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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



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

28

DATE: **APR 05 2011** Office: VERMONT SERVICE CENTER

FILE: A87 980 420
EAC 10 057 51177

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

If you believe the 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 \$630. 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, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal.¹ The AAO will dismiss the appeal.

The petitioner, a gymnastics instruction center, 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 athletics. The petitioner seeks to employ the beneficiary in the position of Gymnastics Trainer/Coach for a period of two years. The beneficiary was previously granted O-1 status for employment with an unrelated entity; therefore, the petitioner requested that he be granted an extension of status.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that he is one of the small percentage who has risen to the very top of his field as a gymnastics coach. The director further found that the petitioner failed to establish that the beneficiary has maintained any legal nonimmigrant status since his last admission to the United States in 2003.

At the outset, it must be noted that Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 101(a)(15)(O)(i) of the Act. The implementing regulation at 8 C.F.R. § 214.2(o)(3)(iii)(A) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines categories of specific objective evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8). The petitioner must submit qualifying evidence for the alien under at least three of the eight regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the director erroneously determined that there is no nexus between the beneficiary's extraordinary ability as a gymnastics athlete and his credentials and skills as a gymnastics/sport acrobatics trainer and coach. Counsel contends that the evidence submitted, including new evidence submitted on appeal, is sufficient to meet four of the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), of which only three are required to establish the beneficiary's eligibility for the requested classification.

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

I. The Law

¹ The petitioner timely filed the appeal on March 23, 2010. The director treated the appeal as a motion to re-open or reconsider and dismissed it as untimely filed, pursuant to 8 C.F.R. § 103.5(a)(4), on April 21, 2010. The petitioner filed a motion to re-open on July 30, 2010. On October 5, 2010 the director advised the petitioner that its appeal was in fact timely filed, apologized for the error, refunded the petitioner's filing fee for the motion to re-open, and forwarded the appeal to the AAO. The director's decision dated April 21, 2010 is withdrawn.

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 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 lower standard for the arts).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum, Lawrence Weinig, Acting Asst. Comm'r., INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

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

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:

- (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
 - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

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).

The court stated that the AAO's evaluation 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 1122 (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 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*. 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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

II. Discussion

A. *Intent to Continue to Work in the Area of Extraordinary Ability in the United States*

This petition, filed on December 23, 2009, seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics trainer/coach. The statute and regulations require that the beneficiary seek to continue work in his area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). The beneficiary was previously granted O-1 classification for a coaching position in sports acrobatics. The record is clear that the beneficiary intends to continue to work in the area of gymnastics coaching in the United States and is no longer a competitive athlete or performer.

Aside from his work in the United States as a gymnastics coach, the record includes evidence showing that the beneficiary competed successfully in national and international gymnastics competitions in the 1980s until 1990, and that he was a member of the Georgian National Sports Acrobatics team from 1986 until 1990. While a competitive gymnast and a coach may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

Id. at 918. The court noted a consistent history in this area. While the record demonstrates that the beneficiary intends to continue working as a gymnastics coach, there is no evidence indicating that he intends to compete as a gymnast in the United States. We acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a gymnastics coach and a competitive gymnast, but the O-1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability. In this case, there is no evidence establishing that the beneficiary intends to continue working in the United States as a competitive gymnast. Although the beneficiary's competitive accomplishments as a gymnast are not completely irrelevant and will be given consideration, ultimately he must satisfy the statutory requirement at section 101(a)(15)(O)(i) of the Act as well as the regulations at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B) through his achievements as a coach.

USCIS recognizes that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence in the aggregate in the final merits determination. Specifically, in a case where an alien has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, 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 coaching is within the petitioner's area of expertise. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

B. The Beneficiary's Eligibility under the Evidentiary Criteria

The beneficiary in this matter is a native and citizen of Georgia. He competed in the field of sports acrobatics at a national and international level between 1986 and 1990. He graduated from the Georgian Institute of Physical Culture in 1994, with the qualification of "Instructor of Physical Culture, Trainer." From 1994 to 2000, he was a teacher of physical culture at a secondary school in Tbilisi, Georgia. The beneficiary was admitted to the United States in July 2003 in P-1 status to work as a circus acrobat/performer, and in 2007, he was granted O-1 status for employment as a sports acrobatics coach.²

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to the Nobel Prize as an example of a major award. *Id.* Given that the regulations specifically cite to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The director determined that the petitioner submitted no evidence to meet this criterion, and the petitioner has raised no objection to this finding.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).³

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

The petitioner has submitted evidence of the beneficiary's receipt of the following awards as a competitive athlete in sports acrobatics, which is also referred to in the record as "sportive acrobatics" and "acrobatic gymnastics." The President of the United Gymnastics Federation of Georgia certifies that the beneficiary was a member of the

² The director noted in his decision that USCIS records reflect that the P-1 petitions filed on the beneficiary's behalf had been revoked.

³ The petitioner has not claimed to meet or submitted evidence relating to the criteria not discussed in this decision.

Georgian combined team from 1986 to 1990 and a Georgian champion in "fellows group trainings." The beneficiary's awards include the following:

- 1986 - First place, Men's Groups, Sports Acrobatics Competition, International Tournament "Friendship 86" among the [REDACTED], issued by the Yerevan City Sports Committee
- 1987 – First place, Georgian Cup
- 1988 - First place, Georgian Union Games
- 1988 - First place, Georgian Cup
- 1988 - First place, Men's Group Exercises among the Youth at the Soviet Army and Navy Championship in the Sports Acrobatics, issued by the Sports Committee of the USSR Ministry of Defense
- 1988 - Third place, Final competition of the All Union Youth Summer Sports Games in Acrobatics
- 1989 – First place, Georgian Championship
- 1989 – First place, Men's Group Exercises, Youth IV All-Union Summer Sports Games in Acrobatics, issued by the USSR State Committee of Physical Culture and Sports
- 1989 – First place, Championship of the USSR
- 1989 – Third place, World Junior Championships in Sports Acrobatics
- 1990 – First place, Georgian Cup
- 1990 – Second place, Championship of the USSR
- 1990 – First place, All-Around competitions at the Soviet Army and Navy Championship in the Men's Group Exercises
- 1990 – First place, Cup of the USSR

The petitioner provided copies of the beneficiary's award certificates and medals, as well as copies of two [REDACTED] articles reporting the beneficiary's results at the 1989 World Championship (as a member of the Soviet Union team), and at the 1988 Georgia Cup competition.

The AAO finds sufficient evidence to establish that the beneficiary received nationally or internationally recognized prizes or awards. However, these awards were the result of the beneficiary's achievements as a competitive athlete more than 19 years prior to the filing of the petition. Subsequent to 1990, there is no evidence indicating that the beneficiary (age 38 at the time of filing) has remained active as a competitor in national or international gymnastics events.

As the petitioner clearly seeks to employ the beneficiary as a gymnastics trainer/coach, the "area of extraordinary ability" for which classification is sought is coaching. There is no evidence indicating that the beneficiary seeks to work in the United States as a competitive gymnast. The preceding awards all resulted from the beneficiary's accomplishments as a competitive gymnast some two decades ago, thus they cannot be considered evidence of his sustained national or international recognition as a coach. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in his area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R.

§ 214.2(o)(3)(i). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. There is no evidence showing that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in coaching. In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence showing that the beneficiary represented the Soviet Union in the 1989 Junior World Championships in sports acrobatics and was a member of the [REDACTED] until 1990. The petitioner also submitted evidence showing that the beneficiary was designated as a "USSR [REDACTED] in 1988. In this case, "the field for which classification is sought" is coaching. We note that the beneficiary achieved the preceding honors based on his ability as a competitive athlete, not as a coach. Accordingly, the beneficiary's athletic accomplishments as a member of the USSR's national gymnastics team and designation as a USSR Master of Sports, before he was active as a coach, cannot serve to meet this regulatory criterion.

The petitioner also submitted a copy of the beneficiary's current [REDACTED] indicating that he is a "Professional Member." There is no evidence (such as membership bylaws) showing that [REDACTED] requires outstanding achievements, as judged by recognized national or international experts in the beneficiary's field or an allied one.

As indicated above, the plain language of this regulatory criterion requires evidence of the "alien's membership in associations in the field for which classification is sought." In this case, the field for which classification is sought is gymnastics coaching. There is no evidence indicating that the beneficiary seeks to work in the United States as a competitive gymnast. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in his area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. As such, the beneficiary's participation as a competitor on the 1989 Soviet World Championship team and his Master of Sports title based on his accomplishments as a gymnast in the 1980s do not meet the elements of this criterion for purposes of establishing his extraordinary ability as a coach.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be primarily "about" the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

The petitioner submitted an article titled "Success at the World Championship," from the December 5, 2009 issue of the [REDACTED]. The article mentions the success of the Soviet Union team at the Junior World Championship held in Latovitze, Poland, and specifically the achievements of Georgian members of the team. The beneficiary's name is mentioned among the four bronze medalists in the male group category. The petitioner submitted a second article titled "Sportive Acrobatics: Six First Place Finishes" from the [REDACTED] [REDACTED] published November 5, 1988. The article mentions that Georgian athletes won six first place awards at the Georgia Cup Competition, and indicates that the beneficiary was a member of the four-person group that won first place in the "male group exercises" event.

The AAO notes that neither of these articles, which simply report team results at athletic events, could be considered to be "about the beneficiary."⁵ We have already acknowledged the significance of the beneficiary's national and international awards earned as an athlete and these articles merely confirm the beneficiary's receipt of those awards. Furthermore, both of these articles reflect the beneficiary's accomplishments as a gymnast rather than his accomplishments as a gymnastics coach. The plain language of this regulatory criterion requires published material "about the alien . . . relating to the field for which classification is sought." We cannot conclude that the preceding material relates primarily to the beneficiary's work as a coach. Further, there is no evidence (such as circulation statistics) showing that either of the above-referenced Georgian publications qualify as "major media."

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

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

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

⁵ See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The certification issued on the beneficiary's behalf by the United Gymnastics Federation of Georgia indicates that the beneficiary has been "awarded the rank of First Class Judge in Sport Acrobatics." The petitioner indicated that this evidence is "meant to illustrate that [the beneficiary] has the qualifications to participate as a judge of others in the field and that he has been authorized by the Georgian National United Gymnastic Federation to perform this duty in the past."

The director determined that the petitioner "failed to submit any information to indicate that the beneficiary actually participated in any event as a judge." The AAO concurs with the director's finding that neither the initial evidence nor the petitioner's response to the request for evidence included direct evidence of the beneficiary's credentials as a judge in the sport of gymnastics, or evidence of his participation as a judge in any gymnastics events.

On appeal, counsel asserts that "the beneficiary was awarded the rank of First Class Umpire in Sport Acrobatics," and that he participated as a judge in gymnastics events between 2000 and 2003. Counsel asserts that "this status is only given to an individual who has reached and earned a specific degree of respect for his excellence and achievement in his field."

The petitioner submits for the first time on appeal a "Certificate of Referee" in artistic gymnastics, issued in March 2001, which bears the stamp of the [REDACTED]. The document indicates that the beneficiary was a referee at the Georgian Championship in September 2000, at the Open Championship of Tbilisi in April 2001, at the Georgian Championship in August 2001, and at the Championship of Georgia in May 2002. One additional event is listed in the document, the "Championship of Georgia," but the date of the event is incomplete. The document indicates that the beneficiary's "awarded category" as a referee is "Republican."

The petitioner has not established that a "referee" is in fact equivalent to a "judge" within the sport of artistic gymnastics, nor has it established the significance of the beneficiary's "Republican" category. Absent additional information from a reliable source such as the [REDACTED] explaining the official duties of a referee, the AAO cannot conclude that this official is responsible for judging or scoring athletes in competition. Furthermore, we note that, although the "Certificate of Referee" indicates on its face that it was issued on March 17, 2001, it appears to document the beneficiary's participation as a referee in at least one event that occurred nearly a year before its issuance. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

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

The director determined that the petitioner did not claim to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). On appeal, counsel emphasized that the petitioner provided recommendations from persons in the entertainment field which were submitted "to illustrate both the beneficiary's prowess in his specific field as well as his importance to those specific organizations." Counsel emphasized that the petitioner submitted a total of five letters from agencies who "require and look for the best individuals in unique specialty acts" and "seek athletes with the highest skill and expertise." Counsel indicates that the individuals who provided testimonial evidence "have all indicated that the beneficiary was not only critical but also essential in the success of their various agencies."

Upon review, counsel's assertions are not persuasive. The beneficiary is seeking a position as a gymnastics coach/instructor. Testimonial evidence regarding his credentials as a circus acrobat cannot establish his sustained national or international acclaim in coaching.

In a letter dated May 28, 2005, [REDACTED] of [REDACTED] praises the beneficiary as "an extraordinarily talented and excellent performer," gives high praise to the beneficiary's aerial acrobatic routine, and commends the beneficiary on his infectious energy, and his "extraordinary, unusual and outstanding diversity of skills." He states that the beneficiary's abilities "made the show such wild success." He indicates that the beneficiary performed a Russian Bar Act "in such great shows as [REDACTED] and [REDACTED]" In a second letter dated June 18, 2005, [REDACTED] states that the beneficiary is an outstanding performer and "one of the best aerial web and acrobats I have ever seen." He states that the beneficiary is "integral to the success of the shows where he is engaged."

The petitioner also submitted a letter from [REDACTED] based [REDACTED] [REDACTED] states that he travels the world searching for new acrobatic talents, and indicates that the beneficiary's "aerial bar display . . . is artistically unique, very unusual and sophisticated act." He opines that the beneficiary "is valuable and excellent access [*sic*] to any circus, theme parks or casino shows."

The record includes a letter dated March 25, 2005 from [REDACTED] artistic director of [REDACTED] The letter is addressed to the beneficiary and indicates that [REDACTED] circus was honored to have the beneficiary's group as guest stars at their December 15, 2004 show. [REDACTED] writes: "You are very valuable, extremely talented and exceptional performer, blessed with an easy genuine personality that reach beyond the circus ring."

The petitioner submitted a letter dated March 28, 2005 which was addressed to the beneficiary from [REDACTED] artistic director of [REDACTED] She thanks the beneficiary for "two months of outstanding performances in our winter dates in Alabama, Georgia and Florida tour." [REDACTED] indicates that the [REDACTED] [*sic*] provided "exceptional entertainment" for audiences and provided "the needed excitement."

Finally, the petitioner relies on a letter dated May 28, 2005 from [REDACTED] Agency. [REDACTED] recommends the beneficiary as "an exceptional and extraordinary circus actor." He notes that beneficiary's "incredible performances as one of the four young acrobats/gymnasts and dancers at [REDACTED] [REDACTED] has led us to consistently request performance of the same act for third year

with the same company." [REDACTED] opines that the beneficiary's act "in nothing short of extraordinary and unique" and "always well-executed with professional costuming, make-up and top-line acting."

Upon review, this evidence fails to meet the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) for several reasons. First, as emphasized above, the petitioner clearly seeks to employ the beneficiary as a gymnastics trainer/coach, thus, "the area of extraordinary ability" for which classification is sought is coaching. There is no evidence indicating that the beneficiary seeks to work in the United States as a circus performer. As the preceding testimonial evidence relates to the beneficiary's accomplishments as a circus performer, it cannot be considered evidence of his national or international recognition as a gymnastics coach. As discussed above, the statute and regulations require that the beneficiary seeks to continue work in his area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. The petitioner has neither claimed nor submitted evidence to establish that the beneficiary has been employed as a gymnastics coach in a critical or essential capacity for an organization with a distinguished reputation.

Furthermore, even if the beneficiary's experience as a circus performer were directly relevant to his proffered position as a gymnastics coach, the evidence submitted fails to meet the plain language of this regulatory criterion. At best, the evidence indicates that the beneficiary is regarded as a very talented circus performer, rather than a critical or essential employee of a circus with a distinguished reputation. In fact, the petitioner submitted no corroborating evidence to establish the distinguished reputation of the organizations that provided letters. 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 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)).

In light of the above, the petitioner has not established that the beneficiary meets this criterion based on his coaching experience.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii).

C. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) 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. § 214.2(o)(3)(ii) and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* section 101(a)(15)(O)(i) of

the Act, 8 U.S.C. § 1101(a)(15)(O)(i) and 8 C.F.R. § 214.2(o)(3)(iii); *see also Kazarian*, 2010 WL 725317 at *3.

In evaluating our final merits determination, we must look at the totality of the evidence to determine the beneficiary's eligibility pursuant to section 101(a)(15)(O)(i) of the Act. As a competitive athlete in sports acrobatics, the beneficiary competed at a national and international level between 1986 and 1990, when he was 15 to 19 years old, and won a bronze medal in the junior world championships of his sport. The beneficiary's documented accomplishments as a gymnastics coach, however, fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and recognition for achievements in the field of expertise."

The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 214.2(o)(3)(iii), depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability." 8 C.F.R. § 214.2(o)(3)(ii).

In this case, the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

With regard to the beneficiary's awards as a competitive gymnast submitted for 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), there is no evidence indicating that the beneficiary has received any nationally or internationally recognized awards in his sport since 1990 or that he intends to continue competing as a gymnast in the United States. As discussed previously, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. §§ 1101(a)(15)(O)(i) and 8 C.F.R. §§ 214.2(o)(3)(i) and (iii). Accordingly, the beneficiary's awards and competitive results demonstrating his past record of success as a national and international gymnastics competitor from 1986 to 1990 are not an indication that he has sustained national or international acclaim as a competitive gymnast during the nineteen years preceding the petition's filing date. The petitioner has not established that the beneficiary has received any nationally or internationally recognized awards as a gymnastics coach.

Regarding the documentation submitted for 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), counsel points to the articles published in two Georgian newspapers, which "pointed out the beneficiary's individual achievements." However, there is no evidence showing that articles in these newspapers, or in any major publications, have been written about the beneficiary relating to his work as a gymnastics coach. The beneficiary's national awards as an athlete, which are mentioned in the submitted articles, are noted. However, the petitioner has failed to submit evidence in the form of published materials about the beneficiary that demonstrates that the beneficiary has sustained acclaim as a gymnastics coach. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

With regard to the documentation submitted for 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), the petitioner failed to submit supporting evidence to establish that the beneficiary's referee credentials and record from the United

Gymnastics Federation of Georgia establish that he has judged the work of others in the field of gymnastics. Again, we emphasize that we have no basis to conclude that a "referee" and a "judge" perform the same duties as gymnastics officials, or that a referee is responsible for judging and scoring athletes during competitive meets. Without additional documentary evidence establishing that the beneficiary has actually participated as a judge and that his activities involved judging top athletes at the national level or above (rather than age-group categories or junior competitors), we cannot conclude that his participation as a referee meets the plain language of this criterion, or that it was commensurate with sustained national or international acclaim.

The evidence submitted to satisfy the beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) relates solely to his career as a circus acrobat. The petitioner has not submitted evidence to establish that the beneficiary has been employed in a critical or essential capacity as a coach for an organization that has a distinguished reputation.

Beyond the categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii), the petitioner submitted several letters of support and an advisory opinion from USA Gymnastics. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters do not equate to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), and 8 C.F.R. § 214.2(o)(3)(iii). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals selected by the petitioner or the beneficiary.

With respect to the letter from [REDACTED] of USA Gymnastics, we acknowledge that this letter satisfies the petitioner's obligation to provide a written consultation from an appropriate entity, pursuant to 8 C.F.R. §§ 214.2(o)(2)(ii)(D) and 214.2(o)(5). Consultations are advisory and are not binding on USCIS. 8 C.F.R. § 214.2(o)(5)(i)(D).

[REDACTED] states:

USA Gymnastics is able to advise you that [the beneficiary] has been involved in gymnastics at the highest levels for Georgia for over twenty years. Until 1996, [the beneficiary] competed and then coached for Georgia who was a part of the dominate [*sic*] Soviet Republic and ranked as a perpetual world leader in the sport of gymnastics.

She describes the beneficiary as "an internationally renowned gymnastics coach" of "extraordinary stature."

As noted above, the beneficiary competed in the sport of gymnastics at the highest levels (or highest junior levels) of the sport between 1986 and 1990. [REDACTED] statement implies that the beneficiary then coached gymnastics at the highest level "for Georgia" until 1996. The record contains no supporting evidence indicating that the beneficiary ever coached the Georgian national team. The record shows that the beneficiary was admitted to the Institute of Physical Culture in 1988 and graduated in 1994 with the qualification

[REDACTED] The only position listed in the beneficiary's Georgian "Work

Records Book" is his position as a teacher of physical culture at [REDACTED] in [REDACTED] from August 20, 1994 until August 18, 2000. If the beneficiary was in fact a gymnastics coach at the highest level of competition for the Georgian team, the AAO finds it reasonable to find that position recorded in the beneficiary's official work records. Thus, while we acknowledge that [REDACTED] supports the beneficiary's petition, the AAO cannot exempt the petitioner from submitting evidence that satisfies the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B). The evidence of record simply does not support a conclusion that the beneficiary is an "internationally renowned gymnastics coach." While the beneficiary appears to possess the qualifications to be a gymnastics trainer/coach, the O-1 classification is not intended for persons who are merely well-qualified in their field.

The petitioner submitted recommendation letters from the beneficiary's peers, including [REDACTED]

[REDACTED] indicates that she was a member of the Georgian and Soviet national teams in sports gymnastics during the time the beneficiary was active in the sport. She describes the beneficiary as "a very talented and hardworking sportsman with a strong will of character," and states that he "is a high-quality specialist in sports gymnastics and acrobatics."

[REDACTED] indicates that he was a member of the Georgian sport acrobatics team from 1984 to 1994. He lists the beneficiary's athletic awards, and states that the beneficiary "is hard working, disciplined and organized sportsman with stable character." [REDACTED] a former gymnast for the Georgian team who is currently an International Judge, provided a similar letter. She notes that, in addition to the beneficiary's athletic achievements, he is "Master of Sport, Judge and extraordinary trainer."

[REDACTED] also a former member of the Georgian sport acrobatics team in the 1980s, summarizes the beneficiary's athletic achievements and notes that he is "Master of Sport, Judge and extraordinary trainer." [REDACTED] states that the beneficiary "brought up several champions of Georgia."

Finally, [REDACTED] states that he knows the beneficiary to be "a tremendous athlete and a highly skilled coach."

While three of the beneficiary's peers have positively endorsed the beneficiary's skill as a coach or trainer in gymnastics, such endorsements cannot be accepted in lieu of direct evidence of the beneficiary's sustained national or international acclaim as a gymnastics coach in accordance with the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 1988). 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, 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 an immigration petition

are of less weight than preexisting, independent evidence of achievements and recognition that one would expect of a gymnastics coach who has sustained national or international acclaim.

On appeal, the petitioner submits recommendation letters from several parents of young gymnastics students at the petitioner's training center, where it appears the beneficiary has already assumed the proffered position as a coach. The letters establish that the beneficiary is well-liked and highly regarded by these parents and their children; however, these endorsements do not establish the beneficiary's record of sustained national or international acclaim as a gymnastics coach.

We cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the beneficiary's sustained national or international acclaim. The petitioner seeks to rely primarily on vague testimonial letters rather than on any primary evidence of the beneficiary's achievements as a gymnastics coach. In fact, the only well-documented role held by the beneficiary as a trainer or coach is the beneficiary's Georgian work record, which reflects that he was an "instructor of physical culture" at a secondary school for approximately 6 years. We are not persuaded that evidence with the numerous deficiencies noted equates to "extensive documentation" demonstrative of an individual with sustained national or international acclaim. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-20* I&N Dec. 77, 80 (Comm'r. 1989).

The petitioner seeks to qualify the beneficiary for a highly restrictive visa classification, intended for individuals already at the top of their respective fields. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii).

IV. Conclusion

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Accordingly, the appeal will be dismissed.

The record does show that the beneficiary was previously granted O-1 status for employment for a gymnastics coaching position with an unrelated petitioner. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); see also *Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm. 1988). For example, if USCIS determines that there was material error, changed circumstances, or new material information that adversely impacts eligibility, USCIS may question the prior approval and decline to give the decision any deference.

In the present matter, the director reviewed the record of proceeding and concluded that the beneficiary was ineligible for the requested classification. In both the request for evidence and the notice of decision, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of a prior approval that may have been erroneous. *See, e.g. Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988)*. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

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