

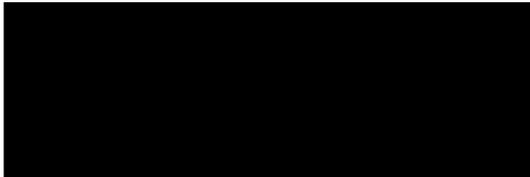
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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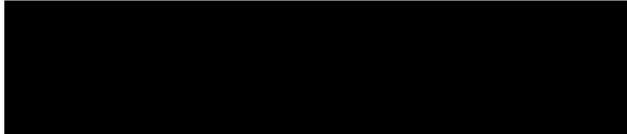
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

FEB 03 2011

IN RE: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California 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, an international sports management agency, 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 as a track and field athlete for a period of three years.

On March 31, 2010, 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 of endeavor. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director erred by undervaluing the significance of the beneficiary's Ugandan national awards in track and field, and by overlooking or assigning little evidentiary weight to other evidence submitted to establish the beneficiary's eligibility. Counsel asserts that the petitioner submitted evidence that meets four of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), and thus established that the beneficiary qualifies as an athlete of extraordinary ability under section 101(a)(15)(O) of the Act.

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

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

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

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

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

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three

types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The AAO finds the *Kazarian* court's two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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

II. The Beneficiary's Eligibility under the Evidentiary Criteria

The beneficiary in this matter is a native and citizen of Uganda. The record reflects that the beneficiary was a student athlete competing in track and field competitions [REDACTED] and for Louisiana State University ("LSU") in 2007 and 2008. He represented [REDACTED]

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 selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

There is no evidence that the beneficiary has received any major, internationally-recognized athletic awards, and the petitioner does not claim that the beneficiary meets this criterion.

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).¹

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

The petitioner has submitted documentary evidence pertaining to the following athletic prizes and awards:

- Certificate, [REDACTED] National Track and Field Championships, [REDACTED]
- Certificate, [REDACTED] UAAF National Track and Field Championships, [REDACTED]
- Certificate, All-American, First Team, Men's Outdoor Track & Field Division I of the National Junior College Athletic Association (NJCAA) [REDACTED]
- Certificate, All-American, Second Team, Men's Outdoor Track & Field Division I of the NJCAA [REDACTED]
- Certificate, [REDACTED] NJCAA National Champion, 800M event;
- Certificate, All-American, First Team, Men's Outdoor Track & Field Division I of the NJCAA [REDACTED]
- Certificate, Honorable Mention, Men's Outdoor Track & Field Division I All-American Team of the NJCAA [REDACTED]
- Certificate for Participation in the NJCAA Division I Men's Cross Country National Championship [REDACTED]
- Results showing that the beneficiary won "Heat 2" in the 800M event at the [REDACTED] IAAF World Junior Championships [REDACTED]
- A newspaper article titled [REDACTED] presents athletes with awards," [REDACTED] [REDACTED] edition of the *Levelland & Hockley County New-Press*, which mentions the beneficiary's receipt of the college's MVP Award in Track;
- A newspaper article titled [REDACTED] (name and date of publication not provided), which mentions that the beneficiary achieved a first-place finish in the 800 meter event at the LSU Alumni Gold track and field meet.
- A newspaper article titled [REDACTED] track team striding toward NJCAA National Meet, [REDACTED] [REDACTED] issue of *Plainsman Press*. The article mentions two meets, the TCU Invitational and the Mt. Sac Relays, in which the beneficiary placed in the top 3 finishers in the 800 meter event.

¹ The petitioner has not claimed to meet or submitted evidence relating to the criteria not discussed in this decision.

The evidence of record also mentions several other athletic awards, prizes or honors that have not been fully documented. In a letter dated January 15, 2010, the petitioner stated:

[The beneficiary] competed very successfully at Louisiana State University in Baton Rouge, Louisiana on a full athletic scholarship. He placed in the Southeastern Conference outdoor championships in the [REDACTED] 2007 and 2008 and placed in the finals of the 800 meters in the [REDACTED] NCAA Indoor Championships. He also won the National Junior College Championships in the 800 meters in [REDACTED]

The petitioner also submitted an advisory opinion letter from [REDACTED] who states that "it is USATF's understanding that [the beneficiary's] career highlights include placing 5th in the 800m at [REDACTED] NCAA Indoor Championship and earning All-American honors, placing 2nd in the 800m at [REDACTED] NJCAA Outdoor Championships and 1st in the 800m [REDACTED] NJCAA Outdoor Championships."

Finally, the beneficiary mentions the following awards in his resume:

- [REDACTED] 5th place finish at the NCAA Indoor Championships in 800 meters;
- [REDACTED] ten time All-American in Track and Field/Cross Country;
- [REDACTED] All-South Eastern Conference Track and Field;
- [REDACTED] 1st place finish in 800 meters and 4 x 800 meter relay and 2nd place finish in 4x400 meter relay at the NJCAA Championship
- [REDACTED] Most Valuable Player in Track and Field;
- [REDACTED] World Junior Semi-finalist in 800 meters;
- [REDACTED] Bronze Medalist East and Central African Championship in 400 meters

The petitioner submitted a photograph of the beneficiary wearing six unidentified medals. We note that at least one of the medals appears to be an NJCAA medal, and four of the medals bear an image of three runners. None of these medals specify a date, event category or placing result. The petitioner submitted a second photograph of various certificates, plaques, trophies and medals. Five of the awards bear the NCAA insignia, but no further information regarding the awards is visible or legible in the photograph.

On February 9, 2010, the director issued a request for additional evidence ("RFE"), in which the director observed that the beneficiary "has competed at the collegiate level in regards to all of his track and field events and accomplishments." The director advised that additional evidence would be required to establish that the beneficiary has risen to the very top of his sport despite having only competed at the collegiate level. In this regard, the director instructed the petitioner to submit evidence to establish the origination, purpose, significance and scope of each national and international award received by the beneficiary, as well as information regarding the criteria used to nominate and judge the participants and award winners, and evidence identifying the winners of each award over the past three to five years.

In response to the RFE, counsel for the petitioner asserted that the beneficiary meets this criterion based on his first place finishes [REDACTED] National Track and Field Championships" in the 400 meter run event in [REDACTED] [REDACTED]. The petitioner resubmitted the above-referenced certificates issued by the UAAF. The petitioner also

submitted a letter from [REDACTED]
states:

Uganda Athletics Federation is the national governing body for track and field in Uganda. The Federation is a member of the International Association of Athletics Federations (IAAF), the global body for the sport of Athletics. The IAAF consists of the national governing bodies for track and field throughout the world.

Ugandan Federation is composed of both amateur and elite athletes. To be an elite athlete you must have the capability to represent the country in international competitions.

[REDACTED] states that the beneficiary is a "national elite athlete" who will represent Uganda at the African Senior Championships in Athletics and at the Commonwealth Games [REDACTED]

The director determined the evidence submitted fails to satisfy the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The director acknowledged that the petitioner submitted certificates for the beneficiary's first-place finishes at the [REDACTED] National Track and Field Championships in the 400 meter run event. However, the director determined that the certificates alone are insufficient to establish the significance of the awards. Specifically, the director found that the petitioner "has not provided USCIS with corroborating evidence regarding the origination, purpose, significance, and scope of each award or the criteria used to nominate and judge the participants and award winners."

On appeal, the petitioner submits a letter dated April 17, 2010 from [REDACTED], who states:

[The beneficiary] finished in first place in the 400 meters at the Uganda National Track and Field Championships [REDACTED]. Both competitions [REDACTED] in Kampala.

The Uganda National Track and Field Championships are conducted by the Uganda Athletics Federation, and are the national competition to crown Uganda's national champions in each track and field discipline (e.g. 400 meters, long jump) through head-to-head competition. Uganda's athletes who have the fastest times or best marks are invited to these championships and the winner of each event is Uganda's national champion in that event.

[The beneficiary] was therefore [REDACTED] National Champion in the 400 meters [REDACTED]
[REDACTED]

Counsel asserts that "in track and field, an athlete can receive no higher national award than being recognized as the national champion in his or her event," and therefore contends that the petitioner has submitted evidence that clearly satisfies the plain meaning of this regulatory criterion.

Upon review, the AAO finds that the submitted evidence satisfies the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

The director's finding that the petitioner provided no corroborating evidence regarding the origination, purpose, significance, and scope of the beneficiary's 2002 and 2004 national track and field championships is incorrect. The petitioner provided a letter from an official of the national governing body of the beneficiary's sport attesting to the significance of the beneficiary's first place finishes [REDACTED] national track and field championship events. While it is true that not every event that is open to athletes from throughout a country is a "nationally-recognized" event, an event that results in a "national champion" recognized as such by the sport's national governing body does meet the plain language of this criterion. The AAO notes that in 2004, the year in which the beneficiary won his second national championship, the beneficiary also represented Uganda at the IAAF World Junior Championships.

While the petitioner has established that the beneficiary's [REDACTED] championships in the 400 meter event qualify under this criterion, the petitioner has not established that any of the beneficiary's other documented and claimed awards are nationally or internationally recognized awards.

As discussed previously, the petitioner submitted a photograph of the beneficiary wearing six medals. None of these medals specify a date, event category, or placing result, and the petitioner provided no information regarding the significance of the medals. Therefore, the photograph of the medals is insufficient to establish that any of them evidences the beneficiary's receipt of a nationally-recognized prize or award. Similarly, while the petitioner submitted a photograph of various NCAA trophies and other unidentified awards, the record contains no other evidence of any claimed NCAA prizes or awards received by the beneficiary, such as official results from events, certificates, close-up photographs of the awards themselves, media coverage of the awards, or a letter from an official representative of the NCAA or from an official of the Louisiana State University's athletics program attesting to the beneficiary's individual achievements. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r. 1972)). While Mr. Logan of the USATF indicates that the beneficiary placed 5th in the NCAA 800 meter finals in 2008, we note that this result, even if well-documented, would not be considered a nationally-recognized "prize or award" as the beneficiary was not among the medalists in the event.

The only other documented awards in the record are some of the beneficiary's claimed NJCAA awards, including his title as the 2005 NJCAA National Champion in the 800M event, his placement on two NJCAA Division I All-American First Teams, his placement on one NJCAA Division I All-American Second Team, and an NJCAA All-American honorable mention. With regard to the preceding NJCAA awards, the record does not include supporting evidence demonstrating the significance of these junior college awards and the magnitude of the junior college national championships. Again, the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) specifically requires that the beneficiary's awards be nationally or internationally *recognized* in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. In this case, there is no evidence establishing that the beneficiary's NJCAA awards had a significant level of recognition in his sport beyond the context of the event where they were received and therefore were commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Moreover, while the competition for these awards may have been open to junior college athletes from throughout the country, 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 NJCAA awards.

The beneficiary indicates in his resume that he received a bronze medal in the 400 meter run at the 2001 East and Central African Championship. The petitioner has provided no corroborating evidence of the beneficiary's receipt of this award. Moreover, the record does not include evidence demonstrating the significance of this award or the magnitude of this competition. As stated previously, 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 158. Furthermore, as previously discussed, 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 his awards.

The petitioner submitted a certificate from the NJCAA stating the beneficiary: "Participated in the Division I Men's Cross Country Championship . . . [REDACTED]." There is no evidence showing that this certificate equates to a nationally or internationally recognized prize or award, rather than simply an acknowledgment of the petitioner's participation in the competition.

The petitioner submitted a letter from [REDACTED] stating: "While he was a student athlete here at LSU, [the beneficiary] helps [sic] lead our team to Runner-up position in the NCAA championships." He also states that the beneficiary "was name [sic] first Team All S.E.C. performer [REDACTED]." [REDACTED] letter does not specify the beneficiary's competitive achievements that led to the LSU men's team's second place finish. Further, [REDACTED] letter does not provide information regarding the total number of LSU men's team members [REDACTED], the points each of the petitioner's fellow team members earned competing for LSU at the NCAA Championships, and the points earned by the beneficiary himself. It cannot suffice that the beneficiary was part of a large track and field team that earned collective recognition. Furthermore, as noted above, none of the beneficiary's specific NCAA achievements have been adequately documented, as the petitioner submitted only a photograph of various unidentified NCAA awards and trophies. With respect to [REDACTED] mention of the beneficiary's placement on the All SEC Performer First Team, we note that awards from the "Southeastern Conference," consisting of twelve universities, are regional collegiate awards rather than nationally or internationally recognized prizes or awards for excellence in the beneficiary's field of endeavor.

The petitioner submitted an article and race results from an unidentified newspaper indicating that the beneficiary placed first in his event at the LSU Alumni Gold Track Meet. Aside from failing to submit evidence of the beneficiary's actual prize or award from the event, the record does not include supporting evidence demonstrating that the LSU Alumni Gold Track Meet was a national competition rather than a regional competition. For instance, the meet results indicate that the vast majority of the competitors were from colleges located in the Southeastern and South Central United States. In this instance, there is no evidence establishing that the petitioner's LSU Alumni Gold first place finish equates to a nationally or internationally recognized prize or award for excellence in his sport. Similarly, while the beneficiary's third and first place finishes [REDACTED] events were reported by the *Plainsman Press*, the petitioner provided no evidence of the beneficiary's actual prizes or awards from the events, or any supporting evidence demonstrating that either meet was a national competition rather than a regional

competition. Finally, the beneficiary's Track MVP award from South Plains College was reported by a local newspaper and reflects only institutional recognition from his junior college's athletic department.

Finally, the petitioner claimed that the beneficiary's inclusion on the IAAF [REDACTED] "Top Lists" for the Indoor 800 meter event qualifies under this criterion. The petitioner relies on this same evidence to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), as will be discussed further below. It should be emphasized that the regulatory criteria are separate and distinct from one another. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a beneficiary meet at least three separate criteria. Regardless, the petitioner has not established how mere inclusion on the "Top List" statistical rankings, while notable, constitutes receipt of a nationally or internationally recognized prize or award for excellence in the sport. The beneficiary posted the 20th fastest time in the 800 meters in the sub-category of "oversized track" [REDACTED] of [REDACTED]. While it may be correct to state that most runners will never be named on the Top List, the AAO cannot consider any mention of the beneficiary in the IAAF rankings to be a nationally or internationally recognized "prize or award."

Based on the foregoing, we must conclude that the beneficiary has not documented the beneficiary's receipt of any nationally or internationally recognized prizes or awards other than his two Ugandan national championships in the 400 meter event, received [REDACTED]. The weight to be given to this evidence will be discussed further in our final merits determination below.

- 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 director determined, without comment, that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). The petitioner claims that the beneficiary meets this criterion based on his membership on the Ugandan national and Olympic teams. In support of this claim, the petitioner submitted a letter dated March 9, 2010 from [REDACTED] who states:

[The beneficiary] is an [REDACTED] Olympic Committee. To be an Elite Athlete Member of our committee, the athlete must be among the top three in his or her event in the entire country, and have the ability to represent Uganda in international competition, including the Olympic Games.

[The beneficiary] meets these criteria. This year, he is Uganda's [REDACTED] runner indoors. He will represent [REDACTED] Africa Senior Championships in Athletics in Nairobi, Kenya from [REDACTED] and the Commonwealth Games in New Delhi, India [REDACTED]. He will represent Uganda [REDACTED] in London.

The record also contains a letter dated March 9, 2010 from [REDACTED] who also confirms that the beneficiary is an elite national athlete, "currently ranked second in 800m outdoors and [REDACTED] runner indoors." [REDACTED] also confirms that the beneficiary will represent [REDACTED] Africa Senior Championships in Athletics and the

The record also contains evidence that the beneficiary competed for the Ugandan National Team at the IAAF World Junior Championships

While an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete can earn a place on a national or an Olympic team only through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that the beneficiary meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. Here, the petitioner provided evidence that only the very top athletes in the beneficiary's sport are selected to compete on the Ugandan national and Olympic teams based on their performance. Therefore, we concur with the director's determination that the evidence submitted meets this criterion.

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*

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.²

The petitioner submitted a captioned photograph of the beneficiary track team members. The photograph and four additional photographs accompanied a May 3, 2006 article in the preceding local Texas newspaper entitled " presents athletes with awards." The article mentions that the beneficiary received the Track MVP award, but the article was not about the beneficiary, nor does this local newspaper constitute "major media."

The petitioner submitted an article from the May 3, 2006 edition " NJCAA" (2006), but the article only briefly mentions the beneficiary. The plain language of this regulatory criterion, however, requires that the published material be "about the alien."³ Further, there is no evidence (such as circulation statistics) showing that this publication qualifies as a professional or major trade publication or some other form of *major media*.

² 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.

³ See *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner submitted two newspaper articles entitled [REDACTED] [REDACTED] which appear to be from the same page of the same publication. The name and date of the publication in which these articles appeared was not provided. The articles indicate that beneficiary placed first in the 800 meter race [REDACTED]. The plain language of this regulatory criterion requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." Track meet results posted in an unidentified newspaper do not meet these requirements.

Finally, the petitioner submitted [REDACTED] published at <http://www.iaaf.org> and in pamphlet form by the IAAF Statistics Office, for the indoor 800 [REDACTED]. The petitioner emphasized that the IAAF is the world governing body for track and field. Counsel stated that "these lists only include the top performers in the world in their events." The beneficiary is listed as having achieved [REDACTED] fastest time in the 800 meters [REDACTED] "oversized track" as of February 17, 2010. The beneficiary also appears on the IAAF list for the 800 meter indoor event.

On appeal, the petitioner submits a letter from [REDACTED] [REDACTED] and a member of the Association of Track and Field Statisticians (ATFS). [REDACTED] states that ATFS "is the world's preeminent authority on track and field statistics, and publishes, among other things, compilations of yearly best marks in track and field events" which are reflected [REDACTED] for indoor and outdoor performers. [REDACTED] emphasizes that "the IAAF's top lists only contain a fraction of a percent of the best performers in each event," while "many of thousands of national international-level performers do not make these lists each year." He explains that while the IAAF has over 200 member federations worldwide, athletes from only 38 countries appeared on the 2008 list, and athletes from only 25 countries appeared on the 2010 list. Finally, [REDACTED] states that the beneficiary was the only Ugandan on the 2010 list, and one of only two Ugandans on the 2008 list.

Upon review, the AAO cannot conclude that the inclusion of the beneficiary's name and top times [REDACTED] [REDACTED] can be considered published material *about* the beneficiary as required by the plain language of the regulation, even if the petitioner had established that the list itself could be considered major media.

Based on the foregoing, we uphold the director's finding that the submitted evidence does not meet the published material criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

4. *Evidence that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence*

The petitioner submitted two Certificates of Eligibility for Nonimmigrant (F-1) Student, Forms I-20, showing that the beneficiary received full athletic scholarships from South Plains College and LSU. 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.*" In this instance, there is no evidence comparing the dollar amount of the petitioner's athletic scholarships to the amounts received by other collegiate runners. Further, there is no indication that top runners' remuneration is limited to collegiate scholarships rather than paid endorsements, prize money, or some other form of compensation. The plain language of this criterion requires the petitioner to

submit evidence of a high salary "in relation to others in the field" (rather than restricted to those at the collegiate level). Nevertheless, the petitioner offers no basis for comparison showing that the beneficiary's past remuneration was significantly high in relation to others in his field.

With respect to the beneficiary's proffered compensation, the petitioner submitted a letter dated March 10, 2010 from its [REDACTED] who states that the beneficiary will "command significant appearance fees for track and field competitions in the 800 meters." [REDACTED] projected that the beneficiary will earn a minimum of \$5,000 per competition and opined that "this is a high rate of pay in the field." [REDACTED] stated that "because appearance fees are individually negotiated, there are no published studies of track and field athletes' earnings."

The director determined that the petitioner failed to submit evidence to meet this criterion, emphasizing that "the record does not contain evidence supporting the assertions of [REDACTED]." The director noted that the lack of relevant salary data or other reliable evidence prohibited a finding that the expected salary of \$5,000 per event is considered a "high salary" within the beneficiary's sport.

On appeal, counsel asserts that [REDACTED] statement that the Beneficiary's rate of pay is high should be accorded great weight in light of his expertise," and that "[h]is statement that there are no published studies of track and field athletes' earnings should be taken at face value." The petitioner submits an article entitled [REDACTED] published in the June 1992 issue [REDACTED] as evidence of [REDACTED] expertise in the sport.

The petitioner also submits two invitation letters, addressed to [REDACTED], for the beneficiary to compete in the 52nd Annual Mt. Sac Relays and the California Invitational Relays. The offer letters indicate that the beneficiary has been offered a \$5,000 fee for participating in each event, as well as transportation and accommodation.

Upon review, we concur with the director's determination that the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8) has not been met. While the AAO does not doubt [REDACTED] expertise in the sport of track and field, or even his knowledge of what constitutes a "high salary" in the field, the regulations clearly require the petitioner's claim that the beneficiary will receive a high salary to be supported by "contracts or other reliable evidence." The regulations do not make an exception for those petitioners who can demonstrate their expertise in their field.

At the time of filing, [REDACTED] submitted a letter dated January 26, 2010 in which he indicated that the petitioner had negotiated the beneficiary's participation in 14 track events scheduled between February and August 2010. The petitioner's initial evidence included no contracts between the sponsors of these events and the beneficiary setting forth the beneficiary's fee for participation in the event, and [REDACTED] provided no information regarding the beneficiary's negotiated compensation.

In response to the RFE, [REDACTED] submitted a second letter in which he projected that the beneficiary will earn at least \$5,000 per competition. The letter was not accompanied by the "contracts or other reliable evidence," specifically required by regulation. Further, it is not clear why the beneficiary's anticipated participation fee had to be "projected" as of March 2010, given [REDACTED] previously indicated that he

had already negotiated the beneficiary's participation in more than a dozen events as of January 2010. A person or company in business as an agent, such as the petitioner and [REDACTED] file an O-1 petition, but under the circumstances, "a contract between the employers and the beneficiary is required." See 8 C.F.R. § 214.2(o)(2)(iv)(E)(2).

The petitioner has finally submitted two offer letters from track events in support of the appeal. Both letters post-date the denial of the petition, and one letter, from [REDACTED] of California Invitational Relays, is not signed. The AAO cannot consider this new evidence as "reliable evidence" that the beneficiary will command a "high salary" as of the date the petition was filed. 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).

Finally, we acknowledge the petitioner's and counsel's claim that there are no "published studies" of track and field athletes' earnings. Such claim does not exempt the petitioner from providing some other form of corroborating evidence in support of its claim that a \$5,000 per meet participation fee is a "high salary" for an elite track athlete. The regulation simply requires that the petitioner's claims be supported by "reliable evidence." The petitioner could have sought other published articles from reputable sources, letters from the sponsors of the races in which the beneficiary will participate setting forth the range of participation fees paid to athletes, a letter from the governing body of the sport attesting to the unavailability of published wage information, the opinions of other experts in the field, or any form of other "reliable evidence" to corroborate its claims. [REDACTED] opinion that the beneficiary will receive a high salary is simply insufficient to meet this evidentiary requirement. In light of the circumstances and the regulatory requirement that the petitioner support its claims with "contracts or other reliable evidence," USCIS need not and will not accept [REDACTED] statement "at face value." Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158.

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).

III. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 214.2(o)(3)(ii) and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) and 8 C.F.R. § 214.2(o)(3)(iii); see also *Kazarian*, 2010 WL 725317 at *3.

In this case, the deficiencies in the documentation submitted by the petitioner have already been addressed in the preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). With regard to the evidence submitted for the awards criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) and the membership criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), we acknowledge that the beneficiary achieved the title of "national champion" [REDACTED], respectively. The beneficiary went on to represent [REDACTED] Junior World Championships. These achievements meet the plain language of the referenced evidentiary criteria. However, it is unclear whether the beneficiary was the senior national champion or the junior national champion in his event, given his age at the time he won the Ugandan national track and field championships. The fact that the beneficiary competed in [REDACTED] Junior Championships [REDACTED] suggests that the rules of the international governing body of the sport place [REDACTED] at the junior level of competition.

Further, the statute and regulations require the petitioner to demonstrate that the beneficiary's national or international acclaim as a runner has been *sustained*. 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). The beneficiary's qualifying achievements in the sport occurred [REDACTED]⁴. While the petitioner submitted evidence indicating that the beneficiary would compete on [REDACTED] national team [REDACTED] the evidence of record does not indicate that he has done so in recent years. National awards and team memberships earned by the beneficiary as a teenager more than six to eight years prior to the filing of the petition are insufficient to establish the beneficiary's sustained national or international acclaim in the support. While the beneficiary undoubtedly competed with success at the national level in his home country prior to coming to the United States on a student visa, the beneficiary's achievements must be compared to all runners, and not only to other junior runners in Uganda.

While the beneficiary has enjoyed success as a junior college and college athlete, we cannot conclude that awards won by him in age-restricted, amateur, junior college, or NCAA Division I collegiate competition indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 214.2(o)(3)(ii). There is no indication that the beneficiary, during his time in the United States, has faced competition from throughout his field (including professional elite runners), rather than limited to his approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁴ Likewise, it does not follow that a runner who has had success in

⁴ While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit and discusses the immigrant extraordinary ability classification, rather than the nonimmigrant classification, the

competition restricted to college students, non-professionals, or others in his immediate age group should necessarily qualify for an extraordinary ability nonimmigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 214.2(o)(3)(ii) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

The minimal published evidence in the record further supports a finding that the beneficiary has not yet risen to the very top of his sport. The beneficiary's individual and team results in junior collegiate and collegiate athletic competitions have been reported by local news media. The petitioner has not submitted evidence that would set the beneficiary apart from any other successful college athlete, much less place him among the most acclaimed and recognized athletes in all of track and field. While we acknowledge that the beneficiary has made [REDACTED] based on his race times, the petitioner has not established how such statistical placement has resulted in the beneficiary's sustained national or international acclaim.

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

IV. Conclusion

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

Beyond the decision of the director, the AAO notes that on May 26, 2010, subsequent to the director's decision in this matter, the AAO entered an administrative finding of willful material representation in connection with the instant beneficiary's Form I-140, Immigrant Petition for Alien Worker filed on June 16, 2009. The beneficiary self-petitioned for an employment-based immigrant visa under section 203(b)(1)(A) of the Act.

Pursuant to section 212(a)(6)(C)(i), any alien who by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation or admission into the United States or other benefit is inadmissible. The regulation at 8 C.F.R. § 214.1(a)(3)(i) provides that every nonimmigrant alien who applies for admission to, or an extension of stay in, the United States must establish that he or she is admissible to the United States, or that any ground of inadmissibility has been waived under section 212(d)(3) of the Act. Therefore, even if the petitioner had established the beneficiary's eligibility for

court's reasoning indicates that USCIS' interpretation of the comparable regulation at 8 C.F.R. § 214.2(o)(3)(ii) is reasonable.

the requested nonimmigrant classification, we note that the beneficiary would be ineligible for the requested change of status from F-1 to O-1 and extension of stay unless he first obtained the required waiver of the grounds of inadmissibility.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In 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