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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

PUBLIC COPY

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[redacted]

DATE: DEC 12 2011 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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, California Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently appealed the decision to the Administrative Appeals Office (AAO), which twice withdrew the director's decision and remanded the petition to the service center for further action and entry of a new decision. On January 17, 2007, the director denied the petition and certified the decision to the AAO.[1] The AAO will affirm the director's decision to deny the petition.

The petitioner states that it operates a management company. It filed the instant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien of extraordinary ability. The petitioner seeks to temporarily employ the beneficiary as a music composer/screenwriter for a period of three years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture and television industry. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or that he has met at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).[2] The director certified her decision to the AAO in accordance with 8 C.F.R. § 103.4(a)(1).

The AAO has conducted a *de novo* review of the totality of the evidence in the record in reaching its decision. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary achievement. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

> *Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion

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[1] The AAO notes that although the certified decision is dated January 17, 2007, the record was not forwarded to the AAO until after a decision was issued on a second nonimmigrant petition filed by the petitioner on behalf of the beneficiary (WAC 06 800 08609).

[2] In previous decisions dated August 20, 2004 and October 5, 2006, the director applied the standard of review and evidentiary criteria applicable to aliens of extraordinary ability in the arts, pursuant to 8 C.F.R. § 214.2(o)(3)(iv), as opposed to the standard and criteria applicable to aliens of extraordinary achievement in the motion picture and television industry, pursuant to 8 C.F.R. § 214.2(o)(3)(v). In both instances, the AAO remanded the matter to the director for issuance of a new decision.

picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

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

Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry. To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

(A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or

(B) At least three of the following forms of documentation:

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

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

(3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;

(4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;

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

> *(6)* Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

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.

In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and two consultations, one from an appropriate union and one from an appropriate management organization.

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

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

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

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens

> whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary achievement" as a "very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field."

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 and extraordinary achievement at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

In the present matter, the petitioner has not established that the beneficiary has a demonstrated record of extraordinary achievement to the extent that his accomplishments are recognized as outstanding, notable, or leading in the motion picture or television field. 8 C.F.R. §§ 214.2(o)(3)(ii) and (v).

II. The Beneficiary's Eligibility under the Evidentiary Criteria

Prior to addressing the issues, the AAO must emphasize that the critical facts to be examined are those that were in existence at the actual time of filing the petition. It is a long-established rule in visa petition proceedings that a petitioner must establish eligibility as of the time of filing. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971); *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

The beneficiary in this matter is a native and citizen of Israel who has worked as a television and film screenwriter and director, and as a musical composer for television, primarily in his native country. The beneficiary's planned projects in the United States at the time the petition was filed included: (1) composing and project development of the original musical [redacted] (2) writing and composing the musical scores for the feature films [redacted] and (3) occasional composition of musical scores for film or television projects developed by [redacted] in the United States, as well as continued freelance work as a composer and musician for United Studios of Israel.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in his or her field pursuant

to 8 C.F.R. § 214.2(o)(3)(v)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has neither claimed nor submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

As there is no evidence that the beneficiary has been nominated for or received a significant national or international award or prize, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

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

In order to establish eligibility under the first criterion, the petitioner must submit evidence that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements. 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

The AAO will first address the evidence submitted to establish that the beneficiary *has performed* services as a lead or starring participant in productions or events which have a distinguished reputation.

At the time of filing, former counsel for the petitioner asserted that the beneficiary "has performed lead services as a Composer/Screenwriter for a variety of critically acclaimed television series, programs, films and productions" including:

Music for Television:

- Composed musical soundtrack and title song for the Israeli dramatic series
- Composed musical soundtrack and title song for the Israeli dramatic series ';
- Composer, arranger and musical director for children's weekly programs .
- Composed musical scores for a trailer for the computer animated series
- Composition of Various television theme songs and commercial jingles.

Soundtrack Designing

- Composed original scores and compiled the sound tracks for several short films including: – at the International Open Video Festival drama category
- Soundtrack designing for stereoscopic promotional film for shown at the 2000 Telecom International Conference.

Writer/Director

- Presently developing a dramatic-suspense series – as the series creator, key screenplay writer and director.
- Screenplay editor, director, and the professional facilitator of the television talk show/drama (mixed) – magazine: which includes studio interviews (multi cam) and location segments (single cam).
- Wrote several screenplays for the nationally broadcast interactive drama series:
- Wrote corporate video screenplays for .
- Direction and editing of Israel Defense Force Films
- Direction of voices for animated CD-ROM: "
- Vocal talent direction of episodes for the children's shows dubbed into English for international distribution.
- Screenplay and direction of a pilot for a full length made for television movie –
- Wrote and directed several films during studies.

The petitioner referred USCIS to exhibits 2 and 3 of the initial submission for evidence substantiating that the beneficiary has performed services as a lead or starring participant in productions or events which have a distinguished reputation. Exhibit 2 contained partially translated excerpts of several Israeli newspapers while Exhibit 3 was comprised of mostly untranslated copies of royalties statements indicating payments the beneficiary received for music composed for Israeli television. The AAO notes that evidence of royalties may be considered under the fourth and six criteria and will be discussed below. However, such evidence, even if accompanied by an acceptable English translation, does not satisfy the plain language of this criterion.

The AAO emphasizes that only one of the submitted articles mentions any of the projects listed above. Specifically, the petitioner submitted a captioned photograph of singer which appears to have been clipped from a newspaper, accompanied by the following uncertified English translation: "Famed singer/musician sang the soundtrack composed by [the beneficiary] of the miniseries ." The name and date of the publication were not provided.

The remaining published evidence that mentions the beneficiary included: (1) an untitled article from the Israeli newspaper *Ma'riv* published on June 16, 1980, which recounts the beneficiary's coining of the phrase at the age of four years old; (2) an article titled published in the November 18, 1990 issue of Israeli newspaper which recounts the beneficiary's and his mother's close relationship with his godfather, American conductor (3) an article published in the August 27, 1985 edition of the daily Israeli newspaper *News*, which recounts a birthday party held for refers to the beneficiary as the beautiful son," and includes a photograph of with the beneficiary, then seven years old; and (4) a brief article and photograph from the "Modern Times" section of Israeli newspaper which recounts the beneficiary's bar mitzvah, attended by his mother (an Israeli actress), other celebrity guests, and While the record shows that the beneficiary's parents are both celebrities in Israel, and that he enjoyed a close relationship with as a child, the petitioner did not explain how this evidence establishes that the beneficiary has performed services as a lead or starring participant in productions or events which have a distinguished reputation.

The petitioner submitted additional published articles about Israeli singers and , and indicates that the beneficiary has composed songs for all of these artists. However, the articles submitted do not mention the beneficiary or the songs he composed. Therefore, the articles do not establish his lead or starring participation in specific productions or events which have a distinguished reputation. Even if it were established that these artists enjoy a distinguished reputation in Israel, it would not automatically follow that any composer who has collaborated with them on a song has played a lead or starring role in a "production or event" with a distinguished reputation.

The petitioner claims that the beneficiary's television projects, specifically are successful series with a national audience in Israel, and that the beneficiary played a significant role in the productions as a musical composer and/or musical director. The record contains letters from the head of the production company that produced these programs, as well as evidence explaining the structure of network television in Israel.

The plain language of this criterion requires the petitioner to submit critical reviews, advertisements, publicity releases, publications, contracts, or endorsements establishing the distinguished reputation of the productions or events in which the beneficiary participated in a lead or starring capacity. The petitioner has not submitted such evidence with respect to the beneficiary's past projects, with the exception of one mention of the beneficiary as the composer of the soundtrack to the miniseries ' The petitioner did not submit a critical review of the soundtrack of the miniseries, nor any other relevant documentary evidence regarding this or other projects in which the beneficiary is claimed to have provided services as a lead or starring participant. Thus, it has not submitted the evidence required to establish the distinguished reputation of these productions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Overall, while the record confirms the beneficiary's involvement with most of the cited television and film projects, the petitioner has submitted primarily testimonial evidence pertaining to the beneficiary's previous work as a writer, director and musical composer, rather than the evidence required by 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*). This evidence will be considered under the appropriate criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*).

Based on the foregoing, the petitioner has not submitted evidence that the beneficiary has served as a lead or starring participant in productions that have a distinguished reputation and therefore cannot meet the plain language of this criterion, which requires evidence of both past and upcoming leading or starring participation in distinguished productions. Nevertheless, the AAO will also consider whether the petitioner established that the beneficiary *will perform* services as a lead or starring participant in events or productions with a distinguished reputation.

At the time of filing, the former counsel for the petitioner stated that the beneficiary "has developed several major projects in collaboration with U.S.-based artists and producers/directors." One of these projects is an original musical described as follows:

> is an original musical, based on the true story of Ester, who became the queen of Persia and prevented the execution of the first genocide against the Jewish people. The

> musical will be based upon "The Scroll of Ester" a well-known Jewish text. [The beneficiary] will compose the original music for the production. The intensive music composing and project development will take place in June 2003, and will primarily take place in New York City, in collaboration with the lyricist. An intensive demo recording session will occur in July 2003, at [the beneficiary's] home studio in Hollywood, California. The project will continue to unfold as the music is composed and the production is developed. It should last approximately 1-2 years.

The petitioner indicated that the musical was planned as a film project. In response to a request for additional evidence issued on February 5, 2004, counsel for the petitioner indicated that the musical was scheduled to open as a stage production on October 22, 2004 at the L.A. Scottish Rite Auditorium in Los Angeles, and stated that the beneficiary was in the last stages of negotiating an agreement to finalize the details of the production. The petitioner submitted an unsigned agreement between the beneficiary as producer and creator and " as investor, for the production of " The agreement specifies the proposed pre-production costs and proposed a 13 week schedule to prepare for production. The record includes a letter dated October 19, 2004 from expressing his continued interest in the project, noting that it "could become a very successful show." However, he indicates that his organization never committed to the production agreement.

While the AAO is satisfied that the beneficiary will play a lead role in developing and producing the petitioner did not submit evidence to establish the distinguished reputation of the upcoming production. At the time the petition was filed, it appears that the project was in its nascent stages, and that investment for the project was secured later. The record contains no evidence of the distinguished reputation of the project documented by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The AAO notes that, in response to the RFE, prior counsel emphasized that an Emmy-nominated costume design company would design costumes for the production, but such association does not lend the reputation of the design company to the production itself.

Other projects anticipated at the time of filing included the feature films . The petitioner indicated that the beneficiary will be writing and composing the musical score for these films. The petitioner provided a proposed timeline of November 2003 to February 2005 for and October 2003 to November 2005 for . The petitioner submitted a letter dated November 20, 2002 from , stated that he recently met the beneficiary, and reviewed his screenplays, a short video promo and a musical demo reel. He indicated that he "would like to begin the development stage with two of [the beneficiary's] screenplays and both suspense thrillers, in order to produce them sometime in 2004." He further stated that he was interested in collaborating with the beneficiary as a music composer. The petitioner submitted an undated article from which indicates the recent success of the company and its "full slate of video premiere films in production or ready to hit rental shelves." The article indicates that films typically debut on video and have budgets between $5 million and $20 million.

Upon review, the petitioner has not submitted evidence that that the beneficiary's anticipated film projects are productions or events that enjoy a distinguished reputation, as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The record establishes

that a successful straight to video production company has an interest in developing the beneficiary's screenplays, but offers no evidence pertaining to the distinguished reputation of the projects themselves. The AAO cannot conclude based on the limited evidence submitted that is of such renown that any project it considers placing into development can also be considered to have a distinguished reputation.

The petitioner indicated that the beneficiary will be writing the screenplay for a feature film based upon a documentary book by an Israeli psychiatrist. The petitioner submitted a letter dated November 29, 2000 from who indicated that the beneficiary requested and obtained his permission to adapt his book into a feature film. The petitioner's itinerary for the beneficiary indicated that development and research on this project would begin in April 2004. The petitioner submitted a letter dated March 20, 2003 from a documentary film and television production company. indicated that she has met with the beneficiary several times because she is interested in his work as a composer, writer and director. She mentioned that the beneficiary proposed the project to her, and noted that it would take a long period of research and pre-production, perhaps 15 to 24 months. The petitioner provided an excerpt from the company's website which describes the nature of the documentary films the company produces, a list of clients, and biographies for the principals. In response to the RFE, prior counsel argued that enjoys a distinguished reputation, noting that "has been nominated for an Academy Award for her film " with and received a Primetime Emmy nomination."[3]

Again, the petitioner did not submit evidence that the beneficiary's project was even under development at the time of filing, much less provide the required documentary evidence to establish that the project enjoys a distinguished reputation. At most, the petitioner provided evidence that is interested in the project. While it appears that the production company enjoys a distinguished reputation in the documentary field, the record contains insufficient evidence that it will actually produce the film. The plain language of the regulation requires documentary evidence related to the distinguished reputation of the production or event to which the beneficiary will provide services in a lead or starring capacity. A show of interest in a film from an established production company is insufficient to meet this criterion.

At the time of filing, the petitioner indicated that the beneficiary was the creator and key writer for a new Israeli television dramatic series called " ." In response to the RFE, counsel indicated that Israeli Oscar winner had been cast in the series, that the series was scheduled to be produced at the end of 2005, and that "several prominent Israeli TV stations, such as , and Channel 2 broadcasters have shown interest in purchasing the series." However, the petitioner submitted no reviews, advertisements, publicity releases, publications, contracts, or endorsements with regard to this series. Counsel referred USCIS to a summary of a published movie synopsis for also known as a movie starring from All Movie Guide. While this evidence establishes that is a known Israeli actor, it does not establish the distinguished reputation of the television project.

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[3] The biography submitted by the petitioner indicates that received an Academy Award Nomination "for her personal film ' and not the film referenced by counsel.

In order to meet this criterion, the petitioner must establish that the beneficiary, as of the date the petition was filed, has provided and will provide services as a lead or starring participant in productions or events with a distinguished reputation. Here, for the reasons discussed above, the petitioner failed to establish that the beneficiary has served in such a role in the past. The petitioner also failed to submit evidence that the theatre or film projects on the beneficiary's proposed itinerary as of the date of filing have a distinguished reputation. Projects that developed after the petition was filed will not be considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978)

Accordingly, the AAO concurs with the director that the petitioner has not submitted evidence to satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

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

At the time of filing, former counsel for the petitioner indicated that the petitioner was submitting evidence to meet this criterion. Specifically, counsel stated:

> Major newspapers and television programs throughout Israel have published articles reviewing [the beneficiary's] compositions, films and television screenplays. One article in an Israeli newspaper proclaimed, "*Famed singer/musician* [redacted] *sang the soundtrack composed by [the beneficiary] of the miniseries* '[redacted] (Please see Exhibit 2).
>
> We have attached numerous articles reviewing [the beneficiary's] compositions, films and television programs, and their success when performed by Israel's top stars and celebrities. Additionally, [the beneficiary's] image is published extensively in national Israeli magazines and newspapers and he [is] quoted extensively as well in all these publications (Please see Exhibit 2).

As noted above, the petitioner submitted a single newspaper clipping which includes a one-sentence photo caption mentioning the beneficiary's work as a music composer. The petitioner did not provide the name, date, or circulation figures for the newspaper such that USCIS could determine whether this clipping from a major newspaper. The other clippings are from the beneficiary's childhood and reflect the media attention he received as a result of being the child of two celebrities and the godson of [redacted], rather than any major media recognition he achieved since commencing his career as a music composer and screenwriter.

While the petitioner submitted clippings regarding other artists who have performed songs composed by the beneficiary, these articles are not "about the beneficiary," do not mention his work, and thus do not demonstrate any national or international recognition he has achieved for such work.

The record does contain a magazine article, published in [redacted] magazine, which is about the beneficiary and his work on the Broadway Big Band Halion Player, a software product for professional music composers developed by the beneficiary and a collaborator in 2006 or 2007. The petitioner also submitted an

April 14, 2004 article from which mentions that the beneficiary created a film for an exhibition at the Masonic Museum of Los Angeles. The article is dated after the filing date of the petition. A visa petition may not be approved after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

For the reasons discussed above, the petitioner has not submitted evidence that satisfies this criterion. 8 C.F.R. § 214.2(o)(3)(v)(B)(*2*).

> *Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials*

To meet the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*), the petitioner claimed that the beneficiary meets this criterion based on his work on the television series *Family and a Half*, *Sofi Toffee*, and *Ipchi Dipchi*; and a television miniseries *Postal West Galilee*. Prior counsel asserted that these programs were produced by the United Studios of Israel Ltd. – Herzliyz Studios, which is "the biggest production house for TV productions in Israel."

The petitioner submitted an April 18, 2002 letter from ., who stated that she has worked with the beneficiary for seven years:

> Throughout this time, he has composed and musically produced various television projects, such as: Mini-series, dramatic long-term series, musical series for children, music for talk show openings etc. . . .
>
> Among these projects:
>
> - " – a drama series, which has been nationally [sic] for more than 6 television seasons (85 episodes).
> - " – a dramatic miniseries . . .
> - Two children musical series: [He] has been the musical director of these shows, and composed more than 30 original children songs for them.
>
> * * *
>
> Recently [he] Produced and directed a dubbed English version for Three of our television productions. . . .
>
> Currently we are in the advanced stage of development of a long-term drama series called " " has expressed its interest in the project . . . . [The beneficiary] is the creator of this series, and is intended to be both its key script writer as well as its director.
>
> [He] has contributed significantly to our projects throughout the years . . . .

In response to the director's request for evidence, the petitioner submitted a second letter from dated April 28, 2004, in which she stated:

> is Israel's biggest production house for television content, producing many of Israel's most successful television shows on Israeli nationally broadcast television.
>
> For nearly 9 years, we've been working with [the beneficiary] first as a composer, arranger and musical producer, and later also as a screen-writer and a director, and recently even as a series creator of the future production: ' staring Isreali Oscar-winner .
>
> [The beneficiary's] contribution to our productions has been significant and unique, and his outstanding work over the years has made [the beneficiary] the studio's primary musician, a position had been maintaining for the past few years. Throughout the years, he has worked with us and performed a key role as the music composer, arranger and musical director of numerous projects, including composing the scores and theme songs for the successful and long-running drama series ' and the 6 part drama miniseries ' composing the talk-show opening music for " and composed numerous original and wonderful songs for our nationally broadcast children TV shows: ' in which he has also been the musical director. . .
>
> .

Although the AAO finds sufficient evidence to establish that the beneficiary has served in a critical role for United Studios of Israel Ltd., the petitioner has not submitted evidence in the form of newspaper articles, trade journal articles, publications or testimonials to establish that the studio enjoys a distinguished reputation. The only supporting evidence the petitioner submitted regarding the studio is an excerpt from the company's own web site.

Prior counsel also asserted that the beneficiary met this criterion based on his role as soundtrack designer for a promotional film for , presented at the Telecom 2000 exhibition in Israel. Counsel noted that is Israel's national telecommunications provider and that the beneficiary had a "key role in preparing and presenting project" which, according to counsel was presented to nearly 100,000 viewers at the exhibition. No independent evidence of record supports prior counsel's assertions as to the role played by the beneficiary or the size of the viewing audience. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner submitted a document with information that was claimed to be taken from website, which contains information about the company. The petitioner did not submit copies of the web pages from which the information was taken, and did not indicate whether the information provided was a translation of information contained on the website. As such, the document has little evidentiary value.

The petitioner also submitted a copy of an unsigned letter dated November 16, 2000 from and the staff of the exhibitions and multimedia department of thanking the beneficiary for his participation in the company's presentation. The letter does not indicate that the beneficiary played a leading or critical role in the organization based on his contribution to this single project.

The petitioner also submitted a letter dated November 13, 2002 from , head of business development and new projects for computer animation production house , indicates that the beneficiary worked for his studio as "the leading music composer on several projects" including " " an animated science fiction series, and the above-referenced Bezeq presentation at " " According to , the beneficiary's role on the contract was the composition and scoring of "music for the promo." With respect to the project, stated that the beneficiary "helped us to produce a stereoscopic 3D ride," for which the beneficiary created the sound track as musical editor and sound designer. letter was accompanied by an uncertified English translation of information obtained from 's public website.

While has high praise for the beneficiary's contribution to the above-referenced projects, the evidence submitted is insufficient to establish that the beneficiary performed in a lead, starring or critical role for either Further, the petitioner has not submitted evidence in the form of newspaper articles, trade journal articles, publications or testimonials to establish that enjoys a distinguished reputation.

In response to the RFE, prior counsel further claimed that the beneficiary has "composed and musically produced the theme song and most of the original songs in the internationally acclaimed, winner of the they appear in the French and international versions. . . ."

The record contains a letter dated October 19, 2004 from , who states:

> About 5 years ago our television production " " (a co-production with) was sold to world-wide distribution through the French distributor " " A new international version was produced to enable dubbed versions for Europe distribution. For that version we replaced the music and songs of the entire series.
>
> Most of the new songs for the international version of " " were composed and musically produced by [the beneficiary] (23 episodes)
>
> [The beneficiary] also composed and musically produced the new theme song " " performed by the renowned singer

The petitioner submitted a synopsis of this television program taken from the website of http://www.marathon.fr, which lists the number of episodes, main cast, production companies involved and notes that the program won the award " at the Montreux Festival." The petitioner did not, however, submit testimonial or published evidence that establishes how the beneficiary performed in a lead, starring or critical role for the Clasicaletet organization, nor does the record contain evidence establishing its

distinguished reputation. If the petitioner seeks to establish that is a distinguished production, then it should have submitted published evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements which establish the beneficiary's services as a lead or starring participant in the series, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*).

Prior counsel further claimed that the beneficiary meets the eligibility requirements for this criterion based on: (1) his contribution of "several screenplays for an interactive drama series called broadcasted on national channel"; (2) his contribution of corporate video screenplays for (3) his direction of the comedy talk show 9; and (4) "key editing and directing services for Israel Defense Force filing unit." The petitioner submitted no testimonial evidence related to these projects, nor did it submit articles in newspapers, trade journals, publications, or testimonials to establish the distinguished reputation of these projects or the beneficiary's lead, starring or critical role. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

With respect to the beneficiary's upcoming film projects, the petitioner submitted nothing more than letters of interest from potential producers in the United States. The minimal evidence submitted is simply insufficient to establish that he would serve in a lead, starring or critical role for an organization or establishment that has a distinguished reputation.

Prior counsel broadly claimed that "TV composers are an essential and leading part of every TV production," noting that "the composer's leading role is recognized in the industry, they win special prizes . . . and gain fame and recognition for their tunes." If this is the case, then it stands to reason that the petitioner should be able to submit evidence of the beneficiary's fame and recognition achieved based upon his role as a television music composer. Contrary to counsel's assertions, it is not "clear from the evidence and testimonies . . . that the role played by [the beneficiary] is a key and starring role in each and every one of the projects, and that the productions and establishments in which he performs have a distinguished reputation." The evidence confirms that the beneficiary has consistently worked in the Israeli television industry as a music composer and has some credits as a director and screenwriter, but falls short of establishing that he has been employed in a lead, starring or critical capacity with organizations or establishments that have a distinguished reputation, as documented by the required testimonial and published evidence.

Based on the foregoing, the petitioner has not submitted evidence that the beneficiary has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation, evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(v)(B)(*3*). Again, the record is particularly lacking in testimonial and published evidence pertaining to the beneficiary's proposed projects in the United States.

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

The petitioner did not initially claim that it was submitting evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*4*). In response to the RFE, prior counsel indicated that the series *Family and a Half*, for which the beneficiary composed the theme music, has been broadcast for over 6 years and "reached the outstanding rating of 10.1%" or a viewing share of 19% of Israeli television viewers. In support of this claim, the petitioner submitted a web page from which depicts a graph with descriptive information provided in the Hebrew language. The following is handwritten on the document: " rerun enjoyed a rating of 10.1% which means more than 500,000 viewers."

Prior counsel further stated:

> As demonstrated by the list of payments for radio and TV programs, [the beneficiary's] series and songs enjoyed numerous showings. This list taken from the database of ACUM, Society of Authors, Composers & Music Publishers in Israel, indicates the occasions where [the beneficiary's] pieces were used on national radio and T.V. It also indicates [the beneficiary's] part in each piece (100% when referring to instrumental pieces and 50% when the Beneficiary contributed tunes for lyrics). . . . It should be mentioned that for every listing and performance [the beneficiary] receives royalties amounting to thousands of dollars every year, a relatively high sum for a composer in Israel.

Prior counsel further emphasized that well-known Israeli singers have all sung compositions created by the beneficiary for television programs. Counsel noted in particular that has recorded the beneficiary's song " released it on two albums, and performs it at all of her solo concerts. The petitioner submitted uncertified, partial English translations of articles about these singers.

While current counsel also indicates that "a few" songs composed by the beneficiary have become "popular hits," the petitioner has not submitted sales figures for any of the beneficiary's songs that have been released for sale on albums by other artists. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner submitted many pages of television broadcast royalties statements issued to the beneficiary by ACUM for the year 2001, but translated only the first page. The translated page indicates that the beneficiary received royalties for the following musical compositions: " ," " ," and " " Current counsel later contributed a summary translation of the beneficiary's royalty statements for 2001 indicating that he was paid NIS 10,045.45, for 51 entries covering 119 instances of airing on television and radio broadcasts. In addition, counsel provides summary translations of other data obtained from ACUM and an "internet search" indicating that the beneficiary is credited with 86 Hebrew language musical pieces, 12 international arrangements and 35 translations and arrangements.

The petitioner submitted a screenshot from the web page of "Central Bureau of Statistics," which indicates "Average Wages per Employee by Industry – at Current Prices" for 2002. The chart provided does not include the television or recording industry. There is no evidence showing that the amount of royalties the beneficiary receives are indicative of "major commercial success" in the beneficiary's industry.

Furthermore, the plain language of the regulation requires evidence "that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications." The petitioner has not submitted any figures reported in trade journals, major newspapers or other publications. In addition, the petitioner failed to submit full certified translations of the documents it did provide, thus the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3).

Simply submitting documentation indicating that the beneficiary composed music for television shows and received royalty payments as a result of his work does not meet the requirements of this regulatory criterion. Any working music composer in the industry would be able to submit comparable evidence and the receipt of royalties alone is not indicative of the beneficiary's achievement of commercial success. While the petitioner indicates that several of the beneficiary's compositions have been released by well-known singers, there is no evidence showing, for example, that the petitioner's musical recordings have generated substantial sales in Israel or elsewhere.

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

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

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements. 8 C.F.R. § 214.2(o)(3)(v)(B)(5).

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) provides that affidavits written by present or former employers or recognized experts certifying to the alien's 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 petition was accompanied by extensive testimonial evidence from friends and acquaintances of the beneficiary, and from persons who have worked with him on television and/or film projects.

The petitioner submitted a letter from who states that he has worked with the beneficiary in his capacity as executive producer for in Tel Aviv, Israel. states:

> [The beneficiary] first came to us as the director of a comedy talk-show magazine. He displayed a skill, meticulousness and confidence that still astounds me, and both these and his extraordinary people skills quickly gained him the role of professional facilitator in a highly-strung and volatile public access television creative/technical team.

> [The beneficiary's] decision to advance his studies – while creating a void in our midst that will be quite impossible to fill- promises the world of film and television a talent whom will surely soon be one to reckon with.

stated in a letter dated May 26, 2002:

> I wish to introduce our member – a young and talented composer . . . whom I know personally for more than 4 years. As a novelist, poet and lyricist, I have worked with [the beneficiary] throughout this period on many songs, including theme songs of the TV series " " which were nationally broadcast on Israeli
>
> During my experience with [the beneficiary] I couldn't help but notice his ability to be outstanding creative, put great attention to detail, and always maintain a positive working environment. I discovered a most talented composer and arranger, extremely devoted to his work. Working with [the beneficiary] has always been a pleasant and fruitful experience.
>
> [The beneficiary] is one of the most active composers in Israel. . . .

The petitioner also submitted a letter dated from Mathematics Department at the University of Kansas, who indicates that he is a violinist and published music composer. With respect to the beneficiary, states:

> I have known [him] since he was a young boy in Israel and I have witnessed the growth and flourishing of [the beneficiary] from an extraordinarily talented boy into an extraordinarily talented and accomplished young man. I have been exposed to his work in music composition and production as well as in film directing and production.
>
> Over many years, I have known personally some very talented people, both in Academia and the Arts (among them are). It is true that [the beneficiary's] accomplishments are not yet comparable to some of those whom I have known as much older people. On the other hand, the extraordinary talents of [the beneficiary] may rival those of any I have known.
>
> * * *
>
> [The beneficiary] is an artist of extraordinary ability and promise, both in music and in film/theater. The opportunities to fulfill that promise in the U.S. should be made available to him for the sake of his future creations.

The petitioner's initial evidence included a letter dated from who states that he is a screen writer of several Israeli television shows, including " " of the animation series , and also "known as a cinema-television expert." He indicates that he has known the beneficiary for seven years, and states:

> Recently we worked together on the project, where [the beneficiary] worked as music composer and soundtrack designer. I have discovered that [the beneficiary] is a true artist who knows, understands and loves the film world.
>
> I have watched [the beneficiary's] work through many projects, both as a music composer and as a screenwriter and director, and I was amazed by his ability of maintaining exceptionally high standards both professionally and creatively, even within the tightest budgets, and sometimes through extremely difficult production situations. I rarely come across such passion and dedication like [the beneficiary's] in my 12 years in the business.
>
> It is my opinion that [the beneficiary] is a unique artist of extraordinary ability in the fields of screenwriting and directing and music composing, as demonstrated by his works and accomplishments so far.

In addition, the petitioner provided a letter from conductor/composer , who states:

> I have known [the beneficiary] since he was born (His mother is my first cousin). To no one's surprise, he has shown a prodigious musical talent from early childhood. In addition to myself, my father and and my grandfather were professional musicians.
>
> What is even more important is that [the beneficiary's] father is a very famous composer/arranger and conductor in Israel. So as you can see he comes by his talent naturally.
>
> I have followed [the beneficiary's] development since his childhood and happy to report that he has developed into an impressive young artist. In the year 2000, while on a sabbatical from the university I spent several months in Israel writing music. While there, I was invited to view and hear a special premiere screening of the mini-series for which [the beneficiary] composed, arranged and musically produced the entire musical score. It was simply wonderful because the music supported and enhanced the drama.
>
> Throughout the whole post-production process, [the beneficiary] was well-prepared and professional. He demonstrated a methodical and well-planned approach, rarely seen in veteran filmmakers. Having captured high quality images and sound, it made it easy for us to deliver a well-polished final product. . . .
>
> . . . . [The beneficiary] is an extremely talented individual, and his continued ability to work in the US will have a beneficial impact on the American Film Industry for years to come.
>
> [The beneficiary] has clearly developed at his tender age into a first rate artist with a great imagination.

The petitioner provided a letter from who states that she is "a well-known actress and singer in Israel for many years." She lists her stage roles and notes that she is known in the children's television world in Israel as " from the musical drama series . With respect to the beneficiary, states:

> I had a great privilege to work with [the beneficiary] as an actress in the pilot for his mini-series " As an experienced actress, I can appreciate his unique and brilliant work as a film director.
>
> I also worked with [the beneficiary] in the musical dramatic television series for children – " For this television series, [the beneficiary] composed and arranged dozens of wonderful and original songs, and as a musical director of the series, he worked with me again, on the recordings of these songs.
>
> There is no doubt that [the beneficiary] is a diverse an[d] original artist and it is my opinion that he is blessed with the spark of genius that is found in the truly great artists. He is defiantly [*sic*] by far, one of the most talented and promising creating artists I've ever worked with, and I'm sure his future will bring us many more wonderful creations in the fields of music, film and television, both as a composer, screen-writer and a film/television producer.

The petitioner's initial evidence included a letter from who states that she is an actress, film screen writer, director, producer and instructor of directing and acting at Tel Aviv University. states:

> I've known [the beneficiary] for years and followed attentively his cinematic work. I have been continually impressed with the truly outstanding directorial talent that [the beneficiary] demonstrated in his films. I have been also extremely impressed with his skills and capability as a writer and director. His talent and ability to understand the complex workings of actors is very apparent.

At the time of filing the petition, the petitioner also submitted favorable written consultations from the American Federation of Musicians, the Writers Guild of America, West, Inc., and the Alliance of Motion Picture and Television Producers. All three organizations indicated that they have no objection to the granting of an O-1 visa.

The petitioner also sought to rely on the above-referenced letter from , noting that stated that he was "impressed with his work as a music composer, and a writer director," leading him to express interest in the beneficiary's future projects. Similarly, the petitioner indicates that has also indicated her interest in the beneficiary's work as a composer and writer/director, and that her interest in the beneficiary's project serves as recognition of the beneficiary's extraordinary abilities.

The petitioner also provided evidence that the beneficiary was granted a scholarship in the amount of $4,000 from the for the purpose of attending summer producing and directing courses at the University of Southern California School of Cinema, described by counsel as "one of the most prestigious schools in the field of TV and motion picture."

The record also contains a letter dated om the , confirming the beneficiary's membership in the academy, along with a list of requirements for membership.

Upon review, the petitioner has not established that the beneficiary meets the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(5).

The plain language of this regulatory criterion requires the petitioner to submit evidence that the beneficiary has received significant recognition *for achievements*. The testimonial letters submitted to satisfy this criterion indicate that the beneficiary is recognized by his friends, employers and colleagues for his work ethic, creative and artistic skills, and innate talent in music composition, screenwriting and directing. All of these attributes have clearly made the beneficiary employable in the field. It is unclear, however, what, exactly, constitute the beneficiary's recognized achievements in the field. The petitioner has not established that either the beneficiary's scholarship award or membership in the Israeli Academy of Motion Pictures was granted based on recognition of the beneficiary's achievements.

The regulation at 8 C.F.R. § 214.2(o)(2)(iii)(C) provides that 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. Here, it would be accurate to state that the beneficiary has received significant recognition for his talent and potential, rather than for any existing achievements in the field.

The AAO notes that the letters submitted are from the beneficiary's own former employers, collaborators or family friends, and discuss his talent and dedication rather than his achievements in the motion picture and television field. While some of the letters could be considered to be from experts in the field, the letters do not discuss the beneficiary's achievements beyond confirming that he performed his work admirably in prior projects.

The favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary achievement claim.[4] Here the submitted testimonial evidence does not establish the beneficiary's recognition beyond his immediate circle of personal and professional contacts. 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, however, ultimately responsible for making

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

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

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.

The admissibility of and weight to be accorded expert testimony may vary depending on such factors as the extent of the expert's qualifications, the relevance of the testimony, the reliability of the testimony and the overall probative value to the specific facts at issue in the case. *See Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011)(citing Fed. R. Evid. 702). Further, the content of the writers' 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 that one would expect of a musical composer and screen-writer who is outstanding, notable or leading in the field. The petitioner submitted no independent objective evidence of the beneficiary's standing and recognition in the entertainment community.

We acknowledge counsel's claim that the "no objection" consultation letters from the Writers Guild of America, The Alliance of Motion Picture & Television Producers and the American Federation of Musicians are evidence of the beneficiary's international renown as an artist of extraordinary ability. We note that all of these letters are based on the writers' review of documentation submitted to them by the petitioner and not upon any independent knowledge of the beneficiary's reputation or achievements in the field. While such consultations are required by regulations and, in this case, fulfill the petitioner's evidentiary burden to submit appropriate written consultations pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(D), they are advisory in nature and are not binding on USCIS. *See* 8 C.F.R. § 214.2(o)(5)(i)(D).

Based on the foregoing discussion, the petitioner has not established that the beneficiary meets this criterion.

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

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(v)(B)(*6*).

The petitioner indicated at the time of filing the petition that the beneficiary is expected to earn "a minimum of approximately $750 weekly in the U.S. alone" from his planned engagements. The petitioner failed to submit any contracts or other reliable evidence in support of these claims. Although the petitioner also submitted a letter from United Studios in Israel indicating that the beneficiary has ongoing commitments to produce musical compositions for Israeli television, the petitioner did not provide evidence of how much he is to be paid for such work.

In response to the director's request for additional evidence, the petitioner stated:

> Due to the Beneficiary's extraordinary abilities and qualifications, he expects to gain for his "Queen Ester" project a salary and remuneration which are substantially higher than those gained by others in the field, as evident by the contract draft attached. . . .
>
> As indicated above, [the beneficiary] is earning high royalties for his pieces amounting to thousands of dollars every year. [The beneficiary] has gained a prestigious scholarship from America Israel Cultural Foundation and received substantial financial support for his film.
>
> The salary and moneys received by [the beneficiary] are considered very high in relation to others in his field, especially in comparison to other Israeli screenwriters and composers. It should be taken into account again that the average salary in Israel standards around $1,500.

Of the five or more U.S.-based projects on which the beneficiary is intending to work, the petitioner submitted a proposed, un-signed agreement related to one project, . The draft agreement indicates that the beneficiary would receive a 30 percent share of gross income generated by the project through ticket and soundtrack sales, and that he would be entitled to an advance of $10,000. This evidence is insufficient to establish that the beneficiary will command a high salary in relation to others in his field.

With respect to the beneficiary's previous salary and remuneration, the petitioner has submitted evidence that the beneficiary earned royalties of NIS 10,045.45 in 2001. The source provided by the petitioner indicated average employee wages for a number of Israeli industries in 2002. The amount the beneficiary earned in royalties in 2001 was higher than some industries, but lower than salaries earned by workers in public administration, finance and electricity/water industries. The data provided does not include the entertainment industry or the beneficiary's occupation. The petitioner did not provide any other evidence of prior earnings received by the beneficiary for his film, musical or television projects beyond the partially-translated royalty statements, nor did it provide appropriate salary and wage data for comparison purposes. The plain language of this regulatory criterion requires evidence of "a high salary or other significantly high remuneration for services, *in relation to others in the field*." [Emphasis added.] The petitioner offers no basis for comparison showing that the beneficiary's earnings are high compared to other musical composers or screenwriters, and in fact does not include any evidence of the beneficiary's earnings as a screenwriter. The record is devoid of objective earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In the present case, the evidence submitted by the petitioner does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

III. Final Merits Determination

Kazarian sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. As discussed above, the petitioner established eligibility for one of the six criteria, of which three are required under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B).

Notwithstanding the above, a final merits determination considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has achieved a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that he is recognized as outstanding, notable, or leading in the motion picture or television field, pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary is recognized as having a demonstrated record of extraordinary achievement, pursuant to 8 C.F.R. § 214.2(o)(3)(v). *See Kazarian*, 2010 WL 725317 at *3.

Upon review, the AAO finds that the petitioner has not established that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture industry or that he is recognized in the field as outstanding, notable or leading.

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). The petitioner submitted extensive evidence relating to the beneficiary's work experience. Although the evidence establishes that the beneficiary has been employed consistently in the field, there is no evidence that the beneficiary is recognized as having a demonstrated record of extraordinary achievement in motion picture or television production, or that he is leading or notable within the industry as a screenwriter or as a music composer. The AAO notes that the majority of the evidence submitted relates to the beneficiary's prior achievements as a music composer for television, while the beneficiary's proposed work in the United States is chiefly as a screenwriter for film, although the record indicates that the beneficiary would also compose the music for any completed film projects. Given that the petitioner indicates that the beneficiary would be a "music composer/screenwriter" in the United States, the petitioner is required to demonstrate extraordinary achievement in both fields. The evidence of record falls particularly short in establishing that the beneficiary is recognized in the industry for his achievements as a screen writer.

The petitioner has not sufficiently documented the distinguished reputation of the beneficiary's prior projects through the types of published evidence required by the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(*1*) and (*3*). At most, it appears that the beneficiary has written theme music for several successful television shows. It is expected that a musical composer for television will in fact be able to demonstrate some television credits. Additional evidence is required to establish that such credits establish the beneficiary as a musical composer who is recognized as outstanding or leading in the field. Even more problematic is the complete lack of evidence to demonstrate that the beneficiary *will perform* services in a lead, starring or critical role for products or events that have a distinguished reputation in the United States. The record suggests that several of the beneficiary's proposed film projects have not developed beyond an outline stage, and the petitioner has provided no evidence that contracts or financing for any projects were secured at the time of filing the petition. The petitioner is obligated to establish the distinguished reputation of the upcoming projects beyond providing an overview of the beneficiary's script ideas and brief letters of interest from possible producers.

Unusual in its specificity, section 101(a)(15)(O)(i) of the Act clearly requires "extensive documentation" of the alien's achievements. The AAO emphasizes that four out of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B) require the petitioner to submit various types of published materials to establish the beneficiary's recognition for achievements, such as critical reviews, advertisements, publicity releases, and newspaper, magazine or trade journal articles. Therefore, it is significant that the petitioner has submitted

minimal evidence that the beneficiary's name has appeared in publications in connection with his career as a musical composer or screenwriter. Specifically, the petitioner has submitted a single newspaper clipping in which the beneficiary was mentioned in a photograph caption.

Unlike the O-1 regulations applicable to aliens of extraordinary ability in the arts, the regulations pertaining to aliens of extraordinary achievement in the motion picture and television industry do not have a "comparable evidence" criterion. *See* 8 C.F.R. § 214.2(o)(3)(iv)(C). Therefore, if the beneficiary is coming to the United States to work in the motion picture and television industry, the petitioner must submit some published materials about the beneficiary in order to establish his eligibility for this classification. It is not reasonable to include the beneficiary among the group of music composers and screenwriters recognized in the field as outstanding, notable or leading if the petitioner does not establish that he has received some form of independent recognition in the industry, beyond the praise of his co-workers, acquaintances, relatives and former employers, based on his reputation or achievements. While the AAO acknowledges that a screenwriter or music composer is considerably less likely to be a household name than an actor or singer and will take this into account when reviewing published evidence, the petitioner cannot be wholly exempted from meeting the plain language of the evidentiary requirements.

Therefore, the conclusion reached by considering each evidentiary criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as a screenwriter or as a music composer who has demonstrated a record of achievement to the extent that he can be deemed to be recognized as outstanding , notable or leading in the motion picture and television field. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary relies primarily on the praise of his employers, acquaintances and collaborators, as well as on the reputation of the production studio for which he has most frequently worked, and the reputations of several singers who have performed his work. While the evidence may distinguish the beneficiary from other aspiring music composers, the petitioner must establish that the beneficiary is recognized based on his own reputation as outstanding, notable or leading in comparison with all music composers *and* screen writers. The documentation submitted in support of a claim of extraordinary achievement must clearly demonstrate that the beneficiary has achieved a very high level of accomplishment in the television or motion picture industry. For the reasons discussed above, the petitioner has not met its burden. Accordingly, the AAO will affirm the director's decision to deny the petition.

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 director's decision to deny the petition is affirmed.