



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **DEC 12 2013** Office: VERMONT 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 with extraordinary ability in athletics. The petitioner, a gymnastics school, seeks to employ the beneficiary as Gymnastics Team Director and Head Coach, for a period of three years.

The director denied the petition, finding that the evidence submitted satisfied only one of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B), of which three are required to establish eligibility.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the petitioner submitted sufficient evidence to establish that the beneficiary qualifies for O-1 classification pursuant to the standards set forth at 8 C.F.R. § 214.2(o)(3)(iii). Counsel emphasizes the beneficiary's qualifications both as a gymnastics coach and as a competitive gymnast. Counsel submits a brief and additional evidence in support of 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 "distinction" standard for the arts).

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)(iii)(B), the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence.

II. Discussion

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

This petition, filed on January 17, 2013, seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics coach. 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 denying the petition, the director found that the record was insufficient to establish that the beneficiary satisfied the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii). On appeal, counsel for the petitioner asserts that the petitioner established that the beneficiary is qualified for the benefit sought. Counsel emphasizes the beneficiary's qualifications both as a gymnastics coach and as a competitive gymnast.

While a competitive gymnast and a gymnastics coach share knowledge of gymnastics, the two rely on different sets of basic skills. Thus, competitive gymnastics and gymnastics coaching/instruction are not 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 statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). USCIS will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the alien acts as a coach. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as both a competitive gymnast and gymnastics coach.

Upon review and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary ability in athletics.

B. The Beneficiary's Eligibility under the Regulatory Criteria

The beneficiary in this matter is a native and citizen of Romania. The record consists of a petition with supporting documentation, a request for additional evidence (RFE) and the petitioner's reply, the director's decision, and the petitioner's appeal.

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 petitioner does not claim that the beneficiary has received a major, internationally recognized award comparable to the Nobel prize as a competitor or coach, or that he has coached or trained athletes who have received major, internationally recognized awards or prizes.

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).

As stated previously, the mere fact that the petitioner has submitted evidence relating to three or more of the criteria as required by the regulation does not necessarily establish that the alien satisfies the criteria and is eligible for O-1 classification. The evidence submitted must establish that the beneficiary qualifies as an alien of extraordinary ability. Here, the petitioner provided evidence related to four of the eight criteria, set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (2)(7) and (8). The director determined that the evidence establishes that the beneficiary meets one of these criteria. These four criteria will be discussed below.¹

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

In order 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). The petitioner claims that the beneficiary is able to meet this criterion as both a competitive gymnast and as a gymnastics coach who has received nationally or internationally recognized prizes or awards.

With respect to the beneficiary's gymnastics career in Romania, the petitioner submitted a list of the beneficiary's gymnastics tournament results and awards for the years 1993 through 1997 and 1999 through 2001, for tournaments in which it appears he was a semi-finalist, finalist or champion, which included the following²:

- 2001 – Third Place in Teams, [REDACTED] Romania

¹ On appeal the petitioner raises no objection to the director's determination that the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), (4), (5) and (6) have not been met. Therefore these regulatory categories of evidence will not be discussed in this decision.

² The beneficiary's finishes lesser than third place have been omitted from the lists 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.

- 2001 – First Place in Vault, [REDACTED] Romania
- 2000 – Third Place in Teams, [REDACTED] Romania
- 2000 – First Place, [REDACTED] Romania
- 2000 – First Place, [REDACTED] Romania
- 1999 – Second Place in Vault, [REDACTED], Romania
- 1999 – First Place in Rings [REDACTED] Romania
- 1999 – Second Place, [REDACTED] Romania
- 1999 – First Place, [REDACTED] Romania
- 1997 – First Place All-Around, [REDACTED] Romania
- 1997 – First Place in Parallel Bars, [REDACTED] Romania
- 1996 – First Place in All-Around, [REDACTED] Romania
- 1995 – First Place in Floor, [REDACTED] Romania
- 1995 – Second Place, Parallel Bars, [REDACTED] Romania
- 1994 – Third Place in All-Around, [REDACTED] Romania
- 1993 – Second Place, [REDACTED] Romania
- 1993 – First Place in All-Around, [REDACTED] Romania

The petitioner submitted documentation evidencing the receipt of such awards by the beneficiary. In addition, the petitioner submitted documentation evidencing the beneficiary's receipt in 2008 of a Perfecting Certificate from the [REDACTED] which indicates the beneficiary "graduated the professional formation course . . . at the gymnastics discipline."

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]." 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.

Overall, the evidence is insufficient to establish that the beneficiary's tournament victories resulted in his receipt of nationally or internationally recognized prizes or awards for excellence as a competitive gymnast. While the petitioner submitted documentation evidencing the beneficiary's receipt of awards, the petitioner has not submitted documentation demonstrating that the awards received from these competitions are nationally or internationally recognized prizes or awards. In addition, the AAO notes that all of the awards that the beneficiary won were in junior competitions which appear to be regional or local in nature. Without documentary evidence regarding the actual competitions themselves, such as the level of accomplishment 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. Therefore, the evidence submitted with respect to the beneficiary's national and international awards

does not demonstrate the requisite sustained national or international acclaim as a competitive athlete in Romania.

Although the evidence does not establish the beneficiary's extraordinary ability as a competitive athlete, the petitioner can meet this criterion if it can establish that the beneficiary has coached athletes who have received nationally or internationally recognized awards for excellence in the sport; merely establishing that he has coached athletes who compete at the national level is not sufficient. The evidence does not establish that the beneficiary has received a nationally or internationally recognized award for excellence as a gymnastics coach. While the evidence of record provides some information regarding individual athletes who are claimed to have been trained or instructed by the beneficiary, the evidence does not establish that he has trained athletes who have received significant national or international awards.

The petitioner submitted documentation pertaining to the beneficiary's coaching proficiency level. In addition, the petitioner submitted letters pertinent to the beneficiary's experience teaching gymnasts competing at the junior level, documentary evidence of the receipt of awards received by gymnasts claimed to have been coached by the beneficiary and articles pertaining to students.

The petitioner submitted the beneficiary's [REDACTED] dated October 1, 2008, which indicates that the beneficiary is certified as a gymnastics trainer at "the 3rd category, based on the university graduation certificate . . . [dated June 25, 2008]." The petitioner also submitted certificates dated in 2010 from [REDACTED] certifying that the beneficiary has achieved "the level 4 certificate in coaching gymnastics – senior coach Women's Artistic" and "the level 4 certificate in coaching gymnastics – senior coach Men's Artistic." The petitioner has not established that receiving certification as a gymnastics trainer in the third category in [REDACTED] or achieving the level four gymnastics coaching certification in [REDACTED] is the equivalent of an "award or prize for excellence in the field," as required by the plain language of the regulations.

The beneficiary indicates in his resume that from 2007 until 2010 he was the head coach of men's artistic gymnastics and a coach of women's artistic gymnastics at [REDACTED] Romania. The beneficiary further indicates in his resume that he achieved coaching tournament results and awards in Romania for students competing at the junior level as follows:

- 2009 – Second Place on Floor, [REDACTED]
- 2010 – First Place on Floor, [REDACTED]
- 2010 – Second Place on Floor, [REDACTED]
- 2010 – Second Place on Pommel, [REDACTED]
- 2010 – Third Place All Around, [REDACTED]

The beneficiary's coaching experience in Romania was documented solely through testimonial evidence. The petitioner submitted a letter from Mr. [REDACTED] General Secretary, [REDACTED] who writes with respect to the beneficiary's coaching:

Hereby we confirm that [the beneficiary] was a coach at the male gymnastics section of the [redacted] during the 2008-2011 timeline and has achieved the following results:

- Gymnast [redacted]
 - 2008 – First Place on Floor, [redacted]
 - 2009 – First Place on Floor, [redacted]
 - 2010 – First Place on Floor, [redacted]

- Gymnast [redacted]
 - 2009 – Second Place Pummel, [redacted]
 - 2009 – Second Place on Floor, [redacted]
 - 2009 – Third Place All-Around [redacted]
 - 2010 – Second Place on Floor, [redacted]
 - 2010 – Third Place All-Around [redacted]

The petitioner submitted documentation of the receipt of the awards received by the gymnasts. In an additional letter submitted in support of the appeal, Mr. [redacted] writes:

With this letter we certify that [the beneficiary] is a Level 3 accredited coach by the [redacted] and he is a well-known name in gymnastics, especially on a juniors level, with outstanding results at the [redacted] demonstrating some extraordinary abilities as a coach on (sic) a relatively short period.

The petitioner also submitted a letter from Professor [redacted] Director, [redacted] [redacted] who writes with respect to the beneficiary's coaching:

The present document certifies that [the beneficiary] has been employed as a coach within the Gymnastics department of our club from 2008-2011 and has achieved outstanding results countrywide at the teams and individual contests, contributing through these, at the improvement of the number of medals from our club's record . . . [The beneficiary] was a model employee for our club, passionate and attached to the athletes composing his group.

Professor [redacted] indicates in his letter the same tournament results for gymnasts [redacted] and [redacted] as indicated in the letter from Mr. [redacted] and also credits the results to the beneficiary's coaching.

The beneficiary's coaching experience at [redacted] England was documented solely through press releases published on two websites, [redacted] and [redacted]. The beneficiary indicates in his resume that he was employed at [redacted] as a Head Coach of [redacted] from May 2010 until the date of filing the petition. The press releases indicate that the beneficiary was one of two coaches of a group of junior gymnasts who won several medals at

the [REDACTED] and excelled at the [REDACTED] competition in [REDACTED] (2011 and 2012), [REDACTED] competition in [REDACTED] (2011), the [REDACTED] (2011) and the [REDACTED] (2010).

In a peer consultation letter dated December 7, 2012, [REDACTED] Director of Program Administration of [REDACTED] states that the beneficiary "is an internationally respected gymnastics professional who will be a great asset to our program."

Upon review, the petitioner has failed to establish that the beneficiary has risen to the very top of his field of endeavor. The submitted evidence does not establish that any of the beneficiary's students are competitors at the adult, professional level, or have won national or international tournaments or other nationally or internationally recognized prizes or awards for gymnastics excellence. Rather, the evidence indicates that the beneficiary has been teaching amateur athletes competing at the junior level.³ Although the petitioner has submitted copies of awards received by students, 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.

In addition, overall the record does not contain sufficient evidence of the coach-athlete relationship between the beneficiary and the junior athletes he is claimed to have coached. For example, Mr. [REDACTED] and Professor [REDACTED] do not indicate what role the beneficiary played in the success of individual athletes such as Mr. [REDACTED] and Mr. [REDACTED] or indicate that the beneficiary contributed significantly to the athletes' receipt of any nationally or internationally recognized awards. Further, if the beneficiary was the head coach of a successful team or individual athlete who won nationally or internationally recognized awards, it would be reasonable to expect him to be able to produce some independent documentation of these coach-athlete relationships beyond testimonials from persons with whom he is personally acquainted.

Finally, the accounts of the persons providing testimonials do not fully correspond to the beneficiary's account of his own career as reflected in his professional resume. For example, the testimonials of Mr. [REDACTED] and Professor [REDACTED] indicate the beneficiary was coaching gymnastics in Romania from 2008 to 2011. Also, the petitioner submitted documentation that gymnasts [REDACTED] received additional gymnastics awards in 2011 and 2012, respectively, and that other gymnasts claimed to have been coached by the beneficiary, [REDACTED], won awards in 2011 and 2012, respectively. However, the beneficiary indicates in his resume that he was coaching gymnastics in England from May 2010 until the date of filing this petition.

As stated above, the O-1 visa classification is restrictive and requires extensive documentation of extraordinary achievement. Overall, the evidence is insufficient to establish that the beneficiary's competitive

³ Counsel's appeal brief acknowledges this fact, stating "the relevant field of endeavor here is *junior gymnastics*. That is the field . . . in which [the beneficiary] exclusively has worked. The skill sets for working with children are considerably different from those working with older children and young adults. Therefore, [the beneficiary's] accomplishments . . . as a coach in junior coaching, which are considerable, demonstrate that he is at the top of his field of endeavor."

gymnastics career at the junior level in Romania resulted in his receipt of nationally or internationally recognized prizes or awards for gymnastics excellence. The record also does not contain sufficient evidence that the beneficiary has coached athletes who have received nationally or internationally recognized awards for excellence in the gymnastics. Accordingly, the beneficiary does not meet this criterion.

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 establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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 this regard, the petitioner submitted the beneficiary's [REDACTED] dated October 1, 2008, which indicates that the beneficiary is certified as a gymnastics trainer at "the 3rd category, based on the university graduation certificate . . . [dated June 25, 2008]." The petitioner also submitted certificates dated in 2010 from [REDACTED] certifying that the beneficiary has achieved "the level 4 certificate in coaching gymnastics – senior coach Women's Artistic" and "the level 4 certificate in coaching gymnastics – senior coach Men's Artistic."

On appeal the petitioner submitted an additional support letter dated May 10, 2013 from its president, stating that the beneficiary's membership in the [REDACTED] as a Level 3 Coach and the [REDACTED] as a Level 4 Coach "requires outstanding achievement as recognized by both the [REDACTED] gymnastics governing bodies and the international gymnastics community, as a whole." The petitioner asserts that Level 3 is "the highest level of gymnastics coaching certification possible in [REDACTED]" The petitioner indicates in its letter that achieving a level 4 certification in [REDACTED] required the beneficiary to provide the following:

- Two separate letters of support, indicating suitability to work with athletes
- Copies of certificates and awards
- Curriculum Vitae, showing all relevant coaching experience
- List of gymnastics skills successfully coached as part of his Romanian qualification

The evidence submitted to establish the beneficiary's membership in associations in the field which require outstanding achievements is from the petitioning entity. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.*; *see also Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998) (noting that there is a greater need for corroborative evidence when the testimony lacks specificity, detail, or credibility). The petitioner has not supported the self-promotional evidence with independent, corroborative evidence that membership in these associations in the field requires outstanding achievements. Upon review, the record lacks evidence that membership in those organizations requires outstanding achievements in the field of gymnastics coaching. For example, the

beneficiary's [REDACTED] indicates that the beneficiary's level 3 certification as a gymnastics trainer by the [REDACTED] is based on his university graduation certificate from the [REDACTED]. A review of the submitted documentation regarding the beneficiary's university degree indicates the beneficiary's ranking at graduation "was classified on position 73 from the whole 133 number of graduates."

Upon review, the petitioner has not established that the beneficiary meets the second criterion based upon his membership in the [REDACTED] or the [REDACTED]. While his achievement of the [REDACTED] Level 3 certification, apparently the highest certification offered by the organization, is noteworthy, the record is devoid of any evidence that "outstanding achievement" is a pre-requisite to taking the certification examination, or that membership in the organization required the beneficiary to be judged by recognized national or international experts in his field. Accordingly, the beneficiary does not meet this criterion.

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

The director concluded without discussion that the petitioner submitted sufficient evidence to meet this criterion.

The petitioner has claimed that the beneficiary meets the seventh criterion in that he has been 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). As previously discussed, the beneficiary's coaching experience in Romania was documented through the testimonial evidence of witnesses Mr. [REDACTED] and Professor [REDACTED] while the beneficiary's coaching experience in England was documented solely through press releases published on two websites. Mr. [REDACTED] General Secretary, [REDACTED] writes that the beneficiary was a coach in the male gymnastics section of the [REDACTED] during the years 2008-2011, during which time he achieved tournament victories at national championships with two gymnasts competing at the junior level. The press releases from the beneficiary's former employer, [REDACTED] England indicate that the beneficiary was one of two coaches of a group of junior gymnasts who won several medals and excelled at local competitions in Great Britain in 2010 through 2012.

While the beneficiary has clearly been able to provide expertise in the area of gymnastics coaching within the organizations that have employed him, the evidence does not establish that his role as a gymnastics coach was essential or critical for those organizations as a whole. For instance, the petitioner's evidence does not demonstrate how the beneficiary's role differentiated him from the other gymnastics coaches at those organizations. The submitted evidence 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." Nor does the submitted evidence establish that such organizations have a "distinguished reputation."

In light of the above, the evidence submitted does not satisfy the plain language of the regulatory 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 eighth and final criterion requires the petitioner to submit evidence that the beneficiary has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(iii)(B)(8). The petitioner indicated on Form I-129 that the beneficiary will receive an annual salary of \$36,000, plus bonuses valued at up to \$11,500 per year.

On appeal, counsel states as follows:

The Service concluded that [the beneficiary] did not meet this criteria [sic]. However, the Service found that the average salary for this position is \$29,000, and the rate of pay for [the beneficiary] is 24% higher than the average salary. Therefore, although [the beneficiary] may not be commanding a high salary in comparison with other fields of endeavor, he will be compensated at a significantly higher salary than comparable professionals in the field.

Upon review, the petitioner has not established that the beneficiary meets this criterion. The petitioner has not submitted objective supporting evidence to corroborate counsel's claim that the beneficiary's compensation would be significantly higher than what an average gymnastics coach earns, such that it would be considered a "high salary" commensurate with extraordinary ability. Such evidence could include statistical comparisons of the salaries in the field of endeavor. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Summary

The evidence does not establish that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), and the documentation submitted does not meet three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B).

C. 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).

The petitioner has claimed eligibility under the "comparable evidence" regulation, based upon the submitted evidence. Counsel emphasizes that evidence relating to the beneficiary's accomplishments as a competitive gymnast and gymnastics coach meets the requirements of the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(C). 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 submitted evidence has been considered above with respect to the beneficiary's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor and with respect to the beneficiary's employment in a critical or essential capacity.

While the petitioner claims eligibility under the "comparable evidence" regulation, it has also claimed eligibility under 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 gymnast's coach 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). An inability to meet a criterion 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.

III. Conclusion

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 any of the criteria found under 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.⁴

⁴ The 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).

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The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.