

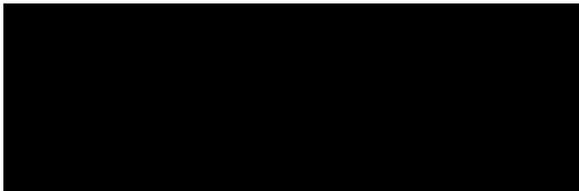
**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



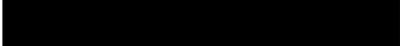
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



88

FILE: EAC 09 160 52014 Office: VERMONT SERVICE CENTER Date: **SEP 17 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: SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner, a ballet company, 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), as an alien with extraordinary ability in the arts. The petitioner seeks to employ the beneficiary as a professional ballet dancer for a period of approximately 46 months.¹

The director approved the petition on May 27, 2009, granting the beneficiary O-1 classification for a period of nine months. On July 23, 2009, the director issued a notice of intent to revoke the approval, advising the petitioner that, upon further review of the beneficiary's credentials, it does not appear that she is qualified for the benefit sought. The director revoked the approval of the petition on November 24, 2009, after reviewing the petitioner's response to the notice of intent to revoke.² In revoking the approval, the petitioner determined that the evidence submitted satisfied only one of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which three are required to establish eligibility.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the beneficiary is "a principle [*sic*] dancer of the highest standard." The petitioner further emphasizes that it has no *corps de ballet* dancers in its company and accepts only those at the principal level. The petitioner submits additional testimonial evidence 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.

¹ Pursuant to the regulations at 8 C.F.R. 214.2(o)(6)(iii), an approved petition for an alien classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

² The director initially issued a one-page summary notice of revocation on October 28, 2009. The second notice was issued to correct the deficiencies of this notice. When denying a petition, a director has an affirmative duty to explain the specific reasons for the denial; this duty includes informing a petitioner why the evidence failed to satisfy its burden of proof pursuant to section 291 of the Act, 8 U.S.C. § 1361. *See* 8 C.F.R. § 103.3(a)(1)(i). The AAO will consider the petition properly revoked as of November 24, 2009.

Section 101(a)(46) of the Act states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

Pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii) pertaining to aliens of extraordinary ability in the arts, "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, that:

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)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

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.

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

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

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

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

Id. at *3.

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

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

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

- (A) *Grounds for revocation.* The Director shall send to the petitioner a notice of intent to revoke the petition in relevant part if it is determined that:
 - (1) The beneficiary is no longer employed by the petitioner in the capacity specified in the petition;
 - (2) The statement of facts contained in the petition was not true and correct;

- (3) The petitioner violated the terms or conditions of the approved petition;
- (4) The petitioner violated the requirements of section 101(a)(15)(O) of the Act or paragraph (o) of this section; or
- (5) The approval of the petition violated paragraph (o) of this section or involved gross error.

(B) *Notice and decision.* The notice of intent to revoke shall contain a detailed statement of the grounds for revocation and the time period allowed for the petitioner's rebuttal. The petitioner may submit evidence in rebuttal within 30 days of the date of the notice. The Director shall consider all relevant evidence presented in deciding whether to revoke the petition.

In the present matter, 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), 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 ballet dancer. 8 C.F.R. § 214.2(o)(3)(ii). Accordingly, for the reasons discussed below, the AAO finds that the director properly revoked the approval of the petition pursuant to 8 C.F.R. § 214.2(o)(8)(iii)(A)(5).

II. Discussion

The record of proceeding contains the Form I-129, Petition for a Nonimmigrant Worker and supporting documentation, the director's notice of intent to revoke, the petitioner's response to the notice of intent to revoke, the director's notice of revocation, and the petitioner's appeal.

The beneficiary in this matter is a native and citizen of Japan who was 19 years old as of the date of filing. According to the beneficiary's resume, she has been training in ballet in Japan, Canada, and the United States since 2000. The beneficiary has performance experience with various ballet studios and lists her only professional experience in her recent role as an apprentice with the petitioner's company, since 2008. The evidence submitted in support of the petition includes numerous testimonial letters, programs for some of the beneficiary's performances, and copies of awards the beneficiary received in Japan. The petitioner filed the petition without reference to the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv) and it is unclear under which criteria the petitioner seeks to establish eligibility.

The director initially approved the petition on May 27, 2009. The director issued a notice of intent to revoke on July 23, 2009, but did not cite to the specific grounds for revocation. Upon review, the director revoked

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

The term "gross error" is not defined by the regulations or statute. Furthermore, although the term has a juristic ring to it, "gross error" is not a commonly used legal term and has no basis in jurisprudence. *See Black's Law Dictionary* 562, 710 (7th Ed. 1999)(defining the types of legal "error" and legal terms using "gross" without citing "gross error"). The word "gross" is commonly defined first as "unmitigated in any way: UTTER," as in "gross negligence." *Webster's II New College Dictionary* 491 (2001).

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

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

A. The Beneficiary's Eligibility under the Evidentiary Criteria

The petitioner states that the evidence submitted in support of the petition establishes the beneficiary's extraordinary ability in the arts. In revoking the approval of the petition, the director determined that the evidence submitted meets only one of the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for revocation.

As noted above, 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 appear to claim that the beneficiary qualifies for O-1 classification on the basis of her nomination for or receipt of such an award. The petitioner has submitted evidence of the beneficiary's receipt of the following awards:

- Award of Excellence in Classical Ballet, 35th All Japan dance competition in Saitama, awarded by [REDACTED]
- Award of Excellence in Classical ballet category, 7th All Japan NBA ballet competition, January 8, 2004
- [REDACTED] All Japan dance competition in Yokohama, May 4, 2004
- [REDACTED] All Japan dance competition in Yokohama, May 4, 2004
- [REDACTED] All Japan dance competition in Saitama, awarded by Saitama Prefecture Dance Association, July 30, 2004

The petitioner provided copies of the beneficiary's certificates for these awards, which she achieved in competitions when she was between the ages of 14 and 16. However, the petitioner provided little background information regarding the awards or competitions, and it cannot be concluded based on the limited testimonial evidence in the record that such awards are comparable in importance to the highly recognizable awards mentioned in the regulations. For example, Ms. Sachiko Ogura, owner of Ogura Sachiko Ballet Conservatory, provided the following information regarding the beneficiary's competition results:

In 2001, she got a special prize [REDACTED]. She won second prize [REDACTED] when she was in Ogura Sachiko Ballet Conservatory. She got this prize in 300 people at the big competition in Japan. These competitions seek to recognize her talent as a dancer.

[REDACTED] a dancer with the Tokyo Ballet who studied with the beneficiary in Japan, also states that the beneficiary "was a finalist in many competitions that included over 300 candidates and won most of them." [REDACTED] a former instructor of the beneficiary's, simply states that the beneficiary "received several awards and prizes in dance competitions held in her native Japan."

The testimonial evidence alone fails to provide sufficient context in which to evaluate the significance of the beneficiary's awards. 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)). As

such, the petitioner has not established that the beneficiary has won a significant national or international award or prize in her field.

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). As noted above, it is unclear which criteria the petitioner is attempting to meet and therefore, the AAO will consider all six criteria.

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

The petitioner submitted programs for the beneficiary's performances in its productions of *Sleeping Beauty*, *The Nutcracker*, and *Dracula*. However, this evidence fails to establish that the beneficiary performed in a lead or starring role in any of these productions. The beneficiary danced the roles of "Fairy" and "Jewel" in *Sleeping Beauty*, the roles of "Soldier," "Snow" and "Flower" in the *Nutcracker*, and the role of "Vampire" in *Dracula*, in which she also performed as one of many dancers in the "Romanian scene," "Picnic" and "Ball." Most of the roles appear to be ensemble roles that fail to rise to the level of a featured dancer, much less a leading dancer, within the scope of these productions. The beneficiary is identified as an "apprentice" in the dancer biographies that are included in the programs.

Furthermore, the petitioner has not submitted critical reviews, advertisements, publicity releases, publications or other evidence to establish that the events themselves have a distinguished reputation, as required pursuant to the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). 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.

The petitioner has also submitted programs for the 16th and 17th Annual School of Alberta Ballet Annual Performances. The record shows that the beneficiary completed the School of Alberta Ballet's pre-professional course from 2006 until 2008. Again, the petitioner has not submitted critical reviews, advertisements, publicity releases or other evidence to establish the distinguished reputation of this event. On appeal, the petitioner submits a letter from [REDACTED] who states that the beneficiary performed "solo and principal roles such as the *Shadows* principal role, a solo from [REDACTED] and many others." The submitted performance programs list the beneficiary as performing as one of 19 dancers in *Shadows*, and a *Pas de Trois* from [REDACTED] along with the Aurora role. Upon review of the programs, it appears that this annual performance serves as a showcase for all of the school's ballet students, and it cannot be determined based on the programs alone that the beneficiary provided services in a lead or starring role in these pre-professional productions.

The petitioner submitted similar evidence relating to the annual presentations of the Sachiko Ogura Ballet Studio in Japan, along with a letter from [REDACTED] currently a principal dancer with the Tokyo Ballet. [REDACTED]

major newspapers, trade journals, magazines or other publications. The petitioner has not submitted evidence of any critical reviews or any other published materials by or about the beneficiary in any type of publication. Accordingly, the petitioner has not satisfied the 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 petitioner has submitted several testimonial letters in support of the petition. However, few of the letters provide information that is relevant to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). [REDACTED] of Ogura Sachiko Ballet Conservatory and the beneficiary's former teacher, states:

In 2006, [the beneficiary] passed an audition for the Pre-Professional course at the School of Alberta Ballet. She graduated this course in 2008. She danced for important dancing roles in the school. Also, she was chosen for important dancing roles by guest teachers from both the Europe and the United States.

[REDACTED] the beneficiary's former instructor at the School of Alberta Ballet, states:

[The beneficiary] proved herself to be a very strong dancer often chosen for important dancing roles, not only by ourselves but also by guest teachers from both the Europe and the United States.

Finally, as noted above, [REDACTED] of Dance/USA stated:

[The beneficiary] has performed in such classical ballets as *Le Corsaire*, *Don Quixote*, *Coppelia*, *The Sleeping Beauty*, *Serenade* and *The Nutcracker*. In 2007, [the beneficiary] had the honor of performing with The Moscow Ballet Company in their production of *Swan Lake*.

None of the remaining letters mention the beneficiary's roles with respect to any specific organizations or establishments and thus do not satisfy the plain language of the regulations. The director determined that the evidence submitted failed to establish that the beneficiary has held any lead or starring roles.

On appeal, the petitioner submits several new testimonial letters in which the authors are more specific regarding the beneficiary's prior performance experience. [REDACTED] who studied with the beneficiary at Sachiko Ogura Ballet Studio, states that the beneficiary "danced solo part and principal roles: Medora (*Le Corsaire Pas de deux*), Swanilda (*Coppelia*), Princess Aurora (*Sleeping Beauty*) and many other roles." [REDACTED] states in a letter dated December 20, 2009 that the beneficiary "performed solo and principal roles

such as the *Shadows* principal role, a solo from *Paquita*, Aurora from *Sleeping Beauty*, and many others," during her time at The School of Alberta Ballet.

Upon review, the petitioner has not established that the beneficiary has performed in lead, starring or critical roles for organizations or establishments that have a distinguished reputation. The majority of the beneficiary's performances to date have been as a ballet student, rather than as a professional dancer, and the specific roles mentioned appear to have taken place within the context of annual student showcases rather than professional productions that have a distinguished reputation. As discussed above, the petitioner has not established that the specific productions in which the beneficiary performed have a distinguished reputation. Further, the petitioner has provided no independent evidence to establish that The School of Alberta Ballet or Ogura Sachiko Ballet Studio have a distinguished reputation, and the testimonial letters submitted do not address the reputation of these organizations.

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. The petitioner has not submitted any documentary evidence that would establish that it enjoys a distinguished reputation in the field of ballet, nor has it articulated or documented how the beneficiary will serve in a lead, starring or critical role that would set her apart from dancers it already employs. The petitioner claims on appeal that it considers all of its dancers to be "principal" dancers, and it is not apparent that the beneficiary would serve in a critical role in future productions as a recently-promoted apprentice.

Based on the foregoing, the AAO concurs with the director that the submitted evidence does not satisfy the criterion 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 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

This criterion specifically requires documentation of commercially or critically acclaimed successes as reported in publications. The petitioner has not submitted evidence to demonstrate that any of the beneficiary's performances or competition results have been mentioned in any trade journals, major newspapers, or other publications, much less established that she has a record of major commercial or critically-acclaimed successes as a dancer. Accordingly, the AAO concurs with the director's determination that the evidence submitted does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

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

In the director's decision, he concluded that the petitioner established eligibility for this criterion without specifically addressing the evidence upon which this conclusion was based. Upon review, we find the director's determination must be withdrawn.

The petitioner has submitted numerous testimonial letters in support of the petition. This evidence includes two letters from [REDACTED] and [REDACTED]

[REDACTED] In a letter dated April 10, 2009, [REDACTED] stated that the beneficiary "showed a singular talent," and noted that "her ability in dancing contains not only excellent technique but also great musical ability." [REDACTED] referenced the beneficiary's Japanese dance competition awards and noted that she graduated from the School of Alberta Ballet. In a second letter dated December 20, 2009, [REDACTED] states that the beneficiary "has proved her remarkable strength and technical ability," and remarks upon her dance awards and role with the School of Alberta Ballet. She further states:

[The beneficiary] is a dancer who constantly expresses joy, enthusiasm, passion and overall respect for the art form. She has an excellent work ethic, and respect with all the people she work with. Her passion and commitment demonstrated her love for dance and how much she wants to become a great dancer every day. Her ability in dancing contains not only excellent technique but also great musical ability. Her talent is unmistakable. She is an extremely talented classical dancer who has an elegant and charismatin [*sic*] stage presence and extraordinary classical technique.

The petitioner has also submitted two letters from [REDACTED] In a letter dated February 24, 2009, [REDACTED] confirms the beneficiary's attendance at the school and states:

We have always found [the beneficiary] to be an excellent worker with an exceptional technical ability and a warm, but strong stage personality.

[The beneficiary] proved herself to be a very strong dancer often chosen for important dancing roles, not only by ourselves but also by guest teachers from both the Europe and the United States.

Very musical, with an openness and willingness to work hard at whatever is presented to her, [the beneficiary] would be a dancer of value to any company.

On appeal, the petitioner submits a letter from [REDACTED] dated December 20, 2009. [REDACTED] notes that the beneficiary performed solo and principal roles while with the School of Alberta Ballet in 2007 and 2008, and states that she "obviously demonstrated extraordinary artistic qualities and high professionalism in her performances." [REDACTED] further opines:

[The beneficiary] brought a bright light and unfathomable reserve of energy to the stage. As a professional dancer I would like to state that [the beneficiary] has an extraordinary talent as a ballet dancer: her strong technique, stage presence, sense of musicality and style are truly outstanding.

The petitioner has also submitted a letter dated February 15, 2009 from [REDACTED], teacher at the School of Alberta Ballet. [REDACTED] states that the beneficiary "is an extremely talented classical dancer who possesses an ability to adapt to and exceed in any dance vocabulary that is presented to her." He notes that the beneficiary "demonstrated high professionalism and has always strived for excellence," and that "her natural talent coupled with her wonderful work ethic have earned the respect of her peers as well as her teachers."

[REDACTED] who was contacted by the petitioner for a consultation, states that, upon review of the beneficiary's documentation, "[the beneficiary] is considered to be a dancer of extraordinary strength and ability and is a credit to [the petitioner]."

The petitioner has also provided a letter from professional dancer [REDACTED] of the Tokyo Ballet, who states:

[The beneficiary] and I had studied at Sachiko Ogura Ballet Studio. I am intimately familiar with [the beneficiary's] work through the years. [The beneficiary] is an artist who succeeded because of her love of the dance. Her technical abilities are complete. As a professional artist at the very top of my profession, I am completely qualified to state that [the beneficiary] is a professional whose strength of ballet technique and musical sensitivity will be recognized in the United States or anywhere else.

The initial petition included a support letter from [REDACTED] a member of the Asami Maki Ballet. [REDACTED] states:

I work with many professional ballet dancers every day, and in my opinion [the beneficiary] is one of the very best. I am very familiar with [the beneficiary's] work in dance. She was a student of mine and I have seen all of her work. Her work as a ballet dancer is exemplary and it is a privilege for me to be making this recommendation on her behalf. She is truly exceptional, a unique talent. She brings the highest artistic standards to her art form. I have no hesitation in stating that [the beneficiary] has an extraordinary ability in ballet in terms of her level of inspired expertise.

The petitioner submitted a brief letter dated February 23, 2009 from Alexander Tressor, artistic director of TressorGroup Inc. [REDACTED] states that the beneficiary been studying with him in New York and indicates that the beneficiary is "an outstanding representative of classical training and ballet tradition."

Finally, the petitioner submitted a letter from [REDACTED] director of the Japan Grand Prix junior ballet competition and associate professor at the Taipei National University of the Arts. [REDACTED] states that he has known the beneficiary "as a very talented student of ballet in Japan and as the accomplished professional dancer she has become." He further states:

[The beneficiary] is an equal to anyone at the top of the profession. Besides being a wonderful artist and spectacular technician, she is a most respectful, gracious and sensitive human being.

Her gifts as a ballet dancer distinguish her in the world of dance. Her being allowed the honor of continuing her work in the United States would be to the credit of American dance.

The remaining letters, while highly complimentary to the beneficiary, are not from individuals who can claim to be recognized experts in the field of ballet, and therefore do not satisfy the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). Briefly, the remaining testimonial evidence includes: (1) a letter from [REDACTED] a Japanese Kabuki actor; (2) a letter from [REDACTED], Chief of Information and Processing and Acquisitions, Department of Public Relations, United Nations, who states that he is a close friend of the beneficiary's uncle; (3) a letter from [REDACTED] at the Embassy of Canada in Tokyo, Japan, who states that she is a close friend of the beneficiary's mother; and (4) a letter from [REDACTED] an author with apparent ties to the Japanese government, who states that she has seen the beneficiary perform in Japan.

Upon reviewing the evidence from experts in the field of ballet, we note that nearly all of the letters submitted are from the beneficiary's own employers, current and former teachers, and colleagues, and primarily discuss the beneficiary's innate talent, work ethic, personal traits, and artistry rather than her *achievements* as a ballet dancer. 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 Matter of Caron International*, 19 I&N Dec. 791, 795-96 (Comm. 1988); *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. The content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of a nonimmigrant petition are of less weight than preexisting, independent evidence of recognition for achievements in the field.

Although a few of the testimonials mention the beneficiary's dance awards received in Japan between 2002 and 2004, as discussed above, the scope and significance of these competitions has not been established through any corroborating evidence. The AAO notes that the sole independent opinion the petitioner provided, from Amy Fitterer of Dance/USA, does not mention such awards. While [REDACTED] concludes that the beneficiary is a "dancer of extraordinary ability," it is unclear on what she based this conclusion. Based on her recitation of the beneficiary's experience, it appears that she simply reviewed the beneficiary's resume, which, as noted above, reveals that the beneficiary's only professional experience to date is as an

apprentice with the petitioner's ballet company. She offers no explanation as to how the beneficiary's achievements to date are recognized in the field.

Based on the foregoing discussion, the petitioner has not submitted evidence to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(5).

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

The petitioner stated on Form I-129 that it will offer the beneficiary wages of \$200 to \$400 per week and provide for her housing. The petitioner's contract with the beneficiary indicates that she will receive \$200 per week, plus housing valued at \$882 per month. The petitioner did not establish through the submission of reliable evidence that the beneficiary's offered monthly compensation of approximately \$1,700 meets the criteria of a "high salary" for a professional ballet dancer. Such evidence could include statistical comparisons of the salaries in the field of endeavor. Accordingly, the petitioner has not submitted evidence to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(6).

B. Final Merits Determination

Kazarian sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. However, as discussed above, the petitioner established eligibility under none of the eligibility criteria, of which three are required under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Notwithstanding the above, a final merits determination considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) 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 renowned, leading, or well-known in the field of arts, pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary is recognized as being prominent in her field, pursuant to 8 C.F.R. § 214.2(o)(3)(iii). *See Kazarian*, 2010 WL 725317 at *3.

In this case, we concur with the director's finding that the petitioner has not established that the beneficiary has a high level of achievement in the arts evidenced by recognition substantially above what is ordinary encountered or that the beneficiary is prominent to the extent that she could be considered renowned, leading or well-known in the field of ballet.

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). The petitioner submitted documentation relating to the beneficiary's education, employment history, and achievements. The submitted evidence is not indicative of the beneficiary's prominence in the field and there is no indication that her

individual achievements have been recognized to the extent that she is leading, renowned or well-known in her field.

This classification focuses on the beneficiary's individual achievements and recognition within her field. The petitioner has provided little evidence of such recognition beyond providing testimonials from the beneficiary's current and prior employers, teachers and colleagues and has failed to establish that the beneficiary has already risen to the level where she is performing lead or critical roles for organizations or productions that have a distinguished reputation.

The AAO notes that four out of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B) require the petitioner to submit various types of published materials to establish the beneficiary's recognition. Therefore, it is significant that the petitioner has not submitted any evidence that the beneficiary's name has ever appeared in any publication. Absent evidence that the regulatory criteria are not applicable to the beneficiary's occupation, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(C), the petitioner must submit some published materials about the beneficiary in order to establish her eligibility for this classification. It is impossible to include the beneficiary among the group of dancers recognized in the field as leading, renowned or well known if the petitioner does not establish that she has received some publicity based on her reputation or achievements.

Notwithstanding the several opinions in the record, the fact remains that the evidence consists almost entirely of testimonial evidence. Furthermore, it must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim.³ Unusual in its specificity, section 101(a)(15)(O)(i) of the Act clearly requires "extensive documentation" of the alien's achievements. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, as noted above, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* Here, all but one of the persons providing testimonial evidence are personally acquainted with the

³ Letters may generally be divided into two types of testimonial evidence: expert opinion evidence and written testimonial evidence. Opinion testimony is based on one's well-qualified belief or idea, rather than direct knowledge of the facts at issue. *Black's Law Dictionary* 1515 (8th Ed. 2007) (defining "opinion testimony"). Written testimonial evidence, on the other hand, is testimony about whether something occurred or did not occur, based on the witness' direct personal knowledge. *Id.* (defining "written testimony"); *see also id.* at 1514 (defining "affirmative testimony").

Depending on the specificity, detail, or credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

beneficiary, and have worked as her teachers, employers or fellow students. Again, when written by independent experts, testimonials solicited by an alien in support of a nonimmigrant petition are of less weight than preexisting, independent evidence of recognition in the field.

The conclusion we reach by considering each evidentiary criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as a dancer who has achieved a level of distinction to the extent that she is considered renowned, leading, or well-known in the field of ballet. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary, an apprentice dancer recently promoted to a full company member, relies primarily on the praise of her teachers and acquaintances. While the evidence may distinguish the beneficiary from other young ballet dancers with less formal training and innate talent, the petitioner must establish that the beneficiary is recognized based on her own reputation as leading, renowned, or well-known compared to other professional ballet dancers.

Nothing in the decision of the AAO should be seen as an attempt to minimize the accomplishments or obvious talent of the beneficiary or as a comment on the criteria used by the petitioner to select persons for positions. Indeed, as many of the testimonial letters make clear, the beneficiary shows great promise and potential in the field of ballet and appears to be on a path that could lead her to the type of prominence required for this visa classification.

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.