that the petitioner's evidence failed to establish that the beneficiary "has met the requirements for O-1A classification." The director granted the petitioner's subsequent motion to reopen, and affirmed his decision to revoke the approval, noting that the petitioner submitted evidence to satisfy only one of the six evidentiary criteria applicable to aliens of extraordinary ability in the arts pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director applied an incorrect standard of law, failed to consider all relevant and probative evidence, and failed to clearly and sufficiently provide the petitioner with adequate notice of specific deficiencies in the evidence. Counsel asserts that evidence submitted with the original petition in addition to the evidence submitted in response to the notice of intent to revoke, clearly establishes that the beneficiary qualifies as an alien of extraordinary ability in the arts.

I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to 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, 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) defines, in pertinent part:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that

ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:
 - (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
 - (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
 - (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
 - (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
 - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or

- (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or
- (C) If the criteria in paragraph (o)(3)(iv) 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.

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

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

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

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. 41818, 41820 (August 15, 1994).

Therefore, in determining the beneficiary's eligibility under these criteria, the AAO will follow a two-step approach wherein we will first look to see whether the petitioner has submitted evidence to satisfy the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A) or, in the alternative, evidence to satisfy at least three of the six regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). If the petitioner submits evidence to satisfy the plain language of the requisite number of criteria, then the AAO will determine whether the quantity and quality of the evidence is consistent with the statutory requirement of "extensive documentation," and the regulatory definition of "extraordinary ability" as one who is "renowned, leading or well-known in the field of arts."

II. Revocation of Petition Approval

As a preliminary matter, the AAO will address counsel's claim that the director failed to provide the petitioner with adequate notice of the specific evidentiary deficiencies that led to the issuance of the notice of intent to revoke.

The regulation at 8 C.F.R. § 214.2(o)(8)(i)(B) provides that the director may revoke a petition approval at any time, even after the validity of the petition has expired. The regulation at 8 C.F.R. § 214.2(o)(8)(iii) sets forth the grounds for revocation on notice:

- (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
- (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
 - (2) The statement of facts contained in the petition was not true and correct;
 - (3) The petitioner violated the terms or conditions of the approved petition;
 - (4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
 - (5) The approval of the petition violated paragraph (o) of this section or involved gross error.
- (B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

The director initially approved the petition on September 5, 2008. The director issued a notice of intent to revoke on April 30, 2009, but did not cite to the specific grounds for revocation. The director stated:

It has now come to the attention of USCIS that the beneficiary is not eligible for this classification because she has not demonstrated any national or international acclaim. Further, the petitioner has not submitted an adequate peer review letter in behalf of the beneficiary.

Upon review, the director revoked the approval primarily on the basis of a finding that the approval of the petition involved gross error, pursuant to 8 C.F.R. § 214.2(o)(8)(iii)(A)(5).

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using

"gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

As the term "gross error" was created by regulation, it is most instructive to examine the comments that accompanied the publication of the rule in the Federal Register. The term "gross error" was first used in the regulations relating to the revocation of a nonimmigrant L-1 petition. In the 1986 proposed rule, an L-1 revocation would be permitted if the approval had been "improvidently granted." 51 Fed. Reg. 18591, 18598 (May 21, 1986)(Proposed Rule). After receiving comments that expressed concern that the phrase "improvidently granted" might be given a broader interpretation than intended, the agency changed the final rule to use the phrase "gross error." 52 Fed. Reg. 5738, 5749 (Feb. 26, 1987)(Final Rule).

Upon review of the regulatory history and the common usage of the term, the AAO interprets the term "gross error" to be an unmitigated or absolute error, such as an approval that was granted contrary to the requirements stated in the statute or regulations. Regardless of whether there can be debate as to the legal determination of eligibility, any approval that USCIS determines to have been approved contrary to law must be considered an unmitigated error, and therefore a "gross error." This view of "gross error" is consistent with the example provided in the Federal Register. *See* 52 Fed. Reg. at 5749.

The AAO agrees with counsel that the notice of revocation fell significantly short of including a detailed statement of the grounds for revocation, and specifically, was lacking an explanation as to why the initial evidence failed to establish that the beneficiary is an alien of extraordinary ability in the arts. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i).

The administrative process provides for an appeal or a motion to reopen as a forum to overcome the disputed decision. The petitioner initially chose to file a motion instead of an appeal in response to the revocation decision. The director granted that motion, and cured many of the defects of the initial decision by issuing the August 20, 2009 decision, which provides a clearer statement of the grounds of ineligibility. Accordingly, we will not withdraw the director's original decision, nor will we remand the matter to the service center for issuance of a new notice of intent to revoke. The petitioner indicates that the evidence of record clearly establishes the beneficiary's eligibility for the benefit sought.

As the AAO's review is conducted on a *de novo* basis, the AAO will herein address the petitioner's evidence and eligibility based on the totality of evidence in the record. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

III. Eligibility as an Alien of Extraordinary Ability in the Arts

The sole issue addressed by the director is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

The petitioner is self-described as "an award-winning provider of innovative design solutions, with specializations in corporate interior design, retail establishment design, architectural design, advanced technology and broadcast, health sciences and graphics and branding." The petitioner counts a number of well-known retailers, prominent media companies and financial institutions among its clientele.

The beneficiary is an interior and retail designer who possesses a Bachelor's degree in Industrial Design from the [REDACTED] (2001) and a Master's degree in Interior Design from [REDACTED] in New York (2006). The beneficiary has gained professional experience in the interior and retail design field with [REDACTED] a Korean design firm, and with the petitioner's firm. The petitioner seeks to employ the beneficiary in the position of designer. The petitioner asserted in its initial letter that the beneficiary "has extraordinary talent, expertise, acumen and experience in the field of Design, specifically Interior and Space Design, and is highly esteemed among her peers in the field."

A. The Evidentiary Criteria

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild Award as examples of qualifying significant awards or prizes.

The petitioner did not claim that the beneficiary has received or been nominated for a comparable award in the field of interior or retail design, and counsel raises no objection to the director's finding that this criterion was not met. Further, the plain language of this criterion requires that the award be issued to the beneficiary, rather than to his or her employer. The two more prominent awards that have been attributed to the beneficiary, specifically, the [REDACTED], and the [REDACTED] were awarded to the petitioning architecture and design firm, rather than to the beneficiary individually. Thus, even if the petitioner established that these awards could be considered significant national or international awards or prizes comparable to an Academy award or Grammy award, the evidence submitted would not be sufficient to satisfy the plain language of the regulation.

Therefore, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements

The petitioner asserts that the beneficiary qualifies under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) based upon her selection by the petitioner's principals to design spaces for "world-renowned and major

establishments" including [REDACTED] the [REDACTED], the [REDACTED] and the [REDACTED]. The petitioner indicates that the beneficiary has served as the "lead and primary Designer" for such projects, and was "personally responsible for these highly critical projects worth substantial amounts of money to our organization."

The petitioner's managing director for its retail practice, [REDACTED] also submitted an affidavit in which he states that the beneficiary has been employed by the company since June 2006 "in the important capacity of designer." He indicates that he can attest to "numerous impressive projects in which [the beneficiary] was personally engaged as the lead project Designer," including the [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. He stated that "only the most experienced and talented Designer" would be assigned to such projects.

The petitioner submitted copies of its contracts with several clients with which the beneficiary has worked. Most of the contracts do not identify any of the petitioner's personnel by name; however the petitioner's contract with [REDACTED] specified that [REDACTED] was to be the "lead designer."

With respect to the [REDACTED] project, the petitioner submitted a letter from [REDACTED] Design Manager for [REDACTED], who states that the beneficiary "was a key member of [the petitioner's] design team for the [REDACTED] design projects." [REDACTED] indicates that the projects were "very well received" and have resulted in increased sales numbers and positive feedback from customers and others in the industry. The petitioner submitted copies of invoices and contracts as evidence that the contract value for the design of [REDACTED] luggage department was in excess of \$275,000.

The petitioner also provided evidence that [REDACTED] published a full-page newspaper advertisement to announce the opening of its new luggage department, and evidence that the project ultimately received a [REDACTED] [REDACTED] for "[REDACTED]". The petitioner indicated in its letter dated January 20, 2009 that the [REDACTED] is "the world's only non-profit organization focused on the international profession of [REDACTED] and [REDACTED]."

The petitioner further indicates that the beneficiary was chosen to design space for [REDACTED], a project which resulted in the petitioner's receipt of the [REDACTED]. The petitioner submitted an article titled "[REDACTED]" published in the June 30-July 7, 2008 issue of [REDACTED] magazine. The article includes a reference to [REDACTED], and devotes a paragraph to a description of the store's design, noting that "the place looks like a gym dropped into the middle of an art gallery." The record also includes a copy of the petitioner's contract with the client, indicating that the project involved a total of eight different "packages." The contract included a schedule of hourly rates for 15 classes of employees who would work on the project, including design directors, designers and design assistants.

The petitioner also claims that the beneficiary can satisfy this criteria based on work she performed as a designer in South Korea, specifically for the [REDACTED] restaurant and the [REDACTED] while employed by Korean design firm [REDACTED]. The petitioner notes that the franchised take-out restaurant [REDACTED] "received rave reviews not only for its food and service but because of its [sic] modern but authentic décor." The petitioner submitted two articles about the restaurant chain published in Korea's [REDACTED], which note the attractive and innovative design of the restaurants.

Finally, the petitioner states that the beneficiary served as master planner for the [REDACTED] an aerospace show that showcases advances made by South Korea's government and businesses. The petitioner indicated, and the beneficiary's former employer confirmed, that the beneficiary was solely responsible for the signage design for the show, and that the show continues to use the brand identity she created in 2001.

Upon review, the AAO finds that the petitioner failed to satisfy each and every component of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), which requires the petitioner to establish that the beneficiary "has performed and *will perform* services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements."

The record contains no evidence related to any specific production or event in which the beneficiary is expected to perform services as a lead or starring participant during the requested petition validity period. The petitioner has offered the beneficiary the position of designer, and has not demonstrated that this position is inherently a "lead" or senior position within the company. In fact the beneficiary's job description indicates that she works with "senior designers" in carrying out her duties as a designer. The record establishes that the petitioner has an excellent reputation in the field and serves many prominent clients across many industries. It is reasonable to believe that the petitioner's design personnel, including the beneficiary, will work with a variety of such clients. However, it does not automatically follow that any design project assigned to the beneficiary in the future will be tantamount to serving as a lead participant in a "production or event" with a distinguished reputation.

While the beneficiary has worked with several prestigious clients to date, not every design project has attracted attention that would lead to a finding that the "production or event," or in this case, the project, would be deemed to have a distinguished reputation. Based on the lack of evidence pertaining to the beneficiary's lead participation in any future productions or events, the petitioner has not satisfied the plain language of this criterion.

The AAO is satisfied that the complete re-design and re-opening of the [REDACTED] and the comprehensive design of the entire [REDACTED] based on media mentions and awards received, could qualify as productions or events with a distinguished reputation. The petitioner has submitted a letter from [REDACTED] confirming that the beneficiary served as a "key member" of the petitioner's design team for the luggage department project. Therefore, the AAO is persuaded that the beneficiary performed services as a lead participant for this project.

The petitioner has not submitted similar confirmation regarding the beneficiary's lead role in the [REDACTED] project. The petitioner submitted four pages of "inspiration images" prepared by the beneficiary for the

project, and a copy of the project agreement. The agreement indicates that the project involved eight separate "packages," and would involve a variety of personnel including design directors, designers, design assistants, space planners, a graphic designer, and project managers, as well as the firm's principals. In light of the scope of the project and the beneficiary's job title of "designer," it is not evident that the beneficiary was the "lead project designer" on this project. The petitioner did not provide a letter from the client confirming the beneficiary's involvement in the project as a lead participant, and the record contains no detailed description of the duties performed by the beneficiary for the project, project organizational chart, invoices, correspondence or other evidence that would corroborate the petitioner's claims regarding the beneficiary's "lead role." The AAO notes that the petitioner identified the beneficiary as the "lead designer" for a design project undertaken for Burberry while the contract for this project identifies a different individual in this same role. In light of this discrepancy, the AAO finds it reasonable to require additional objective evidence and explanation regarding the beneficiary's claimed leading role on the [REDACTED] project.

Based on the foregoing discussion, while the petitioner has established that the beneficiary has performed services as a lead participant for at least one production or event with a distinguished reputation in the past, the petitioner has not submitted evidence that the beneficiary will perform services as a lead or starring participant in such productions or events if the requested petition approval is granted.

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

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) requires the petitioner to demonstrate that the beneficiary has achieved national or international recognition for achievements through submission of critical reviews or other published materials *by or about the individual* in major newspapers, trade journals, magazines, or other publications. In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in major newspapers, magazines or other major publications. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as [REDACTED] nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹

The petitioner has not submitted any published evidence that is "about" the beneficiary or any published materials that even mention her name. Therefore, the petitioner has not submitted evidence to satisfy this criterion. While the petitioner submitted three published articles with favorable references to the interior design and appearance of retail stores, such evidence simply does not meet the plain language of this regulation. The petitioner has not provided evidence in the form of published articles to establish that the beneficiary has achieved national or international recognition for her individual achievements in the field of design.

¹ 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.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.

The director determined in both the revocation decision and on motion, that the beneficiary performs in a critical role for the petitioning organization, and thereby meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). The petitioner indicates that it considers the beneficiary to be its "best designer" and considers her work to be "critical to the continued success of the company." While the petitioner submitted no published evidence and little testimonial evidence to support these statements, we will not disturb the director's determination that this criterion has been met. The quality and quantity of the evidence submitted, and the weight to be given to such evidence, will be addressed further in the merits determination that follows our discussion of the evidentiary criteria.

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

The petitioner has not articulated a claim that the beneficiary qualifies under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4). Upon review, the record does show that an announcement of the petitioner's receipt of the [REDACTED] from the [REDACTED] was published in the [REDACTED] on August 26, 2008. While receipt of this award may be deemed a critically acclaimed achievement for the petitioning firm, the beneficiary received no individual recognition in this publication. As noted in our discussion of the first evidentiary criterion above, the petitioner has not submitted sufficient evidence to establish that the success of the [REDACTED] project, for which the petitioner received the referenced award, should be attributed to directly to the beneficiary or that she played a lead role in this project. Furthermore, even if the AAO accepted that the [REDACTED] can be considered to convey individual recognition to the beneficiary, the plain language of the regulation requires "a record of major commercial or critically acclaimed successes." Published evidence related to a single occupational achievement is insufficient to establish a "record" of major critically acclaimed successes. Accordingly, the petitioner has not submitted evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

At the time of filing, the petitioner submitted several letters relating to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). The petitioner submitted a peer group advisory letter from [REDACTED] Executive Director of [REDACTED]. [REDACTED] described the beneficiary as "an internationally

preeminent designer of interiors and space planner with a record of extraordinary accomplishments." She further stated:

In our opinion, [the beneficiary's] many designs, which resulted in completed building interiors published in numerous magazines and newspapers, along with preeminence among her peers form the basis of our opinion. She is the only designer today working in such an innovative way.

We have reviewed her recommendations and published work. The position she will assume as a designer for [the petitioner] can only be assumed by the most preeminent designer.

The petitioner also submitted a letter from [redacted], CEO of [redacted], the beneficiary's former employer in Korea. [redacted] stated:

I am very proud of [the beneficiary] and her extensive body of work and success and that she has achieve widespread acclaim and recognition as a designer, specifically in the areas of space and interior design. [The beneficiary] definitely has achieved a degree of expertise significantly above that ordinarily encountered. Therefore, I have no hesitation in stating that her impressive body of work is truly outstanding and that she is an alien of Extraordinary Ability.

[The beneficiary] is an award winning and cutting-edge designer whose focus is on creating highly creative, fluid designs that appeal to a variety of sensibilities, from the most traditional to the most modern. She has successfully applied her innovative solutions to interior design, space design and architecture in both indoor and outdoor media. From the beginning, her extensive body of work has focused on the details of how things are made confirming to the highest standards of aesthetic beauty and design.

[redacted] further states that the beneficiary "has successfully created designs for a variety of clientele that has further garnered national and widespread acclaim." He goes on to describe the beneficiary's work for the [redacted] restaurant chain and the [redacted], and notes that the beneficiary was chosen to design [redacted] own Seoul headquarters. [redacted] indicates that, during her tenure with [redacted] the beneficiary also worked on the [redacted], which he describes as "a mega scale city project to educate students by a hands-on experience including a building concept, museum exhibition, and landscape adjacent to the building." He states that the beneficiary served as design director for the project and led a team of 16 people to win first prize, which will lead to [redacted] development of the project along with Kwanju city.

Finally, he states that the beneficiary's receipt of this first prize award, along with the [redacted] and "in addition to the praise and commendation she has received from critics and peers all over the world clearly highlight the fact that she possesses abilities far above others in her field."

The record contains a letter from [redacted] an associate member of the [redacted] and an associate and designer for architecture and design firm [redacted] in New York City.

Extraordinary in her field of Arts & Design, and significantly superior over any other ability normally encountered. [The beneficiary's] expertise and accomplishments will continue to be regarded as valuable and crucial to the design field in the United States and garner her continued praise and acclaim.

chief exhibition designer of in Korea, states that the beneficiary was selected as a designer with his firm in 2001, and worked with him for a period of two years. He notes that she "demonstrated enormous enthusiasm and passion for planning and designing," was "very creative" and "brought amazing computer rendering skills to what she master planned for the government and institutions we worked for." He discusses the beneficiary's work as the designer for the , and notes that "it is rare to meet a person like her, who understands what she or he is doing at a young age." indicates that the beneficiary "showed extraordinary cognition in design as well as good skills in computer graphics," and states that due to the beneficiary's work, his firm has been chosen to design the biannual show. He describes the beneficiary as "the kind of person who can be a leader in the industry," and "a designer who is willing to and is capable of making the world better."

The petitioner's initial evidence included an additional testimonial letter from Design Director and CEO of a Korean interior design firm focused on restaurant design. states that the beneficiary came to his attention when she was asked to work on the project in January 2006. He further states:

[The beneficiary] was selected on the basis of her unique ability to conceptualize space using both hand drawn and computer solutions at a distinct level of abstraction. She is one of a very few interior designers using both of these techniques today. I selected her as the designer of because she was the finest designer with the creativity to make such a small space into a unique restaurant with both eastern and western sensibilities. This project was quite a challenge, but [the beneficiary] made it into an extraordinary space. She successfully transformed her conceptual ideas into a practical space. Her fresh touch changed the idea that take out restaurants are dingy and unwelcome, and demonstrated that they can be pleasant and gorgeous. As a result my firm was selected to develop other locations for as well as to develop other small restaurant franchises.

opines that the beneficiary "exhibits unusual talent for achieving a specific image, which is the product of imagination, talent and concentration." He describes the beneficiary as "one of today's most original and creative interior and space designers."

The petitioner submitted an additional letter from a commercial interior designer with and a member of . states that he worked with the beneficiary at in 2005, and describes her as "a very talented designer" with "a great breadth of work both in Korea and the US." He indicates that he is "tremendously impressed with [the beneficiary] and ha[s] no hesitation in stating that she is a extraordinary interior designer and

space planner and has excelled in this highly competitive and creative field." Finally, [REDACTED] opines that the beneficiary has "demonstrated extraordinary and unique artistic abilities."

[REDACTED] Principal with a major architectural design firm, also submitted a testimonial letter in support of the petition. He indicates that he has reviewed the beneficiary's portfolio and subsequently tracked her progress while in his employ at a previous firm. He states:

As a designer, [the beneficiary] focuses on creating highly creative, fluid designs that appeal to a variety of sensibilities; from the most traditional to the most modern. She has successfully applied her innovative solutions to interior and space design in a variety of media; including her significant skills in computer graphics. From the onset of our professional relationship, I've noticed how her work has focused on conforming to the highest standards of design.

[The beneficiary] stands out in a field of designers as the one to take charge, think outside the box, and assert herself as a talented problem solver. As a working designer, she is significantly enhancing her background as a professional designer and creating a reputation as a distinguished professional.

The petitioner provided a letter from [REDACTED] Adjunct Professor of Interior and Industrial Design at [REDACTED]. With respect to the beneficiary, [REDACTED] states:

[The beneficiary] was a talented and hard working designer in my class. She was strongly committed to challenging herself creatively. Her designs were always an interesting and thoughtful combination of Korean and Western cultures. She approached her projects with a very personal, insightful viewpoint which was backed up with thoughtful research. Her exploration and understanding of space, materials and function sets this young designer to become a very creative force in the American design world. Her post-school professional work is outstanding. She is a very talented person and represents the best we have.

Finally, the petitioner submitted a letter from [REDACTED] architect and principal of [REDACTED] and the beneficiary's former instructor at [REDACTED]. He indicates that he has been mentoring the beneficiary during her time in New York. [REDACTED] addresses the beneficiary's abilities and achievements as follows:

Gifted in communicating the design process and challenging herself to attain the ultimate in her theoretical approach, I have generally found her findings and conclusions sensitive and challenging. There is no question that [the beneficiary] is one of today's most original and creative interior and space designers. She is truly a blossoming professional who has found a way to motivate and inspire herself to design to the highest levels of creativity and professionalism.

praises the beneficiary's talents, commitment, sincerity and personal character, and asserts that "she will continue to influence and contribute to our profession for many years to come."

In response to the director's notice of intent to revoke the petition approval, the petitioner submitted additional testimonial letters in support of the petition. This evidence included a letter from an interior designer/project manager with in New York. indicates that she has worked for ten years on "a variety of high end projects" such as department stores and the . states that she worked with the beneficiary at , and is familiar with the beneficiary's body of work. opines that the beneficiary "has truly achieved widespread acclaim and recognition as a Designer, specifically in the areas of space and interior design and has achieved success both domestically and internationally." Portions of letter closely resemble the letter from . For example, writes that the beneficiary's "focus is on creating highly creative, fluid designs that appeal to a variety of sensibilities, from the most traditional to the most modern."

goes on to reference the "national and widespread acclaim" the beneficiary has garnered as a result of her work with such clients as restaurant, the , and the showroom, noting that the beneficiary "has been chosen at least twice by to design spaces for them." further states:

It is obvious that [the beneficiary's] abundant and unique talent is widely recognized both domestically and internationally. She has won numerous major design awards including the the First Prize in the in South Korea and most recently won a prestigious award from the in the category of " " for her work at

In sum, [the beneficiary's] impressive body of work to date in the ever-important field of Arts and Design clearly evidence that her knowledge, work and expertise is extraordinary. I have no hesitation in stating that she is a truly extraordinary Interior and Space Designer and has excelled in this highly competitive and creative field.

The petitioner's response to the notice of intent to revoke also included more detailed letters from and . The petitioner also provided a second letter from , who addressed the beneficiary's post-academic career:

I have followed [the beneficiary's] work since her graduation from and I have seen many of her projects. Her work is very cutting edge, combining the need for functional selling spaces with a certain special quality of meaningful environment . . . that only a first rate designer can create. She has completed both interior showroom and retail spaces as well as in store shops and fixtures. A recent project, for which she has been chosen twice, is for NY

City. [REDACTED], one of the largest retail chains in the US, commissioned her firm to design the largest luggage department in any US store. [The beneficiary] was chosen to design this most impressive project.

Other projects she has designed include in-gym shops for [REDACTED] [REDACTED] is one of the countries [sic] leading gyms and spas. The shops are to be located in all of their gyms in the US. A current project that she is working on is a showroom for [REDACTED] clothing.

In addition, [the beneficiary] has won many national and international awards for her design work. This alone is a tribute to her unique talent. She has won awards from the [REDACTED] [REDACTED] as well as awards from the [REDACTED] to name a few.

The petitioner submitted a letter from [REDACTED] an interior designer for [REDACTED] in New York. [REDACTED] states that she worked with the beneficiary at [REDACTED], offers her opinion that the beneficiary "has achieved success both domestically and internationally," and states that she "has achieved a degree of expertise significantly above that ordinarily encountered. [REDACTED] goes on to praise the beneficiary's discipline, talent, industry knowledge, professionalism, intelligence, work ethic and personality. She indicates that the beneficiary has garnered national and widespread acclaim in Korea and in the United States based on the work she did with [REDACTED] the [REDACTED], [REDACTED] [REDACTED] and [REDACTED] or "[REDACTED]" Finally, [REDACTED] notes that the beneficiary has won the [REDACTED] [REDACTED], first prize in the [REDACTED] and an [REDACTED] [REDACTED] for her work on the [REDACTED]. She opines that "[the beneficiary's] receipt of these awards in addition to the praise and commendation she has received from critics and peers all over the world clearly highlight the fact that she possesses abilities far above others in the field."

The petitioner's response to the notice of intent to revoke also included a letter from [REDACTED], Managing Director of the [REDACTED] for the petitioner's group, who indicates that she has worked with the beneficiary for over two years. [REDACTED] states that the beneficiary "has achieved widespread recognition in the design field, both in the U.S. and abroad," and "has successfully created designs for a variety of clientele that has garnered national and widespread recognition." She mentions the beneficiary's work with [REDACTED], the [REDACTED], [REDACTED] [REDACTED] and [REDACTED] and the awards mentioned in the letter from [REDACTED]. In fact, there are several paragraphs of text that are repeated almost verbatim in several of the recommendation letters. [REDACTED] asserts that the beneficiary has demonstrated "extraordinary and unique artistic abilities" and "has received sustained national and international acclaim" with achievements that are "widely recognized in the field."

The petitioner also submitted a letter from [REDACTED] an architect in the field of construction management. He does not indicate how he became familiar with the beneficiary's work, but, according to his resume, he worked for [REDACTED] as an assistant and technical manager from 2005 to 2007. Several paragraphs from [REDACTED] letter appear verbatim in other letters submitted in response to the notice of intent to revoke. [REDACTED]

states that the beneficiary has "truly achieved widespread acclaim and recognition as a Designer, specifically in the areas of space and interior design and has achieved success both domestically and internationally." He also indicates that the beneficiary "has achieved a degree of expertise significantly above that ordinarily encountered." He goes on to discuss the beneficiary's projects and awards and notes that "she has received sustained national and international acclaim and her achievements have been widely revered in the field." The petitioner also provided a nearly identical letter from [REDACTED] chief exhibition designer for the [REDACTED] in Korea. [REDACTED] states that he worked on the [REDACTED] and as such is "very familiar with [the beneficiary's] body of work."

Finally, the petitioner submitted a new letter from [REDACTED] who indicates that he has known the beneficiary for seven years and finds her to be "one of the most successful post graduate professionals from our prestigious program at [REDACTED]." Once again, portions of this letter are essentially identical to the other recommendation letters in the record. He states that, since completing her studies at the [REDACTED], the beneficiary "has garnered national and widespread acclaim" based on her work for [REDACTED] and the [REDACTED] and that she has made "major inroads in the Design world in the U.S." He specifically mentions the beneficiary's work with [REDACTED], [REDACTED] and [REDACTED].

On appeal, counsel asserts that the director erroneously discounted the submitted testimonial evidence notwithstanding the fact that "the letters state in glowing terms how impressed the writers are with the beneficiary's design work." Counsel emphasizes that the letters identify the beneficiary's significant contributions by pointing out "specific events or projects that have been praised and conclusively establish that the beneficiary's work has garnered significant recognition." In addition, counsel asserts that the awards the beneficiary received are also evidence of significant recognition from organizations and critics, and as evidence that these organizations consider the beneficiary's work to be "significant and prominent."

Upon review, the AAO finds counsel's assertions persuasive in part. The AAO agrees that the awards attributed to the beneficiary, although not awarded to her individually, do reflect recognition from organizations in the beneficiary's field. The extensive testimonial evidence in the record varies greatly in terms of its relevance and probative value; however, the AAO concur with counsel's assertion that the director erred by discounting such evidence altogether. The petitioner has satisfied the plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence

The petitioner has offered the beneficiary an annual salary of \$57,000. It has not claimed that the beneficiary has commanded or will command a high salary or other substantial remuneration for services in relation to others in the field. Accordingly, the AAO finds that the petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

Summary

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 she meets at least three of the six categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability in the arts. 8 C.F.R. §§ 214.2(o)(3)(iv)(A) and (B).

B. Merits of the Evidence in the Aggregate

As discussed above, the AAO follows a two-step approach where the evidence is first counted against the regulatory criteria, and then considered in the context of a review of the merits of the evidence in the aggregate. However, as discussed above, the petitioner submitted evidence that satisfies the plain language of only two of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B). Accordingly, we concur with the director's finding that the petitioner has not established that the beneficiary is prominent to the extent that she could be considered renowned, leading or well-known in the field of design.

The specific 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)(iv)(B). The petitioner submitted evidence that satisfied the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), by establishing that the petitioner, an organization with a distinguished reputation in interior and retail design considers her to be a "critical" employee based on her talents and the success of her prior assignments with the firm. As noted above, the petitioner submitted no published evidence and little testimonial evidence in support of this criterion. The petitioner did submit extensive testimonial evidence in support of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), and the AAO is satisfied that the awards the petitioner received for two of the beneficiary's projects can be considered evidence of recognition by organizations in her field. However the record as a whole does not support [REDACTED] description of the beneficiary as "an internationally preeminent designer of interiors and space planner with a record of extraordinary accomplishments."

Based on the evidence of record, the beneficiary is a highly talented and successful designer who has participated in projects for the petitioner's high profile clients, two of which resulted in the petitioner's receipt of design awards. While the petitioner refers to her as its "best designer," there is no evidence that she occupies a senior or lead position within the firm at this stage or her career, or that she is has earned recognition from persons who are not directly familiar with her and her work on a professional basis. While the testimonial evidence in the record suggests that she has an extremely bright future in her profession, the petitioner has not sustained its burden to establish that she is currently renowned, leading or well-known in the design field.

The AAO emphasizes that four out of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B) require the petitioner to submit various types of published materials to establish the beneficiary's recognition, such as critical reviews, advertisements, publicity releases, newspaper, magazine or trade journal articles. Therefore, it is significant that the petitioner has submitted no published evidence regarding the beneficiary, and little published evidence relating to her work or achievements. Absent evidence that the regulatory criteria are not applicable to

the beneficiary's occupation, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(C), the petitioner must submit published materials "about" the beneficiary in order to establish her eligibility for this classification. The AAO cannot include the beneficiary among the group of designers recognized in the field as leading, renowned or well-known if the petitioner does not establish that she has received significant independent recognition based on his own reputation or achievements, consistent with the evidentiary criteria.

Therefore, the conclusion we reach by considering each evidentiary 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 a singer or musician who has achieved a level of distinction to the extent that she can be deemed to be renowned, leading, or well-known in the field of design. 8 C.F.R. § 214.2(o)(3)(ii). Accordingly, the appeal will be dismissed.

IV. Conclusion

Review of the record does not establish that the beneficiary has distinguished herself to such an extent that he may be said to be renowned, leading, or well-known in the arts. 8 C.F.R. § 214.2(o)(3)(ii). Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act and the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.