



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **MAR 21 2013** Office: CALIFORNIA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[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, California Service Center, denied the nonimmigrant visa petition and 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), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner, a New York limited liability company based in California, is a motion picture production and distribution company that seeks to employ the beneficiary as an actress for a period of two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture and television industry. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or that she has met three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision is "arbitrary and capricious," stating the director "made inconsistent and illogical conclusions that do not relate to one another." Counsel asserts that the petitioner has established the beneficiary's eligibility under at least three of the criteria evidentiary criteria applicable to immigrant petitions for aliens of extraordinary ability. Counsel submits a brief statement and additional documentary 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 classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

Extraordinary achievement with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.

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

Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture of television industry. To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

- (A) Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award; or
- (B) At least three of the following forms of documentation:
 - (1) Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements;
 - (2) Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications;
 - (3) Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials;
 - (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
 - (5) Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements; or
 - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events

or activities, along with an itinerary; and two consultations, one from an appropriate union and one from an appropriate management organization.

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.

It is noted that the decision of U.S. Citizenship and Immigration Services (USCIS) in a given 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 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. *See* 59 Fed. Reg. 41818-01, 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*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals 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)(v)(B), the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence.

II. Discussion

The sole issue to be addressed is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

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 an appeal. The beneficiary in this case is a native and citizen of the Romania. The evidence in the record indicates that the beneficiary has worked as an actress in the entertainment industry since approximately 2005 in various types of positions. In a letter submitted in support of the petition, the petitioner's president, [REDACTED], stated that the petitioner is scheduled to produce the "action packed fiction movie" titled '[REDACTED]' and requires the "extraordinary ability" of the beneficiary to perform "a key role in our productions as a lead actress. [The beneficiary] will portray the role of [REDACTED]" The petitioner states it will also require the beneficiary's services in "our second and third productions, which are soon to be arranged."

In denying the petition, the director found that the petitioner had failed to satisfy evidentiary criterion set forth at 8 C.F.R. § 214.2(o)(3)(v)(A). The director also noted that the evidence submitted did not relate to at least three of the six criteria set forth at the 8 C.F.R. § 214.2(o)(3)(v)(B), and that the quality of the evidence submitted was insufficient to establish that the beneficiary's achievement in the motion picture or television industry has risen to the level where she is recognized as outstanding, notable, or leading in her field.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary is fully qualified as an alien with extraordinary achievement in the motion picture and television industry pursuant to the regulatory definition and evidentiary criteria applicable to the O-1 visa classification.

A. The Evidentiary Criteria

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in his or her field pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

As there is no evidence that the beneficiary has been nominated for or received a significant national or international award or prize, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements

In order to meet criterion number one, the petitioner must submit evidence that the beneficiary has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements. 8 C.F.R. § 214.2(o)(3)(v)(B)(1). Upon review, the petitioner has not submitted evidence to establish that the beneficiary meets this criterion.

The petitioner submitted evidence that appears to establish that the beneficiary played a leading role, referred to as "[REDACTED]" in the Romanian television series titled "[REDACTED]" ["[REDACTED]"] (2009/2010). The petitioner submitted a copy of two publications, an October 12, 2009 article from [REDACTED] which discusses the "[REDACTED]" and mentions the applicant as one of two theater students acting in the series, and an undated, unattributed article about the applicant from [REDACTED] which discusses her leading role as "[REDACTED]" in the television sitcom "[REDACTED]". The evidence of record further contains two letters from [REDACTED], director of the series "[REDACTED]" describing the beneficiary's role as "one of our main cast" and "the lead actor."

The petitioner also submitted evidence that appears to establish that the beneficiary played a leading role, the role of "[REDACTED]" in the television series titled "[REDACTED]" (2006). The evidence of record contains an undated letter from I [REDACTED], director of the series, describing the beneficiary's role in the series as, "the most important female lead. The plot of the show placed [REDACTED] at the center of the action for most episodes."

The petitioner further submitted evidence that the beneficiary had roles in Romanian television productions as follows: host for unidentified call-in television shows in 2005; presenter/moderator for the television show "[REDACTED]" (2008/2009); successful competitor on the television show "[REDACTED]" (2010/2011); and presenter of the television show "[REDACTED]" (2011/2012).

However, the evidence presented does not establish that the applicant performed services as a lead or starring participant in those productions or events.

In a support letter the petitioner also asserts that the beneficiary played leading roles in movies that include " [REDACTED] " and television shows such as [REDACTED]. The evidence of record further contains a letter from [REDACTED] area director for Romania's [REDACTED] in Romania, who states that the beneficiary was a presenter for the company's television shows. However, the evidence of record is lacking in documentation establishing that the beneficiary performed services as a lead or starring participant in those productions or events. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, the petitioner must establish that the productions or events in which the beneficiary performed a leading or starring role have a distinguished reputation. The petitioner submitted three ratings sheets from Prima TV for October and November 2009, which indicate the rating and audience share for the show "[REDACTED]" for that period. The evidence of record also contains an undated letter from one of the show's producers, [REDACTED], referring to the ratings sheets as evidence of the show's success "for the first three months the show was broadcasted." However, evidence that the show may have had a high rating or audience share in the first few months it aired does not establish that the show has a distinguished reputation.

The evidence of record also contains a letter dated October 30, 2012 from [REDACTED], stating that the series "[REDACTED]" aired on Romania's "National TV" channel, and that the series "enjoyed immense success for years, ranking at the top of the ratings charts out of all the TV series they broadcasted." He states that the series received the "National TV" award for the highest rating in prime time for three years in a row. However, the record is lacking documentation to establish that the show had a distinguished reputation.

The evidence of record also contains a letter from [REDACTED] producer of the television show "[REDACTED]" stating that the beneficiary, as presenter of the show in its ninth season, made the ninth season "one of the best seasons we had and also the season with the highest ratings of them all." However, the record is lacking documentation to establish that the show had a distinguished reputation.

Based on this evidence, the AAO cannot conclude that the beneficiary has been employed as an actress in a leading or starring role for a television or motion picture production event that has a distinguished reputation.

The evidence of record is also lacking in documentation establishing that the beneficiary will perform services as a lead or starring participant in productions or events which have a distinguished reputation in the United States. The petitioner indicates that the beneficiary will perform in a motion picture, "[REDACTED]" and in two future productions which have not yet been scheduled. There is no evidence to establish that these films could be considered to have a distinguished reputation or to

establish that the beneficiary will perform in a leading or starring role in these films. The submitted "Deal Memo" and "Itinerary" regarding the beneficiary's role in the film "[REDACTED]" contain no reference to whether the beneficiary is a lead or starring participant in the film, and there is no documentation, such as a press or publicity releases regarding either "[REDACTED]" or the petitioner's future productions.

Accordingly, the beneficiary does not meet this criterion.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications

In order to establish that the beneficiary meets the second criterion, the petitioner must submit evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. 8 C.F.R. § 214.2(o)(3)(v)(B)(2).

The published materials submitted include: (1) an undated, unattributed interview with the applicant from www.blog.coolgirl.ro which discusses her having won the "[REDACTED]" television show competition; (2) an undated, unattributed article about the applicant from www.PROTV.magazine.ro, which discusses her leading role as "[REDACTED]" in the television sitcom "[REDACTED]" ("[REDACTED]"); (3) an undated interview with the applicant in "[REDACTED]" which discusses various roles she has performed as an actress in the theater, but makes no reference to the beneficiary's work in television or film; (4) an undated article from *Theatrical Searches*, which reviews the play "[REDACTED]" and briefly discusses the applicant's performance, but makes no reference to the beneficiary's work in television or film; (5) an October 12, 2009 article from "[REDACTED]" which discusses the television sitcom "[REDACTED]" and mentions the applicant as one of two theater students acting in the series; (6) a television program list describing the television sitcom "[REDACTED]" and identifying the applicant and other members in an accompanying cast photograph; and (7) a January 6, 2011 press release in "[REDACTED]" stating the applicant, as the winner of the "[REDACTED]" television show, will host the television show titled "[REDACTED]".¹

While two of these articles appear to have been published in magazines, the articles do not establish that the beneficiary has achieved national or international recognition for achievements as an actress in motion pictures or television.

¹The petitioner has also submitted a January 14, 2011 article in "[REDACTED]" regarding the applicant hosting the television show "[REDACTED]". However, the petitioner has not submitted an English translation for this foreign language article. The regulation at 8 C.F.R. § 103.2(b)(3) states, "Translations. Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." Because the petitioner failed to submit certified translations of the document, this evidence will not be accorded any weight in this proceeding.

Therefore, the beneficiary does not meet this criterion.

Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials

In order to establish that the beneficiary meets the third criterion, the petitioner must submit evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials. 8 C.F.R. § 214.2(o)(3)(v)(B)(3).

As stated above, the petitioner submitted evidence that appears to establish that the beneficiary played a leading role in the Romanian television series titled “[REDACTED]” (2009/2010), produced by Prima TV. The petitioner also submitted evidence that appears to establish that the beneficiary played a leading role in the television series titled “[REDACTED]” (2006), produced by National TV.

The petitioner submitted ratings sheets from www.paginademedia.ro for Prima TV for October, November and December 2009, and January 2010. The ranking sheets indicate that the company’s television channels for that period are consistently not the top-three-rated television channels. This evidence fails to establish that this company, for which the beneficiary has performed, enjoys a distinguished reputation in the motion picture or television industry.

Moreover, the petitioner has not established that the beneficiary will perform in a lead, starring or critical role for an organization or establishment that has a distinguished reputation under the approved petition. In support of the petitioner’s assertion that it is “a brilliant entertainment company” whose “presence in Hollywood is widely established”, counsel submits on appeal the following:

- A press release in the June 4-10, 2002 edition of [REDACTED] stating the petitioning company has hired [REDACTED] as vice president of worldwide acquisitions and co-productions.
- Two articles, in the June 14, 2002 edition of [REDACTED] and the May 17, 2002 edition of [REDACTED] respectively, stating the petitioning company has hired [REDACTED] as vice president of worldwide acquisitions and co-productions, and that the petitioning company is moving “from a film distribution company to an acquisitions and production company”;
- An article dated January 2004 from [REDACTED] discussing the petitioning company’s business history, business model, long-term strategy, and the petitioner’s wish to “shoot and distribute its own productions through its offices in Bulgaria;
- An undated press release from *Focus on New Media*, stating that the petitioning company currently features a selection of programming on its own dedicated website;
- An interview/press release with the petitioning company’s president, [REDACTED], dated December 15, 2003 – January 15, 2004 in [REDACTED] discussing the petitioning company’s success in the Romanian market and its future development strategy;

- A press release in an undated edition of [REDACTED] stating the petitioning company launched a production division and announced the establishment of new offices in Latin America;
- A press release in an undated edition of [REDACTED] stating that the petitioning company has signed a two-picture deal with [REDACTED] to handle international sales of two films;
- Three press releases, in an undated edition of [REDACTED] the January 19, 2004 edition of [REDACTED] and at [REDACTED] on January 22, 2004, respectively, stating that [REDACTED] Films has completed a deal with the petitioning company for distribution of [REDACTED] movie [REDACTED];” in Eastern Europe and Latin America;
- A press release in the January 20, 2004 edition of [REDACTED] quoting the petitioning company’s president, [REDACTED] stating that the company is opening more distribution offices “in its Eastern Europe and Latin America stronghold;”
- An article in the February 29, 2004 edition of [REDACTED] quoting the petitioning company’s president stating that in opening multiplexes, [REDACTED]
- A press release in the February 23, 2004 edition of [REDACTED] stating the petitioning company has acquired international sales rights outside North America to three Films;
- Advertisements in the March 1, 2004 edition of [REDACTED] and the May 12, 2004 edition of [REDACTED] respectively, listing several films the petitioning company is distributing.

While three of these articles appear to have been published in magazines, the articles that the petitioner submits on appeal do not establish that the petitioning company enjoys a distinguished reputation in the motion picture or television industry.

Moreover, the petitioner has not established that the beneficiary will perform in a lead, starring or critical role for the petitioner. As stated above, the petitioner indicates that the beneficiary will perform in a motion picture, “[REDACTED]” and in two future productions which have not yet been scheduled. There is no evidence to establish that the beneficiary will perform in a leading or starring role in these films. The submitted “Deal Memo” and “Itinerary” regarding the beneficiary’s role in the film “[REDACTED]” contain no reference to whether the beneficiary is a lead or starring participant in the film or any future productions.

Based on the foregoing, the AAO concurs with the director that the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(3).

Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications

To establish that the beneficiary meets the fourth criterion, the petitioner must establish that the beneficiary has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other

publications. 8 C.F.R. § 214.2(o)(3)(v)(B)(4). The director determined that the beneficiary met his criterion, without discussion. The AAO disagrees with the director's determination.

As discussed above, the petitioner submitted three ratings sheets from [REDACTED] for October and November 2009, which indicate the rating and audience share for the show "[REDACTED]" for that period, the first three months the show was broadcast. However, evidence that the show may have had a high rating or audience share in the first few months it aired does not establish that the beneficiary has a record of major commercial or critically acclaimed successes.

In addition, the petitioner submitted ratings sheets from [REDACTED], the producer of "[REDACTED]" for October, November and December 2009, and January 2010. The ranking sheets indicate that the company's television channels for that period are consistently not the top-three-rated television channels. This evidence fails to establish that the beneficiary has a record of major commercial or critically acclaimed successes.

The regulations do not indicate that this criterion can be met through "a detailed explanation" or through "letters of recommendation" from the beneficiary's colleagues and teachers. Rather, this criterion requires the petitioner to submit evidence that there is a published record of the beneficiary's critical or commercial success, such that her achievement is acknowledged in the industry-at-large. The petitioner has not demonstrated that the beneficiary meets this criterion.

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements;

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) provides that 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 petitioner has provided recommendation letters in support of the petition from 13 individuals all of whom are from the beneficiary's immediate circle of mentors, colleagues and collaborators.

While the statements are highly complementary with respect to the beneficiary's talent and potential, they do not directly discuss the beneficiary's achievements or accomplishments in any detail, or her recognition in the industry. Rather, the statements suggest that the beneficiary is regarded as an actress who is prepared to move to higher levels of achievement and recognition within the industry, rather than as an actress who is already regarded as leading or renowned in the field.

While the AAO recognizes that the individuals who provided letters hold a very high opinion of the beneficiary's talent and potential, the submitted testimonials do not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5). None of the persons providing testimonials have clearly indicated their knowledge of the beneficiary's achievements in the field of acting. Furthermore, the petitioner has not established that any of the individuals providing letters could be considered a "recognized expert" in the television and motion picture industry or in the acting profession. While reference letters *can* satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5), to do so the letters must reflect that the beneficiary has a very high level of accomplishment in the motion picture or television industry to the extent that she is recognized as outstanding, notable, or leading in the motion picture or television field. Subjective assessments of talent cannot suffice in this regard. Furthermore, an artist whose reputation is largely confined to former instructors and colleagues has not achieved a degree of recognition significantly above that ordinarily encountered in the motion picture and television industry.

Finally, the petitioner has submitted a "no objection" letter from the Screen Actors Guild-American Federation of Television and Radio Artists ("SAG-AFTRA") and an advisory opinion from [REDACTED] of the Alliance of Motion Picture & Television Producers. We acknowledge that these letters satisfy the petitioner's obligation to provide written consultations from an appropriate union representing the beneficiary's occupational peers and a management organization in the area of the beneficiary's extraordinary achievement, as required by section 214(c)(3)(A) of the Act and the regulations at 8 C.F.R. §§ 214.2(o)(2)(ii)(D) and 214.2(o)(5)(iii). Consultations are advisory and are not binding on USCIS. 8 C.F.R. § 214.2(o)(5)(i)(D). [REDACTED] states he has reviewed the petition and the documentation submitted in support of the petition, and it is the organization's opinion that the beneficiary "has a history of extraordinary achievement in this field of endeavor and that the prospective services clearly require an individual with this level of professional and artistic achievement."

The petitioner has not submitted evidence that the beneficiary has gained any recognition in her field beyond her circle of former co-workers and teachers. The letters do not demonstrate significant recognition outside of that circle consistent with the accomplishments associated with an alien with extraordinary achievement.

Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence

The petitioner did not submit any evidence to establish that the beneficiary meets this criterion.

B. 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 she meets at least three of the six categories of evidence that must be satisfied to establish the minimum eligibility

requirements necessary to qualify as an alien with extraordinary achievement in the motion picture or television industry. 8 C.F.R. §§ 214.2(o)(3)(v)(A) and (B).

III. Conclusion

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is recognized as outstanding or leading in her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's critical and commercial achievements in the television and motion picture industry have not yet risen to this level.

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 criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(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)(v)(B), and the petition may not be approved.²

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.

² 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).