U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: OCT 14 2014 Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner, a dance studio, filed this 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), 8 U.S.C. 1101(a)(15)(O)(i), as an alien of extraordinary ability in the arts. The petitioner seeks an extension of the beneficiary's O-1 status so that he may work in the position of "dance professional" for a period of three years.

The acting director denied the petition, concluding that the submitted evidence did not satisfy any of the evidentiary requirements applicable to aliens of extraordinary ability in the arts, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B).

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner asserts that the beneficiary is eligible for the classification sought. The petitioner submits a brief and additional evidence in support of the appeal.

For the reasons discussed below, we will uphold the acting director's decision and dismiss the appeal.

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 . . . .

The petitioner filed this petition seeking classification of the beneficiary as an alien of extraordinary ability in the arts as a ballroom dancer, instructor and coach.

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 . . . 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.

II. Beneficiary's Area of Extraordinary Ability

As a preliminary matter, we note that the petitioner claimed eligibility under the evidentiary criteria for aliens of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv)(B), and asserted that the beneficiary meets the standard of "distinction" applicable to the arts, pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii). The acting director reviewed the petition under these criteria and determined that the petitioner did not establish the beneficiary's eligibility as an alien of extraordinary ability in the arts.

While dancers in stage, film and television productions are considered performing artists for the purposes of this classification, the record shows that the petitioner seeks to employ the beneficiary in the field of competitive ballroom dance, also known as "DanceSport." The petitioner has neither claimed nor submitted evidence that the beneficiary will be performing as a dancer in any other capacity than that of a competitive ballroom dancer and instructor/coach.

The evidence of record reflects that the has formally recognized DanceSport as a sport under consideration for inclusion in the Olympic Games, although it is not yet a medal sport in the Olympic Games. The formerly the has been designated as the world governing body of the sport. The recognition of DanceSport by the is a clear indication that DanceSport, or competitive ballroom dance, has evolved into an acknowledged form of athletic competition.

We note that there may be instances in which a competitive ballroom dancer seeks to enter the United States to provide services as an entertainer or performing artist, rather than as a competitive dancer-athlete. The nature of the intended events or activities in the United States is critical in

determining whether the beneficiary is entering the United States to provide services as "athlete" or as an "artist."

Here, as the beneficiary is clearly coming to the United States to participate in or train others for athletic events, the petitioner should have requested review of the petition according to the "extraordinary ability" criteria applicable to athletes, and pursuant to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii).

The regulations clearly prescribe different evidentiary criteria and standards of review for aliens of extraordinary ability in the arts as opposed to aliens of extraordinary ability in athletics. 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 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 less restrictive standard for the arts).

The acting director appropriately reviewed the petition according to the classification requested on the Form I-129. USCIS will only consider the visa classifications that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).

However, a petitioner sponsoring an O-1 athlete cannot seek consideration of the petition under the less restrictive standard of "distinction" by characterizing the beneficiary's field as arts. The petitioner has not sought the correct O-1 visa classification for the beneficiary, nor has it claimed or submitted evidence to establish that the beneficiary meets the criteria and standards for individuals of extraordinary ability in athletics as set forth at 8 C.F.R. § 214.2(o)(iii)(A) or (B). Accordingly, the petition will be denied for this additional reason.

As the acting director did not raise the foregoing issue in her decision, we will nevertheless review the petitioner's claim that it satisfied the evidentiary requirements and less restrictive standard of "distinction" applicable to aliens of extraordinary ability in the arts.

III. Beneficiary's Eligibility under the Requested Classification

The beneficiary in this matter is a native and citizen of the Russian Federation who began competing in ballroom dance in 1998, at the age of ten years old. The petitioner states that the beneficiary "has taught at well-respected schools throughout Russia." The petitioner's agreement with the beneficiary indicates that he will be employed in the United States as a dance instructor

and a competitive dancer. In addition, the testimonial evidence provided indicates that the beneficiary is seeking to coach and compete in the United States.

While a competitive ballroom dancer and a dance instructor certainly share knowledge of dance, the two rely on very different sets of basic skills. Thus, competitive dancing and dance instruction are not the same area of expertise. This interpretation, as applied to competitive athletes and athletic coaches, 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. Nevertheless, this office has recognized that there exists a nexus between playing or practicing and coaching a given sport. To assume that every competitive dancer's area of expertise includes teaching or instruction, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly demonstrated extraordinary ability as a dancer-athlete and has sustained that acclaim in the field of instruction, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the beneficiary's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as an instructor. An instructor who has an established successful history of instructing dancers who compete regularly or perform at a high level has a credible claim; an instructor of novices does not.

A. The Beneficiary's Eligibility under the Evidentiary Criteria

The issue to be addressed 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). In denying the petition, the acting director determined that the evidence submitted meets none of these criteria. After careful review, the evidence of record does not establish that the petitioner has overcome the grounds for denial.

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 production 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.

While the petitioner has submitted copies of various award certificates the beneficiary received while competing in ballroom dance competitions in Russia, the petitioner has neither claimed nor provided

evidence that any of these awards are comparable to the types of significant national or international awards or prizes listed as examples in the regulation. Without documentation to provide additional context regarding the beneficiary's awards within the scope of his occupation, the petitioner has not established that the beneficiary's awards in the DanceSport field are regarded as comparable to, for example, an Academy award in the arts. It is the petitioner's burden to establish how the submitted evidence establishes eligibility under the regulatory criterion. The acting director determined that the petitioner did not submit evidence to satisfy this criterion, and the petitioner raises no objection to this finding on appeal. Accordingly, the petitioner has not established that the beneficiary has received or been nominated for a significant national or international prize or award that would qualify for him for O-1 status under 8 C.F.R. § 214.2(o)(3)(iv)(A).

Therefore, the petitioner must establish the beneficiary's eligibility under at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). 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). In addition, we have held that truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). We will address these criteria below.[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*

The acting director determined that the petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*). The acting director acknowledged that the beneficiary has participated in various competitive events, but found the petitioner did not provide sufficient evidence that he performed services as a lead or starring participant in relation to any of the other competitors who participated in the same events or that any of the competitive events in which the beneficiary has

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[1]As noted by the acting director in the request for evidence (RFE) issued on November 15, 2013, the petitioner has not consistently identified and articulated under which regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) it is claiming eligibility. For example, in the petitioner's initial letter in support of the petition, the petitioner characterized some of the submitted evidence under regulatory criteria found at 8 C.F.R. § 214.2(o)(3)(iii)(B), relating to aliens of extraordinary ability in the fields of science, education, business, or athletics. Specifically, the petitioner indicated it was submitting evidence of "awards for excellence in the field of ballroom dance" consistent with 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*) (receipt of nationally or internationally recognized prizes or awards for excellence), and "memberships in associations in his field which require outstanding achievements of their members "), consistent with 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) (memberships in associations in the field which require outstanding achievements of their members). The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 286 Fed. Appx. 963 (9th Cir. July 10, 2008).

performed have a distinguished reputation. In addition, the acting director noted that "there is no evidence of critical reviews, advertisements, publicity releases, publications, contracts or endorsements about the beneficiary as a dancer," as required by the plain language of the regulation. As noted by the acting director, the petitioner has submitted none of this documentary evidence and thus cannot support its conclusion that the beneficiary's achievement of relatively high finishes at competitive DanceSport events is tantamount to providing services as a lead or starring participant in productions with a distinguished reputation. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Even if the petitioner had established the distinguished reputation of the DanceSport competitions in which the beneficiary has achieved a high finish, a distinction must be made between winning or placing in an athletic competition and providing services as a lead or starring participant in an artistic production or event. Achieving a favorable result in an athletic competition is not indicative of providing services in a lead or starring capacity for an artistic production or event.

Also on appeal, the petitioner asserts that the beneficiary's "skills, abilities, experience, expertise, presence and leadership have greatly assisted [the petitioner] and the dance industry in the United States to move forward." The petitioner's general assertions that the beneficiary will play a leading role for dance in the United States are similarly unpersuasive. The regulation requires evidence that the beneficiary will provide services as an artist in a leading or starring role for a "production or event" that has a distinguished reputation. Broad and unsupported claims that the beneficiary will elevate the competition level in the sport as a whole merely by entering events as a dancer or that he will play a leading role in a specific production or event by training the petitioner's students are not persuasive. Without documentary evidence to support the claim, the petitioner's assertions will not satisfy its burden of proof. 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. at 190.)

In addition, the acting director noted that the petitioner provided evidence related to many dance competitions promoted by the [redacted] to be held in various U.S. cities in the upcoming years. The petitioner submitted background information regarding the upcoming U.S. events from the websites of the event sponsors. However, the petitioner has not provided adequate documentation in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements to show that the beneficiary would perform services as a lead or starring participant in these productions or events.

Based on the foregoing, the petitioner has not submitted evidence to satisfy this criterion.

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

The acting director determined that the petitioner did not establish eligibility for this criterion. The petitioner did not contest the findings of the acting director for this criterion or offer additional arguments on appeal. Therefore, the petitioner abandoned this issue. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885, at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal). Based on the foregoing, the petitioner has not submitted evidence that meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*).

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 acting director determined that the evidence of record does not establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*).

For the reasons discussed above with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*), the beneficiary's receipt of awards in athletic competitions cannot be considered to be equivalent to having performed in a lead, starring or critical role for organizations and establishments that have a distinguished reputation.

With respect to the beneficiary's prior role for organizations or establishments in Russia, the petitioner has submitted a translation of a letter of recommendation from a professional dancer and the beneficiary's former teacher in the Russian Federation. The petitioner did not submit the original foreign language document. Thus, the translation has no probative value. Regardless, the letter does not establish that the beneficiary meets this criterion. Ms. indicates that in 2003 the beneficiary was a soloist for a where he "performed a solo presentation in many theme concerts during the time when ' was touring several cities in Russia, Egypt and Turkey with a very successful dance show program. Local reviews described [the beneficiary] as a great performer with authentic demonstrations of the dancing roles he portrayed." The petitioner submitted a promotional poster for production of ' indicating that the beneficiary was a soloist in the production. Ms. also indicates that "[i]n 2005, [the beneficiary] pursued professional coaching with children and adults. As a result, his students demonstrated high dancing level during competitive events." Ms. letter does not refer to the reputation of and the petitioner submitted no evidence regarding the reputation of as a company and that is has a distinguished reputation. 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. at 190.)

President of the states that the beneficiary "was invited to teach at my dance studio in Moscow on several occasions." Mr. states that the beneficiary "was a very gifted teacher. He easily establishes a strong working relationship and transfers his immense knowledge of technique and artistry effectively to his students. His coaching has benefitted many dancers across our country." This conclusory letter does not explain how the petitioner has influenced the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner also submitted a foreign language original and translation of a letter from Ms. Director of the The petitioner submitted only a blanket certification for the "attached documents." The January 10, 2011 certification does not list the translations it purports to certify or even name the beneficiary. Thus, the translation is not properly certified as required under 8 C.F.R § 103.2(b)(3) and have little probative value. Regardless, Ms. states that the beneficiary "performed many times and give [sic] lessons and master-classes in our dancing center 'Maximum.'" She further states that the beneficiary "was a powerful help to the development of our youngest dancers of our dancing center which gave high results at city, regional and All-Russia competitions." While Ms. attests to the beneficiary's experience as a dance sport coach and his success with his young students at the city, regional, and All-Russia levels of competition, her letter does not speak to the leading or critical nature of his coaching role with the nor does the record contain evidence that this dance club enjoys a distinguished reputation.

The new testimonial letters the petitioner offers on appeal speak of the critical role the beneficiary will play in bringing an international style of ballroom dance to the United States in general, and to the petitioning entity's studio specifically. With respect to the beneficiary's offered employment as a dancer and dance instructor with the petitioning studio, the petitioner describes the beneficiary as being "exceptionally successful for himself and for [the petitioning entity]" in assuming the roles of dancer and dance instructor, and that he "has been a critical producer of revenue for [the petitioner's] studio, generating 63 percent of our gross income in 2012 and 68 percent in 2013." The petitioner further stated that it anticipated "that the beneficiary would continue to be an important factor in the [petitioning entity's] ongoing success." The petitioner submitted new testimonial letters in an effort to establish that the beneficiary has played "important leadership roles within [the petitioning entity's organization" and that "[m]uch time and attention has been given to developing business plans in which [the beneficiary] has played and will continue to play a critical role." The letters speak of the "critical role" the beneficiary will play as a member of the petitioning entity's Outreach and Education committee's "ongoing development of our prototype program."

On the basis of the above, the petitioner has submitted sufficient evidence establishing that the beneficiary has been employed, and will be employed under the approved petition, in a critical or essential capacity at the petitioning entity. The acting director's findings and comments to the contrary will be withdrawn.

While it is not disputed that the beneficiary was employed in a critical or essential capacity for the petitioning entity, the petitioner did not establish it is or was a company with a distinguished

reputation, as required at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*7*). The letters do not speak to the reputation of the petitioning entity, nor has the petitioner submitted evidence that its dance studio enjoys a distinguished reputation. While the petitioner submitted evidence of the services that the petitioning entity provides, as stated on its website, this does not constitute evidence regarding the reputation of the petitioning entity. 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. at 190).

Further, even if the petitioner had demonstrated its distinguished reputation, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*7*) requires evidence that the beneficiary has been employed in a critical or essential capacity for "organizations and establishments" that have a distinguished reputation, in the plural. Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(iv) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(6) only requires a single high salary. When the regulation at 8 C.F.R. § 214.2(o) wishes to include the singular within the plural, it expressly does so, as when it states at 8 C.F.R. § 214.2(o)(3)(ii)(D) that the petitioner must submit a "written advisory opinion(s) from the appropriate consulting entity or entities." Thus, it can be inferred that the plural in any regulatory criterion has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[2] The petitioner did not establish that the beneficiary was employed in a critical or essential capacity for any other organization or establishment of distinguished reputation.

Based on the foregoing, the petitioner has not submitted evidence to satisfy the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*).

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

The acting director determined that the petitioner did not establish eligibility for this criterion. The petitioner did not contest the findings of the acting director for this criterion or offer additional arguments on appeal. Therefore, the petitioner abandoned this issue. *See Sepulveda*, 401 F.3d at 1228 n. 2; *Hristov*, 2011 WL 4711885, at *1, *9 (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal). Based on the foregoing, the petitioner has not submitted evidence that meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*).

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[2] *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

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.

The petitioner has described the beneficiary as "a world-renowned ballroom dancer who has been able to achieve and sustain international acclaim within his field" and an "internationally acclaimed Ballroom Dancer."

To meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), the petitioner has submitted a number of testimonial letters, as well as copies of the beneficiary's awards received at DanceSport competitions between 1998 and 2007.

The petitioner provided a letter dated October 11, 2013, from an international champion in ballroom dance. Ms. states that she knows the beneficiary personally. She states that the beneficiary's "ongoing work as a coach and teacher marks him as one of the most influential contributors in the industry" and that the beneficiary "has raised the standard of dance in the United States."

The petitioner also submitted letters from President of and President of stating that the beneficiary is well known to them "in the industry for several years" as an excellent ballroom dancer, coach/trainer and competitor.

Ms. Mr. and Mr. state that they have had the opportunity to know the beneficiary and have been continually impressed with his performances and successes on the competitive floor. They state that the beneficiary's competitions and titles are very highly regarded and well deserved.

The petitioner also submitted a letter from a dance champion and coach, stating that he would consider the beneficiary to be one of the most talented dancers he has ever seen.

President of and a ballroom dance competitor, states that she has "examined and followed the career of [the beneficiary] and believe[s] his talents and skills are exceptional." She states that his achievements include "his performance at events including the " She also states, "[the beneficiary's involvement as a principal dancer and soloist in , has placed him among the very top dancers in one of the largest and most talented countries involved in dancesport in the world."

Executive Vice President of the and a ballroom dance champion, states that he is well-acquainted with the beneficiary. Mr. states that the beneficiary "is a strong, powerful and dominating force on the floor, and his technique is superior." He states that the beneficiary's abilities as a dancesport theatrical artist "clearly mark him as exceptional and to be an important influence in the industry."

a professional ballroom dance coach, states that the beneficiary "achieved Championship Status in his country, Russia" and "participated in numerous Ballroom Dance Show events as a performer." He refers to the beneficiary's first place finish in a junior competition in Russia in 2000, at the age of twelve years old, and the beneficiary's role as a soloist in the

The petitioner submitted an advisory opinion from President of Mr. describes the beneficiary as "a high level dance professional who has been recruited by [the petitioning entity] – one of our largest affiliated member organizations. We believe his presence in the United States has been and will continue to be beneficial to achieve . . . high standards for dance in general."

President of the describes the beneficiary as "a leading dancesport professional" and "a very highly regarded member of the dancesport industry." He states that the beneficiary, as a competitor in Russia, has been "clearly an exceptional dancer, with many excellent performances on the competitive dance floor."

The petitioner also submitted several letters from the beneficiary's colleagues in DanceSport, including two letters from , a professional ballroom dancer and trainer. Mr. states that he has known the beneficiary for many years and that "[t]hroughout his career, [the beneficiary] has always achieved the top in his category." He describes the beneficiary's talent as a "truly exceptional" ballroom dancer.

a ballroom dance champion, states that he has worked with the beneficiary and has been "continuously impressed with [the beneficiary], from his performances at international championships, especially the and to his exhibition performances as principal dancer with ' He describes the beneficiary's talent as "exceptional."

The petitioner submitted the above-referenced letter from a professional dancer and the beneficiary's former teacher in Russia. As discussed above, the petitioner did not submit the original foreign language copy of this letter; thus, the translation has no probative value. Regardless, she states that the beneficiary started his dancing career at her studio at the age of eight. As noted above, Ms. indicates that in 2003 the beneficiary was a soloist for where he "performed a solo presentation in many theme concerts during the time when ' was touring several cities in Russia, Egypt and Turkey with a very successful dance show program. Local reviews described as a great performer with authentic demonstrations of the dancing roles he portrayed." The petitioner submitted a promotional poster for production of ' indicating that the beneficiary was a soloist in the production.

a Russian dance champion, states that he has known the beneficiary for seven years, and that the beneficiary "was always among the best dancers at all of the competitions that he ever attended." The only certification of the translation of this letter is the blanket certification discussed above that does not list the translation it is certifying or even the beneficiary's name. Thus, Mr. letter has little probative value. Regardless, he refers to additional competition

results which he claims the beneficiary achieved in Russia in 2008 and 2009. The petitioner has not submitted any evidence pertaining to these competitions, therefore, they will not be further considered. 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. at 190.)

a Russian dance champion, states he has known the beneficiary since 2001, and describes the beneficiary as "one of the best dancer [sic] in the

The petitioner submitted the above-referenced letter from Director of the DanceSport club As noted above, Ms. states that the beneficiary "performed many times and give [sic] lessons and master-classes in our dancing center '" She states that the beneficiary "was a powerful help to the development of our youngest dancers of our dancing center which gave high results at city, regional and All-Russia competitions."

The petitioner also submitted the above-referenced letter from President of the He states that he has known the beneficiary since the beneficiary began dancing. He also indicates that the beneficiary has been a champion of many important and major Russian and Open championships. As noted above, Mr. states that the beneficiary "was invited to teach at my dance studio in Moscow on several occasions." He states that the beneficiary "was a very gifted teacher. He easily establishes a strong working relationship and transfers his immense knowledge of technique and artistry effectively to his students. His coaching has benefitted many dancers across our country."

owner of states that he has known the beneficiary "for many years as an outstanding dancer in Russia." Mr. states, "I worked early on with [the beneficiary], and he very quickly transitioned into an outstanding dancer . . . competing on a national level . . . with numerous championships to his credit."

professional dance champion, describes the beneficiary as "an exceptional dancer and ten-dance champion." She states, "[h]aving been trained in the Russian dancesport arena myself, I know the caliber of [the beneficiary's] training, and his successes there reflect his exceptional abilities and talents."

Finally, the petitioner submitted letters from those associated with the petitioning entity. a Russian ballroom dance champion and the director of one of the petitioning entity's dance studios, states that the beneficiary is "an exceptional ballroom dancer who has been able to achieve and sustain acclaim and reputation both in the highly competitive environment in his home country and nationally. Mr. states that the beneficiary's standard of dance is "exceptionally high."

a ballroom dance champion and the director of one of the petitioning entity's dance studios, states that the beneficiary "has been known to me as an excellent ballroom dancer

and competitor in the dance industry." Mr. states that he has had the opportunity to see the beneficiary in many competitions and has been impressed with him.

The petitioner has submitted three letters from , President of He praises the beneficiary's contributions to the petitioning entity and to the United States DanceSport industry in general, based upon the beneficiary's "exceptional abilities, expertise and training." He notes that the beneficiary has obtained the highest certification level within the petitioning entity. He indicates that the petitioning entity has "identified [the beneficiary] as a leader within our studios to lead a prototype project in developing programs and curriculum to engage and prepare the next generation of dancesport participants." He states that the beneficiary will also continue to be "a critical and active member of our organization as a dancer" and states the beneficiary "will continue to dance, compete and represent his studio and our organization with honor and distinction in this key role." He describes the beneficiary as "an exceptional dancer and coach, among the most accomplished and respected of dance professionals."

On appeal, the petitioner submitted a letter from a member of the petitioning entity's governing board. He states that the beneficiary, "as a member of the Board's Outreach and Education committee, has been instrumental in the on-going development of our prototype program." Mr. states that the beneficiary "has been central to the success of his home studio," and he asserts that the beneficiary's "skills, abilities, experience, expertise, presence and leadership have greatly assisted [the petitioning entity] and the dance industry in the United States to move forward."

In addition to the testimonial letters, the petitioner submitted documentary evidence of the beneficiary's competitive awards. The beneficiary's documented awards included fourteen first place awards, two second place awards, five third place awards, two fourth place awards, one fifth place award, and two sixth place awards. The petitioner did not submit any evidence regarding the significance of the awards, all of which appeared to be in city or regional competitions, and all but three of which appeared to be in the junior, or age-restricted, categories.

The petitioner also submitted a copy of the beneficiary's Russian competition booklet that indicates that the beneficiary is a member of the The petitioner further submitted documentation that indicates that it is a member of the and that the beneficiary has been conferred the status of a certified professional competitor by the petitioning entity.

In the request for evidence, the acting director acknowledged that the petitioner submitted testimonial letters from persons who spoke highly of the beneficiary. The acting director found, however, that the evidence was insufficient to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) because, while all of the authors speak highly of the beneficiary in terms of his talent and skills, they did not articulate any specific, significant achievements of the beneficiary. The acting director advised the petitioner that such evidence was inadequate to establish that the beneficiary garnered a level of national or international recognition from such events. The acting director requested that the petitioner submit evidence from experts in the field

to establish that the beneficiary has received significant recognition for his purported achievements. Upon review of the petitioner's response, the acting director found that the petitioner did not establish that the beneficiary has received significant recognition for achievements in the arts.

The petitioner also submits on appeal a letter from First Vice President of th who speaks of the critical role the beneficiary will play in bringing an international style of ballroom dance to the United States in general and to the petitioning entity's studio, specifically. She describes the beneficiary as "an exceptionally accomplished dancer and dance instructor."

Upon review, the evidence of record supports the acting director's determination that the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). As noted above, to satisfy this evidentiary criterion, the petitioner must submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which he is engaged. Any testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations.

The submitted reference letters all praise the beneficiary's talent and abilities. The majority of the submitted letters are from the beneficiary's own former teacher, colleagues and personal acquaintances, and therefore do not demonstrate significant recognition outside of that circle. The remaining letters, from do not clearly indicate how the authors came to be aware of the beneficiary's achievements as a dancer or a dance instructor.

While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, many of the submitted reference letters did not address the beneficiary's specific achievements in the sport as an athlete or coach. Those letters that did address specific achievements of the beneficiary, such as his three first place finishes in adult regional competitions in Russia, his participation in the development of the petitioner's prototype program, and his participation in do not explain how the beneficiary's achievements to date have received significant recognition from organizations, critics, government agencies or other recognized experts in the field.

Regarding the beneficiary's several first-place finishes, the significance of the competitions has not been established. While the record supports a finding that the beneficiary was successful in his age categories in regional ballroom dance competitions in Russia, the evidence of record does not establish that his first place finishes in three adult regional competitions in Russia constitute "significant recognition for achievements from organizations in the field" pursuant to the plain language of the criterion. If the referenced competitive events are major, nationally or internationally-recognized events as claimed, it is reasonable for the petitioner to provide additional evidence regarding the requirements for entry, and evidence that the beneficiary received independent national or international recognition for finishing in the finals of each event. While the petitioner did submit printouts from the website, www , and from the website www listing the dates and results of the events, the submitted evidence does not establish that the certificates rise to the level of "significant recognition" as required by the plain language of the regulatory criterion.

Similarly, the evidence of record does not establish that the beneficiary's participation in at the age of fifteen years old, constitutes a "significant recognition for achievements from organizations in the field" pursuant to the plain language of the criterion.

Ms. has emphasized that Russia is "one of the largest and most talented countries involved in dancesport in the world," and several colleagues of the beneficiary have emphasized Russia's impressive standing in the field of dance. However, a petitioner does not establish eligibility for O-1 classification as a dancer simply by demonstrating that a beneficiary has achieved some success in Russia. This classification focuses on the beneficiary's individual achievements and recognition within the field. The petitioner has provided little evidence of such recognition. The petitioner's evidence pertaining to the beneficiary consists of copies of awards the beneficiary received in dance competitions of unknown importance or reputation, and a number of testimonial letters which were primarily written by the beneficiary's personal acquaintances and solicited specifically for the purpose of supporting his nonimmigrant petition. As previously discussed, the petitioner has not provided documentation that would corroborate the petitioner's claim that the beneficiary has achieved "international acclaim" or even significant recognition.

Furthermore, regarding the beneficiary's coaching experience the petitioner did not submit primary evidence of awards won by the beneficiary's student athletes. 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. at 190.)

Overall, while the beneficiary has earned the respect of his colleagues and well-known figures in the sport of ballroom dance, the evidence submitted is insufficient to establish that the beneficiary has received significant recognition for achievements in the field.

Based on the foregoing, the petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field.

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 sixth and final criterion requires the petitioner to submit evidence that the beneficiary 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.

Assuming that the beneficiary's salary will be $45,000 per year as stated on the Form I-129, the petitioner has not established this salary is high in relation to others in the field. As a point of comparison, the petitioner submitted an O*Net printout from the Department of Labor, Office of Foreign Labor Certification, reflecting that the Level 4 prevailing wage for dancers in the petitioner's area is $25,792 per year. The petitioner emphasized that the "average top wage is approximately $25,000." While the beneficiary's salary exceeds the Level 4 prevailing wage for the petitioner's area, the prevailing wage only reflects the *average* wage paid to all similarly employed workers in the same occupation in the same area. 20 C.F.R. § 655.10. The prevailing wage, alone, is insufficient to establish whether a salary is high in relation to others in the field, as required by the plain language of the regulation.

In addition, the petitioner claims that USCIS has approved cases with similar salaries. However, the petitioner's claim is not persuasive or supported by documentary evidence. While the petitioner provided a list of ten names and receipt numbers, the petitioner did not provide any documentary evidence to establish that USCIS did, in fact, find eligibility under this criterion and approve the petitions based upon the same set of facts present here. In making a determination of the beneficiary's eligibility, USCIS is limited to the information contained in the instant record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Therefore, the petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

Based on the foregoing, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Therefore, the petitioner has not demonstrated that the beneficiary satisfies the evidentiary production requirement of three types of evidence. Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in the arts. For this additional reason, the petition may not be approved.

IV. Prior Approval

The record indicates that 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'r 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 acting director reviewed the record of proceeding and concluded that the petitioner did not meet all eligibility requirements for the requested classification. If the previous nonimmigrant petition was approved based on the same evidence that is contained in the current record, the approval would constitute material and gross error on the part of the acting director. Furthermore, as discussed above, the petitioner has classified the beneficiary's claimed area of extraordinary ability as "arts" rather than "athletics." Based on the lack of required evidence of eligibility in the current record, we find that the acting director was justified in departing from the previous petition approval by denying the instant petition.

We are 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'r 1988). It would be absurd to suggest that CIS 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 does not meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

V. Conclusion

The petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in the arts and the petition may not be approved.

Furthermore, the evidence of record indicates that the beneficiary's claimed area of extraordinary ability, competitive ballroom dance, falls within the field of athletics, rather than the arts. As the beneficiary's occupation does not fall within the O-1 classification requested on the petition, the petition must be denied for this additional reason. An application or petition that does not comply with the technical requirements of the law may be denied by us even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003). We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision. When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that we

abused our discretion with respect to all of our enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.