



U.S. Citizenship
and Immigration
Services

(b)(6)

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

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 AAO will dismiss the appeal.

The petitioner, a church, filed this nonimmigrant petition seeking to classify the beneficiary 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 the arts. The petitioner requests that the beneficiary be granted O-1 classification for a period of two years so that the petitioner may employ the beneficiary as an artist-in-residence to develop an art program for the church. The beneficiary was previously granted O-1 status for employment with the petitioner; therefore, the petitioner requested that she be granted an extension of status.

The director denied the petition, finding that the petitioner had failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts as defined in the statute and regulations. The director determined that the petitioner failed to establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or any of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(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, the petitioner asserts that the evidence submitted meets three of the evidentiary requirements set forth at 8 C.F.R. 214.2(o)(3)(iv)(B)(2), (4), and (5).

Counsel submits a brief and additional evidence in support of the appeal. For reasons that will be discussed below, the AAO upholds the director's ultimate conclusion that the petitioner has not established that the beneficiary meets the eligibility requirements for an alien of extraordinary ability in the arts.

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

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts.

Extraordinary ability in the field of arts means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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

Evidentiary criteria for an O-1 alien of extraordinary ability in the arts. To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated by the following:

- (A) Evidence that the alien has been nominated for, or 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; or
- (C) If the criteria in paragraph (o)(3)(iv) 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 (9th Cir. 2009) *aff'd in part* 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).

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

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

The beneficiary, an artist, is a native and citizen of Canada who was last admitted to the United States in O-1B status to work for the petitioner for two years. The petitioner, an [REDACTED], filed the instant petition on October 17, 2012. The director subsequently issued a request for additional evidence ("RFE"), to which the petitioner responded.

The Evidentiary Criteria

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes.

The petitioner does not claim eligibility under this criterion. Therefore, 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)(iv)(B). The petitioner indicates that the beneficiary satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), (4) and (5). The remaining criteria will not be discussed.

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.

The petitioner has submitted numerous articles regarding the beneficiary from a variety of print sources. Three are foreign language articles without accompanying translations, appearing in the publications [REDACTED] [REDACTED] respectively. The regulation at 8 C.F.R. § 103.2(b)(3) requires the submission of complete certified English language translations for all foreign language documents. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Thus, we will not consider the foreign language articles.

The petitioner submitted three articles published in [REDACTED] featuring the beneficiary's work. The first article discussed the exhibition "Impact" by installation artists of Atlantic Canada, and included a photograph of one of the beneficiary's pieces. Even though this article included a photograph of one of the beneficiary's pieces, this article did not specifically discuss the beneficiary or her artwork. Rather, it was about the [REDACTED] in general and the overall theme of the exhibition, which included works from an unspecified number of other artists. Thus, the petitioner failed to establish that this article is "about" the beneficiary or otherwise constitutes evidence that the beneficiary has achieved national or international recognition for her achievements. The second article discussed the beneficiary's exhibit [REDACTED] in 1996. The third article discussed the beneficiary's exhibit [REDACTED]. While the second and third articles specifically discussed the beneficiary's work and thus are "about" the beneficiary, the petitioner failed to establish that [REDACTED] is a major national newspaper in Canada. Although the petitioner asserted that [REDACTED] is a "national glossy magazine," the petitioner failed to provide any specific information regarding the magazine's actual circulation and distribution, so the AAO cannot discern whether it is a major magazine. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)).

The petitioner submitted an article about the beneficiary's [REDACTED] exhibition, published in [REDACTED] in February 1996. The petitioner failed to establish that this is a major publication. The petitioner failed to provide any specific information regarding the magazine's actual circulation and distribution, so the AAO cannot discern whether it is a major magazine. Notably, the petitioner indicated that [REDACTED] is "the daily newspaper published in the province's capital city, [REDACTED];" this suggests that the newspaper's readership is limited to a particular city.

The petitioner submitted two articles published in [REDACTED]. One article discussed [REDACTED] created by a group of eight [REDACTED] artists, including the beneficiary. While this article mentions the beneficiary, this article did not specifically discuss the beneficiary or her work so as to establish that this article is "about" the beneficiary as required by the regulation. The other article discussed the beneficiary's exhibit [REDACTED] as well as the beneficiary's life in general. While this article is "about" the beneficiary, the petitioner failed to establish that [REDACTED] is a "major" newspaper. The petitioner failed to provide any specific information regarding [REDACTED] actual circulation and distribution, so the AAO cannot discern whether it is a major newspaper. The petitioner indicated that [REDACTED] is both a provincial daily as well as a local newspaper for [REDACTED] Canada (population 120,000), again indicating that the newspaper's readership is limited to a particular city. While the petitioner indicates that [REDACTED] "is published by [REDACTED] owned by [REDACTED];" this does not establish that [REDACTED] itself is a major newspaper, regardless of its publisher or owner.

The petitioner submitted an article published in [REDACTED] about an exhibition in [REDACTED], in which one of the beneficiary's pieces was featured. In particular, this article critically describes the beneficiary's piece as [REDACTED] and goes on to state that one of the major problems with the exhibition was that [REDACTED]. The petitioner failed to establish that this article constitutes evidence that the beneficiary has achieved national or international recognition for her achievements. Furthermore, the petitioner failed to establish that this newspaper is a "major" publication, as required by the

regulation. While the petitioner indicated that this newspaper is the only English language daily newspaper published in Montreal and is Quebec's oldest daily newspaper, the petitioner did not provide any specific information regarding [REDACTED] actual circulation and distribution, so the AAO cannot discern whether it is a major newspaper.

The petitioner submitted two articles in [REDACTED] discussing the beneficiary's artwork. The petitioner failed to establish that [REDACTED] is a "major" publication. The petitioner indicated that [REDACTED] is "a daily newspaper from New Brunswick's [REDACTED]". However, the petitioner did not provide any specific information regarding [REDACTED] actual circulation and distribution, so the AAO cannot discern whether it is a major newspaper.

The petitioner submitted an article about the beneficiary's exhibit [REDACTED] published in [REDACTED]. The petitioner failed to establish that [REDACTED] is a "major" publication. The petitioner did not provide any specific information regarding [REDACTED] actual circulation and distribution, so the AAO cannot discern whether it is a major newspaper. The petitioner indicated that [REDACTED] is "a daily newspaper in [REDACTED] Vancouver, BC and serving the [REDACTED] in British Columbia;" this suggests that the newspaper's readership is limited to a particular city.

Further, the petitioner submitted the beneficiary's exhibition catalogues. However, the petitioner failed to establish that these exhibition catalogues constitute major publications. Exhibition catalogues are primarily distributed to exhibition viewers; the petitioner submitted no evidence to establish how many people attended the above exhibitions. The petitioner submitted no evidence to establish that these catalogues were widely distributed outside of the exhibitions' viewers.

Upon review, none of the media coverage of the beneficiary, including newspaper articles, brochures and catalogues, has been shown to be national or international in scope.

Finally, the AAO cannot conclude that routine exhibition reviews constitute "national recognition for achievements" for a fine artist. The above-referenced reviews mention the beneficiary's technique and subject matter and are, generally, neutral to positive in assessing the beneficiary's work. The petitioner has not indicated how such reviews rise to the level of "recognition for achievements."

Based on the foregoing discussion, we concur with the director's conclusion that the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) has not been met.

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

The petitioner indicates that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) based on her major exhibitions, as follows: her solo exhibition [REDACTED] (1993); her exhibition at [REDACTED] in Paris (1999); her exhibition [REDACTED] (1991) which received an honorable mention in a [REDACTED]; her exhibition [REDACTED] (2000) curated by the [REDACTED] which

included a published book; her exhibition [REDACTED] (1996);” and her exhibition [REDACTED] (1998-2000).”

While the petitioner has submitted publications as evidence of the beneficiary’s exhibitions, none of the publications indicate that the beneficiary has a record of “major commercial or critically acclaimed success as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements.” In particular, none of the articles reported how many people attended the above exhibitions, which would constitute evidence equivalent to “box office receipts” or “motion picture or television ratings” as referenced in the regulation. Most of the articles did not report how the beneficiary’s exhibitions were received by the public and critics, or otherwise provide any other factual indicators to establish whether the beneficiary has achieved “major commercial or critically acclaimed success.” Rather, many of the submitted publications, particularly the exhibit brochures and catalogues, were purely informational publications that simply announced rather than substantively discussed the beneficiary’s work.

Further, we are not persuaded that a newspaper review of a gallery exhibition rises to the level of an “occupational achievement” as contemplated by the regulation.

For the foregoing reasons, the petitioner has not submitted evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

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 support of this criterion, the petitioner submitted a copy of the beneficiary’s [REDACTED] [REDACTED], which the beneficiary states she received when she obtained studio space in France, and which she states gave her free admission to all the museums in the European Union. The petitioner failed to explain how this card constitutes evidence that the beneficiary has received significant recognition for her achievements. The petitioner failed to provide any information as to what criteria is needed to be satisfied in order for an individual to qualify for this identity card. On its face, the card simply identifies the beneficiary as a professional artist.

The petitioner asserted that one of the beneficiary’s painted bowls was chosen by the [REDACTED] to present to the [REDACTED]. As evidence of this assertion, the petitioner submitted a copy of the beneficiary’s invitation to “[REDACTED]” hosted at the Aberdeen Cultural Center, attended by the Governor General of Canada. However, the petitioner failed to provide any factual information as to what criteria was utilized to select the beneficiary’s art piece for this particular occasion. The petitioner also provided no background information about “[REDACTED]” or the Aberdeen Cultural Center. Therefore, the AAO is unable to discern the significance of this particular event.

The petitioner submitted a letter from the Canada Council for the Arts confirming that the beneficiary received an [REDACTED] in 1993 for \$11,431, and that the council provides grant funding “to individual professional artists and arts organizations through a peer assessment process.” However, the letter does not

provide any specific information as to the exact criteria utilized to select the beneficiary for this grant. Merely stating that funding is provided to professional artists through a peer assessment process does not indicate that this grant was awarded based upon the beneficiary's achievements.

The petitioner submitted letters confirming that the beneficiary received two grants from the [REDACTED] for two distinct projects, as well as an [REDACTED] for her travel to China. Again, these letters do not provide any specific information as to the exact criteria utilized to select the beneficiary for these grants. The mere fact that the beneficiary was awarded these grants does not establish that these grants were awarded based upon the beneficiary's achievements.

The petitioner submitted a letter from the [REDACTED] confirming that it purchased one of the beneficiary's art pieces for \$800 in 1995 as part of the 1995-1996 [REDACTED]. The petitioner has not submitted evidence that establishes that the purchase constitutes "significant recognition" for the beneficiary's achievements.

The petitioner submitted a letter confirming that the beneficiary was an Invited Artist at the [REDACTED] from June to July 2001. Again, the letter does not provide any specific information as to the exact criteria utilized to select the beneficiary for this program. Therefore, the AAO is unable to discern the significance of this particular event.

Finally, the petitioner submitted several letters from members of the petitioning church, residents of the community, and representatives of other community organizations. These letters attest to the beneficiary's artistic skills, her contributions and dedication to the community, and the importance of continuing her work for the community. However, while the AAO recognizes that the individuals who provided the letters hold a high opinion of the beneficiary, the submitted testimonials do not satisfy the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). None of the persons providing testimonials are recognized experts in the field of fine arts. It is evident that the beneficiary's talent and contributions to the community are greatly respected and appreciated. The beneficiary has earned the praise and respect of for her work from local organizations, her church, and residents of her community. However, we must conclude that the witnesses have not clearly indicated their authority and expertise in the field of fine arts and are simply not "recognized experts" in the field, and as such, their testimonial evidence, individually and collectively, does not rise to the level of "significant recognition."

Based on the foregoing, the petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

III. Prior Approval

The record does show that USCIS has approved a prior O-1 classification petition filed by the petitioner on behalf of the instant beneficiary. In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give some deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); see also *Matter of Church Scientology*

Int'l., 19 I&N Dec. 593, 597 (Comm. 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the director reviewed the record of proceeding and concluded that the beneficiary was ineligible for the requested classification. In both the request for evidence and the notice of decision, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. Much of the evidence in the current record consists of newspaper clippings and catalogues/brochures dated in the 1990s and early 2000s, which we presume were submitted in support of the beneficiary's initial petition filed in 2010. If the previous petition was approved based on the same minimal evidence of the beneficiary's eligibility, the approval would constitute gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petition on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

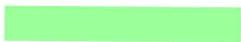
IV. Conclusion

The documentation submitted in support of a claim of extraordinary ability in the field of arts must clearly establish that the beneficiary is prominent to the extent that she could be considered renowned, leading or well-known in her field.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under any of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(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)(iv)(B), and the petition may not be approved.¹

¹ 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



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The petition will be denied and the appeal dismissed for the above stated reasons. 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.

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