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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 1 1 2013 Office: VERMONT SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of business. The petitioner states that it operates a reinsurance brokerage and risk management business. It seeks to employ the beneficiary in the position of Senior Vice President, Reinsurance Account Executive 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 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 a review of the evidence in its entirety will establish that the beneficiary meets three of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Counsel asserts that the director undervalued the testimonial evidence in the record, stating the director "bluntly disregards the overwhelming amount of evidence submitted in the original petition and the response to the RFE [request for evidence] proving beneficiary's extraordinary ability . . ." Counsel further asserts that the director failed to apply the preponderance of evidence standard when adjudicating the petition, particularly in light of a prior approval granting the beneficiary O-1 status for employment with a previous petitioner. The petitioner has not submitted any further evidence on appeal.

For the reasons discussed below, the AAO will uphold the director's decision and dismiss the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

> has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability . . . .

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

> Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

> It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum, Lawrence Weinig, Acting Asst. Comm'r., INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

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

> *Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:
>
> (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
>
> (B) At least three of the following forms of documentation:
>
> (*1*) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (*2*) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
>
> (*3*) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
>
> (*4*) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;

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

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

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

(8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.

(C) If the criteria in paragraph (*o*)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

(A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.

(B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 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 July 31, 2012. The petitioner describes its business activities and the beneficiary's proposed position as "Senior Vice President, Account Executive - Reinsurance" as follows:

> [The petitioner] provides its clients – insurance and reinsurance companies including [redacted] syndicates – with advice and solutions to protect their capital and enhance their shareholders' value. [The petitioner's parent company] established its first North American office in New York 2006 and subsequently expanded by setting up regional offices in Latham, Chicago and Miami, the latter of which is targeting Latin American and Caribbean clients.
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> * * *
>
> [The petitioner] is rapidly expanding and its recently expanding Miami office urgently requires a Senior Vice President and Account Executive – Reinsurance with extraordinary ability in the field of Latin American reinsurance and with international acclaim and recognition to develop and maintain favorable relationships with new and existing clients in Latin America and further grow its business . . . .

The petitioner stated that the beneficiary "is an extraordinarily skilled and experienced insurance and reinsurance broker with a particular specialization in transactions taking place in Latin America and the Caribbean." The petitioner further stated that the beneficiary "possesses extensive knowledge and expertise in insurance and reinsurance brokerage" with a "track record of success and numerous prior achievements."

The record consists of: the Form I-129 petition and supporting evidence, the director's request for evidence dated August 13, 2012 and the petitioner's response; the director's decision dated September 26, 2012; 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)(*5*), (*7*) and (*8*). The petitioner has not submitted any evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*1*), *(2), (3),* (*4*) and (*6*), and raises no objection to the director's determination that these criteria have not been met. The remaining three criteria will be discussed below.

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

The petitioner seeks to rely on testimonial evidence of the beneficiary's "numerous contributions of major significance to the reinsurance industry" in the form of "many large deals and contracts [the beneficiary] has completed within the reinsurance industry in the past twenty years, largely for Latin American and Caribbean insurance markets." The petitioner has submitted a total of seven letters of support from the beneficiary's professional contacts, and two advisory opinions from an appropriate entity in the beneficiary's field.

CEO/President of states he has maintained a close working relationship with the beneficiary since 2008, when he first worked with him on "international expansion and reinsurance opportunities." He states that the beneficiary's accomplishments with his company are as follows:

- Set up a joint venture with in 2009 . . . which equates to a premium income of approximately US $ 35,000,000.

- . . . [The beneficiary] represented in Beijing in 2010 . . . which equates to approximately US $15,000,000.

- There is also another joint venture for life reinsurance business in Brazil, and now have an arrangement with a Brazilian Reinsurance Company . . . Again we would expect this to generate a significant premium income.

- . . . in 2011, [the beneficiary] successfully completed . . .the backbone of our reinsurance requirement for our health portfolio.

- . . . in 2011, [the beneficiary] successfully completed a Catastrophe XOL reinsurance programme.

- [The beneficiary] helped us identify [a Guatemalan company] in 2010 and after much dialogue we will start selling products in Guatemala via [the company's] distribution channels.

Based on the above, asserts that the beneficiary possesses extraordinary ability in the field of insurance and reinsurance brokerage.

President of , states she has maintained a close relationship with the beneficiary since 1999, "when he first approached offering health reinsurance contract from Latin America." She states the beneficiary "has built a lasting relationship with numerous Latin American and Caribbean leaders in the life and health insurance sectors during his time working with . . ." She states the beneficiary successfully structured a joint venture between and "whereby grants us the authority to underwrite business on their behalf for our Latin American portfolio of business." She states that in 2010, she, the beneficiary (on behalf of) and a third-party administrator put together a panel of Chinese Insurance Companies with whom to do business. She also states the beneficiary recently began negotiations with for to supply their life and health reinsurance distribution channel focused in China. She further states that the beneficiary just negotiated relationship for the next three years.

, Chief Executive of the petitioning entity, states that in his prior employment the beneficiary "has proved himself to possess great skill, knowledge and experience in the field of reinsurance brokerage." He states that while the beneficiary worked for the beneficiary "played a key role in establishing the Caribbean and Latin American platform in Miami, Florida," obtained new clients in Mexico and Trinidad, and had "numerous successful large-scale reinsurance business transactions."

, Senior Vice President of in Florida, states he has maintained a close relationship with the beneficiary since the mid 1990's, and that he has worked with the beneficiary "on numerous large scale reinsurance deals which have assisted with [his company's] financial success." He states that his company has underwritten many reinsurance contracts presented by the beneficiary over the years, and have worked alongside him on many

reinsurance deals. He states that his company "has profited from millions of dollars of reinsurance premium as a result of our business dealings with [the beneficiary]."

use almost identical language in describing their knowledge of the beneficiary as a reinsurance broker "of exceptional ability" based upon his insurance and reinsurance brokerage dealings in Mexico.[1] and state they have known the beneficiary for approximately ten years. All of these witnesses state they are familiar with the beneficiary's work in various Mexican states arranging insurance against natural disasters.

Finally, the petitioner has submitted two letters from president of the in New York. We acknowledge that these letters satisfy the petitioner's obligation to provide a written consultation from an appropriate entity, pursuant to 8 C.F.R. §§ 214.2(o)(2)(ii)(D) and 214.2(o)(5). Consultations are advisory and are not binding on USCIS. 8 C.F.R. § 214.2(o)(5)(i)(D). states he has reviewed the documentation submitted in support of the petition, "comprised mainly of support letters written by leading reinsurance industry professionals and [the beneficiary's] previous employers and colleagues." He states that the beneficiary, "acting in his capacity as a reinsurance broker, has a history of prior achievements in the field that exceed by a clear margin the achievements of similarly positioned professionals in this field and prove his extraordinary ability in Latin American insurance and reinsurance brokerage."

The remaining letters submitted by the petitioner were experience letters from the beneficiary's prior employers and are more appropriately considered under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(*7*).

Upon review, the preceding letters of recommendation demonstrate that the beneficiary's work has earned the respect and admiration of those with whom he has collaborated and consulted, 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 field of insurance and reinsurance brokering, and his work on projects has benefited 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 letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795

[1]The AAO notes that does not set forth his own expertise and the manner in which he acquired his knowledge, as required by the regulation at 8 C.F.R. § 214.2(o)(2)(iii).

(Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a business executive 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.

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 meet the seventh criterion, the petitioner must submit evidence that the beneficiary 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*). The petitioner submitted employment recommendation letters from two individuals that worked with the beneficiary. The director determined that the petitioner failed to establish that the beneficiary meets this evidentiary criterion.

states that he hired the beneficiary to work at and supervised him until 1996. He states the beneficiary was responsible for targeting and executing the production and placement of Latin American reinsurance business, which he describes as "an important component of [the company's] reinsurance revenues." He states the beneficiary "established property reinsurance programs for major insurers in countries such as Mexico, Brazil, Chile, Colombia, Argentina and El Salvador, and oversaw the contract negotiations . . . as well as the ongoing account maintenance." The witness states that the beneficiary also "was a crucial player for [the company] in the completion of reinsurance deals in Brazil." He states that the beneficiary "oversaw the rapid growth and development of the company's Latin American portfolio, including a substantial increase in annual revenues . . ." He praises the beneficiary's work ethic, integrity, knowledge, expertise and "ability to orchestrate negotiations on multi-million dollar contracts with high ranking industry executives."

states he employed the beneficiary for more than 10 years as a partner in the reinsurance arm of the , in the company's Latin American division. He provides the following examples of the beneficiary's successful deals, which he states provided significant revenues for the company:

- A proportional workers compensation reinsurance contract in Peru . . .
- A primary facility reinsurance contract in Mexico . . .
- A number of medical expense and life insurance contracts in the Latin American region . . .

- Several [c]atastrophe reinsurance contracts . . . .

He states that in 2007, the beneficiary transferred to in the U.S., "where he headed the establishment of a new reinsurance platform in Miami, Florida." He states the beneficiary facilitated the company's further expansion into Latin American and Caribbean reinsurance markets.

Upon review, the AAO concurs with the director's determination. The letters submitted speak highly of the petitioner's intelligence and work ethic, describe the beneficiary's duties in detail and characterize the work he did as "crucial" and "vital" to the institutions. While the beneficiary has clearly been able to provide expertise in the area of insurance and reinsurance brokerage within the institutions that have employed him, there is no evidence that his role as an insurance and reinsurance broker was essential or critical for those companies as a whole. The beneficiary was assigned insurance and reinsurance 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 as the head of one or more business areas 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 senior account executives at those companies, or from other senior staff such as partners, divisional directors and department heads. We concur with the director that 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 the petitioner submits is insufficient to establish that he meets this evidentiary 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 petitioner has offered the beneficiary an annual salary of $182,850 for the proffered position of Senior Vice President, Account Executive - Reinsurance. The support letter states the beneficiary will receive other remuneration including "a sign on bonus of $75,000, guaranteed bonus of $75,000 in March 2013, discretionary bonuses and a housing allowance of $106,000." The support letter describes the proffered salary as "at the very top of the typical range for this extremely high level position."

The petitioner submitted pay statements from the beneficiary's current employer, Modified, indicating a monthly salary in 2012 of approximately $11,242 (8,660 pounds sterling (GBP)). The petitioner also submitted W-2 Forms from showing compensation paid to the beneficiary of $439,336 in 2011 and $419,488 in 2010.

The petitioner also submitted salary information for the occupation of "Insurance Sales Agents" from the Foreign Labor Certification (FLC) Data Center Online Wage Library (www.flcdatacenter.com). The information provided indicates that the average salary in the field in the Miami area is $57,179, while the top 25% wage level in that geographic area is $68, 494. The petitioner also provided salary data for the occupation of "Insurance Sales Agents" from O*Net Online (www.onetonlive.org). The

data provided is for the U.S. nationally for 2011 and indicates that the average salary for the occupation is $47,550.

While the director noted that the petitioner submitted wage information reflecting salaries for average level positions in the field rather than salaries for high level positions, the director found that "given the base salary, bonus and other allowances said to be paid it does appear the beneficiary has and will command a high remuneration."[2] The AAO agrees, in part, with the director's finding.

Upon review, the evidence does not establish that the beneficiary will command a high salary as a reinsurance account executive and senior vice president with the petitioner. The proffered salary of $182,850 plus other remuneration may be high for average level positions in the field but may not be considered high for the beneficiary, who has over three decades of professional experience. The petitioner has not documented what salary it typically pays to a reinsurance account executive with experience comparable to that of the beneficiary; therefore, it is impossible to determine whether the beneficiary's salary is comparatively high by the petitioner's own standards.

However, the petitioner has established that the beneficiary has commanded a high salary in the past. The record contains evidence of the high salaries paid to the beneficiary at [redacted] for the years 2010 through the date of filing.

Accordingly, the petitioner has established that the beneficiary meets this criterion.

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).

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*).

[2] The director also noted that the proffered wage was not supported by a contract or other reliable evidence.

The petitioner states in its support letter that the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) are not readily applicable to the beneficiary's occupation.

> As reinsurance brokerage is by its nature a private undertaking and one in which the parties involved often consider reinsurance contracts and transactions confidential and not appropriate for the public eye, there is very little published material or opportunities to be published, opportunities for public recognition such as awards or prizes, or judge or panel opportunities .

Counsel utilizes similar language on appeal. However, 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, without documentary evidence to support the claim, the unsupported assertions of counsel, here regarding the confidential nature of transactions in the reinsurance brokerage business, 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).

In addition, 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 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 three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). While the director did not specifically address the beneficiary's eligibility under the "comparable evidence" regulation, he considered the petitioner's testimonial evidence with respect to the beneficiary's business-related contributions to his field and with respect to the beneficiary's employment in a critical or essential capacity under the eligibility criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)*(5)* and *(7)*. 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.

III. Prior Approval and Conclusion

The record shows that the beneficiary held O-1 status authorizing employment with a previous employer from December 2008 to November 2011.[3] 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

[3]The beneficiary held L-1A status with that previous petitioner at the time the petition was filed.

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.[4]

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.

[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).