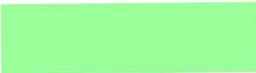


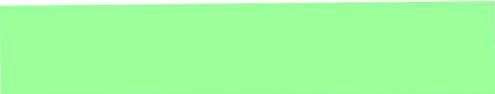
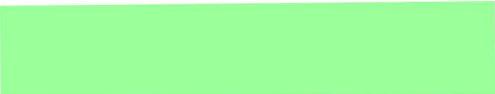


U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: **SEP 13 2013** Office: VERMONT SERVICE CENTER

FILE: 

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:

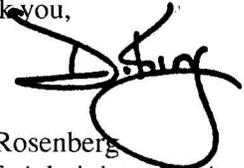
SELF-REPRESENTED

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, a children's gymnastics school, 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 seeks to employ the beneficiary in the position of coach of rhythmic gymnastics 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 she is one of the small percentage who has risen to the very top of her field as a gymnastics coach.

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, the petitioner asserts that the beneficiary has extraordinary ability in the field of rhythmic gymnastics, and that the beneficiary is an outstanding coach in this field. On appeal, the petitioner submits new evidence as well as copies of previously submitted evidence.

## I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to 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, 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) 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 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*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> 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).

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 *Kazarian* 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)).

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.

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. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter.

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

## II. Discussion

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

This petition, filed on October 26, 2012, seeks to classify the beneficiary as an alien with extraordinary ability in athletics, through her achievements as a coach of rhythmic gymnastics. The statute and regulations require that the beneficiary seek to continue work in her 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). The record is clear that the beneficiary intends to continue to work in the area of gymnastics coaching in the United States and not as a competitive athlete or performer.

The record includes evidence showing that the beneficiary competed successfully in national and international gymnastics competitions in 2006, 2007, 2008, 2010, 2011 and 2012, that the beneficiary was a member of the national team of [REDACTED] and that she was a coach in the area of children's calisthenics. While a competitive gymnast and a coach may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching 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 court noted a consistent history in this area. While the record demonstrates that the beneficiary intends to continue working as a gymnastics coach, there is no evidence indicating that she intends to compete as a gymnast in the United States. We acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a gymnastics coach and a competitive gymnast, but the O-1 petition must be accompanied by evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability. In this case, there is no evidence establishing that the beneficiary intends to continue working in the United States as a competitive gymnast. Although the beneficiary's competitive accomplishments as a gymnast are not completely irrelevant and will be given consideration, ultimately she must satisfy the statutory requirement at section 101(a)(15)(O)(i) of the Act as well as the regulations at 8 C.F.R. § 214.2(o)(3)(iii)(A) or (B) through her achievements as a coach.

USCIS recognizes that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence in the aggregate in the final merits determination. Specifically, in a case where an alien has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. A coach who has an

established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

**B. The Beneficiary's Eligibility under the Evidentiary Criteria**

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)(iii)(A), or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The beneficiary, a gymnast who has also coached gymnastics, is a native and citizen of [REDACTED]. The petitioner, self-described as children's school of gymnastics, filed the instant petition on October 26, 2012, seeking to employ the beneficiary as a gymnastics coach. The director subsequently issued a request for additional evidence ("RFE"), to which the petitioner responded.

At the outset, it must be noted that Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. See section 101(a)(15)(O)(i) of the Act. If the petitioner establishes through the submission of documentary evidence that the beneficiary has been the recipient of a major internationally recognized award in the particular field 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 regulation lists the Nobel Award as an example of a qualifying significant award or prize. Other examples of major, internationally recognized awards may include the Pulitzer Prize, the Academy Award, and most relevant for athletics, an Olympic Medal.

The petitioner claimed that that the evidence establishes the beneficiary has met the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A).<sup>1</sup> The petitioner submitted copies of the beneficiary's awards and diplomas. The beneficiary's first, second and third place finishes are listed below:<sup>2</sup>

- 1. 2<sup>nd</sup> place for [REDACTED] 2010;
- 2. 3<sup>rd</sup> place for [REDACTED] 2010;
- 3. 3<sup>rd</sup> place for [REDACTED] 2010;

<sup>1</sup> The AAO will withdraw the director's comment that the petitioner did not claim eligibility under this criterion. In response to the director's RFE, the petitioner indicated that it was submitting evidence under this criterion.

<sup>2</sup> The beneficiary's fourth place and lower finishes (and finishes not specifically designated) have been omitted from the awards provided by the petitioner, as the petitioner has not established that placing in these positions resulted in the receipt of an "award or prize for excellence in the field" as required by the plain language of the regulations.

4. 3<sup>rd</sup> place for [REDACTED] 2010;
5. 3<sup>rd</sup> place for [REDACTED] 2010;
6. 2<sup>nd</sup> place for [REDACTED] 2007;
7. 1<sup>st</sup> place for [REDACTED] [REDACTED], 2011;
8. 1<sup>st</sup> place for [REDACTED] [REDACTED] 2011;
9. 1<sup>st</sup> place for [REDACTED] [REDACTED], 2011;
10. 1<sup>st</sup> place for “ [REDACTED] 2011;
11. 1<sup>st</sup> place for [REDACTED] [REDACTED], 2011;
12. 1<sup>st</sup> place in the [REDACTED] [REDACTED] 2010;
13. 2<sup>nd</sup> place in [REDACTED] [REDACTED] 2007;
14. 2<sup>nd</sup> place in [REDACTED] [REDACTED] 2007;
15. 2<sup>nd</sup> place in [REDACTED] [REDACTED] 2007;
16. 2<sup>nd</sup> place in [REDACTED] [REDACTED] 2007;
17. 2<sup>nd</sup> place in [REDACTED] [REDACTED] 2007;
18. 1<sup>st</sup> place in [REDACTED] (date un-translated);
19. 3<sup>rd</sup> place in [REDACTED] 2008;
20. 2<sup>nd</sup> place in [REDACTED] [REDACTED], 2012;
21. 2<sup>nd</sup> place in [REDACTED] (date un-translated);
22. 1<sup>st</sup> place in [REDACTED] [REDACTED], 2008;
23. 1<sup>st</sup> place in [REDACTED] [REDACTED], 2012;
24. 2<sup>nd</sup> place in [REDACTED] (date un-translated);

25. 3<sup>rd</sup> place in [REDACTED], 2008;
26. 3<sup>rd</sup> place in [REDACTED], 2008;
27. 3<sup>rd</sup> place in [REDACTED], 2008;
28. 3<sup>rd</sup> place in [REDACTED], 2006.

The petitioner also submitted published articles reflecting that the beneficiary won five gold medals in [REDACTED] in the United States.

While the evidence indicates that the beneficiary is talented and has received several awards as a gymnast, the petitioner submitted no evidence to establish that the above awards are internationally recognized or equivalent to the Nobel Prize or an Olympic Medal. 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)). Therefore, the petitioner failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iii)(A).

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 indicates that the beneficiary satisfies the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B)(3), (4) and (5). In addition, while the petitioner did not explicitly claim that the beneficiary satisfies the criteria at 8 C.F.R. 214.2(o)(3)(iii)(B)(1) and (2), the AAO will analyze the petitioner's evidence under these two criteria.<sup>3</sup>

*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 *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.

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<sup>3</sup> The petitioner has not claimed to meet or submitted evidence relating to the criteria not discussed in this decision.

While the petitioner submitted certificates evidencing the beneficiary's receipt of the awards previously discussed for the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A), the petitioner failed to submit documentation demonstrating that the awards received from these competitions are nationally or internationally recognized prizes or awards. The AAO notes that the majority of the awards that the beneficiary won were in junior competition in [REDACTED] and [REDACTED]. Without documentary evidence regarding the actual competitions themselves, such as the level 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.

In addition, and most importantly, the record contains no evidence that the beneficiary has received a nationally or internationally recognized award for excellence as a rhythmic gymnastics instructor or coach. As the petitioner clearly seeks to employ the beneficiary as a rhythmic gymnastics coach, the "area of extraordinary ability" for which classification is sought is coaching. There is no evidence indicating that the beneficiary seeks to work in the United States as a competitive gymnast. The preceding awards all resulted from the beneficiary's accomplishments as a competitive gymnast, thus they cannot be considered evidence of her sustained national or international recognition as a coach. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in her 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). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. There is no evidence showing that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in coaching.

Further, the AAO finds that the petitioner has not established that the beneficiary's students have won nationally or internationally recognized prizes or awards for excellence in the field. While several support letters assert that the beneficiary has participated in coaching several award-winning students, the petitioner has not provided documentary evidence of their awards. The petitioner has not adequately explained why documentary evidence of such awards is not available; the third-party statements of witnesses regarding such awards are insufficient to meet this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Finally, the evidence indicates that the beneficiary has only been teaching gymnasts competing at the junior level. Even if the petitioner had submitted copies of the awards, an international award received by a student competing at the junior level would not carry the same evidentiary weight as an international award received by a competitor at the adult, professional level, without some additional explanation as to how the sport is governed at the junior level.

In light of the above, 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)(I).

*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 demonstrate that membership in an association meets this criterion the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, 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.

The petitioner submitted three reference letters attesting that the beneficiary was a member of the [REDACTED] in rhythmic gymnastics as an active participant in major international and national competitions, and that due to her "good results," she was allowed to work as a coach of younger girls under the direction of the main coach, her mother. However, the petitioner has not adequately explained why documentary evidence of such membership is not available; third-party statements that the beneficiary is a member of the [REDACTED] in rhythmic gymnastics are insufficient to meet this criterion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In addition, the petitioner has failed to submit documentary evidence that this organization requires outstanding achievements of its members, as judged by recognized national or international experts. The petitioner has not submitted evidence of the membership requirements for the [REDACTED] in rhythmic gymnastics, showing that membership is reserved for those gymnasts who have recorded outstanding achievements in the field.

Further, as indicated above, the plain language of this regulatory criterion requires evidence of the "alien's membership in associations in the field for which classification is sought." In this case, the field for which classification is sought is rhythmic gymnastics coaching. The petitioner does not indicate that it requires the beneficiary's services as a competitive gymnast. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in her 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. The petitioner has not provided evidence that the beneficiary is a member of any qualifying association for gymnastic coaches, or provided evidence of any separate [REDACTED] membership requirements applicable to rhythmic gymnastics coaches.

Therefore, the AAO cannot conclude that the evidence satisfies the plain language requirements of 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

*Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation.*

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be primarily "about" the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

With the initial petition, the petitioner submitted a newspaper article titled '[REDACTED]' which mentions the beneficiary's receipt of gold awards in skipping, rope, hoop, ball, Indian clubs, and ribbon at the [REDACTED].<sup>5</sup> The petitioner also submitted an article reprinting an interview with the beneficiary titled "[The beneficiary]: [REDACTED]," published in [REDACTED], discussing the beneficiary's life and achievements in gymnastics competitions. On appeal, the petitioner submitted additional articles discussing the beneficiary's achievements as a gymnast.

The submitted articles reflect the beneficiary's accomplishments as a gymnast rather than her accomplishments as a gymnastics coach. The plain language of this regulatory criterion requires published material "about the alien . . . relating to the field for which classification is sought." We cannot conclude that the preceding material relates primarily to the beneficiary's work as a coach. Further, there is no evidence (such as circulation statistics) showing that any of the above-referenced publications qualify as "major media."

In light of the above, the petitioner has not submitted the initial required evidence necessary to satisfy the plain language requirements of 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

*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.*

On appeal, the petitioner submitted a letter from the [REDACTED] stating that the beneficiary worked as a judge in 2011 and 2012 '[REDACTED]'. However, it is noted that on November 5, 2012, the director issued a Request for Evidence (RFE). The RFE instructed the petitioner to submit evidence of the applicant's eligibility pursuant to section 203(b)(1)(B) of the Act. In

<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

<sup>5</sup> The translated version did not include the name of the newspaper in which this article appeared.

denying the application, the director concluded that the documents submitted in response to the RFE were not sufficient to establish the applicant's eligibility, and that the petitioner had failed to submit evidence to establish eligibility under this criterion. The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the application is filed. See 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the application. 8 C.F.R. § 103.2(b)(14). As in the present matter, where an applicant has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Ohaigbena*, 19 I&N Dec. 533 (BIA 1988). If the applicant had wanted the submitted evidence to be considered, it should have submitted the documents in response to the director's request for evidence. *Id.* Under the circumstances, the AAO need not, and does not, consider the sufficiency of this evidence submitted on appeal.

In light of the above, the petitioner has not submitted the initial required evidence necessary to satisfy the plain language requirements of 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.*

As evidence of eligibility under this criterion, the petitioner submitted the beneficiary's awards and diplomas. However, as stated above, the submitted awards all resulted from the beneficiary's accomplishments as a competitive gymnast and not as a gymnastics coach, thus they cannot be considered evidence of her contributions of major significance in the field of gymnastic coaching. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

While not explicitly submitted under this criterion, the petitioner submitted recommendation letters from the [REDACTED], and the [REDACTED]. The letter from the [REDACTED] who was contacted by the petitioner for a consultation, asserts that the beneficiary is an "internationally respected gymnastics professional who will be a great asset to our program" in her capacity as a gymnastics coach at the petitioning company, because it will allow the beneficiary to "provide leadership and expertise." The letter states that the beneficiary's coaching "would greatly serve the needs of the United States Gymnastics Federation" and its efforts to place and maintain the United States in a top world ranking in gymnastics. The letter proceeds to discuss the decline in gymnastics teachers and coaches in the United States, and the need to develop more gymnastics professionals into U.S. coaches. While this letter indicates that the beneficiary will likely make a contribution to the field of gymnastics coaching in the future, this letter does not indicate that the beneficiary has already made contributions of major significance in the field of gymnastics coaching. Thus, this letter does not meet the plain language requirements of 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

The letter from the [REDACTED] attests to the beneficiary's achievements as a gymnast, and states that due to these

“good results,” she was “allowed to work” as a coach “under the direction” of the school’s main coach, the beneficiary’s mother. The letter states: “During her work she trained the whole generation of talented gymnasts who where [sic] and who is [sic] in national junior and senior team of [REDACTED], [REDACTED].” The letter also states that the beneficiary “showed good results during working at the calisthenics school, she was attentive and serious, developed coaches [sic] qualities, proved to be the [sic] responsible and knowing specialist.” The letter concludes: “[The beneficiary] always improves her professional skills as a professional coach.” While this letter indicates that the beneficiary coached three gymnasts who are in the national junior and senior team of [REDACTED] the letter does not explain how this constitutes a contribution of major significance in the field.

On appeal the petitioner submitted an additional letter from the [REDACTED], stating that the beneficiary “prepared the champion of state among 8-9 aged girls and silver prised [sic] gymnast [sic] of state among 10-14 aged girls.” Again, the letter does not explain how coaching students at the junior level constitutes a contribution of major significance in the field. On appeal the petitioner also submitted a diploma awarded to the beneficiary “for [her] excellent contribution to the [REDACTED].” The diploma does not indicate that it was given to the beneficiary in recognition of contributions of major significance made with respect to coaching.

In summary, while the record contains reference letters that acknowledge the beneficiary’s skills and success as a competitive gymnast and acknowledge that she has coached gymnastics, none of the letters indicate that the beneficiary has made original contributions of major significance to the field of gymnastics coaching.

Therefore, based upon the record of proceeding before the director, the petitioner failed to submit evidence meeting the plain language requirements of 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

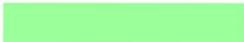
### III. Conclusion

The record indicates that the beneficiary is a talented gymnast who has also performed the duties of a coach in the area of children’s calisthenics. However, the documentation submitted in support of the petition fails to establish that the beneficiary has sustained national or international acclaim and recognition for achievements in gymnastics coaching.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under any of the criteria found under the regulations at 8 C.F.R. § 214.2(o)(3)(iii)(A) and (B). The AAO will not conduct a final merits determination. For the above-stated reasons, the petition may not be approved.<sup>6</sup>

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<sup>6</sup> 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



(b)(6)

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

**ORDER:** The appeal is dismissed.

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