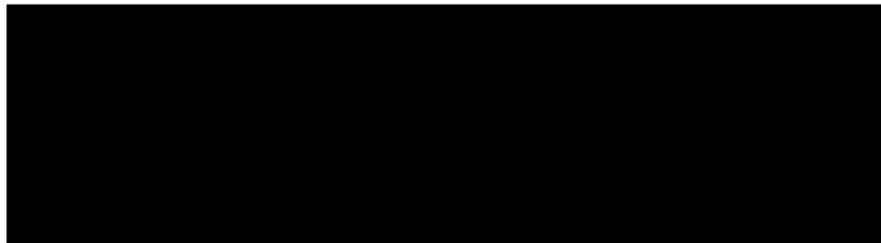




U.S. Citizenship
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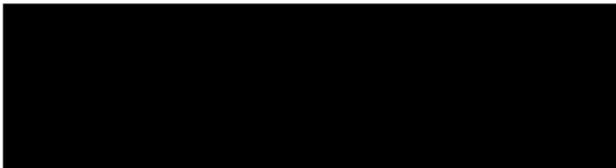


DATE: **DEC 05 2012** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner 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, a dance studio, seeks to employ the beneficiary as a Dance Instructor for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim in his field. The director determined that the petitioner established only one of the eight evidentiary 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 for review. On appeal, counsel for the petitioner asserts that the director failed to consider relevant evidence that establishes that the beneficiary has achieved the requisite level of distinction in his field. Counsel submits a detailed brief in support of the appeal. The applicant has submitted additional evidence on appeal.

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, although the petitioner has submitted evidence pertaining to several of the evidentiary criteria, for the reasons discussed below the AAO finds the petitioner has not established that the beneficiary has risen to the very top of his field or that he has achieved sustained national or international acclaim. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

II. Discussion

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

This petition, filed on March 27, 2012, seeks to classify the beneficiary as an alien with extraordinary ability as a dance instructor. The statute and regulations require that the beneficiary seek to continue work in his area of extraordinary ability in the United States. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). In its April 1, 2012 letter submitted at filing, the petitioning dance studio indicates it seeks to employ the beneficiary "to teach the international style of ballroom dancing" and "give classes to all levels of students including beginners, intermediate, advanced students as well as coach dance teachers." In addition, the petitioner states the beneficiary "will prepare students for competitions," since "some of [the petitioner's] students have already begun to compete in annual domestic and international dance competitions . . . [The beneficiary] will represent [the petitioner] in national and international ballroom competitions and he is planned to participate in National and International competitions." However, the petitioner has not indicated that the beneficiary will continue his career as a competitive dancer in the United States under the terms and conditions of employment with the petitioning studio. Thus, in this case there is no evidence establishing that the beneficiary intends to continue working in the United States as a competitive dancer.

The beneficiary is a 30-year-old ballroom dancer who participated in competitive ballroom dance competitions, or "DanceSport" competitions, from 1995 until 2010, before coming to the United States as a visitor in April 2011. Documents submitted by the petitioner on appeal also indicate that the beneficiary worked as a dance instructor of both adolescents and adults in the city of [REDACTED] Russia from September 1998 through March 2011. The petitioner's contract with the beneficiary, based on the evidence of record, consists of an "Employment Agreement" and a "Professional Instructor Agreement" under which the petitioner agrees to train the beneficiary in its teaching and instructional methods and the beneficiary agrees to complete such training within three months, after which time he will be assigned students to teach. There is nothing in either agreement to suggest that the beneficiary would be performing on national or worldwide tours, competing in DanceSport competitions, or rehearsing for such events, as a condition of his employment with the petitioner. The petitioner has not provided evidence that instructors employed by its studio are simultaneously working for the petitioner as professional dancers. Therefore, the AAO must conclude that the beneficiary will be employed primarily as a dance instructor.

While a professional dancer and a dance instructor certainly share knowledge of dance, the two rely on very different sets of basic skills. Thus, dance performance and dance instruction are not the same area of expertise. This interpretation, as applied to competitive athletes and athletic coaches, has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

Id. at 918. The court noted a consistent history in this area. This office has recognized that there exists a nexus between performing as a competitive athlete and teaching as an athletic coach. To assume that every extraordinary athlete's area of expertise includes teaching or instruction, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved distinction as an athlete and has sustained that acclaim in the field of instruction, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the beneficiary's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as an instructor. An instructor who has an established successful history of instructing dancers who compete regularly or perform at a high level has a credible claim; an instructor of novices does not. Thus, we will examine whether the petitioner has demonstrated the beneficiary's extraordinary ability as a dancer or as a dance instructor. If the petitioner has demonstrated his extraordinary ability as an athlete, we will consider the level at which he has successfully performed as an instructor, since ultimately he must satisfy the statutory requirement at section 101(a)(15)(O)(i) of the Act as well as the regulations at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B) through his achievements as a dance instructor. As discussed below, the beneficiary in this matter appears to have only limited experience as a dance instructor, and has no documented achievements as an instructor.

B. The Beneficiary's Eligibility under the Evidentiary Criteria

At the outset, it must be noted that Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 101(a)(15)(O)(i) of the Act. If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to the Nobel Prize as an example of a major award. *Id.* Given that the regulations specifically cite to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The director determined that the petitioner submitted no evidence to meet this criterion, and the petitioner has raised no objection to this finding.

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

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

In a letter dated April 1, 2012, the petitioner provided a list of the beneficiary's "major awards or prizes" received during the years 1995, 1997 through 2000, 2002 through 2006, 2010 and 2011. The beneficiary's first, second and third place finishes are listed below:¹

1995

- 2nd Place, [REDACTED]
- 3rd Place, [REDACTED]

1997

- 1st Place, [REDACTED]

1998

- 1st Place, [REDACTED]
- 1st Place, [REDACTED]
- 3rd Place, [REDACTED]

¹ The beneficiary's finishes lesser than third place have been omitted from the list provided by the petitioner, as the petitioner has not established that placing in these positions resulted in the receipt of an "award or prize for excellence in the field" as required by the plain language of the regulations.

1999

- 1st Place,
- 1st Place,
- 2nd Place,
- 3rd Place,

2000

- 3rd Place,

2002

- 1st Place,
- 1st Place,
- 1st Place,

2003

- 1st Place,
- 1st Place,
- 1st Place,
- 1st Place,

2004

- 1st Place,
- 1st Place,
- 2nd Place,

2005

- 1st Place,
- 1st Place,

2006

- 1st Place,

2010

- 1st Place
- 1st Place

- 3rd Place,
- 1st Place,
- 3rd Place,
- 1st Place,
- 1st Place.

2011

- 1st Place,
- 3rd Place

The petitioner submitted copies of certificates with the necessary translations confirming that the beneficiary achieved the above-referenced results. The petitioner also provided copies of what the petitioner calls the beneficiary's "official dancer book", the beneficiary's Russian Dance Sport Federation book in which the beneficiary's partners, dancer proficiency classification, and competition results are recorded.

The director determined that the evidence submitted was insufficient to meet the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), finding that the petitioner failed to demonstrate that those awards and prizes are nationally or internationally recognized for excellence.

On appeal, counsel asserts that the petitioner submitted evidence of the beneficiary's receipt of several national and international awards

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

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

While the petitioner submitted certificates evidencing the beneficiary's receipt of these awards, the petitioner failed to submit documentation demonstrating that the awards received from these competitions are nationally or internationally recognized prizes or awards. The AAO notes that the awards that the beneficiary won in adult competition, from 2002 through 2010, were all awarded in competitions in [REDACTED]. Without documentary evidence regarding the actual competitions themselves, such as the level of those who participated or evidence of the selection criteria, we cannot conclude, based on the name of the competitions alone, that the competitions or tournaments are national or international, and therefore that the results are recognized beyond the awarding entities as national or international awards.

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

Further, and most importantly, the record contains no evidence that the beneficiary has received a nationally or internationally recognized award for excellence as a dance instructor or coach. As the petitioner clearly seeks to employ the beneficiary as an instructor, the "area of extraordinary ability" for which classification is sought is teaching or coaching. There is no evidence indicating that the beneficiary seeks to work for the petitioner in the United States as a competitive dancer. Therefore, even if the petitioner established that the beneficiary's awards for dancing include nationally-recognized awards for excellence, the preceding awards all resulted from the beneficiary's accomplishments as a competitive dancer, thus they cannot be considered evidence of his sustained national or international recognition as an instructor. As previously discussed, the statute and regulations require that the beneficiary seek to continue work in his area of extraordinary ability in the United States. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914.

There is no evidence showing that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in coaching or instruction. In its letter dated April 1, 2012, the petitioner provided a list of the beneficiary's coaching certificates obtained from September 24, 2010 through December 1, 2011 in Russia and the United States. The petitioner has not explained how any of these coaching certificates could be considered nationally or internationally recognized awards or prizes. In addition, the petitioner has submitted four letters regarding his excellence as a dance instructor from regional authorities in [REDACTED]. One undated letter is from [REDACTED] the deputy mayor of [REDACTED] thanking the beneficiary for his work at a dance studio in that region. The second letter, from [REDACTED] member of the board of education administration in [REDACTED] thanks the beneficiary for his assistance in a regional dance conference in 2010. The third letter, from [REDACTED] a member of the municipal authority in [REDACTED] recommends that beneficiary as a "capable and talented teacher of ballroom dancing" based upon his work from 2008 to 2010 choreographing a program commemorating the city. The fourth letter, from the governor of [REDACTED] expresses his admiration for the beneficiary having coached a junior dance couple to a 4th place finish in the city's 2010 [REDACTED] competition.

In addition, in its letter dated April 1, 2012, the petitioner indicates that from 1998 until his arrival to the United States in June 2011 the beneficiary "trained students at [REDACTED] prestigious dancesport schools," and lists several students of the beneficiary and awards some of them have won. Employment verification letters from several of the beneficiary's past employers also provide this information. As stated above, in a case where an alien has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Upon review the AAO finds insufficient evidence to establish that the beneficiary has won national or internationally recognized awards or prizes as a ballroom dance coach or that his students have won nationally or internationally recognized prizes or awards. The evidence shows that the beneficiary has been *regionally* recognized as being an outstanding

ballroom dancer and instructor, but there is no evidence of any national or international prize or award issued to him based on his accomplishments as an instructor or teacher.

Further, the AAO finds that additional documentary evidence is needed to establish that the beneficiary's students have won nationally or internationally recognized prizes or awards for excellence in the field. While the petitioner has provided the names of the beneficiary's claimed award-winning students, the petitioner has not provided documentary evidence of their awards. The petitioner has not adequately explained why documentary evidence of such awards is not available. In addition, the third-party statements of witnesses regarding such awards are insufficient to meet this criterion. 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. Finally, the evidence indicates that the beneficiary has only been teaching dancers competing at the junior level. Even if the petitioner had submitted copies of the awards, an international award received by a student competing at the junior level would not carry the same evidentiary weight as an international award received by a competitor at the adult, professional level, without some additional explanation as to how the sport is governed at the junior level. The petitioner has not established that the beneficiary meets this criterion.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

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

In order to demonstrate that membership in an association meets this criterion the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The director determined, without further discussion, that the petitioner submitted evidence which satisfies the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). The AAO disagrees with the director's determination.

In support of its contention that the beneficiary meets this criterion, the petitioner first has submitted a certificate stating that the applicant is a certified member of the Dance Sport Association of the [REDACTED]. However, the petitioner has failed to submit documentary evidence that this organization requires outstanding achievements of its members, as judged by recognized national or international experts. The petitioner has not submitted evidence of the membership requirements for the Dance Sport Association of the [REDACTED] showing that membership is reserved for those dancers who have recorded outstanding achievements in the field.

Secondly, the petitioner has submitted a certificate which indicates that the applicant “. . . is included in the sportsmen database of Dance Sport Federation of Russia . . .” However, this certificate does not establish that the applicant’s status as a “sportsman” is equivalent to his being a member of the Dance Sport Federation of Russia.

Thirdly, the petitioner has submitted two letters from [REDACTED] president of the [REDACTED] [REDACTED] stating that the applicant is a member of the Russian Professional Dance Union (RDU), and that the RDU is a member of the [REDACTED]. Upon review, the petitioner has not submitted sufficient evidence of the beneficiary's membership in the RDU. The petitioner has not adequately explained why documentary evidence of such membership is not available. In addition, Stanislav Popov’s third-party statement that the beneficiary is a member of the RDU is insufficient to meet this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Fourthly, the petitioner has submitted documentation from the National Dance Council of America, indicating that *the petitioner* is a member of the council, and indicating that the beneficiary has been conferred the status of a Certified Dance Teacher by the petitioner. These documents do not establish that the beneficiary is a member of the National Dance Council.

Fifthly, the petitioner has provided evidence that on September 12, 2010 the beneficiary was issued a “Republic category coach and first-degree judge” license by the Russian Dance Sport Federation (RDSF). While it appears that issuance of the license would entail membership in the RDSF, the record does not contain any explanation to demonstrate that the beneficiary's membership required outstanding achievements, as judged by national or international DanceSport experts.

Further, as indicated above, the plain language of this regulatory criterion requires evidence of the “alien's membership in associations in the field for which classification is sought.” In this case, the field for which classification is sought is dance instruction. The petitioner does not indicate that it requires the beneficiary's services as a dance competitor. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in his area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. The petitioner has not provided evidence that the beneficiary is a member of any qualifying association for dance coaches or teachers, or provided evidence of any separate RDSF or Dance Sport Association of the [REDACTED] membership requirements applicable to teachers or instructors.

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

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

To meet the third criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), the petitioner must submit 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. The petitioner does not claim that the beneficiary meets this criterion. The petitioner has not provided published materials from which the petitioner can demonstrate the beneficiary's sustained national or international acclaim as a competitive dancer or coach, nor did it provide any articles relating to the work of the beneficiary's students in the sport of competitive dance.

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

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

To meet the fourth criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), the petitioner must submit evidence of the beneficiary'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. Although, as stated above, the petitioner has provided evidence that the beneficiary was issued a "Republic category coach and first-degree judge" license by the RDSF on September 12, 2010, the petitioner did not specifically address this criterion prior to the director's decision. On appeal, the petitioner asserts that the beneficiary can in fact satisfy this criterion and has submitted evidence to establish that the beneficiary officiated in three events: an international juvenile open-style competition on [REDACTED], an international competition in [REDACTED] and an international juvenile Latin competition on [REDACTED] respectively.

Upon review, the submitted evidence satisfies the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, artistic, athletic or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner does not claim that the beneficiary meets this criterion, and the AAO finds no evidence in the record relevant to this criterion. The record contains reference letters that acknowledge the beneficiary's skills and success as a dancer and dance instructor, but none of the letters indicate that the beneficiary has made original contributions of major significance to the field.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media

The petitioner has not attempted to establish that the beneficiary has authored scholarly articles in the field in professional or major trade publications or other major media, or otherwise claimed that the beneficiary meets the sixth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

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

The petitioner does claim that the beneficiary meets the seventh criterion, which requires the petitioner to submit evidence that the beneficiary was employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner stated that the beneficiary meets this criterion based on his past salary as a dance instructor. On appeal, the petitioner submitted letters from representatives of two of the beneficiary's past employers, the Dance Sport Federation of [REDACTED]. The record indicates that the beneficiary worked for Dance Sport Federation of [REDACTED] from 1998 to 2005 and from 2006 to 2011. The record reflects that the beneficiary worked for the [REDACTED] from 2005 to 2006. The record also indicates that the beneficiary was paid an annual salary of \$29,000 while working for [REDACTED] and an annual salary of \$35,500 while working for [REDACTED]. Both letters state that the applicant "commanded a high salary in comparison to other dance instructors of his caliber" and both letters state that they have enclosed "a Salary Survey showing the average wages of dance instructors with similar experience as [the beneficiary] . . ." However, the record does not contain the Salary Survey referred to by the letters verifying the beneficiary's past employment. Therefore, since the petitioner has not offered any evidence as to what constitutes a "high salary" for a dance instructor in Russia, such as a statistical comparison of salaries in the field, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion regarding the beneficiary's past earnings.

The petitioner also stated that the beneficiary meets this criterion based on his proffered annual salary of \$60,000. Firstly, we note that the petitioner has provided wage data for no less than four different occupational titles in an attempt to establish that the beneficiary earns a high salary: "dance instructor", "dancer", "coaches and scouts", and "self-enrichment education teachers". Of these, the occupation of "dance instructor" appears to be the appropriate classification for the beneficiary's proffered position.

Regarding the beneficiary's proffered salary, as a point of comparison, the petitioner relied on a statement of the median hourly earnings of dance instructors for May 2012 from Payscale (www.payscale.com) indicating a range in hourly earnings between \$8.21 and \$29.36 for Florida and six other major cities. In addition, the petitioner also provided salary data for May 2012 for the occupation of dance instructor in Miami, Florida, which indicates that the average salary in the field is \$41,000. However, the beneficiary's salary must be evaluated on a national level and should not be restricted to data for certain localities. Therefore, evidence relating to the average salaries for the position in Florida need not be considered. However, we note that the data from Payscale regarding the seven major cities indicates that the average hourly wage for the occupation ranges from \$8.21 to \$100.

Given that the petitioner indicates that the beneficiary will be employed on a full-time basis, his proffered salary of \$60,000 would be equivalent to an hourly wage of \$28.85 per hour.²

In addition, the petitioner has submitted a statement from Payscale for May 2012 indicating the national salary range for a dance instructor based upon years of experience. A dance instructor with five to nine years of experience has a salary range of \$16,800 to 78,000, and with 10 to 19 years of experience has a salary range of \$19,200 to 39,120.

Based on the national data for the relevant occupation and time period, we can conclude that the beneficiary's proffered salary of \$60,000 is not substantially higher than the data cited by the petitioner among similarly employed individuals.

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

C. Final Merits Determination

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

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

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

In evaluating our final merits determination, we must look at the totality of the evidence to determine the beneficiary's eligibility pursuant to section 101(a)(15)(O)(i) of the Act. Upon review, the AAO finds that the petitioner has not established that the beneficiary has risen to the very top of the sport of competitive ballroom dancing as an athlete. Furthermore, the petitioner does not seek to hire the beneficiary as a competitive dancer, but rather as a dance instructor. The petitioner has submitted minimal evidence of the beneficiary's experience as a dance instructor, and no documentation of his achievements as an instructor. As discussed above, in a case where an alien has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing

² Although this petition denies that the proffered position is a full-time, it does not state the number of hours the applicant is expected to work per week. However, in its April 1, 2012 letter, the petitioner states that the applicant "will teach classes Monday – Friday from 4:00 p.m. to 10:00 p.m. . . . He will teach on Saturday from 10:00 a.m. to 3:00 p.m."

an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise. A coach or instructor who has an established successful history of training athletes who compete regularly at the national level has a credible claim. The record contains only passing references to the beneficiary's teaching experience, and no evidence that he has coached any top dancers. The beneficiary's documented accomplishments as a dance instructor, therefore, fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and recognition for achievements in the field of expertise."

While the beneficiary has undoubtedly competed with success at the juvenile, junior and adult levels of dancesport competitions between 1995 and 2011, regarding the applicant's success at the juvenile, and junior levels, the beneficiary's achievements must be compared to all athletes and not only to other children and youth competing in the sport. In addition, upon review it appears that the beneficiary's adult awards were all in competitions in [REDACTED] with the exception of two competitions sponsored by the petitioner in 2011. The record simply does not contain documentation to support the petitioner's claims that the beneficiary's first, second and third place finishes in dance events are nationally or internationally-recognized awards or prizes for excellence in the beneficiary's field, as required by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The petitioner failed to provide any evidence to corroborate its claims that the beneficiary has participated in, much less won, "major" awards in the field of competitive ballroom dance. The AAO would expect an athlete at the very top of his or her sport to be competing in such high-profile events at the highest competitive level of the sport over a period of time. The regulations require the petitioner to demonstrate "sustained" acclaim. 8 C.F.R. § 214.2(o)(3)(iii). A 1st, 2nd or 3rd place finished in a junior or regional competition is insufficient to establish the beneficiary's placement in the top echelon of athletes in the sport.

Further, there is no evidence indicating that the beneficiary intends to continue competing as a ballroom dancer in the United States under the terms of employment offered in the instant petition. As discussed previously, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of extraordinary ability in the United States. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. §§ 1101(a)(15)(O)(i) and 8 C.F.R. §§ 214.2(o)(3)(i) and (iii). The petitioner has not established that the beneficiary has received any nationally or internationally recognized awards as a dance instructor.

Moreover, the petitioner has failed to submit evidence in the form of published materials about the beneficiary that demonstrates that the beneficiary has sustained acclaim as a dance instructor. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). The petitioner has not submitted any published materials about the beneficiary. While the beneficiary's membership in the Dance Sport Association of the [REDACTED] and likely membership in the Russian Dance Sport Federation is noted, the petitioner also failed to submit evidentiary documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields, and thus did not satisfy the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). Based on the evidence submitted, it appears that competitive dancers of any age and proficiency level are eligible for membership in the Dance Sport Association of the [REDACTED]

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

The petitioner submitted a letter from [REDACTED] first vice president of the [REDACTED]. The witness does not state how he became aware of the beneficiary's work. He states that the beneficiary "won national recognition as lead coach of winners of our competitions." and lists the names of two of the beneficiary's students and the junior level competitions which they won. The witness also states that the beneficiary has "designed unique body conditioning techniques that enable dancers to enhance and broaden their dancing abilities and skills," and that the beneficiary's methods have been implemented in prestigious dance schools and "have changed Ballroom dance instruction world-wide." However, the witness does not identify the beneficiary's unique body conditioning techniques or any dance schools adopting such techniques.

[REDACTED] of First Coast Classic Dancesport Championships states that the beneficiary is well-recognized as an outstanding ballroom dancer, choreographer and instructor. He does not state how he became aware of the beneficiary's work.

[REDACTED] a professional ballroom dancer, states that he has worked previously with both the petitioning studio and the beneficiary. The witness states he has "observed [the beneficiary] as a junior competitor since he was only eight years of age" and that the beneficiary is "an extremely talented dancer, world class competitor and professional teacher of high caliber."

[REDACTED] a professional ballroom dancer in Moscow, Russia, does not state how he became aware of the beneficiary's work. He states that the beneficiary has "won some awards for training of pairs Champions of Denmark, Russia and Norway," although he does not identify the pairs-team members.

[REDACTED] from in Jacksonville, Florida, who owns one of the petitioning studios, states that she has been in the ballroom dance industry for 30 years, has known the beneficiary for more than 15 years, and "worked with him back in Russia." She states that the beneficiary is "one of the best male professional dancers in his field."

[REDACTED] a professional ballroom dancer from Rancho Palos Verde, California, does not state how she became aware of the beneficiary's work. She states that the beneficiary's students "became champions of Norway, Denmark, Russia and USA." although she does not identify the beneficiary's students to whom she is referring.

[REDACTED] of USA Dance, Inc., Cape Coral, Florida, states that the beneficiary's students "have participated in, and won, many of our competitions, including events at the US National Championships." The witness does not identify the beneficiary's students to whom he is referring.

[REDACTED] of Emerald Ball Championships and [REDACTED] of Ohio Star Ball, and [REDACTED] of the Arthur Murray International Dance Board, use almost identical language stating that the beneficiary "won many of our competitions and drew national recognition from the dancesport community in the United States."

[REDACTED] a professional ballroom dancer in Moscow, Russia, states that he has known the beneficiary for more than 10 years. "not only as an outstanding performer . . . but also as an exceptional dance coach." He states the beneficiary "produced a great number of dancers that reached the highest level of technical and performance quality." He lists the names of five of the beneficiary's students and the junior level competitions which they won.

[REDACTED] of the [REDACTED] and manager of the dance club [REDACTED] and [REDACTED] president of the [REDACTED] in Kaliningrad, Russia, submitted letters using almost identical language. They state that the beneficiary worked as a coach-choreographer for both dance clubs [REDACTED] from September 1998 until March 2011. They state that in 2001, the beneficiary and his partner were "among the top 20 best couples in the world youth category" and that the beneficiary "has produced several award winning ballroom dance couples that have placed in the top three in finals at different international competitions." The witnesses do not identify the beneficiary's award-winning dance couples. The AAO notes that this undated statement of [REDACTED] is inconsistent with a statement from the witness dated June 24, 2012 submitted on appeal, in which the witness states that the beneficiary worked for [REDACTED] from November 2005 through December 2006.

[REDACTED] owner of the dance studio [REDACTED] Russia, states that the beneficiary worked for him for two years as a full time dance instructor.

[REDACTED] a professional ballroom dancer, states that she has known the beneficiary for 13 years as a member of "one of the top amateur couples in Russia."

[REDACTED] director of the dance studio [REDACTED] states that he beneficiary "choreographed the modern ballroom dances of our company, and has taught master classes in my primary, secondary and undergraduate student levels for the 2007 to 2011 school years." He states that whether the beneficiary is choreographing or teaching the beneficiary "displays an original gift to the art of dance."

[REDACTED] a dancesport trainer, adjudicator and lecturer, states that the beneficiary "has tremendous skill and talent as a professional dancesport athlete." She does not state how she became aware of the beneficiary's work. She lists 10 adult dance competitions in which the applicant placed in the top three from 2002 to 2006 in [REDACTED] and five youth competitions in which the applicant placed in the top three from 1999 to 2000 in Poland, Ukraine, Denmark, Armenia and Latvia. She states that the beneficiary "is in the company of internationally recognized dancesport

athletes competing today.” She also states that as part of the beneficiary’s employment with the petitioner, “he will compete in a rigorous schedule of competitions over the next five years.” although she does not state the basis for her knowledge. To the contrary, as stated above, there is nothing in the employment documents submitted by the petitioner to suggest that the beneficiary would be performing on national or worldwide tours, competing in DanceSport competitions, or rehearsing for such events, as a condition of his employment with the petitioner. Nor has the petitioner provided evidence that instructors employed by its studio are simultaneously working for the petitioner as professional dancers.

██████████ president of the petitioning dance studio organization in Coral Gables, Florida, states the beneficiary is an outstanding ballroom dancer and instructor who has won international and national dancesport competitions. The witness also states that the beneficiary’s students “have become international champions winning German and Poland Open Championships and most recently, UK prestigious international ██████████ although he does not identify the beneficiary’s students to whom he is referring.

██████████ an employee of the petitioning dance studio organization in Albuquerque, New Mexico, states that he has known of the beneficiary’s work since the beneficiary became affiliated with the petitioning studio, and that the beneficiary is a fine teacher and dancer.

While we acknowledge that the above-referenced individuals support the beneficiary's petition, the AAO cannot exempt the petitioner from submitting evidence that satisfies the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B). The evidence of record simply does not support a conclusion that the beneficiary is a "nationally or internationally recognized" dance instructor, or that he reached the level of a nationally-recognized competitive dancer.

While some of the beneficiary’s peers have positively, but vaguely, endorsed the beneficiary's skill as an instructor in dance, such endorsements cannot be accepted in lieu of direct evidence of the beneficiary's sustained national or international acclaim as a dance instructor in accordance with the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The O-1 classification is not intended for persons who are merely well-qualified in their field. In addition, as stated above, the AAO finds that additional documentary evidence is needed to establish that the beneficiary's students have won nationally or internationally recognized prizes or awards for excellence in the field. While the petitioner has provided the names of the beneficiary’s claimed award-winning students the petitioner has not provided documentary evidence of their awards. The petitioner has not adequately explained why documentary evidence of such awards of the beneficiary’s students is not available. In addition, third party statements that the beneficiary's students have won nationally or internationally recognized prizes or awards for excellence in the field are insufficient to meet this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, as stated above, the evidence indicates that the beneficiary has only been teaching dancers competing at the junior level. Even if the petitioner had submitted copies of the awards, an international award received by a student competing at the junior level would not carry the same evidentiary weight as an international award received by a competitor at the adult, professional level, without some

additional explanation as to how the sport is governed at the junior level. The petitioner has not established that the beneficiary meets this criterion.

The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of achievements and recognition that one would expect of a dance instructor who has sustained national or international acclaim.

We cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the beneficiary's sustained national or international acclaim. The petitioner seeks to rely primarily on vague testimonial letters rather than on any primary evidence of the beneficiary's achievements as a dance instructor. We are not persuaded that evidence with the numerous deficiencies noted equates to "extensive documentation" demonstrative of an individual with sustained national or international acclaim. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chuwathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r. 1989).

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

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 have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed