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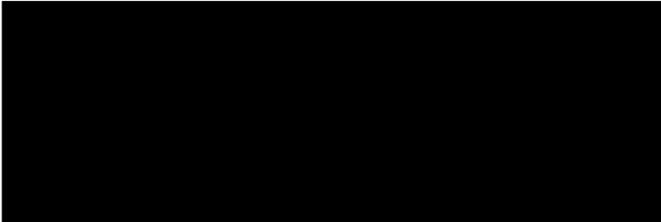
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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

D8



FILE: WAC 09 021 51454 Office: CALIFORNIA SERVICE CENTER Date:

APR 15 2010

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in the arts.¹ The petitioner, a dance studio, seeks to employ the beneficiary as a Dancer/Dance Instructor for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim in her field. The director determined that the petitioner established only two of the six evidentiary criteria set forth at 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 for review. On appeal, counsel for the petitioner asserts that the director failed to consider relevant evidence that establishes that the beneficiary has achieved the requisite level of distinction in her field. Counsel submits a detailed brief in support of the appeal.

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:

¹ The petitioner indicated on the O-1 classification supplement to Form I-129 that it seeks O-1A classification of the beneficiary as an alien of extraordinary ability in sciences, education, business or athletics. The director applied the evidentiary criteria pertaining to aliens with extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv). The petitioner indicates on appeal, and the AAO agrees, that these are the appropriate criteria for a dancer/dance instructor.

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.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach recently set forth in a decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010).

The *Kazarian* court, while upholding the AAO's decision to deny a first-preference employment-based immigrant petition, took issue with the AAO's procedure for evaluating evidence submitted to meet a given evidentiary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3). Similar to the regulations governing this nonimmigrant classification, 8 C.F.R. § 204.5(h)(3) requires the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability.

Specifically, the court stated that the AAO's approach rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did), " and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination.

The AAO finds the *Kazarian* court's two part approach applicable to evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability or achievement at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v), and to other immigrant and nonimmigrant classifications based on a similar evidentiary framework.²

² For example, the *Kazarian* court's two-part approach would be applicable to outstanding professors and researchers, where the petitioner must: (1) submit evidence meeting at least two out of the six criteria outlined at 8 C.F.R. § 204.5(i)(3)(i); and (2) demonstrate that the professor or researcher is recognized internationally as outstanding. This approach would also be applicable to petitions for P-1 classification athletes and

Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Dor. v. INS*, 891 F.2d 997, 1002 n.9 (2nd Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

In the present matter, the petitioner has failed to submit evidence that satisfies three of the evidentiary criteria, and has not established that the beneficiary has 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 she is prominent, renowned, leading, or well-known in the field of arts as a dancer or dance instructor. 8 C.F.R. §§ 214.2(o)(3)(ii).

II. Analysis

The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, an appeal and brief, and additional evidence supporting the appeal. The beneficiary in this case has worked as a professional dancer, choreographer, and dance teacher in Israel since 1995. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a dancer/dance instructor.

The regulation at 8 C.F.R. § 214.2(o)(1)(ii)(I) requires the beneficiary to "continue work in the area of extraordinary ability." The petitioner stated in its letter dated October 8, 2008 that the beneficiary will serve "as a dance instructor and performer for our productions and competitions." The petitioner further described these productions as follows:

These events are major productions, and are expected to continue the successful career which [the beneficiary] has established. The high-profile dance performances, in which the Petitioner will be engaged, will be developed, produced and rehearsed in the United States and will tour major venues across the United States, and will feature a cast of performers drawn from only the very highest echelons of the entertainment industry.

* * *

The Alien will be engaged on a temporary basis as a Dancer and a Dancer Instructor for a series of dance instruction, event, competition and Nationwide Tour projects which the Petitioner is producing. Pursuant to this production, the Beneficiary will be engaged for a number of performances at major performance venues all over the United States. The Beneficiary will be part of a troupe of some of the world's finest dancers. Moreover,

entertainment groups, where the petitioner must: (1) submit evidence meeting at least two of the seven criteria at 8 C.F.R. § 214.2(p)(4)(ii)(B)(2) or three of the six criteria at 8 C.F.R. § 214.2(p)(4)(iii)(B)(3), respectively; and (2) demonstrate that the individual beneficiary has achieved international recognition in his sport based on his reputation or that the entertainment group has been recognized as outstanding in the discipline for a sustained and substantial period of time.

Petitioner will represent Alien in any and all of her future competitions and in highly acclaimed dance show "DanceSports" and tours within the United States.

The petitioner further stated that the beneficiary "will also be part of the extensive Promotions and Publicity for the Nationwide Dance Studio which will entail radio, television and print interviews throughout the United States."

The AAO notes that the petitioner mentioned the beneficiary's role as an instructor only in passing in describing the proposed employment. However, the petitioner's contract with the beneficiary, based on the evidence of record, consists solely of a "Professional Instructor Agreement" under which the petitioner agrees to train the beneficiary in its teaching and instructional methods and the beneficiary agrees to complete such training within three months, after which time, she will be assigned students to teach. There is nothing in the agreement to suggest that the beneficiary would be performing on national or worldwide tours, competing in DanceSport competitions, or rehearsing for such events, as a condition of her employment with the petitioner.

The petitioner indicates that it operates three [REDACTED] in California, and provided a list of the employees working at each studio. Notably, there are no employees with the title "dancer" or "dancer/instructor." Rather, the petitioner states that it employs managers, instructors and receptionists/administrative personnel, and has not provided evidence that instructors employed by its studio are simultaneously working for the petitioner as professional dancers. Therefore, the AAO must conclude that the beneficiary will be employed primarily as a dance instructor.

While a professional dancer and a dance instructor certainly share knowledge of dance, the two rely on very different sets of basic skills. Thus, dance performance 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 and coaching a given sport, or performing and teaching a given form of artistic expression. To assume that every extraordinary artist'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 achieved distinction as an artist 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. Thus, we will examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a dancer or as a dance instructor. If the

petitioner has demonstrated her extraordinary ability as an artist, we will consider the level at which she has successfully coached.

A. Evidentiary Criteria

At the outset, it is critical to note that simply submitting evidence to satisfy the evidentiary criteria will not automatically establish eligibility for this visa classification. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg 41818, 41820 (August 15, 1994).

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 does not claim that the beneficiary qualifies for O-1 classification on the basis of her nomination for or receipt of such an award.

Accordingly, 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). The petitioner indicates that the beneficiary meets all six criteria.

1. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)

To meet criterion number one, the petitioner must submit evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

The petitioner states that the beneficiary satisfies this criterion based on the following roles and performances:

- Lead female dancer in a music video for the song "[REDACTED]"
- Two performances at the New York Salsa Congress (2004 and 2008)
- Multiple performances as lead dancer and choreographer at [REDACTED]
- Leading role in the musical [REDACTED]
- Leading role in the musical [REDACTED]
- Performances in several TV shows, festivals and events as a member of the dance group [REDACTED]
- Lead dancer and choreographer of the dance City Group [REDACTED]
- Team leader of the cheerleading squad for the [REDACTED]
- Leading dancer in the televised musical production [REDACTED]

The beneficiary's participation in these events and productions was documented almost entirely through letters from persons who were personally involved in the productions, through biographical information regarding the persons who provided the letters, and through photographs of the beneficiary which depict her participation in the events. The director emphasized that in order to satisfy the criterion, the petitioner must submit critical reviews, advertisements, publicity releases, contracts or endorsements documenting the beneficiary's lead or starring roles and the distinguished nature of the productions. The AAO agrees, in part, with the director's finding. The director specifically requested corroborating evidence as specifically required by this regulatory criterion. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The AAO does find that the beneficiary's lead role in the music video for [REDACTED]'s music video '[REDACTED]' is sufficiently documented in the record. The evidence establishes that [REDACTED] is a well-known contemporary singer in Israel and the AAO does not doubt that the video was widely seen on major Israeli television stations. The AAO therefore considers this performance to qualify under 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

However, in determining whether the beneficiary meets this criterion as a dancer, the AAO must also find that the beneficiary will perform services as a lead or starring participant in productions or events which have a distinguished reputation. The petitioner has not established this component of the criterion. As noted above, the beneficiary's contract does not indicate that she will be performing as a dancer in any events under the terms of her professional instructor agreement. The petitioner's claim that she will "tour major venues across the United States," along with a "cast of performers drawn from only the very highest echelons of the entertainment industry," has not been documented in the record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In response to the RFE, the petitioner provided a list of "the distinguished productions hosted by [REDACTED] including showcases, Dance-o-Rama events which "bring students together from many different [REDACTED] festivals in which [REDACTED] students and teachers earn points, the Kaua Hularama (a three-day student competition), the Banff Dance-O-Rama (a two-day student competition), and an International Dance Festival (a "participation event," in which [REDACTED] compete worldwide). While some of these events appear to include professional exhibitions and the participation of instructors, they also appear to be open to any students and instructors who are affiliated with the franchise and have not been shown to be events which have a distinguished reputation. Moreover, the petitioner has not explained how the beneficiary would be considered to serve in a lead or starring participant in such events.

Finally, the petitioner has not established that the beneficiary meets this criterion as a dance instructor by submitting evidence that the beneficiary's students have performed as lead or starring participants in events or productions which have a distinguished reputation. The beneficiary indicates in her resume that she has worked as a dance instructor for [REDACTED] in Tel Aviv, as a dance teacher "for kids of all ages" at [REDACTED] in Israel, and as a teacher for kids and teens at [REDACTED] Israel. The supporting evidence submitted to corroborate the beneficiary's prior experience as an instructor

consisted of letters from [REDACTED] from [REDACTED] vice president of the [REDACTED] and from [REDACTED] of [REDACTED]. [REDACTED] confirms that the beneficiary was the studio's "Top and Lead Instructor" and states that she taught "Salsa Dance and Latin Lady Style." [REDACTED] confirms that the beneficiary worked as a classical ballet instructor at his club. [REDACTED] confirms that the beneficiary was hired to instruct "children of all ages." While all three acknowledge the beneficiary's talent and professionalism, none of them indicate that any of the beneficiary's students performed lead or starring roles in events or productions with a distinguished reputation during her time as an instructor in their employ, and it is not clear at what level she taught for any of these employers.

The petitioner also submitted a letter from [REDACTED] in Israel, who states that "there are very few dance instructors anywhere in the world as renowned as [the beneficiary]," but she does not identify any specific, recognized accomplishments achieved by the beneficiary as an instructor or by the beneficiary's students, or otherwise identify the factual basis for her conclusion. [REDACTED] statement is therefore insufficient to establish that the beneficiary meets this criterion.

Finally, the petitioner has not established that the beneficiary is coming to the United States to teach students who have performed or will perform services as a lead or starring participant in productions or events which have a distinguished reputation. The petitioner has provided a description of its dance programs, which range from an introductory program, designed for individuals who seek to learn the most basic dance steps, to a "gold program" for "the hobby dancer interested in performances, exhibitions or competitions." The petitioner has not specified at which level the beneficiary would teach; however, it does not appear that the petitioner's students are at a level in which they are likely to be serving as lead dancers in events or productions with distinguished reputations.

Based on the foregoing discussion, the petitioner has not established that the beneficiary meets this criterion as a dancer or dance instructor.

2. *8 C.F.R. § 214.2(o)(3)(iv)(B)(2)*

To meet the second criterion, the petitioner must submit 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 petitioner attempted to satisfy this criterion primarily through recommendation letters from "prominent individuals in the field of performing arts." The petitioner also claims that the beneficiary meets this criterion based on her role in the [REDACTED] music video, her role as a team leader for [REDACTED] cheerleading squad, and her receipt of a first-place award at [REDACTED]. However, the regulation clearly states that the petitioner must submit "published materials by or about the individual." None of the above-referenced evidence will be considered under this criterion.

The petitioner submitted one published article, identified simply as "a magazine article," in which the beneficiary is mentioned. The article indicates that the beneficiary performed at a "monthly singing evening" held at the [REDACTED] which was hosted by her mother. The beneficiary danced in a tribute to singer,

composer and poet [REDACTED]. The AAO cannot determine whether this article appeared in a major publication, as the petitioner has not identified the title of the magazine or the date of publication.

The beneficiary also appeared on the cover of a 2003 issue of an Israeli motorcycle magazine, *Motobike*. Counsel states that she was featured "for a national advertisement campaign." While the petitioner has provided a copy of the magazine cover, there is no evidence that the magazine featured an article about the beneficiary recognizing her achievements or that she was even identified by name on the cover, as the magazine cover is in Hebrew and was not accompanied by an English translation. The record contains no additional evidence regarding the "national advertisement campaign," to which counsel referred and the AAO cannot conclude that the beneficiary's photograph on the cover of the magazine alone is sufficient evidence of published materials *about* her achievements as a dancer or dance instructor.

As these are the only published materials in the record, the petitioner has not established that the beneficiary qualifies under this criterion.

3. 8 C.F.R. § 214.2(o)(3)(iv)(B)(3)

In order to meet this criterion, the petitioner must submit 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 found that the beneficiary could not meet this criterion because it submitted only testimonial evidence. However, the regulations clearly list testimonials as a form of acceptable corroborating evidence for this criterion. Upon review, the petitioner has provided sufficient testimonial evidence and information regarding the beneficiary's prior employers and dance performance experience to establish that the beneficiary has performed in such a capacity as a dancer.

However the petitioner has not established that the beneficiary qualifies under this criterion as a dance instructor. As discussed above, the petitioner has not submitted any evidence with respect to any individual students of the beneficiary. There is nothing in the record to suggest that the beneficiary has instructed or will instruct professional dancers, much less dancers who are serving in lead, starring or critical roles for distinguished organizations and establishments.

Moreover, the petitioner has not established that the beneficiary will perform in a lead, starring or critical role for an organization and establishment that has a distinguished reputation under the approved petition. While the petitioner operates a well-known dance instruction franchise, it has not articulated or documented how the beneficiary will serve in a lead, starring or critical role that would set her apart from the instructors it already employs or from any other instructor at [REDACTED]. Based on the "Professional Instructor Agreement" the petitioner accepts applications from individuals who have no prior training in dance instruction and qualifies them as instructors after only three months of training. While the petitioner also hires experienced instructors, it also requires them to undergo the same three months of training in the petitioner's own methods

before fully qualifying them as instructors, which undermines the petitioner's claim that the beneficiary would assume a "lead" position.

As discussed above, the petitioner has not submitted sufficient evidence to establish that the beneficiary has actually been "engaged for a number of performances at major performance venues all over the United States" or that she "will be part of a troupe of some of the world's finest dancers." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

4. *8 C.F.R. § 214.2(o)(3)(iv)(B)(4)*

In order to meet the fourth criterion, the petitioner must submit 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 states that the beneficiary meets this criterion, but has not submitted any evidence of occupational achievements reported in trade journals, major newspapers or other publications. The petitioner instead relies on recommendation letters "from various experts in their field and prominent luminaries, producers and other professionals who bear witness to the Beneficiary's extraordinary history of distinguished professional achievement, and her manifest talent and ability."

The director determined that such evidence does not satisfy this criterion. The AAO agrees. While other criterion may be satisfied through submission of testimonials and recommendations, this criterion specifically requires documentation of commercially or critically acclaimed success as reported in published format.

5. *8 C.F.R. § 214.2(o)(3)(iv)(B)(5)*

To meet this criterion, the petitioner must submit 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 director determined that the extensive testimonial evidence in the record satisfies this criterion. However, the AAO notes that, with one exception, the letters submitted are from the beneficiary's own former teachers and employers, and therefore do not demonstrate significant recognition outside of that circle consistent with the prominence, distinction and sustained acclaim required of aliens with extraordinary ability in the arts. The only letter that was not provided by a former employer, teacher or colleague was the letter from [REDACTED] who states that she owns "one of the leading dance schools in Israel." [REDACTED] cited some of the beneficiary's achievements as a dancer, but provided no basis for her opinion that the beneficiary is "among the most

innovative dance instructors in the world" or that "there are very few dance instructors anywhere in the world as renowned as [the beneficiary]." Further, she provided no explanation as to how she came to be aware of the beneficiary's achievements as a dancer or a dance instructor. Finally, the letter contains no address or contact information for [REDACTED] and is not accompanied by any information regarding her or her dance school. The petitioner has not clearly established [REDACTED] authority or knowledge of the beneficiary's achievements.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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).

6. 8 C.F.R. § 214.2(o)(3)(iv)(B)(6)

The sixth and final criterion requires the petitioner to submit 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 stated that the beneficiary meets this criterion based on her proffered annual salary of \$60,000. As a point of comparison, the petitioner relied on the median hourly earnings of dancers as of May 2006, as reported in the Department of Labor's *Occupational Outlook Handbook*. The petitioner emphasized that the highest 10 percent of dancers earned \$25.75 per hour.

The director found that the petitioner satisfied this evidentiary criterion. The AAO disagrees with the director's determination. The data provide by the petitioner was two years old at the time of filing and pertained to dancers and not salaried dance instructors. Furthermore, given that the petitioner indicates that the beneficiary will be employed on a full-time basis, her proffered salary of \$60,000 would be equivalent to an hourly wage of \$28.85 per hour, which is not substantially higher than the data cited by the petitioner.

In light of the foregoing, the petitioner has failed to submit evidence that satisfies three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). As discussed above, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. In accordance with the *Kazarian* opinion, as the petitioner has failed to meet the evidentiary criteria, we need not conduct a final merits determination.

While the beneficiary has achieved considerable success as a dance performer in her home country of Israel, the petitioner has not established through submission of the required evidence that she has achieved the same success as a dance instructor. Overall, the record does not establish that the beneficiary has extraordinary ability in the

arts which has been demonstrated by a high level of achievement in the field, and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act. The petitioner submitted no evidence that the beneficiary has received a significant national or international award or prize, and the documentation submitted does not satisfy three of the six evidentiary criteria specified in the regulations at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act and the petition must be denied.

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

ORDER: The appeal is dismissed.