



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **APR 03 2014** Office: VERMONT SERVICE CENTER

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

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner operates an independent film production business. The petitioner seeks to employ the beneficiary as a creative producer/director in the United States for a period of three years.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the director committed numerous errors of law and fact. The petitioner submits a brief in support of the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

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

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

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

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

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

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

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 596 F.3d 1115

(9th Cir. 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

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)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

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).

II. Discussion

1. The Beneficiary's Eligibility under the Evidentiary Criteria

In order to establish eligibility as an alien of extraordinary achievement in the motion picture or television industry, the statute and regulations require evidence of a very high level of accomplishment in the industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the field, and whose achievements have been recognized in the field through extensive documentation. Section 101(a)(15)(O)(i); 8 C.F.R. 214.2(o)(3)(ii). The petitioner has not established through extensive documentation that the beneficiary or her achievements have been so recognized.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in her field pursuant to 8

C.F.R. § 214.2(o)(3)(v)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not claimed nor submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

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)(v)(B). The petitioner asserts eligibility under several criteria, specifically, 8 C.F.R. §§ 214.2(o)(3)(v)(B)(1), (2), (3), (4), and (5). Each criterion will be discussed below.

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

Under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1), the petitioner submitted evidence in the form of critical reviews, advertisements, publicity releases, and publications establishing that the beneficiary's past performance as the producer of "[REDACTED]" constitutes providing services as a lead participant in a production with a distinguished reputation. Thus, the petitioner has satisfied the elements of this criterion pertaining to past participation in productions or events which has a distinguished reputation.

With respect to the elements of the criterion requiring that the beneficiary will perform services as a lead or starring participant in productions or events which have a distinguished reputation, the petitioner submitted documentation indicating that the beneficiary will serve as the director and screenwriter for the feature film "[REDACTED]". This documentation consists of the petitioner's engagement offer to the beneficiary dated November 15, 2012, documentation the petitioner characterized as "presentation of film," and letters attesting that the beneficiary has attached the Turkish actor "[REDACTED]" to this film. While the petitioner's engagement offer to the beneficiary could reasonably be considered a contract, the petitioner failed to explain how the engagement offer establishes the distinguished reputation of the film.¹ This document merely sets forth the basic terms of employment between the petitioner and the beneficiary; it contains no information pertinent to the reputation of the film. With regards to the "presentation of film," the petitioner failed to provide any explanation and evidence establishing the nature of this presentation, including whether the presentation has ever been published or released to the public as to potentially constitute an advertisement, publicity release, and/or publication. With respect to the letters attesting that the beneficiary has attached the award-winning Turkish actor "[REDACTED]" to the film, the petitioner has not explained how these letters constitute endorsements, critical reviews, or other types of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1), nor how they address the reputation of the film. The petitioner submitted no other evidence establishing the reputation of the film "[REDACTED]".

The petitioner also submitted documentation establishing that the beneficiary will perform post-production services for the feature film "[REDACTED]". With regards to the reputation of "[REDACTED]" the petitioner submitted an article reflecting that the film, among six others, received an annual "[REDACTED]" grant. The petitioner pointed out that these grants were awarded to only seven out of 84 submissions in that year. The petitioner then explained that "the quality of "[REDACTED]" is emphasized by the fact that although

¹ Notably, the engagement offer states: "This deal memo shall confirm these essential terms of our agreement and shall be subject to a more formal agreement once we are nearer actual production. This agreement may be changed or cancelled without obligation by either party at any time."

Frameline is non-profit organization solely dedicated to the funding, exhibition, distribution and promotion of lesbian, gay, bisexual and transgender (LGBT) media arts, the focus of "[REDACTED]" is not solely on same-sex relationships but also on the similarly sensitive issues of monogamy and race." However, the petitioner's explanation is not persuasive. Merely establishing that the film received a grant from a non-profit organization supporting LGBT media arts, even though the film also addresses non-LGBT subjects, falls short of establishing that the film has a distinguished reputation. The petitioner submitted evidence establishing the distinguished reputation of [REDACTED], however, evidence of the distinguished reputation of the film's director, alone, does not equate to evidence of the distinguished reputation of the film itself.

Overall, the petitioner has failed to satisfy all elements of the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1).

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

Under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2), the petitioner submitted three articles that "solely featured or showcased the beneficiary," specifically: "[REDACTED]" published in [REDACTED], "[REDACTED]" published in [REDACTED], and "[REDACTED]" published in the Turkish publication Filmlerim.com.

While the articles "[REDACTED]" and "[REDACTED]" are about the beneficiary, the petitioner failed to establish that these articles are were published in major publications, as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(2). The petitioner provided no information about [REDACTED] such as their distribution, circulation, or readership. Without such information, the AAO has no basis to gauge whether these publications are "major" publications.

The article "[REDACTED]" is not "about" the beneficiary, as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(2). This article is about the question of whether producers cast, as answered by five producers including the beneficiary. It is insufficient to establish eligibility for this criterion based on any material that simply mentions or quotes the beneficiary, without any substantive discussion about the beneficiary relating to her work.

Based on the above, the petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2).

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

Under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(3), the petitioner highlighted the films the beneficiary has produced or co-produced, including "[REDACTED]". The petitioner also

highlighted the credentials of the directors of the above films, including [REDACTED]. However, the petitioner has failed to explain and document how films, or their directors, can be considered “organizations and establishments” within the ordinary meaning of those terms.² The petitioner has submitted no evidence pertaining to the reputations of the actual organizations or establishments that produced or directed the films, such as the petitioning company or [REDACTED]. Therefore, the petitioner has not submitted evidence to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(3).

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

Under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4), the petitioner highlighted that the film [REDACTED] produced by the beneficiary, won two awards and was screened at twenty six film festivals. The petitioner did not discuss any other films in which the beneficiary has been involved under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4).

The plain language of this criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4) requires evidence that the beneficiary has “a record of major commercial or critically acclaimed successes,” in the plural (emphasis added). Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B) are worded in the plural, such as the criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(6) which only requires evidence that the beneficiary has “either commanded a high salary or will command a high salary (emphasis added).” Moreover, when the regulation at 8 C.F.R. 214.2(o) wishes to include the singular within the plural, it expressly does so, as when it states at 8 C.F.R. 214.2(o)(3)(ii)(D) that the petitioner must submit a “written advisory opinion(s) from the appropriate consulting entity or entities.” Thus, the AAO can infer that the plural in any regulatory criterion has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation.³

Here, the petitioner has only claimed eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4) based upon the success of the single film [REDACTED]. The petitioner highlighted that this film won the 2012 [REDACTED] and was screened at twenty six different film festivals. On appeal, the petitioner emphasizes that the fact a film is chosen to be screened at prestigious film festivals is “substantial recognition of success in and of itself and represents a major professional accomplishment.” However, the petitioner failed to provide objective evidence to establish the significance of these awards and screenings, thus failing to establish that it constitutes a “major” success as required by the plain language of 8 C.F.R.

² The petitioner consistently merges its discussion of the evidence under the criteria at 8 C.F.R. §§ 214.2(o)(3)(v)(B)(1) and (3), without clarifying which pieces of evidence were submitted under which criterion.

³ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

§ 214.2(o)(3)(v)(B)(4). Merely stating in conclusory language that these awards and screenings are “prestigious” and “represents a major professional accomplishment” is insufficient to meet the burden of proof. The lack of objective supporting evidence gives the AAO no basis to gauge the level of success of [REDACTED]

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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Even assuming *arguendo* that the petitioner has established that [REDACTED]’ received major commercial or critically acclaimed success, the petitioner nevertheless failed to meet all elements of the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4). The major success of one single film cannot constitute “a record of major commercial or critically acclaimed successes,” as required by the plain language of the regulation (emphasis added).⁴

Notwithstanding the petitioner’s failure to establish eligibility under 8 C.F.R. § 214.2(o)(3)(v)(B)(4), the AAO will withdraw the director’s finding that the petitioner did not claim eligibility under this criterion. The petitioner expressly asserted eligibility under 8 C.F.R. § 214.2(o)(3)(v)(B)(4) in its response to the RFE.

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

Under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5), the petitioner provided several testimonials. The regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) states that affidavits (testimonials) 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. Each testimonial will be discussed below.

The petitioner submitted a letter from [REDACTED] who also instructed the beneficiary in two courses at [REDACTED]. [REDACTED] describes the beneficiary as an excellent student, and describes her as being “industrious, ambitious and dedicated.” He attests that the beneficiary was chosen as [REDACTED] and [REDACTED] and lists her associated responsibilities including coordinating admissions

⁴ The AAO notes that the petitioner listed the beneficiary’s other films which have been screened at various film festivals under the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B)(1) and (3). However, the petitioner did not specifically assert that the screenings of the beneficiary’s other films constitute evidence of “major commercial or critically acclaimed successes” pursuant to 8 C.F.R. § 214.2(o)(3)(v)(B)(4), and the AAO will not analyze or consider them as such.

interviews, overseeing teacher-student relations, and serving as a teaching assistant. [REDACTED] also attests to the beneficiary's assistance in setting up meetings with prominent industry figures during the [REDACTED] Festival. I [REDACTED] concludes that the beneficiary, "fueled by her commitment and great creative instincts quickly became a leading figure both at [REDACTED] and in the independent film industry at large. I can confirm that [the beneficiary] is a producer of extraordinary ability."

While [REDACTED] speaks of the beneficiary in positive terms, he fails to specifically describe the beneficiary's achievements, as required by the plain language of 8 C.F.R. § 214.2(o)(3)(v)(B)(5). Furthermore, he fails to specifically describe her recognition and ability or achievement in factual terms, pursuant to 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, he describes her talents in a general manner, while describing her duties as a [REDACTED] in more detail [REDACTED] statement that the beneficiary is a "leading figure both at [REDACTED] and in the independent film industry at large" is conclusory and not entitled to evidentiary weight. *Matter of Soffici*, 22 I&N at 165.

The petitioner submitted a letter from [REDACTED], an independent film producer who is the President of the petitioner and has also collaborated with the beneficiary on several projects. [REDACTED] praises the beneficiary's talents as a producer and director, describing her as having "extraordinary" technical and artistic abilities, a "big and perceptive heart," and a "very keen eye for casting." He describes his observations of her work on their collaborative projects, attesting that she is "industrious, hard-working and astoundingly creative," and has "uncompromising dedication" to their projects. He concludes that she is an "extraordinary professional filmmaker." Again, while [REDACTED] speaks of the beneficiary in positive terms, he fails to specifically describe the beneficiary's achievements, as required by the plain language of 8 C.F.R. § 214.2(o)(3)(v)(B)(5). Furthermore, he fails to specifically describe her recognition and ability or achievement in factual terms, pursuant to 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, he describes her talents and abilities as a filmmaker in general.

The petitioner submitted a letter from [REDACTED] describes the beneficiary's efforts and support in the production of the film. [REDACTED] describes the beneficiary as "the guardian angel of my film, and my most precious partner in making the film," which allowed [REDACTED] "to realize my artistic vision." [REDACTED] also discusses the beneficiary's "amazing ability" in casting and attaching musical talent to a film. [REDACTED] concludes that "[i]t is quite evident that [the beneficiary] will go on to do great things in the film industry, and has already gained and sustained significant international success and renown as a filmmaker." While [REDACTED] speaks of the beneficiary in positive terms, she fails to specifically describe the beneficiary's achievements, as required by the plain language of 8 C.F.R. § 214.2(o)(3)(v)(B)(5). Furthermore, she fails to specifically describe the beneficiary's recognition and ability or achievement in factual terms, pursuant to 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, she describes the beneficiary's specific contributions to their film, and the beneficiary's talents and abilities in general. [REDACTED] statement that the beneficiary "has already gained and sustained significant international success and renown as a filmmaker" is conclusory and not entitled to evidentiary weight. *Id.*

The petitioner submitted a letter from [REDACTED] and who advised the beneficiary while she produced her thesis project at [REDACTED] and "[REDACTED] [REDACTED] states that the beneficiary is "a remarkably gifted producer whose extraordinary character sets her apart from most other young producers." He describes her ambition and "fierce commitment and unshakeable commitment," and gives an example of how the beneficiary attached the "internationally acclaimed Turkish actor,

_____ also describes the beneficiary's "remarkable instincts" for understanding story and developing script, and her "outstanding gift for casting, packaging and discovering talent for a project." _____ states, without explanation, that "the short film she wrote and directed was so well received at _____ and at festivals around the world." _____ concludes that the beneficiary "possesses the unique creativity and extraordinary ability to provide exquisite production work," and is "undoubtedly an outstanding artist and producer."

Similar to the other testimonials discussed above, _____ speaks highly of the beneficiary but fails to specifically describe the beneficiary's achievements and her recognition in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, he describes the beneficiary's talents in general terms. While _____ provides an example of the beneficiary's ability in terms of attaching an acclaimed Turkish actor for one of her films, this example is insufficient to describe the beneficiary's achievements and recognition. _____ fails to explain and provide the factual basis for his statement that "the short film she wrote and directed was so well received at _____ and at festivals around the world." Thus, this conclusory statement is not entitled to weight. *Id.*

The petitioner submitted a letter from _____, producer and full-time faculty at _____ Graduate Film Program in the Producing Department, who was also one of the beneficiary's teachers at _____ University. _____ describes the beneficiary's film _____ as a "beautifully composed story, which was both engaging and deeply touching," which played at several film festivals including the _____. _____ describes the production of _____ as "one of the most challenging productions in the history of our school," and discusses the obstacles the beneficiary overcame to produce the film, as well as the beneficiary's contributions to find music for the film. _____ states that _____ played at "several top film festivals including the _____. It also won the Grand Jury Prize at this year's _____ a very prestigious award." Finally, _____ states that she selected the beneficiary as the Producing Fellow of 2009-2010, and Master Producing Fellow of 2010-2011, which she states are "distinguished honors."

_____ mentions three particular achievements of the beneficiary, specifically: the screenings of _____ at "top film festivals," the "very prestigious" Grand Jury Prize and screenings of _____, and the "distinguished honors" of being selected as Producing Fellow of 2009-2010 and Master Producing Fellow of 2010-2011. However, _____ does not provide any factual basis for her characterizations of these award, screenings, and fellowship programs, as required at 8 C.F.R. § 214.2(o)(2)(iii)(D). The AAO is not persuaded by vague, solicited assertions of the prestige or distinguished reputation of these awards, screenings, and fellowship programs, without any objective evidence to corroborate these assertions. Conclusory assertions are not entitled to evidentiary weight. *Id.* The lack of supporting evidence gives the AAO no basis to gauge the significance of these award, screenings, and fellowship programs.

The petitioner submitted a letter from _____, an independent film director and the director of _____ discusses the beneficiary's contributions to and work on the film, stating that the beneficiary's work "was nothing short of astonishing." He discusses her talents and skills in photography, editing, and choosing music with respect to the film. He states that he appreciates the beneficiary's "professionalism and character so much, that she continues to take part in the final post-production duties for _____ which should premier next year at major film festivals throughout the world." While Mr.

speaks highly of the beneficiary, he fails to specifically describe the beneficiary's achievements, and her recognition and ability or achievements in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, he describes the beneficiary's talents in general terms, while discussing her contributions to his film in more detail.

The petitioner submitted a letter from and 2012 Creative Producing Fellow. describes how he was so impressed by the beneficiary's talents that he asked her to co-produce and entrusted her to manage the production in his absence. While speaks highly of the beneficiary, he fails to specifically describe the beneficiary's achievements, and her recognition and ability or achievements in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, he describes the beneficiary's talents in general terms, while discussing her contributions to " " in more detail.

The petitioner submitted a letter from , producer, director, and documentary filmmaker who collaborated with the beneficiary in " " asserts the beneficiary is "a unique and outstanding producer." describes the beneficiary's charisma, passion, and devotion to her projects. In particular, describes the beneficiary's contributions to the production of " " in which she "single-handedly saved the production" and overcame various production issues. concludes that she believes the beneficiary "is going to become a force to be reckoned with in the American film and TV industry" and asserts that she is "both a leader and a creative force in the field." Similar to the other affidavits discussed above, speaks highly of the beneficiary, but fails to specifically describe the beneficiary's achievements, and her recognition and ability or achievements in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, she describes the beneficiary's talents and leadership in the field in conclusory terms, which is not entitled to evidentiary weight. *Id.*

The petitioner submitted a letter from and Arts. Neither the petitioner nor describe his credentials in the film industry, thus failing to establish that can be considered an expert in the field as required by the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(5). Regardless, makes references to the beneficiary's "professional achievements" and "international achievements," without specifically describing the beneficiary's achievements, and her recognition and ability or achievements in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D). Again, conclusory assertions about the beneficiary's achievements and recognition are insufficient and not entitled to evidentiary weight. *Id.* Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Finally, the petitioner provided a letter from a producer and director who has collaborated with the beneficiary since 2007. speaks about the beneficiary's talents and characteristics in positive terms, such as describing her as "unquestionably the most talented and astute collaborator I have ever had the pleasure of working with." discusses how he has chosen to collaborate with the beneficiary on his upcoming feature project, and how he hopes to collaborate with her on her upcoming film. concludes that he has no doubt the beneficiary "will continue to garner great success throughout her career." letter fails to specifically describe the beneficiary's

achievements, and her recognition and ability or achievements in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D). Instead, he describes the beneficiary's talents in conclusory terms, which are not entitled to evidentiary weight. *Id.*

Overall, the testimonials submitted are insufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5). The testimonial letters do not adequately describe with specificity the beneficiary's achievements, and her recognition and ability or achievements in factual terms, as required by 8 C.F.R. § 214.2(o)(3)(v)(B)(5) and 8 C.F.R. § 214.2(o)(2)(iii)(D)). Instead, they describe the beneficiary's talents and abilities as a filmmaker in general.

On appeal, the petitioner asserts:

The distinction between 'achievement' and 'talent or style' is illogical where the definition of 'achievement' in Webster's dictionary is 'a successful result gained by effort'. Achievement in film is positive reception and reaction to a film (the successful result) that is conceived of and realized by a filmmaker (gained by artistic efforts: talent, style, vision, skills). Recognition of achievement in film lies in the critical and commercial appreciation of how the filmmaker applied their particular and unique artistic efforts. The testimonials submitted include extensive acclaim from leading experts in the field who offer their critical appreciation of the films produced by the beneficiary and which include a detailed discussion of her specific experience, expertise, and exceptional artistic ability, her artistic efforts, which directly resulted in the film's success, the achievement. The definition of achievement is broad, defined through a variety of media and documents as per the usage in multiple evidentiary categories within the regulations themselves.

The AAO finds the petitioner's assertions unpersuasive. There is a distinction between the terms "achievement" and "talent or style." While the AAO agrees with the petitioner that achievements in the film industry are generally gained by a filmmaker's talent and style, the converse is not always true. A filmmaker can have talent and style, but never gain "achievements" in terms of significant recognition from experts in the film industry, as required at 8 C.F.R. § 214.2(o)(5)(B)(5). The petitioner has submitted testimonials generally attesting to the talent or style of the beneficiary, but the testimonials fall short of attesting to the achievements of the beneficiary.

Accordingly, the petitioner has not established that the beneficiary meets this criterion at 8 C.F.R. § 214.2(o)(5)(B)(5).

Notwithstanding the petitioner's failure to establish eligibility under 8 C.F.R. § 214.2(o)(3)(v)(B)(5), the AAO will withdraw the director's comment that the testimonials do not demonstrate that the beneficiary has "made any major contributions to her art for which she will be remembered, or which will influence those who follow her." The director's comment goes beyond the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5).

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

The petitioner has never claimed eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(6). The petitioner specifically emphasized in its RFE response that it was not claiming eligibility under this criterion. The director erred by making a finding on this criterion, where the petitioner made clear that it was not claiming eligibility under 8 C.F.R. § 214.2(o)(3)(v)(B)(6). Accordingly the AAO will withdraw the director's finding and associated comments with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(6).

2. Summary

The petitioner has failed to establish eligibility under at least three of the six criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B). Therefore, the proper conclusion is that petitioner has failed to satisfy the regulatory requirement of three types of evidence.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under at least three of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B). Therefore, the AAO will not conduct a final merits determination.⁵

III. Conclusion

The petitioner failed to establish the beneficiary's eligibility pursuant to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(v)(A) or 8 C.F.R. § 214.2(o)(3)(v)(B). Therefore, the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the motion picture or television industry.

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.

⁵ The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). See also Section 103(a)(1) of the Act; Section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii)(2003); *Matter of Aurelio*, 19 I & N Dec. 458, 460 (BIA 1987)(holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).