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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

DATE: **APR 02 2013**

Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition and dismissed the petitioner's subsequent motion to reopen. 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 the field of business. The petitioner states that it operates a non-profit organization in the United States. It seeks to employ the beneficiary in the position of communications/public relations director for a period of three years.

The director denied the petition concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that he is one of the small percentage who has risen to the very top of his field of endeavor. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The director dismissed the petitioner's subsequent motion to reconsider on October 26, 2010, concluding that the motion did not meet the requirements at 8 C.F.R. § 103.5(a)(2).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel asserts that the petitioner's motion was wrongly denied, and that a review of the evidence in its entirety will establish that the beneficiary meets at least three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel asserts that the director undervalued the documentary evidence in the record, including testimonial evidence. Counsel asserts that the evidence satisfies the requirements set forth at 8 C.F.R. § 214.2(o)(2)(iii)(B), and should have been given full weight.

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*, 596 F.3d 1115 (9th Cir. 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). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion. The court concluded that while USCIS may have raised legitimate

concerns about the significance of the evidence submitted to meet two of the criteria, those concerns should have been raised in a subsequent "final merits determination." *Id* at 1121-22.

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)). 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 this matter, the AAO has reviewed the evidence under the plain language requirements of each criterion claimed. As the petitioner has failed to submit evidence that satisfies three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B), the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on April 14, 2010. The petitioner describes its non-profit activities and the beneficiary's proposed position as communications/public relations director as follows:

[The petitioner] promotes social and economic transformation through direct humanitarian action and sustainable development . . . We have delivered in person and by hand over two million U.S. dollars of rice, food, clothes, computers, sewing machines and helped to build schools, orphanages, monasteries and homes for the elderly in India, Cambodia and Burma.

* * *

To aid the growth, reach, and impact of our organization, we would like to employ [the beneficiary] as Director of Communications and Public Relations. [The beneficiary] will be responsible for creating, developing, managing, planning, and coordinating activities related (sic) our central mission, our promotional campaigns and materials, the publication of articles and books, and our internet and website presence. In the position of Director of Brand for [redacted] [the beneficiary] will utilize his vast skills and knowledge of the art and retail world to assess viable markets; develop business plans and contacts; coordinate distribution, marketing and advertising

resources; and to provide overall brand management during the start up and initial growth phases of this aspect of our business. He will also be instrumental in identifying business partners who will be able to be reliable suppliers to sustain the growth of the brand. Finally, [the beneficiary] will coordinate brand management operations with other senior level management of [the petitioning company].

The petitioner stated that the beneficiary “has worked in a critical and essential capacity for world renowned (sic) such as [redacted] the world’s leading advertising agencies We believe in his writing skills, his creative skills, and his persuasive skills.” The petition states the beneficiary’s job duties under the approved petition will be to plan and direct public relations programs designed to create and maintain a favorable image for the petitioner. The beneficiary will also be expected to direct and coordinate fundraising and create/write public relations content.

The record consists of: the Form I-129 petition and supporting evidence; the director’s requests for evidence dated April 22, 2010 and June 1, 2010, respectively, and the petitioner’s responses; the director’s decision dated August 18, 2010; the petitioner’s motion to reopen and supporting evidence; the director’s decision dismissing the motion dated October 26, 2010; and the petitioner’s appeal. The AAO has reviewed the evidence of record in its entirety in reaching its decision.

A. The Beneficiary's Eligibility under the Regulatory Criteria

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.* The petitioner does not claim that the beneficiary can meet this criterion.

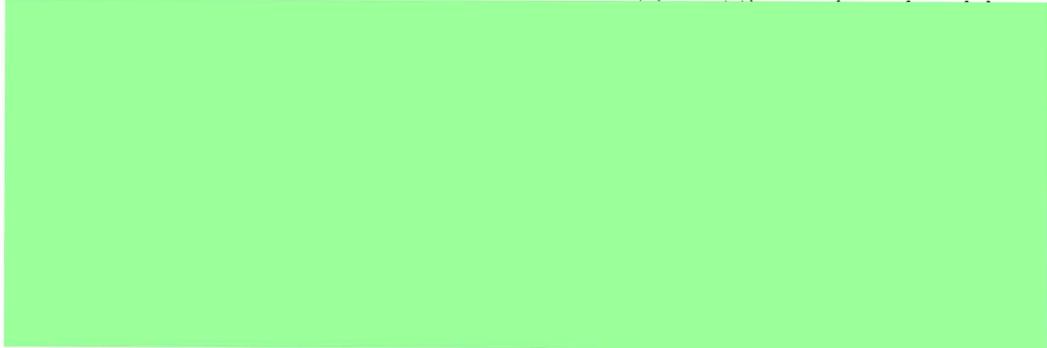
As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (3), (4), (5), (7) and (8). The petitioner also requests that USCIS consider as comparable evidence documentary evidence that the beneficiary was elected Chair of the [redacted] for 2008, “because of his advertising, marketing and communications expertise.” The AAO will consider this evidence under 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). The petitioner did not submit evidence relating to the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) and (6) at the time of filing the petition, and raises no objection to the director’s determination that these criteria have not been met. The remaining six criteria will be discussed below.

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

To meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

At the time of filing, the petitioner submitted testimonials letters from various individuals who are the beneficiary's former colleagues at [REDACTED] in New Delhi, India. The witnesses assert the beneficiary meets this criterion based on his receipt of the following:

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The letters also indicate that the beneficiary was a finalist for the [REDACTED] in public service advertising category (1994) and a runner up for an additional [REDACTED] award (1997).¹ The letters further indicate the beneficiary has won numerous other national and international advertising awards.

However, the AAO notes the petitioner has not submitted documentary evidence to establish that the beneficiary has won awards, or other independent corroboration of the awards. While the AAO does not question the credibility of the testimonial letters that list awards won by the beneficiary, the petitioner has not explained why the AAO should accept the letters' assertions of the fact of the awards in lieu of the awards themselves, as required by the plain language of the criterion. Nor has the petitioner asserted that documentary evidence of such awards is not available. 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. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). In addition, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Further, the beneficiary's claimed receipt of workplace awards fails to qualify as nationally or internationally recognized awards. The plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) specifically requires that the petitioner's awards be nationally or internationally recognized in the field of endeavor and it is the petitioner's burden to establish every element of this criterion. The petitioner has not provided any documentation explaining the significance of these awards, thus there is no evidence demonstrating that the receipt of such an awards is tantamount to a nationally or internationally recognized prize or award for excellence in the beneficiary's field of endeavor.

¹ The petitioner has submitted a copy of a certificate for Finalist, [REDACTED] (1994), but this certificate does not contain any information that would serve to link it to the applicant. Therefore, this document has no probative value.

For the reasons stated above, the petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

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 relating to his work and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted two articles relating to this evidentiary criterion at the time of filing the petition. The first was an article from the January 16-31 1998 issue of [REDACTED]. The article [REDACTED] is about the Indian government's use of professional advertising, provided by the beneficiary's previous employer [REDACTED] and another company, regarding a tax compliance program called [REDACTED]. The beneficiary is identified as [REDACTED] "creative supervisor" and briefly quoted in the article describing the public's reaction to the government's advertising campaign. Thus, a review of the article fails to reflect the published material is about the beneficiary relating to his work. In fact, the article is about the government's [REDACTED] advertising campaign and is not about the beneficiary's work.

The second article submitted is from the January 12, 1998 issue of [REDACTED]. The article [REDACTED] also discusses the Indian government's [REDACTED] advertising campaign. The article mentions that the advertising campaign was partly by [REDACTED]. The beneficiary is not mentioned in the article.

The director determined that the above-referenced evidence was insufficient to meet the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Specifically, the director observed that only one of the submitted publications made a brief mention of the beneficiary.

The AAO concurs with the director's determination that a brief mention of the beneficiary in one publication does not satisfy this criterion. The AAO also notes that the petitioner failed to submit any documentary evidence demonstrating that [REDACTED] is a professional or major trade publication or other major media.

The petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

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.

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

The director concluded that the beneficiary's review of the work of subordinates and colleagues in his employment in the field does not qualify as evidence of the beneficiary's participation on a panel, or individually as a judge of the work of others in the field. Neither counsel nor the petitioner challenges that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

Nevertheless, upon review, the AAO concurs with the director's conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

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

The petitioner submits testimonial evidence to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5). At the time of filing, the petitioner submitted nine experience letters from the beneficiary's prior work colleagues. These letters are more appropriately considered under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

The director noted that the petitioner's evidence failed to establish that the beneficiary has made an original business-related contribution of major significance in this field. The director determined that the evidence submitted was insufficient to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Upon review, the preceding experience letters demonstrate that the beneficiary's work has earned the respect and admiration of those with whom he has worked, but these letters do not establish that he has made original business-related contributions of major significance in his field.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner is admired for his skills in the fields of communications and public relations, and has worked on projects that benefitted his clients and employers, there is no evidence demonstrating that he has made original contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner's influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the experience letters submitted by the petitioner are not sufficient to meet this criterion. The petitioner has not provided preexisting, independent evidence of original contributions of major significance that one would expect of a communications/public relations professional who has sustained national or international acclaim. Without extensive documentation showing that the

beneficiary's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

In addition, at the time of filing the petitioner submitted evidence that the beneficiary was elected [REDACTED] for 2008, "because of his advertising, marketing and communications expertise." However, the petitioner has not provided evidence either that being a member of the [REDACTED] or being Chair of the [REDACTED] of the council's International Forum is restricted to those who can demonstrate outstanding achievements in the beneficiary's field of endeavor. Therefore, the AAO finds that this additional evidence fails to establish either the beneficiary's original business-related contributions of major significance in the field or that the beneficiary has the requisite sustained acclaim and has established that he has reached the very top of his field.³

The petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

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

In order to establish that the beneficiary meets the criterion, the petitioner must submit evidence that the alien has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The petitioner submitted experience letters from nine individuals that worked with the beneficiary. The director determined that the petitioner submitted evidence to satisfy the criterion. The AAO disagrees with the director's determination.

Several of the experience letters refer to the fact that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The regulations, however, include a separate criterion for awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views awards as a separate evidentiary requirement from being employed in a critical or essential capacity. (We have considered the awards under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)).

[REDACTED] who worked in the same business unit with the beneficiary at [REDACTED] in Delhi for from 1994 to 1997, states the beneficiary was in charge of "several highly visible brands critical to the company's success . . . and created some particularly exceptional work . . ."

[REDACTED] (no relation to the beneficiary) does not state how he first became aware of the beneficiary's work. He states the beneficiary was in charge of "high profile multinational clients" of [REDACTED] and was "critical to our success." He describes the beneficiary's work with [REDACTED] as "consistently exceptional. . . ."

³ This evidence has also been considered below with respect to the "comparable evidence" requirements of the regulation at 8 C.F.R. § 214.2(o) (3)(iii)(C).

█ does not state how he first became aware of the beneficiary's work. He states the beneficiary established a satellite office for █ in Chandigarh, India, and that "[the beneficiary's] leadership at the creative department of this newly launched office helped make █ Chandigarh the largest advertising agency in that city during its initial year of operation." He also states that the beneficiary was instrumental in helping █ "win new business pitches, each worth several million dollars."

█ states he has known the beneficiary since 1989 when the beneficiary first began working for █. He states he was the beneficiary's supervisor from 1997 to 1998, when the beneficiary was a creative supervisor. He states "[the beneficiary] is one of the best creative professionals in the industry, and was often selected to work on critical or sensitive accounts." He states that from 1995 to 1997 the beneficiary was responsible for submitting the company's best work to the national/international award shows, and that the company "won Agency of the Year every year." In addition he states the beneficiary "led a team from █ and █ to create advertising for [the Indian government's program] █ . ." which he describes as "the most successful advertising campaign in Indian advertising history."

█ states he worked with the beneficiary at █ from 1993 to 1998. He states the beneficiary's work for the company's client, █ "was invaluable for the brand to continue to dominate the market [in India] and retain its leadership position in the beverages category."

█ states he worked with the beneficiary at █ in New Delhi, India in 1998. The beneficiary's resume indicates the beneficiary worked for the company from February 1998 to April 1999. He states the beneficiary was responsible for the largest client of the New Delhi branch, █. He states the beneficiary created some of █ best work.

█ states he has known the beneficiary since 1989 at █. He states that the beneficiary worked at █ first as a copy trainee, then as junior copywriter, copywriter, senior copywriter and creative supervisor, respectively. He states "in each of his various capacities as a copywriter, [the beneficiary] not only has served in critical and essential roles, but has stood out as exceptional." He describes █ advertising campaign, and the beneficiary's work on it, as "one of █ best and most historic"

█ chairman and CEO of █ in San Francisco, states the beneficiary worked for the company from April 2000 to March 2010.⁴ He describes the beneficiary's work as an editor/creative director as critical and essential in two important ways: the beneficiary was in charge of creative and original content and the beneficiary "judged, reviewed, and evaluated all of our creative output."

█ summarizes awards that the beneficiary claims to have received while employed by █

Upon review, the letters submitted speak highly of the petitioner's work for the institutions that have employed him. However, although the letters characterize the beneficiary's work as "crucial" and

⁴ The record shows the beneficiary previously held O-1 status authorizing employment with █ from April 13, 2009 to April 14, 2010.

“essential”, there is no evidence that his role for these organizations was essential or critical for those companies as a whole. The beneficiary was assigned copywriting and advertising projects as part of his normal responsibilities, and achieved results that met or exceeded his employer’s expectations. While an employer’s staff may consider the beneficiary’s achievements to be of great benefit to the employer, the focus of this criterion, based on the plain language of the regulation, is the beneficiary’s role itself. Although the beneficiary may have served on a team that resulted in significant profit for the employer, the petitioner’s evidence does not demonstrate how the beneficiary’s role differentiated him from the other copywriters or creative supervisors at those companies, or from other senior staff such as partners, divisional directors and department heads. The documentation submitted by the petitioner does not establish that the beneficiary was responsible for the previous employers’ success or standing to a degree consistent with the meaning of “essential or critical capacity.”

Therefore, the evidence that the petitioner submits is insufficient to establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

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 concluded that the petitioner has not submitted qualifying evidence that the beneficiary has either commanded a high salary or will command a high salary for services in the field of endeavor. Neither counsel nor the petitioner challenges that conclusion on appeal. Accordingly, the petitioner has abandoned that claim. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

Nevertheless, upon review, the AAO concurs with the director’s conclusion that the petitioner did not submit qualifying evidence that meets the plain language requirements of this criterion, set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

B. 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). We further acknowledge that the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) 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).

At the time of filing counsel emphasizes that the evidence in the record meets the requirements of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C), in that it the petitioner has provided evidence that the beneficiary was elected Chair of the [REDACTED] Forum for 2008, "because of his advertising, marketing and communications expertise." Counsel cites to no authority for consideration of such evidence under 8 C.F.R. § 214.2(o)(3)(iii)(C) as comparable evidence of the beneficiary's eligibility. The beneficiary's role as Chair of the Steering Committee of the [REDACTED] Forum for 2008 has been considered above with respect to the beneficiary's original business-related contributions of major significance in the field.

While the petitioner appears to claim eligibility under the "comparable evidence" regulation, it has also claimed eligibility under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (3), (4), (5), (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 communications/public relations director 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). In fact, as indicated in this decision, the petitioner specifically indicates that it is submitting evidence relating to four of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation.

Where an alien is simply unable to meet or submit documentary evidence meeting three of these criteria, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) does not allow for the submission of comparable evidence.

C. Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii).

III. Prior Approval and Conclusion

The record shows that the beneficiary held O-1 status authorizing employment with a previous employer from April 13, 2009 to April 14, 2010. In the present matter, the director reviewed the record of proceeding and concluded that the petitioner failed to establish the minimum eligibility requirements necessary to qualify the beneficiary as an alien of extraordinary ability under 8 C.F.R. § 214.2(o)(3)(iii). In both the request for evidence and the notice of decision, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

The record does not establish that the beneficiary is an alien of extraordinary ability in business whose achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O)(i) of the Act.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under at least three of the evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The AAO will not conduct a final merits determination.

For the above-stated reasons, the petitioner has not established the beneficiary's eligibility pursuant to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), and the petition may not be approved.⁵

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.

⁵The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who 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).