

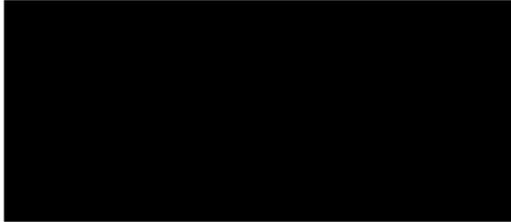
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



Dg.

DATE: **JUL 13 2012**

Office: CALIFORNIA SERVICE CENTER

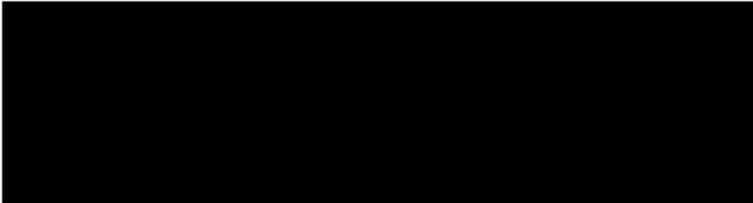
FILE: 

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 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.

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, a Dutch Warmblood horse breeding and training facility, filed this petition to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in athletics. The petitioner seeks to employ the beneficiary in the position of [REDACTED] for a period of three years.

The director denied the petition based on a conclusion that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that he is one of the small percentage who has risen to the very top of his field as a horse trainer. In reaching this conclusion the director determined that the evidence submitted satisfied the plain language of only two of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), of which at least three are required to meet the threshold evidentiary requirements for the requested classification. Further, the director determined that the proffered position of horse trainer does not constitute continuing work in the alien's area of extraordinary ability, as the beneficiary's documented achievements are as a competitive equestrian athlete.

At the outset, it must be noted that Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 101(a)(15)(O)(i) of the Act. The implementing regulation at 8 C.F.R. § 214.2(o)(3)(iii)(A) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines categories of specific objective evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8). The petitioner must submit qualifying evidence for the alien under at least three of the eight regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the petitioner established the beneficiary's eligibility under three of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Specifically, counsel states that, in addition to the two criteria under which the director found the beneficiary eligible, the petitioner has established that the beneficiary will command a high salary or other remuneration for his services, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). Further, counsel objects to the director's finding that the beneficiary would not be continuing work in his area of extraordinary ability, and explains that "athletic competitions are a direct duty of the trainer" at the petitioner's facility. Finally, counsel asserts that the petitioner is submitting additional documentation and affidavits to establish that the beneficiary is "at the very top of his field of endeavor."

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.

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. 41818, 41820 (August 15, 1994).

Therefore, in determining the beneficiary's eligibility under these criteria, the AAO will follow a two-step approach wherein we will first look to see whether the petitioner has submitted evidence to satisfy the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A) or, in the alternative, evidence to satisfy at least three of the eight regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). If the petitioner submits evidence to satisfy the plain language of the requisite number of criteria, then the AAO will determine whether the quantity and quality of the

evidence is consistent with the statutory requirement of "extensive documentation," and the regulatory definition of "extraordinary ability in athletics."

II. ANALYSIS

The first issue addressed by the director is whether the petitioner established that the beneficiary qualifies as an alien of extraordinary ability athletics through submission of evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B).

A. Evidentiary Criteria

Receipt of a major, internationally recognized award, such as the Nobel Prize

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 in the field of athletics) an Olympic medal.

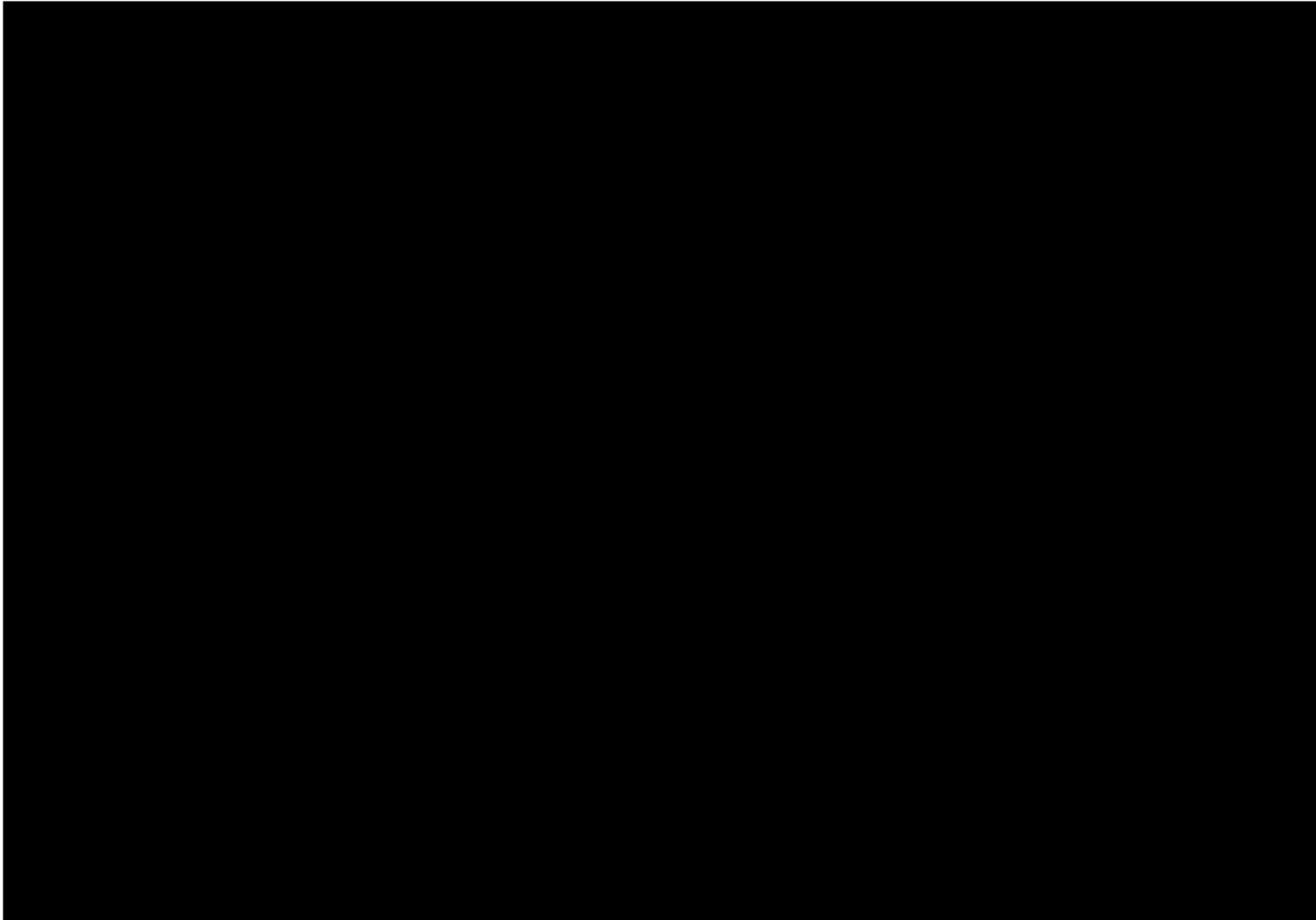
The director determined that the petitioner did not submit evidence to satisfy this criterion. In counsel's brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

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 director determined that the petitioner's evidence satisfied two of these criteria. With regard to the six criteria under which the director found the beneficiary ineligible, the petitioner contests the director's findings with respect to only one criterion on appeal, specifically, the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).¹

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

¹ The petitioner has not claimed to meet any of the regulatory categories of evidence not discussed in this decision, specifically those set forth at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(4),(5) and (6). The AAO finds that the director correctly determined that the petitioner did not submit evidence related to these criteria, and the petitioner raises no objection to the director's determination on appeal.

The petitioner has submitted two letters from the [REDACTED] confirming the beneficiary's receipt of the following awards in the equestrian sport:



The petitioner submitted copies of these and other awards received by the beneficiary in show jumping competition, with English translations, in support of the petition. The petitioner has also submitted a letter from the [REDACTED] indicating that the beneficiary is one of 535 members who are jumping athletes, and one of twelve jumping athletes who have been given the designation of [REDACTED] level, described as "the high state rank of the athletes in Russia." The letter explains that athletes must demonstrate achievements at the Grand Prix level to receive this designation.

The director determined that the beneficiary meets this criterion and the AAO will not disturb this finding.

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

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." The petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by

colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative: the issue here is membership requirements rather than the association's overall reputation.

The petitioner initially submitted the Form I-129 and supporting evidence without reference to the eligibility criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). On October 19, 2010, the director issued a request for additional evidence (RFE) instructing the petitioner to provide additional evidence pertaining to at least three of the eight regulatory criteria. In response to the RFE, counsel indicated that the petitioner was submitting evidence addressing the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2) and (7), as well as comparable evidence of the beneficiary's eligibility pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C).

The only explanation that accompanied the counsel's citation to the regulations at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2) and (7) was the following:

[The beneficiary] has been a member of the [redacted] the [redacted] that was founded in 1923 and is one of the leading sports institutions of Russian [*sic*] and countries of Eastern Europe. At present, [the beneficiary] is the only [redacted] on the team of [redacted]. The [redacted] held by [the beneficiary] is the instructor of highest qualification of the [redacted]. He represented the [redacted] as a member of the [redacted]. Since 1987, [the beneficiary] is a leading rider of the [redacted] and represents at national and international competitions. Please see the attached catalog identifying the elite sporting members of the [redacted].

Based on this explanation, it was unclear how the submitted evidence related to the criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(2), and the petitioner did not adequately address the significance of the submitted evidence. The AAO notes that the director issued a detailed request for evidence instructing the petitioner to explain the significance of any evidence submitted in response and how it establishes eligibility for the classification under the regulatory criteria. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner's response to the RFE included a letter dated November 3, 2010 from the [redacted] Club. The letter confirms that the beneficiary commenced military service in December 1987 and was appointed as an athlete-instructor in the equestrian squadron of the [redacted]. The letter documents the beneficiary's progressive military ranks and positions within the [redacted] through 2008, and indicates that his roles within the organization have included chief trainer of the jumping team (1998), [redacted] chief trainer of equestrian squadron of the Federal State Institute of the [redacted]. Since transferring from military service to the reserve in 2008, he has held the role of instructor of the jumping team of [redacted].

In denying the petition, the director determined that "no evidence was submitted in relation to criterion number two." Rather it appears that the director considered evidence relative to the beneficiary's membership in [REDACTED] under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

In counsel's brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

While the documentary evidence submitted by the petitioner reflects the beneficiary's membership on the [REDACTED] equestrian team, the documentary evidence fails to reflect that this organization requires outstanding achievements of its members, as judged by recognized national or international experts, as a condition for admission or membership. The record shows that that the beneficiary was appointed to the [REDACTED] equestrian squadron when he commenced military service in December 1987 at 18 years of age. The AAO cannot conclude based on the evidence on record that his initial appointment to the [REDACTED] was based upon his outstanding achievements in the sport, as opposed to being a condition or responsibility of his military service. While the beneficiary was eventually awarded the [REDACTED] 11 years after his appointment to [REDACTED] it is evident that such designation is not a condition for appointment to this institution. As the petitioner has not addressed this criterion on appeal, the AAO will not discuss this issue further.

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

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be primarily "about" the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some

newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The director determined that the petitioner submitted no evidence to satisfy this criterion and counsel raises no specific objection to this finding on appeal.

Although neither the petitioner nor counsel have claimed eligibility under this criterion, either at the time of filing or on appeal, the AAO acknowledges that the evidence submitted on appeal includes: (1) a summary translation of a table found on the [REDACTED] which summarizes the beneficiary's results in equestrian competition during 2009; (2) an article titled [REDACTED] which reports the beneficiary's results in two events; (3) uncertified English translations of on-line articles (original articles not provided) which report the results of the [REDACTED] Competition for showjumping alumni (2001); (4) photographs of the beneficiary, with Russian language captions, which appear on a Russian equestrian website [REDACTED]; (5) un-translated articles from the Russian websites [REDACTED] "Peski: [REDACTED]" and [REDACTED] "Soldatru" [REDACTED], and (6) an online article published by the [REDACTED]. The article indicates that the beneficiary tied for fifth place in the [REDACTED] in which riders competed for a brand-new Volvo automobile.

The evidence submitted on appeal does not satisfy the plain language of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). None of the submitted evidence is clearly "about" the beneficiary. At most, the evidence appears to confirm his participation and placement in certain equestrian competitions. Published competition results that merely indicate the beneficiary's events and finishes, along with those of other competitors, are not sufficient to establish eligibility for this criterion. The regulation clearly requires a written article about the beneficiary, in light of the petitioner's burden to submit the title, date, and author of such published material.

The petitioner did not submit the original source material for the foreign language articles that were accompanied by uncertified translations, and did not provide any translation for the two Russian language documents that were provided from an original source. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

As cited above, the regulation at 8 C.F.R. § 103.2(b)(3) specifically requires that any foreign language document that is submitted to USCIS must be accompanied by a *full and certified* English language translation. Because the petitioner failed to submit full and certified English language translations, it failed to comply with this regulation. As such, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The petitioner failed to submit evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

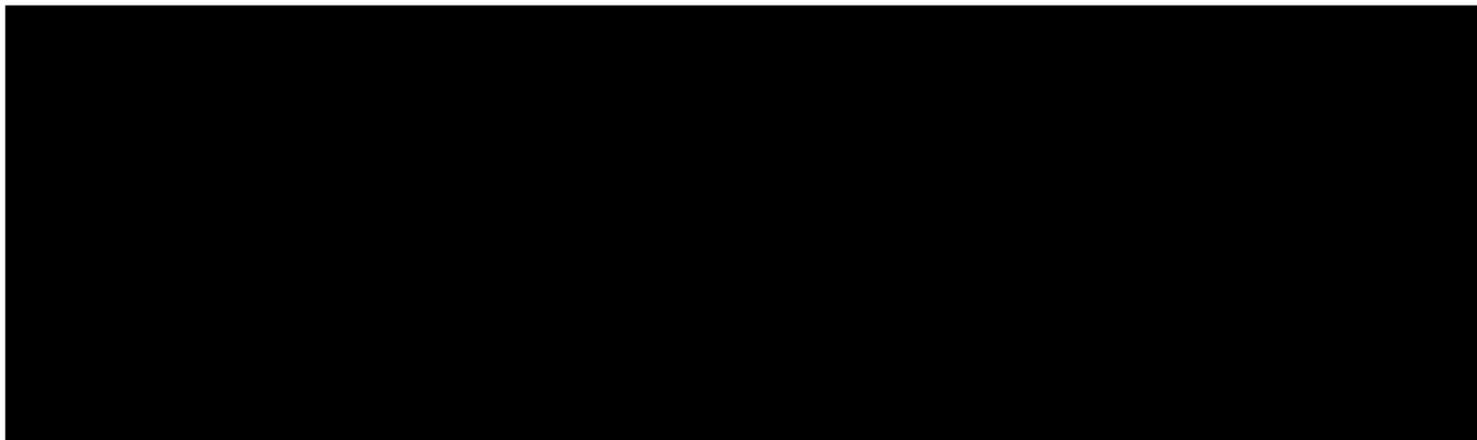
Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7) requires the petitioner to demonstrate that the beneficiary has been employed in a critical or essential capacity, that his employment in this capacity was for organizations or establishments, and that those organizations or establishments have a distinguished reputation. The director determined that the petitioner submitted evidence to satisfy this criterion, but did not discuss the basis of this finding. Considering the evidence and explanation provided in response to the RFE, as discussed under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), it appears that the director determined that the beneficiary was employed in a critical or essential capacity for the [REDACTED] based on his leadership roles as [REDACTED]. The AAO agrees that the petitioner has submitted evidence to meet the plain language of this criterion.

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

The director determined that the beneficiary does not meet this criterion, observing that "the proposed salary of \$40,000 per year does not appear to be a high salary in this context." The director observed that any other salary the beneficiary may receive, such as prize money "must be won." The director also found that there was no evidence that the beneficiary received substantial remuneration in the past, and found no objective comparison showing that the beneficiary has commanded or would command a high salary or remuneration in relation to others in his field of endeavor.

The petitioner's initial evidence included a copy of the petitioner's employment agreement with the beneficiary attached with his compensation and benefits package. The package is outlined as follows:



[REDACTED]

In the request for evidence, the director advised that the petitioner that the initial evidence was insufficient to establish that the beneficiary has commanded a high salary or other significantly higher remuneration for services compared to others in the field. The director requested that the petitioner submit additional evidence, such as a statistical comparison of the salaries in beneficiary's field of endeavor from the Economic Research Institute, or like organization.

In response to the RFE, counsel stated that the beneficiary meets the eligibility requirements at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1),(2) and (7) and did not further address the beneficiary's eligibility under this criterion.

On appeal, counsel asserts that the director incorrectly determined that the beneficiary does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). Counsel provides the following explanation:

[REDACTED]

The petitioner has not submitted any documentary evidence of the wage data from which counsel claims to have derived the average salary figure of [REDACTED]. 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)). 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 Obaighena*, 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).

Further, the petitioner has not established that the uncorroborated salary information for the position of "riding instructor" is a relevant point of comparison for the beneficiary's proposed position as the head trainer for a specialty horse breeding and training facility that develops animals capable of competing at the highest levels of the equestrian sport. Again, the petitioner did not provide any supporting documentation with respect to the salary information cited by counsel, and the AAO cannot conclude that a "riding instructor" and a "head trainer" are substantially similar occupations.

Moreover, the petitioner's reliance on data limited to local wages in the Detroit, Michigan geographical area is not an appropriate basis for comparison in demonstrating that the beneficiary's earnings constitute a high salary compared to others in the field. The record is void of reliable earnings data showing that the petitioner will receive a "high salary" or "high remuneration" in comparison with those performing similar work. *See, e.g. Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In the present matter, the documentary evidence submitted by the petitioner does not establish that the beneficiary has received or will receive a high salary or high remuneration for services in relation to others in his field.

Finally, the AAO notes that the beneficiary's proposed remuneration package, claimed by counsel on appeal as falling between \$100,000 to \$150,000, appears to be inflated compared to the compensation package and figures attached to the beneficiary's original employment agreement. Counsel has not explained how the new figures were derived. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Without such explanation, USCIS would rely on the figures set forth at the time of filing, which include a \$40,000 base salary and additional compensation and benefits, for a total compensation estimated between \$50,000 and \$65,000.

The petitioner has not submitted evidence on appeal to overcome the director's determination. The petitioner has not established that the beneficiary's compensation package satisfies the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

Comparable Evidence

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) provides that an alien of extraordinary ability in the fields of science, education, business or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of receipt of a major internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), or by submitting evidence to satisfy at least three of the eight forms of documentation set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) further provides "[i]f the criteria in paragraph (o)(3)(iii) of the section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility." It is clear from the use of the word "must" in 8 C.F.R. § 214.2(o)(3)(iii) that the rule, not the exception, is that the petitioner is required to submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8).

The petitioner does not specifically claim eligibility under the "comparable evidence" regulation on appeal, but did indicate that it was submitting comparable evidence of the beneficiary's eligibility in response to the

request for evidence. This comparable evidence, as explained by counsel in his letter dated November 17, 2010, relates to the beneficiary's participation in [REDACTED]

[REDACTED] which counsel described as "an international competition among the world's best leagues on all continents." The AAO notes that the beneficiary's successful participation in nationally or internationally recognized athletic competitions is properly considered under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), and the director determined that the beneficiary met this criterion.

Further, the petitioner has claimed eligibility under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2), (7) and (8). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for O-1 classification in the beneficiary's occupation as a horse trainer cannot be established by submitting documentation relevant to at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The AAO further acknowledges that the petitioner has submitted four new affidavits on appeal from persons in the beneficiary's field who attest to the beneficiary's qualifications for the requested classification. Counsel does not purport to submit these affidavits with respect to any one of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Had the petitioner submitted evidence to meet three of the eight evidentiary criteria, the AAO would consider these affidavits in determining whether the evidence in the aggregate demonstrates that the beneficiary has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Summary

The AAO affirms the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability in athletics. 8 C.F.R. § 214.2(o)(3)(iii)(B). Accordingly, the appeal will be dismissed.

B. Intent to Continue to Work in the Area of Extraordinary Ability

The remaining issue addressed by the director is whether the beneficiary intends to continue work in his area of extraordinary ability.

This petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a specialized horse trainer. The statute and regulations require that the beneficiary seek to continue work in his area of extraordinary ability in the United States. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i).

The director determined that "training at a breeding/training facility is not related to a specific athletic event or events and does not constitute continuing in the work of athletic performance at the extraordinary level."

The director further found that "there is no evidence that developing horses requires being, or having been, an equestrian rider or that there are any recognized standards evaluating or ranking trainers." Finally, the director found that "there is no evidence that the beneficiary has achieved any sustained acclaim in the field of horse training."

The petitioner's offer letter to the beneficiary indicates that he will fill the position of head trainer, and notes that the petitioner values the beneficiary's experience in working with horses that have Grand Prix jumping potential. The petitioner indicates that it will provide the beneficiary "an opportunity to train, compete and market horses for the top tier markets for jumper, hunter, equitation." The petitioner further states that its objective is "to compete in regional and national finals for young jumpers."

The beneficiary's specific duties, as outlined in an attachment to his employment agreement including: supervising daily specialized training and conditioning of horses; supervising other trainers in grooming, tacking, and daily care of horses; meeting with the owners to review horses' feeding plans, conditioning, health care requirements; assisting with the sale of horses, including selection, pricing, pre-sale grooming, and actual showing and sale; and designing and reviewing training plans and progress with the owners.

At the time of filing, the petitioner submitted a letter from horse trainer and [REDACTED] who, like the beneficiary, was a member of the Russian military equestrian team. [REDACTED] states that the beneficiary is "deeply skilled in caring for and developing young horses," noting that he developed lesser-quality horses in Russia to compete at the top levels of international show jumping.

The petitioner also submitted a letter from the [REDACTED] which details his ranks and roles during his military service between 1987 and 2008. During this time, his roles included Instructor of the [REDACTED], and subsequent appointments to the roles of [REDACTED]

The director did not request additional evidence pertaining specifically to this issue, and the majority of the evidence submitted in response to the RFE was focused primarily on the beneficiary's competitive successes as a leading rider with the Russian military equestrian team, [REDACTED]

On appeal, counsel asserts:

The trainer role at [the petitioner's] farm entails more than the mere training of horses it involves competing the horses in athletic jumping competitions. [The petitioner] presently competes its horses in a national program called [REDACTED] (referencing the young age of the horses). Only the best show jumper prospects compete in this program with a total of 60 to 240 horses in each age group for 2010. . . . To compete in these classes, [the petitioner] must retain a trainer who can compete athletically in these types of competitions and train these elite horses to qualify, prominently place and then substantially

increase the value of each animal. Therefore, these athletic competitions are a direct duty of the trainer at [the petitioner] and such athletic performances must be conducted at the extraordinary level – which require an individual who has competed and will continue to compete to achieve excellence in the field of endeavor.

In support of the appeal, the petitioner submits an affidavit from [redacted] who states that he is familiar with the beneficiary based on his own relationship with the petitioner, and an affidavit from [redacted] who states that he was the beneficiary's team member and student on the [redacted] team. Both [redacted] state that the beneficiary "developed training methods for young horses that are centered on a realistic progression of horses' development, given the horses' level of psychological and physical abilities." They both describe the beneficiary as a "true trainer," as well as a leading Russian rider in the field of show jumping.

While a competitive show jumper and a specialized horse trainer may share knowledge of the sport, the two roles also rely on different sets of basic skills. Thus, it is not self-evident that competitive show jumping and specialized horse training should be considered the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

Id. at 918. The court noted a consistent history in this area. It is the petitioner's burden to demonstrate that the beneficiary's proposed employment is within his area of expertise.

We are not persuaded that acclaim as a rider is presumptive evidence that the daily training, conditioning and care of horses is within that rider's area of expertise. However, the record does show that the beneficiary continued to compete in show jumping at a high level while holding "trainer" positions with the Russian army team over a period of twenty years, and that he continued to compete as recently as 2009, while testimonial evidence confirms the beneficiary's inherent responsibilities for development of young horses. Further, the petitioner clarifies on appeal that the beneficiary's role as a trainer will include competing young horses in regional and national events.

Therefore, based on a review of the totality of the evidence, the petitioner has established that the proposed employment is in the beneficiary's area of expertise. The AAO will withdraw the director's decision with respect to this issue only.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the beneficiary has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Here, the petitioner has submitted evidence to satisfy only two of the eight regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), of which at least three must be met. Thus, it has failed to meet the threshold requirements for the requested classification. Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, the next step would be to consider all of the evidence in the context of whether or not the petitioner has demonstrated that the beneficiary possesses: (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. § 8 C.F.R. § 214.2(o)(3)(iii).

Where the petitioner fails to satisfy the minimal evidentiary requirements for the classification, the AAO will not make a final determination of eligibility based on a review of the totality of the evidence. While the record shows that the beneficiary is a talented and accomplished competitive rider and trainer, the petitioner cannot establish his eligibility for this classification without submitting evidence to meet the regulatory requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B). Thus, the AAO must conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion or address the evidence in the aggregate.³

The petitioner has not established eligibility pursuant to section 101(a)(15)(O) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

³ The AAO maintains de novo review of all questions of fact and law. See *Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). See also section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).