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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**



88

DATE: **JUN 17 2011** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE:           Petitioner:   
                  Beneficiary:

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

ON BEHALF OF PETITIONER:



**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 filed this nonimmigrant petition seeking to classify the beneficiary pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O), as an alien with extraordinary ability in the arts. The petitioner operates a restaurant and bar and the beneficiary is a singer and entertainer. The petitioner requests that the beneficiary be granted O-1 classification for a period of approximately three months so that he may enter the United States for three scheduled performances between December 2010 and February 2011.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director determined that the petitioner failed to establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), and submitted evidence to satisfy only one of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which three must be met to establish eligibility.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel contends that the evidence submitted meets at least three of the evidentiary requirements set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), and was "possibly overlooked" by the director. Counsel asserts that USCIS should take into account "the cultural differences between acclaim perceived in a western fashion and those perceived in the Arabic community." Counsel submits a brief in support of the appeal.

## **I. The Law**

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

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

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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

*Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:
  - (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
  - (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
  - (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
  - (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
  - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
  - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or

- (C) If the criteria in paragraph (o)(3)(iv) 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 FR 41818, 41820 (August 15, 1994).

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

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

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

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

*Id.* at \*3.

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

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

In the present matter, the petitioner has failed to submit evidence that satisfies three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B), and has not established that the beneficiary has a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that he is recognized as prominent, renowned, leading, or well-known in the field of music. 8 C.F.R. § 214.2(o)(3)(ii).

## II. Discussion

The sole issue addressed by the director is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

The petitioner filed the petition and supporting documentation on October 13, 2010. The director subsequently issued a request for additional evidence ("RFE") on October 26, 2010, to which the petitioner responded on November 17, 2010.

In a letter dated September 29, 2010, the petitioner, which operates a bar and restaurant known as [REDACTED] on the Strip, stated that it is also engaged in arranging and promoting entertainment tours in the United States, often featuring Middle Eastern and Arabic performers. The petitioner stated that it will promote the beneficiary's upcoming concert tour and assume responsibility for his salary and expenses. The petitioner indicated that the beneficiary is scheduled for performances on December 23, 2010, December 31, 2010, and February 14, 2011, with attendance at each event expected to be approximately 500 people.

The petitioner described the beneficiary, a native and citizen of Iraq, as "one of the most famous performers and admired Arabic singers on the music scene today," and "one of the most successful and admired singers in the Iraqi music industry for many years." The petitioner further stated that the beneficiary has obtained international acclaim as an Arabic singer, with multiple "best-selling albums."

**A. *The Evidentiary Criteria***

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes.

The petitioner did not claim that the beneficiary has won or been nominated for a Grammy award or comparable national or international award, and counsel raises no objection to the director's finding that this criterion was not met.

Therefore, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

*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*

At the time of filing, the petitioner indicated that the beneficiary has had "successful concert performances in the United States, Iraq and the rest of the Gulf region." As evidence of specific events or productions in which the beneficiary has appeared, the petitioner submitted what appears to be advertising or promotional materials for the beneficiary dated 2002 and 2003. These documents are in the Arabic language and are not accompanied by a certified English translation. The petitioner submitted one translated advertisement indicating that the beneficiary was scheduled to perform at a party held at the [REDACTED] in Damascus, Syria on April 15, 2010. The advertisement indicates that "the star of the night will be the singer of the Radio and Television [REDACTED] and top Iraqi singers."

The petitioner submitted evidence that the beneficiary is a member of the [REDACTED] since 1997, and an "Information Circular" dated 2004 from the Syrian Association of Singers and Actors indicating that the beneficiary worked as a "singer for parties and weddings" in Syria for over six years. The petitioner also submitted a letter dated March 19, 1997, from the Iraqi Ministry of Press and Culture, Department of Radio and Television Broadcasting. The letter is addressed to the Association of Singers and Actors, and indicates that the beneficiary "sang many songs" and includes a list of 11 songs the beneficiary performed between 1990 and 1993.

The petitioner submitted a letter from [REDACTED], manager of Al Khadra Studio in Baghdad, Iraq. [REDACTED] confirms that the beneficiary recorded a new work of art for 2010 titled "Sayad El Gloob."

The only other documentary evidence submitted included: (1) an interview with the beneficiary published in *Alwan Magazine* on April 19, 2001; (2) an interview with the beneficiary from [REDACTED] published in February 2002; (3) an interview with the beneficiary published in [REDACTED] on February 10, 2002; and (4) transcripts of two television interviews that are claimed to have taken place in 2003 and 2008. The petitioner did not provide an Arabic transcript of either interview. The beneficiary's interview with "Iraqi Tune" indicates that the beneficiary first reached the media through a television show called "Talents Studio" and has performed in Syria, Turkey and Jordan.

With respect to the beneficiary's upcoming performances in the United States, the petitioner submitted the beneficiary's agreement with the petitioner to perform at three singing engagements, as well as letters confirming that the concerts have been arranged. [REDACTED] President of Penna's of Sterling in Michigan wrote to confirm that the petitioner has reserved his facility for a Christmas Party on December 23, 2010 at which the beneficiary will perform. [REDACTED] indicated that the price of the hall will be \$50.00 per person, tickets for the performance will be priced at \$100.00 per person, and the petitioner has guaranteed attendance at 500 guests.

[REDACTED] owner of Prestige Club & Banquet Center in Eleajon, California wrote to confirm that the petitioner has reserved his club's banquet center for December 31, 2010 for the beneficiary's performance, and guaranteed attendance of 500 guests at a ticket price of \$120.00 per person. Finally, [REDACTED] general manager of the [REDACTED] in Southfield, Michigan wrote to confirm that the petitioner reserved the banquet center for a Valentines Day Party with guaranteed attendance of 500 guests on February 14, 2011.

In the request for evidence issued on October 26, 2010, the director advised the petitioner that the initial evidence failed to establish that the beneficiary has performed or will perform services as a lead or starring participant in productions or events which have a distinguished reputation. The director noted that the advertisements submitted for previous events were not accompanied by English translations and did not provide sufficient evidence to establish the beneficiary's lead or starring role in productions or events with a distinguished reputation. The director instructed the petitioner to provide additional evidence with respect to prior performances in the forms of written reviews from critics, advertisements, publicity releases, contracts or endorsements. In regard to the beneficiary's planned U.S. performances, the director requested additional evidence to establish that the beneficiary would participate in such events in a leading or starring role and that the events themselves have a distinguished reputation.

In a response dated November 11, 2010, the petitioner stated that the beneficiary "is the sole performer in his shows," and as such is "the main attraction" and "the single reason for audience members to attend the show." The petitioner stated that "previously submitted advertisements of the beneficiary's previous performances refer to the beneficiary as 'the star of the night' and 'a top Iraqi singer.'" The petitioner emphasized that the advertisements "clearly depict the beneficiary as a sole performer, they show no supporting performers."

The petitioner indicated that additional advertising for the beneficiary's planned performances in the United States would occur only after the visa petition is approved. The petitioner stated its intent to "aggressively promote the performances to ensure large crowds." Finally, the petitioner referred to the magazine and newspaper articles submitted at the time of filing, noting that such articles "evidence the fact that the beneficiary has performed as the lead and starring role and has a distinguished reputation in the artistic community."

The director determined that the submitted evidence failed to meet the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). In denying the petition, the director once again emphasized that, although the petitioner submitted advertisements for some of the beneficiary's prior performances, it failed to submit English language translations of the original Arabic documents, and further failed to establish through evidence that the performances were for events or productions that have a distinguished reputation. The director found the evidence similarly lacking with respect to the beneficiary's upcoming performances, and noted that the petitioner is obligated to establish the distinguished reputation of the performances through submission of critical reviews, advertisements, publicity releases, publications, contracts or endorsements.

On appeal, counsel asserts that the petitioner did in fact submit an advertisement from a performance that lists the beneficiary as the "star of the night" and as one of the "top Iraqi singers." Counsel contends that all of the submitted advertisements "feature the beneficiary's face as the central focus of the advertisement, showing that he is the lead, starring performer."

Counsel further contends that the submitted magazine articles do in fact establish that the beneficiary performed in productions or events which have a distinguished reputation. In this regard, counsel states:

Typically award and esteem is not measured in Middle Eastern countries the same way that it is perceived in the United States. There are no Academy Awards, Grammys, or Platinum measurement of sales. Acclaim and recognition come to a Middle Eastern artist through word of mouth, articles in magazines and newspapers, interview requests, published articles, and contracts for live performances and tours within the international Arabic speaking community. The fact exists that media in the Middle East has been severely censored and oppressed, especially in Iraq. Since the fall of Saddam in the early 2000s, media in Iraq has begun to rebuild after a previous regime of oppression. . . . The beneficiary has grown in acclaim and popularity throughout the years as evidence by submitted exhibits. He . . . is talented and respected in the Arabic musical community. His reputation is distinguished among other artists in his field, and he is in high demand to perform outside of the Middle East, to other Arabic speaking crowds.

Upon review, the AAO concurs with the director's determination that the petitioner has not submitted evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

The plain language of this criterion requires the petitioner to support its assertions regarding the beneficiary's lead or starring role in events or productions with a distinguished reputation by submitting evidence including critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The petitioner

has submitted a single advertisement indicating that the beneficiary was the "star of the night" at a party featuring "top Iraqi singers," which was held at the [REDACTED] in Damascus, Syria on April 15, 2010. While the advertisements appear to be sufficient to establish that the beneficiary was a starring participant at this party, the AAO is unable to determine based on the advertisement alone that this event had a distinguished reputation. As twice noted by the director, all other advertisements for the beneficiary's past performances are in Arabic and have not been accompanied by English translations. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. *See* 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Contrary to counsel's assertions, the fact that the beneficiary's photograph appears to be featured on the advertisements is insufficient to establish each element of this evidentiary criterion.

The petitioner appears to be relying on claims regarding the beneficiary's reputation as a popular Arabic singer in lieu of providing specific documentary evidence relating to any particular events or productions in which he has participated or will participate. 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)). The fact that the beneficiary was interviewed by magazines and newspapers is significant and will be considered under the appropriate evidentiary criterion below; however, the content of the interviews does not confirm the beneficiary's performance in a lead or starring role at any particular event or production with a distinguished reputation.

Furthermore, this regulatory criterion also requires the petitioner to submit evidence that the beneficiary "*will perform*" services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements.

The petitioner has submitted evidence to establish that the beneficiary will perform as the sole performer at a Christmas party, a New Years Eve party, and a Valentine's Day party in the United States, and indicates that it expects to sell 500 or more tickets to each event. The petitioner has not, however, provided evidence in the form of advertisements, publicity releases, publications, contracts, or endorsements to establish that any of the productions or events in which the beneficiary will participate have a "distinguished reputation." The petitioner stresses that no advertising costs will be incurred until the beneficiary's visa petition has been approved. However, the regulations clearly require the petitioner to support its claims with specific forms of documentary evidence. While the AAO does not doubt the petitioner's claims that the beneficiary would be the sole performer at the engagements that it has arranged for him, the petitioner has failed to establish that such engagements could be considered events with a distinguished reputation. The petitioner's claim that the beneficiary is a popular singer who will garner the interest of American audiences is insufficient to meet the evidentiary requirements set forth in the regulations.

Based on the foregoing discussion, we concur with the director's conclusion that this criterion has not been met.

*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*

As noted above, the petitioner submitted three published interviews with the beneficiary. The first was an interview published in the April 19, 2001 edition of [REDACTED] magazine. The article mentions that the beneficiary gained popularity with his first song, [REDACTED] and then "vanished." The beneficiary responds to the interviewer's inquiry about the status of his career, noting that he has been doing his shows in Syria, but had returned to Baghdad to record new songs. The beneficiary indicated that he has recorded 70 songs but did not consider them to be as good as [REDACTED].

The second interview was published in [REDACTED] magazine in February 2002. The interviewer asked the beneficiary what he has been doing since recording [REDACTED]. The beneficiary responded that he had recorded four songs "for the TV." The beneficiary mentioned that he got his start as a singer on the program [REDACTED]. The interviewer also asked the beneficiary about playing as a professional player on the [REDACTED].

Finally, the petitioner submitted a short article from the February 10, 2002 issue of [REDACTED]. The article indicates that the beneficiary "is one of the best artist singer of [REDACTED]." The interviewer asked the beneficiary about his relations with singer [REDACTED]. The beneficiary responded that he met [REDACTED] during an amateur talent program, and made an agreement to record three songs, including the song which gave him his start.

The petitioner also submitted the transcripts for two television interviews, but did not provide the original Arabic language transcripts, video of the original interviews, or evidence identifying when and where the interviews aired.

In the RFE issued on October 26, 2010, the director acknowledged the petitioner's submission of the articles, but noted that the petitioner failed to establish that the interviews were published in major magazines or newspapers with a national or international circulation. The director further found that the interviews themselves do not sufficiently attest to the beneficiary's achievement of national or international recognition.

In its response dated November 11, 2010, the petitioner stated:

[T]he beneficiary has been featured in several newspapers, magazines and other publications; 3 of which have been previously submitted. The first article printed on April 19, 2001, was published in [REDACTED] an Arabic lifestyle, entertainment, and social magazine published in Lebanon. The interview featured [the beneficiary] discussing his hit song [REDACTED], as well as other performances and recordings. The second article from [REDACTED] on February 20, 2002 features [the beneficiary] discussing his song [REDACTED]. The article included a large picture of [the beneficiary]. The third article submitted is a 2002 article from the Tikrit

Newspaper, describing [the beneficiary] as "one of the best artist singers" with a "strong and beautiful voice."

With respect to this criterion, the petitioner also emphasized that it submitted a letter from the [redacted] [redacted] advising that "the beneficiary is a singer/entertainer of extraordinary ability as demonstrated by sustained international acclaim." The petitioner did not submit any additional evidence relating to this criterion in response to the RFE.

The director determined that the evidence submitted does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2). The director acknowledged the petitioner's claim that the favorable consultation from AFM provides evidence that the beneficiary has achieved national or international recognition for his achievements in music. However, the director emphasized that a consultation letter constitutes neither a critical review nor published material about the beneficiary.

The director concluded that, while the petitioner submitted published material about the beneficiary in the form of three published interviews from 2001 and 2002, the petitioner failed to establish that the interviews were published in major newspapers and magazines.

On appeal, counsel asserts that "the beneficiary has achieved widespread recognition for his musical achievements stretching as far from Syria and Iraq to the United States." Counsel once again relies on the consultation letter from [redacted] in support of the petitioner's claim that this criterion has been met. Counsel asserts that the beneficiary "is well known outside of his home country," "has performed outside of Iraq, and been featured in publications which circulate throughout the world," and is "in high demand to perform live in the United States."

Counsel further asserts that [redacted] [redacted] and [redacted] "are major publications in Iraq and throughout the Middle East region. Counsel indicates that [redacted] is a daily publication in Lebanon with a large circulation, and [redacted] is a large daily newspaper in Iraq, thus establishing that the beneficiary enjoys international acclaim.

Counsel indicates that the beneficiary was interviewed in [redacted] on April 11, 2010, and in [redacted] [redacted] on April 12, 2010. Counsel provides a summary of these alleged articles, but submits no additional documentary evidence in support of the appeal. Counsel asserts that "in a region of the world where nations are attempting to rebuild free media whose expression has been oppressed by years of tyrant dictatorship, these accomplishments are more than significant." Finally, counsel contends that "the statute is being unintentionally, yet prejudicially misconstrued against a minority whose media operates in a different format than those of western society."

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) requires the petitioner to demonstrate that the beneficiary has achieved national or international recognition for achievements through submission of critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. In general, in order for published material to meet this criterion, it must be

primarily about the beneficiary and, as stated in the regulations, be printed in major newspapers, magazines or other major publications. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the New York Times, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>1</sup>

The petitioner has submitted evidence of three published interviews with the beneficiary, but has not provided evidence that the publications, namely [REDACTED] have a significant national or international distribution or otherwise qualify as "major" magazines or newspapers. While the petitioner claims that [REDACTED] is published in Lebanon, while the others are Iraqi publications, the fact that articles were published in more than one country is insufficient to establish international recognition from the media. The regulation requires the petitioner to also establish that the published material be printed in major newspapers or magazines. Therefore, the submitted articles, without more, are insufficient to establish the beneficiary's national or international recognition. Counsel's unsupported assertions that the publications are major magazines or newspapers is not sufficient. 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).

On appeal, counsel references and summarizes two additional interviews with the beneficiary which were allegedly published in April 2010. The appeal is not accompanied by copies of these publications. Counsel's assertions that the articles were published cannot be accepted in lieu of primary evidence of their publication and accompanying evidence establishing that the articles did in fact appear in major newspapers or magazines. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Finally, we observe that the director correctly determined that a favorable consultation from the [REDACTED] is not a form of evidence that can be used to satisfy this evidentiary criterion. The [REDACTED] consultation satisfies the petitioner's burden to submit a written advisory opinion from an appropriate consulting entity pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(D). The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) explicitly requires the petitioner to submit 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.* (Emphasis added). An advisory opinion letter from the AFM clearly cannot be used to satisfy this criterion.

Although counsel appears to suggest that some exception be made because media in the Middle East, and particularly in Iraq, operates differently from western media, counsel simultaneously contends that the beneficiary has received qualifying media attention from major publications in more than one country, including his home

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<sup>1</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

country of Iraq. The petitioner must demonstrate with supporting evidence that a given criterion does not readily apply when seeking to rely on comparable evidence. The beneficiary's inability to meet the criterion does not demonstrate that it is not readily applicable to the beneficiary's occupation. Similarly, the assertion that it is difficult to meet the criterion in the beneficiary's occupation will not suffice as evidence that the criterion does not readily apply to the beneficiary's occupation. Here, the petitioner simply failed to provide copies of several claimed published articles about the beneficiary, and failed to document that the articles submitted were published in major magazines or newspapers. The AAO finds no basis to conclude that it is impossible for an Arabic singer who is claimed to be "one of the most famous performers and admired Arabic singers on the music scene today" to submit documentary evidence in support of that claim.

*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)(iv)(B)(3), the petitioner relied on essentially the same evidence submitted with regard to 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

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

While in Michigan, [the beneficiary] will perform at various locations known to host large musical and artistic performances on a consistent basis. Due to his large fan base, it is expected that the shows would have a significant turnout. As stated above, the beneficiary will perform in a lead, starring, and critical role in these shows as he is the sole performer.

The director determined that the petitioner's evidence failed to satisfy this criterion, noting that the petitioner did not support its claims that the organizations and establishments that have hosted and will host the beneficiary's performances have a distinguished reputation.

On appeal, counsel asserts:

The beneficiary was scheduled to perform at three locations in southeastern Michigan: Regency Manor & Banquet Center, Prestige Club and Banquet Center, and Penna's of Sterling. At least 450 people were expected to attend each performance, with ticket prices ranging from \$90 to \$120. These venues commonly host large banquets and special events, including large musical and artistic performances. Additionally, these large venues have been established for many years and are known as premiere banquet halls catering to performers and large groups within the Arabic community as well as regionally. The Beneficiary would undoubtedly increase his bookings for future concerts and tours in an even larger geographical area if he were able to guarantee his performances by having a secured O-1 visa.

Upon review, counsel's assertions are not persuasive. The petitioner has not submitted evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), which requires the petitioner to submit articles in newspapers, trade journals, publications, or testimonials in support of its claims that the beneficiary has performed and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation.

Here, the petitioner relies on counsel's unsupported assertions that the banquets halls at which the beneficiary will perform in the United States have a distinguished reputation. 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)). Again, 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. at 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506 (BIA 1980).

The record remains devoid of any published articles or testimonials attesting to the beneficiary's past or upcoming lead, starring or critical role for an organization or establishment that has a distinguished reputation. Accordingly, the petitioner has not submitted evidence required to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

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

At the time of filing, the petitioner described the beneficiary as "one of the most famous performers and admired Arabic singers on the music scene today," and mentioned that he had produced "best-selling albums."

The petitioner indicated in response to the RFE that the "sampling" of magazine and newspaper publications submitted at the time of filing establishes that the beneficiary "has received critically acclaimed successes." The petitioner further stated:

We have also previously submitted transcripts from two television interviews that the beneficiary has participated in. In a 2003 interview by [REDACTED] the beneficiary discusses how his singing career began at a young age by singing for his friends at parties. He also discussed how he auditioned for a [REDACTED] at a local television station and was selected for the program among over 2,000 applicants. He also explained that he has recorded several songs and produced an album that was distributed in Iraq and virtually the entire Arabic community. The beneficiary further discussed in the interview that he has worked with several elite performers in the industry and has traveled to perform in theaters, festivals and various parties. He further explained how he had been able to establish a strong reputation and gain recognition throughout the music community.

The beneficiary participated in a second television interview in 2008. The host began the interview by addressing the beneficiary as "the great artist, with a beautiful voice." The beneficiary again talked about his musical influences and performed his song, [REDACTED] for the audience.

The director acknowledged the petitioner's claims that the beneficiary's published and televised media interviews, participation in a televised talent show, and production of an album satisfy this criterion. The director observed, however, that neither the published articles nor the submitted television interview transcripts address whether the beneficiary has a record of major commercial or critical success. The director noted that the submitted articles compare the beneficiary's singing style and tone to that of another singer. The director further emphasized that the petitioner failed to submit the original language transcript of the beneficiary's television interviews, and therefore, the English translation cannot be given full evidentiary weight. Finally, the director found that the petitioner's claim that the beneficiary's music has been distributed throughout the entire Arabic community was not supported by evidence.

On appeal, counsel asserts that the record shows that the beneficiary's achievements have been reported in numerous major newspapers and other publications. Counsel maintains that [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] *Newspaper* are all major publications with large circulations in the Middle East and beyond. Counsel emphasizes that the referenced publications "praise the beneficiary's extraordinary talent and discuss his sustained national and international success" over a span of ten years. Counsel further asserts that the "publications are circulated not only online in Iraq, Syria and the Middle East, but also in Europe, Asia and through accessible venues on the World Wide Web."

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) requires the beneficiary's commercial or critically acclaimed successes to be "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." In the beneficiary's field, evidence satisfying this criterion would reasonably include evidence of album or single sales, radio airplay rankings and similar evidence of tangible achievements in the music industry. The beneficiary's interviews with magazines and newspapers of undocumented circulation and interviews with television shows of unknown origin and viewership do not provide direct evidence of the beneficiary's commercial or critically acclaimed success. Rather, such evidence is more appropriately considered under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), and has been considered above. None of the information provided in the published materials or interview transcript could be construed as objective evidence of commercial or critical success.

The petitioner's claim that the beneficiary has produced several best-selling CDs is not supported by evidence such as reliable documentation of sales figures. Further, the AAO notes that the fact that a CD is available for purchase does not provide evidence that the beneficiary has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, and other occupational achievements reported in trade journals, major newspapers, or other publications. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

For the foregoing reasons, the petitioner has not submitted evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

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

At the time of filing, the petitioner submitted several letters relating to this criterion. The petitioner submitted a letter dated January 10, 2010 from the Iraqi Public Service Broadcasting and Transmission Iraq Media Network, addressed to the Iraqi Artist Syndicate. The letter confirms that the beneficiary "has worked as a singer in the radio & television and his songs tapes are still being broadcasted and televised." The letter further states that the beneficiary "has many works of arts in this field."

The petitioner also submitted three identical letters from persons associated with the [REDACTED]-area radio station [REDACTED]. The letters are from: [REDACTED]; [REDACTED] Mid-East Media Radio; and [REDACTED] Voice of Future Radio, and each letter is printed on [REDACTED] letterhead." Each person claims to be the "Director/Manager of Radio Show, Radio Program." The radio station is described as one mainly targeted toward listeners of Arab and Eastern European descent. Each individual providing a letter indicates that the beneficiary is an "internationally acclaimed singer and performer," and an "extremely popular singer who has fans across the world, including Michigan." Each letter also states that the beneficiary's music "is often requested and played" on the station, and indicates that the Arabic population across the world and in Michigan is "aware of his talent and international recognition."

In the RFE issued on October 26, 2010, the director advised the petitioner that the initial evidence failed to establish the significance of the beneficiary's achievements. The director acknowledged the petitioner's submission of letters from the Detroit AM radio station, but noted that "all three letters are exactly the same in content and format," and that little evidentiary weight would be given to them. The director also acknowledged the petitioner's submission of letters from the [REDACTED] and the [REDACTED] but noted that such evidence also failed to establish that the beneficiary has received significant recognition for his achievements in the arts. Accordingly, the director advised the petitioner to submit additional evidence in support of this criterion.

In its response dated November 11, 2010, the petitioner relied upon the favorable advisory opinion from the [REDACTED], the beneficiary's membership in the Iraqi Union of Artists, the letter from the [REDACTED] which confirms that the beneficiary is a "known artist," and the letter from the same organization confirming that the beneficiary has worked as a singer in radio and television.

The director determined that the petitioner failed to submit evidence to satisfy the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). Specifically, the director stated:

A favorable consultation does not meet this criterion as the consultation does not clearly indicate the author's knowledge of the beneficiary's achievements as promulgated in the regulations. Furthermore, the evidence is insufficient to establish that membership in the Iraqi Union of Artists is limited to only extraordinary artists. Finally, the confirmation that the beneficiary is a known artist is insufficient to meet the stringent evidentiary requirements of the O-1 classification.

On appeal, counsel asserts that the petitioner submitted numerous letters written by various radio and television personnel which "prove that the beneficiary has extraordinary ability and has received significant recognition." Counsel contends that "all of the letters discussed the beneficiary's talents and confirmed that he is internationally known, extremely famous especially in the Arabic community across the world and has achieved a high level of achievement in the field."

Counsel maintains that the letters were written by executives of American radio and television programs, and that such individuals are "able to know of the beneficiary because he has received significant recognition from fans across the world and people in southeastern Michigan are requesting his music." Counsel further asserts that the beneficiary has been recognized by AFM as a "singer/entertainer of extraordinary ability, which has been demonstrated by sustained acclaim."

Upon review, the AAO concurs with the director's determination that the submitted testimonials and other documentary evidence do not satisfy the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). As noted by the director, the letters submitted by [REDACTED], [REDACTED] and [REDACTED] are identical in content. The repetitions indicate that the language of these three letters is not the authors' own and greatly detract from the letters' probative value. Furthermore, other than indicating in the body of the form letter that each author is the "director/manager of Radio Show, Radio Program," the record contains no evidence that would establish that any of the individuals would be considered a "recognized expert" in the field, as required by 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

The fact that the beneficiary is a member of the Iraqi Union of Artists and is an artist recognized by the Iraq Media Network is sufficient to establish that he is a working performing artist and entertainer by profession. However, the petitioner fails to explain how membership in the artists union or ongoing broadcast of the beneficiary's artistic work constitutes a *significant recognition for achievements* in the beneficiary's field. The petitioner has not submitted evidence, for example, to establish that the Iraqi Union of Artists requires significant or outstanding achievement as an essential condition for membership or otherwise identified or documented the criteria for membership.

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

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

The director determined that the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6) was met based on the petitioner's submission of evidence that the beneficiary has been offered a salary of \$10,000 per engagement for each of his three scheduled performances in the United States. The AAO agrees with the director's determination that this criterion has been met.

#### *Summary*

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the six categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability in the arts. 8 C.F.R. §§ 214.2(o)(3)(iv)(A) and (B). A final merits determination that considers all of the evidence follows.

#### ***B. Final Merits Determination***

*Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. However, as discussed above, the petitioner established eligibility under only one of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B). Notwithstanding the above, a final merits determination considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that he is renowned, leading, or well-known in the field of arts, pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary is recognized as being prominent in his field, pursuant to 8 C.F.R. § 214.2(o)(3)(iv). *See Kazarian*, 2010 WL 725317 at \*3.

In this case, we concur with the director's finding that the petitioner has not established that the beneficiary is prominent to the extent that he could be considered renowned, leading or well-known in the field of music.

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). This classification focuses on the beneficiary's individual achievements and recognition within the field. The petitioner has provided insufficient corroborating evidence of such recognition, and has not supported its assertions that the beneficiary is a "best-selling" artist, "one of the most famous performers and admired singers on the music scene today," or "one of the most successful and admired singers in the Iraqi music industry."

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). The evidence of record indicates that the beneficiary has received some attention from the media since launching his career on a televised talent

competition, but the petitioner has failed to provide sufficient evidence of the beneficiary's achievements and recognition in the form of major media attention, critical reviews, sales figures, awards, nominations or other evidence that would reasonably be available to an artist who is claimed to be well-known and highly successful within his genre. Although it appears that the beneficiary's professional musical career began in earnest in the early 1990s, the few articles submitted suggest that the beneficiary was considered to have "vanished" from the music scene in Iraq after one popular song.

Further, the record remains devoid of any documentary evidence of the beneficiary's critical and commercial success as a musician in Iraq or any other country in the form of articles, reviews, testimonials, sales figures, income or any other indicia of his standing in the Iraqi national music industry or in any other part of the world. As discussed, the record consists of unsupported assertions that the beneficiary is a world-famous and best-selling artist in the Arabic community. Although we acknowledge counsel's claim that the beneficiary should not be held to Western standards of fame and popularity, the petitioner does in fact claim that the beneficiary is well-known outside of his home country of Iraq, and popular with Arabic audiences worldwide, including American audiences.

The AAO emphasizes that four out of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B) require the petitioner to submit various types of published materials to establish the beneficiary's recognition, such as critical reviews, advertisements, publicity releases, newspaper, magazine or trade journal articles. Therefore, it is significant that the petitioner has submitted relatively little published evidence regarding the beneficiary. Absent evidence that the regulatory criteria are not applicable to the beneficiary's occupation, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(C), the petitioner must submit 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 musicians recognized in the field as leading, renowned or well-known if the petitioner does not establish that he has received significant independent recognition based on his own reputation or achievements. Here, the scant published evidence submitted about the beneficiary is from 2001 and 2002 only. While we do not discount the possibility that the beneficiary is in fact a nationally-recognized artist in Iraq or elsewhere in the Middle East, the petitioner has simply not documented its assertions regarding the beneficiary's career with the required supporting evidence.

Therefore, the conclusion we reach by considering each evidentiary criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as a singer or musician who has achieved a level of distinction to the extent that he can be deemed to be renowned, leading, or well-known in the field of music. 8 C.F.R. § 214.2(o)(3)(ii). Accordingly, the appeal will be dismissed.

### **III. Conclusion**

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to be renowned, leading, or well-known in the arts. 8 C.F.R. § 214.2(o)(3)(ii). Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act and the petition may not be approved.

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.