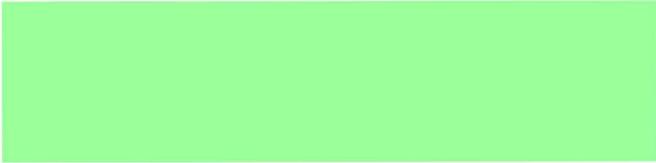


(b)(6)

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



U.S. Citizenship
and Immigration
Services

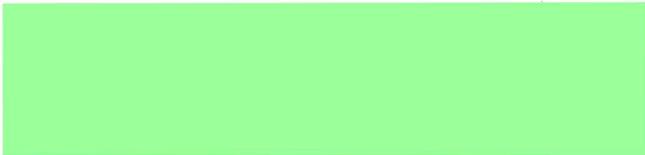


DATE: **NOV 13 2013**

Office: VERMONT SERVICE CENTER

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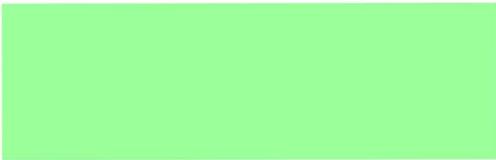
IN RE: Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 martial arts school, seeks to employ the beneficiary as Head Instructor of Tang Soo Do karate, a Korean martial art, for a period of three years.

The director denied the petition, finding that the evidence submitted satisfied only two 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 Tang Soo Do competitive athlete and instructor. Counsel submits a brief and documentary evidence that he previously submitted into the record.

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.

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 U.S. Citizenship and Immigration Services (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 denying the petition, the director observed that there was no evidence that the beneficiary has received a major, internationally recognized award equivalent to that listed at 8 C.F.R. § 214.2(o)(3)(iii)(A). The director also found that the petitioner failed to submit evidence that the beneficiary meets three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In this matter, the AAO has reviewed the evidence under the plain language requirements of each criterion claimed. Upon review, for the reasons discussed below, 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 therefore 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 September 24, 2012, seeks to classify the beneficiary as an alien with extraordinary ability as an instructor of Tang Soo Do karate, a Korean martial art. 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 Tang Soo Do competitive athlete and instructor.

While a competitive athlete and an instructor of Tang Soo Do share knowledge of Tang Soo Do, the two rely on different sets of basic skills. Thus, Tang Soo Do competitive athletics and Tang Soo Do 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 Tang Soo Do competitive athlete and coach/instructor.

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 record of proceeding contains the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, the director's request for further evidence (RFE) and the petitioner's response, and the petitioner's appeal. The beneficiary in this case is a native and citizen of Chile. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as an instructor of Tang Soo Do karate, a Korean martial art.

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 the petitioner does not assert 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 decision of USCIS 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 at least three of the criteria 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),(4) and (5). The director determined that the evidence establishes that the beneficiary meets two 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.

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].” Moreover, 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. The petitioner claims that the beneficiary is able to meet this criterion as both a competitive Tang Soo Do athlete and as an instructor of athletes. The director determined, without further discussion, that the petitioner submitted evidence which satisfies this criterion. The AAO disagrees with the director's determination.

¹ The petitioner raises no objection to the director’s determination that the petitioner did not submit evidence of eligibility under the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3),(6), (7) and (8). Therefore these regulatory categories of evidence will not be discussed in this decision.

With respect to the beneficiary's martial arts career in Chile, the petitioner submitted a list of the beneficiary's martial arts tournament results and awards for tournaments in which it appears he was a semi-finalist, finalist or champion, as follows:

- 2010 – First Place in Weapons, Master Category, [REDACTED]
- 2010 – First Place in Forms, Master Category, [REDACTED]
- 2010 – First Place in Sparring, Master Category, [REDACTED]
- 2008 – First Place in Weapons, Master Category [REDACTED]
- 2008 – Second Place in Sparring, Master Category, [REDACTED]
- 2005 – First Place in Sparring, [REDACTED]
- 2005 – First Place in Weapons, [REDACTED]
- 2005 – First Place in Forms, [REDACTED]
- 2005 – Chief Referee, [REDACTED]
- 2002 – First Place in Weapons, [REDACTED]
- 2000 – First Place in Sparring, [REDACTED]
- 2000 – First Place in Forms, National Championship, Vina del Mar, Chile
- 1999 – First Place in Weapons, National Championship, Santiago, Chile
- 1999 – Best Referee, World Championship, Buenos Aires, Argentina
- 1996 – Third Place, 4th Annual A.T. E. Championship²
- 1996 – First Place in Sparring, National Championship, Santiago, Chile
- 1996 – First Place in Weapons, National Championship, Santiago, Chile
- 1994 – First Place in Sparring, National Championship, Vina del Mar, Chile
- 1994 – First Place in Forms, National Championship, Vina del Mar, Chile
- 1992 – First Place in Weapons, National Championship, Santiago, Chile
- 1992 – First Place in Forms, National Championship, Santiago, Chile
- 1990 – First Place in Forms, Sparring World Championship, Santiago, Chile
- 1990 – Third Place Sparring World Championship, Santiago, Chile
- 1987 – First Place in Weapons, American Federation of Martial Arts (AFMA) World Championship, Panama City, Panama
- 1987 – Second Place in Sparring, AFMA World Championship, Panama City, Panama

The petitioner submitted evidence of the receipt of several of the awards and photographs of various trophies received by the beneficiary.

The petitioner also submitted evidence that the beneficiary was awarded the following:

- 1999 – Special Demonstration Award, AFMA 14th World Championship, Argentina
- 1990 – Plaque of Appreciation, AFMA 9th World Championship in Santiago, Chile

² The petitioner has provided a list of the beneficiary's awards in a document titled the beneficiary's "resume", in which this award as listed as having been presented at the "A.T.E." championship. However, a photograph of the award appears to indicate it was presented at the "A.T.F." championship. The petitioner has not identified the organization for which either abbreviation stands.

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 Tang Soo Do competitive athlete. The petitioner has not submitted documentation demonstrating that the awards received from these competitions are nationally or internationally recognized prizes or awards. 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 Chile.

With respect to the beneficiary's U.S. Tang Soo Do competitive career, the petitioner submitted a copy of the beneficiary's [REDACTED] Florida. As the petitioner has not presented evidence of the significance of this award it cannot serve to meet this criterion.

The petitioner also submitted a copy of an undated [REDACTED] issued by the [REDACTED] and signed by the petitioner's president, indicating the beneficiary was awarded [REDACTED]. The AAO notes that the letterhead of the [REDACTED] lists as its address the same address as the petitioning school, lists as its president the petitioner's president, [REDACTED] and lists as its general secretary the petitioner's treasurer, [REDACTED]. The beneficiary's resume indicates he attained the level of 5th Dan in 2010.

The petitioner asserts that the beneficiary's receipt of 5th Dan in Tang Soo Do is the equivalent of an "award or prize for excellence in the field," as required by the plain language of the regulations. The petitioner's letter of support asserts that "a 5th degree Black Belt in Tang Soo Do . . . is a difficult degree to obtain." The petitioner's own attestation cannot establish the significance of this martial arts award. Specifically, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of SofJici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) permits the submission of comparable evidence where a criterion is not readily applicable. However, the evidence submitted to show the recognition of the petitioner's award from the [REDACTED] is from the entity that issued the award, which is also an entity in which the petitioner's president and treasurer have a direct involvement. [REDACTED] states, "[the beneficiary] is now one of the top 50 highest ranking members of the [International] [REDACTED] worldwide" out of the federation's 15,500 members, and "one of our members who has reached the highest levels within our art in his training, skill, ability and demonstration."

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. For instance, the petitioner has not provided any information on the percentage of practitioners in the sport of Tang Soo Do who are a 5th Dan black belt. Upon review, the record lacks evidence that attaining a specific Dan level is based on excellence in the field of endeavor rather than passing a competitive test of skill. Thus, the fact of the beneficiary having attained 5th Dan cannot serve to meet this criterion.

The petitioner has failed to establish that the beneficiary has received a nationally or internationally recognized award for excellence as a Tang Soo Do instructor. While the evidence of record provides some information regarding individual athletes who 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 beneficiary's coaching experience was documented through the testimonial evidence of several witnesses. In a support letter submitted at the time of filing the petition, the petitioner's president, [REDACTED] discusses the beneficiary's teaching experience as follows:

. . . [P]erhaps [the beneficiary's] greatest attribute is teaching children the Martial Arts. [The beneficiary] has traveled through the world, in particular South America, conducting various martial arts seminars. In particular he has taught children with learning disabilities that would not be able to function normally in a regular class setting in Chile without payment.

In a peer consultation letter dated September 6, 2012, [REDACTED] Executive Director and Founder of the [REDACTED] states:

In particular [the beneficiary] is very good at teaching children the Martial Arts. He has traveled extensively doing seminars. He has taught children with learning disabilities, behavioral and cognitive disorders and children who require special attention as a part of the "Integrating Disability Program" in his home country Chile without compensation. It is my opinion the [the beneficiary] is an outstanding martial arts instructor . . .

[REDACTED] General Secretary of the [REDACTED] states he has had an opportunity to watch the beneficiary teach students in the beneficiary's academy in Chile.

[REDACTED] a martial arts instructor in Panama City, states she has known the beneficiary since 1985 and that he is a martial arts instructor.

[REDACTED] a Jujitsu instructor in Chile, states the beneficiary is a master instructor of Tang Soo Do. He states the beneficiary "always stood out for his dedication to his students, especially children." Mr. [REDACTED] expresses his opinion that the beneficiary has extraordinary skills as an instructor.

[REDACTED] principal of [REDACTED] Chile, states the beneficiary participated for three months as a volunteer in the school's "Integrating Disability Program," teaching disabled children who cannot participate in regular classes and require special attention.

The petitioner also submitted a letter of appreciation from Police Chief [REDACTED] regarding a free course in self-defense given by the beneficiary on February 9, 2013.

The beneficiary's resume states that in 1989 he opened his own martial arts school in [REDACTED] Chile. The petitioner submitted an undated article from an unidentified publication, stating that a student of the beneficiary was a top performer in the eleventh [REDACTED] in the gym "[REDACTED]" The article describes the preparation required for the competition as being, "[t]he work and effort deployed for three and a half months of intense training."

The petitioner submitted an article dated May 23, 2010 from an unidentified publication, stating that two of the beneficiary's students were first place winners in fighting and forms, respectively, in the [REDACTED] among several karate school teams in Chile.

The petitioner submitted an article dated August 23, 2010, from [REDACTED] stating that the [REDACTED] Team coached by the beneficiary won [REDACTED] held in [REDACTED]

The petitioner submitted an article dated June 20, 2011, from an unidentified publication, stating that the beneficiary led a group of karate students who won [REDACTED]

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 Tang Soo Do excellence. Rather, the evidence indicates that the beneficiary has been teaching amateur athletes, mainly competing at the junior level. Even if the petitioner had submitted copies of awards received by these 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.

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 Tang Soo Do career in Chile, or in the United States, resulted in his receipt of nationally or internationally recognized prizes or awards for Tang Soo Do excellence. The petitioner also has not established that the beneficiary has received nationally or internationally recognized awards for excellence in coaching or that he has coached athletes who have received such awards.

Based on the foregoing, the AAO withdraws this portion of the director's decision, and finds that the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

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. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In this regard, in its response to the RFE the petitioner provided a peer consultation letter from [REDACTED] Executive Director and Founder of the [REDACTED] stating that the beneficiary is a member of the organization. In addition, the letters from [REDACTED] state that the beneficiary is a member of the [REDACTED]

On appeal, the petitioner refers to the support letter of [REDACTED] the petitioner's treasurer and general secretary of the International [REDACTED] as evidence that membership in that organization meets this criterion. In his letter, [REDACTED] states as follows:

Within our system it is required that a student train for a minimum of four years to test for the rank of First Dan; two additional years of training to test for Second Degree; three more years of training before one can test to achieve Third Degree; four more years of training before one can test to reach the Forth (sic) Degree Black Belt; and five additional years of training before one can test to achieve a Fifth Degree level.

* * *
Currently the [REDACTED] worldwide membership is approximately 15,500 members. Of all the practitioners 2,791 members have reached the level of First Degree Black Belt; 892 have reached the level of Second Degree Black Belt; 285 members have reach Third Dan; 96 have reached Fourth Dan; 28 members have reached Fifth Dan; 16 members have reached Sixth Dan; 4 members are in Seventh Dan; only 1 is Eighth Dan; and only 1 in Ninth Dan which is the highest rank one can achieve in the [REDACTED]

On appeal, counsel asserts that the lengthy process to achieve each proficiency level establishes that the organization requires outstanding achievements of its members. Completing one's studies in demonstrating the required skills and training to achieve the next proficiency level does not equate to outstanding achievement. In addition, [REDACTED] states that the organization's membership is comprised of [REDACTED] practitioners at all levels of proficiency: approximately 4,000 members of the organization have attained a ranking of First Degree Black Belt or higher; and, presumably, approximately 11,500 members have not. This evidence does not support the petitioner's assertion that a requisite to membership in the organization is "outstanding achievement."

Finally, the membership criteria are an essential element of this criterion according to the plain language of the regulation at § 214.2(o)(3)(iii)(B)(2). Despite the director's specific request, counsel has provided no information on appeal or through accompanying evidence regarding how one becomes a member of the [REDACTED] and the [REDACTED]. There is no evidence of the membership criteria of these organizations, such as membership bylaws or rules of admission, showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the beneficiary's field. Accordingly, the petitioner has not established that the beneficiary meets this second criterion.

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

To meet the fourth criterion, the petitioner must submit evidence of the beneficiary'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. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4). The director determined, without further discussion, that the petitioner submitted evidence which satisfies this criterion.

The petitioner's president, who is also the president of the [REDACTED] submitted a letter stating that the beneficiary is an official referee with that organization. In addition, the beneficiary's resume indicates he was a referee at the [REDACTED] and chief referee at the [REDACTED]. However, the record does not establish that the beneficiary's work as a referee in the above instances equates to participating as a "judge" of the work of others. For instance, there is no evidence demonstrating that the petitioner actually judged the work of competitors, such as assigning points or determining winners, rather than merely enforcing the rules and maintaining a sense of fair play. Nor does the record contain official competition rules for the championships in Argentina and Mexico indicating that serving as a referee in these instances equates to participating as a judge of work of others.

The petitioner also submitted photographs purportedly showing the beneficiary judging a Tang Soo Do competition hosted by the [REDACTED] in [REDACTED]. The pictures show the beneficiary assigning points to the work of competitors. Although the pictures are evidence demonstrating that the beneficiary may have judged the work of competitors at this event, this evidence relates to an occurrence after September 2012, when the petition was filed. Therefore this evidence cannot be considered. The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm'r 1978).

Based on the foregoing, the AAO withdraws this portion of the director's decision, and finds that the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § § 214.2(o)(3)(iii)(B)(4).

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

The fifth criterion requires the petitioner to submit evidence of the beneficiary's original scientific, scholarly, or business-related contributions of major significance in the field. 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

The petitioner submitted letters of support from his personal contacts discussing his achievements as a Tang Soo Do competitor and instructor and his activities in the sport. Success and dedication to one's sport, however, are not necessarily indicative of original contributions of major significance in the field. The petitioner failed to establish that the beneficiary has made original athletic contributions that have significantly influenced or impacted his field.

The director concluded that the submitted evidence did not establish eligibility under this criterion. On appeal, the petitioner does not contest the director's conclusion. Therefore, the AAO considers this particular issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).³

Based on the foregoing, the petitioner has not established that the beneficiary meets the fifth criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Summary

The petitioner submitted no evidence 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).

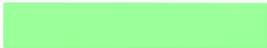
III. Conclusion

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 the beneficiary's eligibility pursuant to any of the regulatory criteria 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

³ Even if this particular issue were not abandoned, upon review the AAO would have concurred with the director's finding that the submitted letters do not establish eligibility under this criterion.

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



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.

(BIA 1987)(holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).