

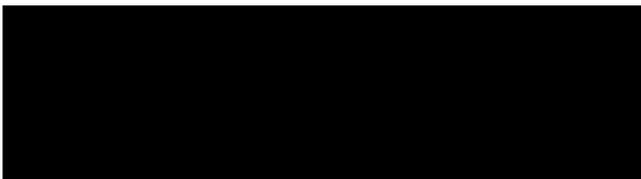
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



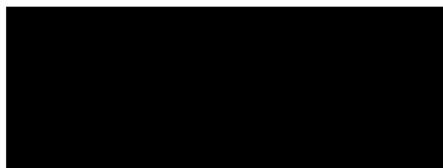
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DATE: **APR 15 2011** Office: VERMONT SERVICE CENTER FILE: EAC 10 055 50304

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:



**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. The AAO will dismiss the appeal.

The petitioner, a dance studio, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), as an alien of extraordinary ability in athletics. The petitioner seeks to employ the beneficiary in the position of dance instructor for a period of three years.

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 determined that the evidence submitted failed to satisfy any of the evidentiary criteria applicable to aliens of extraordinary ability in athletics pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B).

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 failed to consider all of the evidence submitted to satisfy the regulatory requirements at 8 C.F.R. §§ 214.2(o)(3)(iii)(B), as well as comparable evidence submitted pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C). Counsel asserts that the evidence clearly establishes that the beneficiary is among the top ballroom dancers in the world.

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

## **I. The Law**

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability . . . .

The 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, [REDACTED] 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 18, 2009, seeks to classify the beneficiary as an alien with extraordinary ability as a dance instructor. 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 petitioning dance studio seeks to employ the beneficiary "to teach youth Ballroom/Latin dance" and to develop its junior and youth dance programs. The petitioner has not indicated that the beneficiary will continue his career as a competitive dancer in the United States under the terms and conditions of employment with the petitioning studio.

The beneficiary is a 19-year-old ballroom dancer who participated in competitive ballroom dance, or "DanceSport" competitions from 1998 until 2008, before coming to the United States as a visitor in June 2009. While a competitive dancer and a dance instructor may share knowledge of the sport, the two rely on 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.

We acknowledge the possibility of an alien's extraordinary ability claim in more than one field, such as a dance instructor and competitive ballroom dancer, 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 dancer. Although the beneficiary's competitive accomplishments as a dancer 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 dance instructor.

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 or instructor who has an established successful history of training athletes who compete regularly at the national level has a credible claim; a coach of novices does not. As discussed below, the beneficiary in this matter appears to have only limited experience as a dance instructor, and has no documented achievements as an instructor.

***B. The Beneficiary's Eligibility under the Evidentiary Criteria***

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). The petitioner has submitted evidence pertaining to the following criteria:<sup>1</sup>

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

In a letter dated December 15, 2009, counsel for the petitioner provided a list of the beneficiary's "major awards or prizes" received during the years 1998, 1999, 2003 through 2006, and 2008. The beneficiary's first, second and third place finishes are listed below:<sup>2</sup>

1998

- 1<sup>st</sup> Place in Student Ball, Cup Dance, International Dance Sport Federation (IDSF)

1999

- 1<sup>st</sup> Place in Festival Dance Sport Cup Amur 1999, IDSF
- 2<sup>nd</sup> Place, Ballroom Sport Dance, Winter Devieu 1999

2002

- 3<sup>rd</sup> Place in Vladivostok 2002 at the XI IDSF Festival
- 1<sup>st</sup> Place, Open Festival, Amur Couple 2002, IDSF
- 1<sup>st</sup> Place, Student Ball, Cup Dance Sport, IDSF
- 3<sup>rd</sup> Place, First Open Festival Amur Couple 2002, IDSF
- 3<sup>rd</sup> Place, Mayor Cup, Nahodka
- 3<sup>rd</sup> Place, Leader Dance Studio
- 3<sup>rd</sup> Place, First Open Festival Amu, IDSF

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

<sup>2</sup> The beneficiary's fourth, fifth and sixth place finishes have been omitted from the list provided by the petitioner, as the petitioner has not established that placing in these positions resulted in the receipt of an "award or prize for excellence in the field" as required by the plain language of the regulations.

2003

- 3<sup>rd</sup> Place Junior II Latin Program, IDSF
- 2<sup>nd</sup> Place, Junior Open, 14 International Ballroom Festival
- 1<sup>st</sup> Place, Championship, Cinderella
- 2<sup>nd</sup> Place, Junior II Latin Program
- 3<sup>rd</sup> Place, VIII International Dance Festival, IDSF
- 3<sup>rd</sup> Place, Governor Cup
- 2<sup>nd</sup> Place, Sport Dance Competition, [REDACTED]

2004

- 1<sup>st</sup> Place in Cup Sport Dance, Junior Latin, [REDACTED] Area
- 1<sup>st</sup> Place, Championship in Far East Region, IDSF
- 2<sup>nd</sup> Place, Dance Time 2004, IDSF
- 2<sup>nd</sup> Place, Cup Irkza, Junior 2 Program
- 2<sup>nd</sup> Place, Far East, IDSF
- 1<sup>st</sup> Place, Fire in Big City, Youth Latin Program
- 2<sup>nd</sup> Place, Dance Time 2004, IDSF

2005

- 2<sup>nd</sup> Place, 14<sup>th</sup> International Ballroom Festival
- 1<sup>st</sup> Place, Open Dance Season, XXVIII Festival, IDSF
- 3<sup>rd</sup> Place, Latin Program, Festival Competition, DanceSport
- 3<sup>rd</sup> Place, Youth Standard Program, Sport Committee Chairman
- 2<sup>nd</sup> Place, Youth Program Standard, Khabarovsk
- 2<sup>nd</sup> Place, DanceSport Competition, Standard Program, Khabarovsk
- 2<sup>nd</sup> Place, Closed Competition, Khabarovsk, IDSF
- 2<sup>nd</sup> Place, Governor Cup, [REDACTED]
- 2<sup>nd</sup> Place, Stars Primor'ya 2005, International Festival Ballroom DanceSport
- 1<sup>st</sup> Place, VIII International Festival DanceSport, Cup [REDACTED] Area

2006

- 1<sup>st</sup> Place, Cup Irkaza, Sport Committee Chairman
- 1<sup>st</sup> Place, Ballroom Sport Dance, IX Festival Tradition [REDACTED] Cup Mayor
- 1<sup>st</sup> Place, Ballroom Sport Dance, Latin, IX International Festival Dance Sport
- 2<sup>nd</sup> Place, Winter Waltz, IDSF, Standard
- 2<sup>nd</sup> Place, Winter Waltz, IDSF, Latin
- 1<sup>st</sup> Place, Cup Tornado 2006, Latin Open Program

2008

- 2<sup>nd</sup> Place, Zenith 2008, Dance Sport Studio

The petitioner submitted copies of certificates confirming that the beneficiary achieved the above-referenced results, as well as photographs of several trophies. The petitioner also provided copies of the beneficiary's Russian Dance Sport Federation "Books for Classification," in which the beneficiary's partners, dancer proficiency classification, and competition results are recorded.

The director determined that the evidence submitted was insufficient to meet the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), noting that the petitioner only submitted awards that the beneficiary received on or before December 2006, when he was 16 years old.

On appeal, counsel asserts that the petitioner submitted evidence of the beneficiary's receipt of over 60 national and international awards dated between 1998 and 2008, and not only through 2006, as stated by the director. Counsel asserts that the beneficiary competed in national and international competitions in both 2007 and 2008 when he was 17 and 18 years of age. Specifically, counsel states:

[The beneficiary] won 1<sup>st</sup> Place in the National Far East Region in 2007, won 2<sup>nd</sup> at the National Zenith 2008, 2<sup>nd</sup> Place at the Winter Waltz 2008, placed in the top 64 at the St. Petersburg International Governors Cup 2008, and also placed in the 2008 International Victory Waltz. (See Exhibit 4) Additionally [the beneficiary's] ranking[s] were published on DanceportInfo.net, the fastest growing, and most innovative international dancing website in the world (See Exhibit 5).

The petitioner resubmits copies of the beneficiary's award certificates, and now identifies whether each certificate was issued in national or international-level competition. The petitioner submits a photograph of a trophy for 1st Place in the "Cup Far East Regions" awarded to the beneficiary in 2007. The AAO notes that a photograph of this trophy was previously submitted, with no identifying information provided.

Upon review, the AAO concurs with the director's determination that the petitioner's evidence fails to satisfy the plain language of this regulation.

We note that the director did make a factual error in determining that the petitioner failed to submit evidence of an awarded dated after December 2006. The petitioner did submit a copy of the beneficiary's certificate for a 2<sup>nd</sup> place finish in "Cup Dance Sport Studio Zenith" held on May 18, 2008, prior to the adjudication of the petition. This was the only post-2006 award including among counsel's list of the beneficiary's prizes and awards submitted at the time of filing. The above-referenced trophy and the beneficiary's certificate at the "Winter Waltz" event were submitted previously, but no dates were identified on the awards themselves, and the petitioner did not claim that the beneficiary earned them in 2007 or 2008.

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) requires "[d]ocumentation of the alien's receipt of lesser *nationally or internationally recognized prizes or awards for excellence* in the field of endeavor [emphasis added]." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate the beneficiary's receipt of awards and prizes, it must also demonstrate that those awards and prizes are nationally or internationally recognized for excellence.

In other words, the petitioner must establish that the beneficiary's awards and prizes are recognized nationally or internationally beyond the awarding entities.

While the petitioner submitted certificates evidencing the beneficiary's receipt of these awards, the petitioner failed to submit documentation demonstrating that the awards received from these competitions are nationally or internationally recognized prizes or awards. Without documentary evidence regarding the actual competitions themselves, such as the level of those who participated or evidence of the selection criteria, we cannot conclude based on the name of the competitions alone, that the competitions or tournaments are national or international, and therefore that the results are recognized beyond the awarding entities as national or international awards.

We emphasize that a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with the beneficiary's awards.

On appeal, the petitioner refers to DancesportInfo.net as a source of the beneficiary's rankings and results in competition. The petitioner has submitted evidence that the beneficiary's results in the following competitions have been reported on DancesportInfo.net: 2005 Blackpool Junior Festival (five events), Russian Open 2004 (four events), Victory Waltz 2008 (Youth Latin), and St. Petersburg Governors Cup 2008 (Youth Latin). The beneficiary's highest finish was "Top 22" at the Russian Open 2004 in the "Russian Junior II Latin" competition. None of the beneficiary's first, second, or third place finishes in competitions are reported on the website, which raises questions as to whether such competitions were in fact nationally or internationally recognized.

In addition, we note that the beneficiary, to date, has participated only in age-restricted competition. While it appears that his proficiency level has progressed from "E" as a young child to his current level of "B" in Standard Ballroom and "A" in Latin Ballroom, it is unclear whether he has, in fact, achieved the highest level of competition. Even within a national-level competition, an award given to an athlete competing in age-restricted events at an intermediate level would not necessarily be "nationally recognized." The record contains no published articles documenting the beneficiary's receipt of any awards, or other documentation that would corroborate the petitioner's claim that he has won nationally recognized prizes for excellence.

Finally, and most importantly, the record contains no evidence that the beneficiary has received a nationally or internationally recognized award for excellence as a dance instructor or coach. As the petitioner clearly seeks to employ the beneficiary as an instructor, the "area of extraordinary ability" for which classification is sought is teaching or coaching. There is no evidence indicating that the beneficiary seeks to work for the petitioner in the United States as a competitive dancer. Therefore, even if the petitioner established that the beneficiary's awards for dancing include nationally-recognized awards for excellence, the preceding awards all resulted from the beneficiary's accomplishments as a competitive dancer, thus they cannot be considered evidence of his sustained national or international recognition as an instructor. 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 or instruction. 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.*

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” The petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

In support of the petitioner's contention that the beneficiary meets this criterion, counsel stated:

The Russian DanceSport Federation, a full member of the International DanceSport Federation, issued [the beneficiary] a Sport Book at the age of ten years which lists many of his various dance competition accomplishments, as well as his Class A Rating.

The director determined that the petitioner failed to submit evidence to establish the beneficiary's membership in the IDSF, or evidence of the criteria for membership in the organization. The director noted that, based on the IDSF rules, membership requires only an application and an "annual membership fee."

On appeal, counsel reiterates that the beneficiary is a member of the Russian DanceSport Federation and notes that this organization is a full member of the International DanceSport Federation.

While the documentary evidence submitted by the petitioner reflects the beneficiary's membership in the Russian DanceSport Federation, the documentary evidence fails to reflect that this organization requires outstanding achievements of its members, as judged by recognized national or international experts. The petitioner has not submitted evidence of the membership requirements for the Russian DanceSport Federation. The beneficiary joined the organization as a "Class E" dancer at the age of 10, which suggests that membership is not, in fact, reserved for those dancers who have recorded outstanding achievements in the field. Absent evidence to the contrary, it appears that membership in the organization is held by competitive dancers of all ages and levels.

Further, 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 dance instruction. The petitioner does not indicate that it requires the beneficiary's services as a dance competitor. 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. The petitioner has provided evidence that the beneficiary is a member of any qualifying association for dance coaches or teachers, or provided evidence of any separate Russian DanceSport Federation membership requirements applicable to teachers or instructors.

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.<sup>3</sup>

At the time of filing, counsel indicated that the beneficiary meets this criterion based on the fact that his "world rankings are published in the IDSF computerized rankings web site at [dancesportinfo.net](http://dancesportinfo.net), and also on the Blackpool Dance Junior Dance Festival web site."

The petitioner submitted two screenshots from *DanceSportInfo* from <http://dancesportinfo.net>. The results reported are for the 2005 Blackpool Junior Dance Festival, where the beneficiary and his partner achieved the following results: Top 51, Junior Jive Competition; Top 49, Junior Latin Championships; Top 24, Junior Samba Competition; Top 102, Junior Standard Competition; and Top 97, Junior Viennese Waltz Competition. The same page also reports the following results from the Russian Open 2004: Top 22, Russian Junior II Latin; Top 26, Junior Rising Star Latin; Top 65, Junior II Standard; and Top 49, Junior Rising Star Standard. The second page of results, for the beneficiary and a more recent partner, indicates that they placed in the Top 91 in Youth Latin at Victory Waltz 2008, and Top 64 in the St. Petersburg Governors Cup 2008. All results are in the "Amateur" category. The petitioner submitted published information about the Blackpool Festival from the festival's website.

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<sup>3</sup> 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.

In response to the RFE, counsel further explained the scores and rankings as follows:

The IDSF has a series of world ranking dance tournaments that are conducted with points for the IDSF World Ranking list. IDSF publishes their World Ranking results on dancesportinfo.net. DancesportInfo.net is the fastest growing, and the most innovative dancing international website in the world. This website is currently accessible in 18 languages and contains results data base of 8,242 competitions, and is visited with 148 countries. DancesportInfo.net has a daily page impression of 301288, with a peak of 526,690.

The director determined that the evidence submitted does not meet this criterion. The director noted: "You state that the beneficiary is a member of Blackpool Dance, but the beneficiary's name is not on the list submitted. There is no published material of the beneficiary's work."

On appeal, counsel asserts:

It was never stated that the beneficiary is a member of Blackpool Dance. Blackpool Dance is not an association or club that dancers become members, but rather a Dance Festival in which dancers from all over the world compete. The Blackpool Dance Festival began in 1920, and continues today as the most famous and prestigious dance event in the World. The 2009 Blackpool Festival had dancers from 60 countries and a total of 1,808 couples who competed at this event.

Counsel refers to the competition results published on dancesportinfo.net and emphasizes that the beneficiary's name "was most certainly on the list of dancers competing at that dance event." Counsel contends that such evidence represents "evidence of published material in a major media relating to [the beneficiary's] work in the field of dance sport."

The AAO notes that the on-line competition results published by dancesportinfo.net, cannot be considered to be published materials "about the beneficiary." The evidence does little more than confirm the beneficiary's participation in the Russian Open 2004, the 2005 Blackpool Junior Dance Festival, and the two additional events in 2008, where the beneficiary failed to receive any prizes or awards. We are not persuaded that published competition results that merely indicate the beneficiary's scores and finishes, along with those of other competitors, are sufficient to establish eligibility for this criterion.

While counsel emphasizes that the website has a daily page impression of over 300,000 viewers, it is reasonable to believe that the beneficiary's specific results would only be read by those who specifically search for either his name or for the results of the specific competitions in which he participated. The regulation clearly requires a written article about the beneficiary, in light of the petitioner's burden to submit the title, date, and author of such published material.

Furthermore, the evidence reflects the beneficiary's accomplishments as a dancer rather than his accomplishments as a dance instructor. 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 dance instructor.

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

### *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. Comparable Evidence*

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) provides that 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 receipt of a major internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), or by submitting evidence to satisfy at least three of the eight forms of documentation set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). We further acknowledge that the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides “[i]f the criteria in paragraph (o)(3)(iii) of the section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.” It is clear from the use of the word “must” in 8 C.F.R. § 214.2(o)(3)(iii) that the rule, not the exception, is that the petitioner is required to submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8).

The petitioner claimed eligibility under the "comparable evidence" regulation in its response to the director's request for evidence, in addition to claiming eligibility under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2) and (3). Counsel emphasizes on appeal that the director failed to consider the petitioner's claim that it has comparable evidence of the beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(C)

Nonetheless, the regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for O-1 classification in the beneficiary's occupation as a dance instructor cannot be established by submitting documentation relevant to at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In fact, as indicated in this decision, counsel mentions evidence in his brief that specifically addresses three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation. Moreover, although the petitioner failed to claim any additional criteria, we find it reasonable to believe that a dance instructor could, for example, earn a high salary or be employed in a critical or essential capacity for an organization with a distinguished reputation.

Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) does not allow for the submission of comparable evidence.

We note that the "comparable evidence" of the beneficiary's eligibility consists of testimonial letters, and the above referenced evidence of the beneficiary's participation in the Blackpool Junior Dance Festival. Although the petitioner does not claim that this evidence is directly related to any of the eligibility criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), we will nevertheless consider the evidence in our final merits determination below.

#### ***D. 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.

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).

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. Upon review, the AAO finds that the petitioner has not established that the beneficiary has risen to the very top of the sport of competitive ballroom dancing as an athlete. Furthermore, the petitioner does not seek to hire the beneficiary as a competitive dancer, but rather as a dance instructor. The petitioner has submitted minimal evidence of the beneficiary's experience as a dance instructor, and no documentation of his achievements as an instructor. As discussed above, 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 beneficiary's area of expertise. A coach or instructor who has an established successful history of training athletes who compete regularly at the national level has a credible claim. The record contains only passing references to the beneficiary's teaching experience, and no evidence that he has coached any top dancers. The beneficiary's documented accomplishments as a dance instructor, therefore, 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."

While the beneficiary has undoubtedly competed with success at the juvenile, junior and youth levels of dancesport competitions between 1998 and 2008, the beneficiary's achievements must be compared to all athletes and not only to other children and youth competing in the sport. Furthermore, we note that the record simply does not contain documentation to support the petitioner's claims that the beneficiary's first, second and third place finishes in dance events are nationally or internationally-recognized awards or prizes for excellence in the beneficiary's field, as required by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). With the exception of the Blackpool Dance Festival, the petitioner failed to provide any evidence to corroborate its claims that the beneficiary has participated in, much less won, "major" awards in the field of competitive ballroom dance.

Upon review, it appears that the beneficiary's greatest achievement as a dancer was finishing in 49<sup>th</sup> place in the Junior Latin Championships at the 2005 Blackpool Junior Dance Festival at the age of 14 years old. While we acknowledge that Blackpool is a prestigious dance competition, and one that would qualify as "internationally recognized" under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the AAO cannot conclude that a 49<sup>th</sup> place finish is an "award or prize for excellence," and the petitioner provides no rationale for considering the beneficiary's competition results under any other criterion. The AAO would expect an athlete at the very top of his or her sport to be competing in such high-profile events at the highest competitive level of the sport over a period of time. The regulations require the petitioner to demonstrate "sustained" acclaim. 8 C.F.R. § 214.2(o)(3)(iii). A 49<sup>th</sup> place finish at a prestigious junior competition is insufficient to establish the beneficiary's placement in the top echelon of athletes in the sport. In weighing the merits of the beneficiary's achievements as a dancer, the AAO must also take into account that the beneficiary has enjoyed success at junior and pre-professional levels of the sport.

Further, there is no evidence indicating that the beneficiary intends to continue competing as a ballroom dancer in the United States under the terms of employment offered in the instant petition. 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). The petitioner has not established that the beneficiary has received any nationally or internationally recognized awards as a dance instructor.

Moreover, 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). The only "published materials" submitted for review were dance competition results published on dancesportinfo.net, rather than articles *about* the beneficiary. While the beneficiary's membership in the Russian Dance Sport Federation is noted, the petitioner also failed to submit evidentiary 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, and thus did not satisfy the plain language of the

regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). Based on the evidence submitted, it appears that competitive dancers of any age and proficiency level are eligible for membership in the Russian DanceSport Federation.

Beyond the categories of evidence at 8 C.F.R. § 214.2(o)(3)(iii), the petitioner submitted several letters of support from the beneficiary's peers and former instructors. 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, and will not be considered "comparable evidence" of same. 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.

The petitioner submitted a letter from [REDACTED] confirms that the beneficiary danced with his organization and states:

[The beneficiary] was in class A Latin dance program and class B Standard program March 18, 2008 until December 29, 2008. During this time, [the beneficiary] was a member of [REDACTED]. In this time he proved that he was a very diligent and did everything his instructors asked of him. This time he competed in regional and international competitions. Competitions: "Zenith 2008" May 18, 2008, "Victory Waltz" (international comp. in Moscow) May 10, 2008, [REDACTED] (international comp.) April 26, 2008.

[REDACTED], and a certified [REDACTED] certifies that the beneficiary "worked at a professional dance company "Fantasia" from September 1, 1997 until June 1, 2007." He further states:

His level is A class in the Latin program and B class in the Standard program. During this period, [the beneficiary] studied under some of Russia's most notable Dance Instructors Yu. [REDACTED]. [The beneficiary] has competed at the International World Championship where he placed. [The beneficiary] also competed Russia Open (Russian National Champion) where 22<sup>nd</sup> in Latin and 69<sup>th</sup> in Standard. [The beneficiary] performed in a Dance Exhibition in Enniigata Japan. [The beneficiary] worked with our young dancers and demonstrated his professionalism.

The petitioner submitted a letter from [REDACTED] and Instructor of the Region Youth Organization in St. Petersburg. [REDACTED] indicates that the beneficiary danced in his studio from March 2008 until December 2008. He further states:

[The beneficiary] competed in "Zenith 2008" May 18, 2008, placing 2<sup>nd</sup> out of our 24 couples, "Victory Waltz" (international competition in Moscow) May 10, 2008, placing 91<sup>st</sup> out of 156 couples, [REDACTED] April 26, 2008, placing 64<sup>th</sup> out of 115 couples. [The beneficiary] was my student and was extremely diligent, hardworking and is a young man of exceptionally fine character and honor. His dancing shows emotion, perfect technique, and exceptional elegance, which he taught to his own 10 students in my studio.

[The beneficiary] danced in the [REDACTED] March 28 through April 1, 2005. [REDACTED] is the 2<sup>nd</sup> highest ballroom dance competition in the world, second only to the World Championship in which two couples from each country compete annually. [The beneficiary] and his partner placed 102 in standard 5 dance and 49 in Latin 5 dance. Because [the beneficiary] ranked so highly in Blackpool, my studio benefited by adding prestige and marketable talent to our studio reputation.

[The beneficiary's] ability to teach youth in professional dance is of major importance in my opinion. I conclude that [the beneficiary] is gentle but firm in teaching technique as to emphasize correctness in this area during competitions. [The beneficiary's] level of skill at so young an age directly benefits young students as to encourage and persuade them to continue to dance as he is an excellent role model.

[REDACTED] also provided a letter in support of the petition. He states:

I have known [the beneficiary] for a few months and have had the pleasure of watching him dance at various dances locally. He is an extremely accomplished dancer of a very high caliber. He is well liked in the Huntsville dance community and has a good moral character. It would benefit the Huntsville community tremendously to have a dance instructor with [the beneficiary's] experience and accomplishments.

[REDACTED] in also indicates that the beneficiary "has a degree in ballroom dancing, a level that is not offered in any institution in America."

The petitioner submitted a letter from [REDACTED] who indicates that he is a governing council member of [REDACTED] states:

[The beneficiary] has demonstrated his extraordinary ability to dance at the highest level by placing 42<sup>nd</sup> at [REDACTED] and 22<sup>nd</sup> at the [REDACTED] Open. Both competitions are listed as the Top five competitions world wide (<http://dancesportinfo.net/articles/6698.aspx>). [The beneficiary] has training under some of the top coaches in the world. Currently today, in both [REDACTED] make up

25% of the top 100 (<http://dancesportinfo.net>). Of the 200 spots (100 in Latin and 100 in Ballroom only two Americans . . . are present, and both happen to be of Russian descent.

Finally, on appeal, the petitioner has supplemented the record with a letter from Olga Kormanovskaya, who states that she has known the beneficiary since the summer of 2009 “in the capacity of a fellow Russian professional dancer, performer, and instructor.” [REDACTED] states:

Because formal dance in Russia is so highly competitive, only a handful of dancers who are willing to train as an Olympian reach the level of extreme talent that [the beneficiary] possesses. As a ballroom dance performer and judge who travels extensively throughout the southeast U.S. I have the opportunity to watch, judge and evaluate hundreds, if not thousands of competitive dancers, and rarely have I been so impressed with a dancer who encompasses every single desirable trait of a professional dancer – natural talent, self-discipline, focus and charisma.

Besides competing and winning countless national and international Latin competitions through 2008, [the beneficiary] competed in Blackpool, England in 2005, and placed a remarkable 49<sup>th</sup> among almost 300 in the Latin category. I stress what an accomplishment this is in the world of dance, since the annual Blackpool Festival is one of the two foremost international ballroom dance competitions in the world. [The beneficiary] studied under two of the most accomplished dance performers (now instructors) in [REDACTED] and [REDACTED] who instilled not only a great love of dance, but perfect technique. Again, [the beneficiary's] accomplishments in Latin dance are significant and especially noteworthy considering his young age.

[REDACTED] concludes by stating that the beneficiary's “experience and talent as a dancer and instructor will benefit and enhance any studio and student performance.”

While we acknowledge that the above-referenced individuals support 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 a “nationally or internationally recognized” dance instructor, or that he reached the level of a nationally-recognized competitive dancer.

While some of the beneficiary's peers have positively, but vaguely, endorsed the beneficiary's skill as an instructor in dance, such endorsements cannot be accepted in lieu of direct evidence of the beneficiary's sustained national or international acclaim as a dance instructor coach in accordance with the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The O-1 classification is not intended for persons who are merely well-qualified in their field.

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 dance instructor who has sustained national or international acclaim.

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 dance instructor. 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. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

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