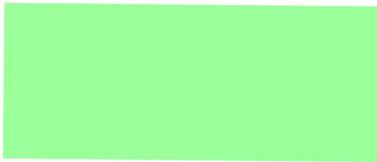




U.S. Citizenship  
and Immigration  
Services

(b)(6)

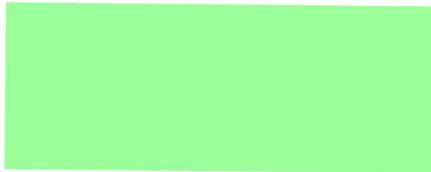


DATE: **DEC 01 2014** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We 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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of business. The petitioner states that it operates an online gaming business. It seeks to employ the beneficiary in the position of Vice President (“VP”) of Customer Support, Payments and Fraud for a period of three years.

After issuing a request for evidence (RFE) and then considering the evidence of record, the director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in business. The director determined that the petitioner did not establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(A), and submitted evidence to satisfy only two of the eight evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B), of which three must be met to establish eligibility.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner reiterates the standard of proof (preponderance of the evidence), and asserts that the petitioner submitted sufficient evidence establishing that it is more likely than not that the beneficiary qualifies as an alien with extraordinary ability in the field of business. For the reasons discussed below, the petitioner has not submitted probative evidence satisfying the plain language requirements of at least three criteria. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

## 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.

## II. Discussion

### A. Extraordinary Ability in Business

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 3, 2014. The petitioner described its business activities as a new online gaming operator and service provider. The petitioner described the beneficiary’s proposed position in exhibit A of the employment agreement as “VP of Customer Support, Payments and Fraud,” including the following essential job functions:

1. Lead a team of customer support, payments and fraud professionals to ensure a consistent and proactive level of service is provided to all customers;
2. Lead and manage the development of and implementation of support, payment and fraud tools, materials and procedures for each department;
3. Ensure [the petitioner has] a market leading customer support, payment and fraud organization by enhancing and developing the provision of these services by implementing best practice technology, policies, and recruiting a high performance team;
4. Contribute to revenue growth of the company by: (a) driving player interaction, retention, reactivation, and cross sell/up sell opportunities through inbound and outbound call activities; (b) minimizing deposit failure rate[s]; (c) maximizing player conversion during the player registration process; (d) ensuring [the petitioner has] a market leading payment offering with all available deposit options; (e) Balancing charge back expenses with securing player deposits; [and] (f) identifying and eliminating player fraud;
5. Create a customer feedback system to help the product, marketing and information technology teams understand the concerns [and] experience [the] customers have had with [the petitioner’s] products;
6. Set up and drive improvements in the contact management system to enable a high standard of logging and tracking of customer contacts (email, voice and chat) resulting in an excellent customer experience of the driving of operational efficiencies;
7. Set performance KPI’s for an industry leading support organization and manage to ensure the KPI are measured and delivered, with relevant performance reports provided to all stakeholders;

8. Ensure [that] all members of [the beneficiary's] team are appropriately trained and understand the regulatory requirements necessary to ensure customers have a safe and fair experience using [the petitioner's] online products.

The petitioner stated that the beneficiary's work "has a proven track record in implementing [customer relationship management (CRM)] systems] and event detection based on interventions in the customer's journey to help drive the sales and conversions in an online business where customer loyalty is a big challenge."

In a January 20, 2014 letter, [REDACTED] the petitioner's Chief Executive Officer (CEO), describes one of the beneficiary's past accomplishments as having "led the process training at [REDACTED] for the support and technology teams based in India where he was responsible for training and upskilling employees on Poker, Casino and the Account Platform." Mr. [REDACTED] states that the beneficiary was also the Team Lead for the Games & Promotions team within Customer Support. The record indicates that [REDACTED] became part of the [REDACTED] group of companies in March 2011, during the period of the beneficiary's employment. Mr. [REDACTED] explains that during the merger the beneficiary "was a key member of the steering team responsible for driving synergies within the customer support organization for the merged and newly created business of [REDACTED] digital entertainment plc."

In addition to discussing the beneficiary's work for [REDACTED] both Mr. [REDACTED] the petitioner's Vice Chairman of the Board, describe the beneficiary's past employment as a Site Director (Managing Director) with [REDACTED] stating that in that position the beneficiary "managed a staff of 420 personnel with responsibility over the following business units; risk management, payments, customer support, conversion and promotion operations, affiliate operations and customer relationship management." Mr. [REDACTED] explains that "[w]ith the recent regulation on online gaming in Nevada, Delaware and New Jersey, an individual with [the beneficiary's] skills [is] in high demand and extremely relevant to the development of a successful online gaming business in the United States."

On appeal, the petitioner asserts that the beneficiary is recognized internationally as a leader "in the field of online gaming operations related to customer service, more specifically payment fraud" and possesses skills not normally found in the workplace, "[s]ince the online gaming industry is new in the U.S. [and] it is impossible to find someone with [the beneficiary's] qualifications . . ."

The record consists of: the Form I-129 petition and supporting evidence; the director's request for evidence dated February 12, 2014 and the petitioner's response; and, the director's decision dated March 18, 2014. We have reviewed the evidence of record in its entirety in reaching our decision.

#### 1. Consideration of the Evidentiary Criteria

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that, "truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both

individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. at 376.

The sole issue is whether the petitioner submitted evidence to establish that the beneficiary enjoys the requisite sustained national or international acclaim. If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will have submitted the requisite initial evidence pertaining to the beneficiary’s acclaim and recognition. The regulations cite to the Nobel Prize as an example of a major award. *Id.* The petitioner does not claim that the beneficiary can meet this criterion. Instead, the petitioner has submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

At the time of filing, the petitioner claims that the beneficiary meets the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (1), (5), (7), and (8). In denying the petition, the director determined that the evidence submitted satisfied two of the eight evidentiary criteria. The petitioner has not submitted any evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), (3), (4) and (6), and raises no objection to the director’s determination that these criteria have not been met. We will discuss the four criteria the petitioner claims below. After careful review of the record and for the reasons discussed herein, the petitioner has only established eligibility under one of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

*Documentation of the alien’s receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.*

To meet criterion number one, the petitioner must submit documentation of the beneficiary’s receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The initial cover letter states that the beneficiary’s “efforts materially contributed to the following awards received” by his employer. In a letter dated March 5, 2014, in response to the director’s RFE, the petitioner addressed this evidentiary criterion, asserting that the beneficiary, “although not named directly, is the recipient of awards for excellence in his field” because “[the beneficiary] participated substantially in contributions that led to company awards” for his employers. In support of its assertion the petitioner submitted a letter dated March 3, 2014, from its CEO, [REDACTED] also the CEO of the beneficiary’s prior employer, [REDACTED] and [REDACTED] Mr. [REDACTED] asserts that “[i]n the online gaming industry, awards are not given out directly to individuals and are only given to companies,” but that the beneficiary “participated substantially in the activities that led to the granting of the award.” The petitioner provided a list of the following awards [REDACTED] received:

- [REDACTED]
- [REDACTED]
- [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) specifically requires documentation of “the alien’s receipt” of nationally or internationally recognized prizes or awards. The petitioner did not submit evidence listing the runners up for the [REDACTED]. Regardless, the petitioner has not established that being the runner up for an award or prize is itself an award or prize. The record contains documentation that the [REDACTED] presented the [REDACTED] and the [REDACTED] which [REDACTED] acquired in 2009. The record also contains the petitioner’s press release dated September 22, 2008 stating that [REDACTED] awarded [REDACTED] award in [REDACTED]. While the beneficiary was an employee of [REDACTED] there is no documentary evidence specifically identifying him as a recipient of the preceding six awards. For this reason alone, the petitioner has not submitted evidence that satisfies this criterion.

Further, the petitioner did not submit evidence demonstrating the national or international recognition of the awards. The petitioner provided statements of appreciation from [REDACTED] recipients downloaded from the [REDACTED] website ([http://\[REDACTED\]](http://[REDACTED])) and a general article regarding [REDACTED] from *Wikipedia*, stating that the magazine annually presents awards “to gaming operators that it judges excel in their respective fields.” We note that there are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).<sup>1</sup> Regardless, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) specifically requires that the petitioner’s awards be nationally or internationally recognized in the field of endeavor and it is the petitioner’s

<sup>1</sup> See also a copy of the online content from [http://en.wikipedia.org/wiki/Wikipedia: General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on November 26, 2014, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

burden to establish every element of this criterion. In this case, there is no documentary evidence showing that the [REDACTED] awards have garnered a significant level of recognition beyond the entity that issues the awards such that the petitioner has established that they are nationally or internationally recognized awards for excellence in the field.

Accordingly, for the reasons stated above, the petitioner has not submitted evidence that meets the plain language of this criterion.

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

The petitioner seeks to rely on testimonial evidence of the beneficiary's "major contributions to the online gaming industry." The petitioner has submitted employment recommendation letters from four individuals that worked with the beneficiary.

The petitioner has provided two letters from [REDACTED] CEO at [REDACTED] [REDACTED] who states he worked with the beneficiary "for a couple of years" and can attest to the beneficiary's "expertise in the areas of online payments, fraud and customer support specifically within the online gaming market place." In his first letter, dated January 20, 2014, Mr. [REDACTED] states that "it is hard to find anyone that would have the same depth of knowledge in the online poker sector related to customer conversion, payment processing, fraud and security management." He explains that the beneficiary was employed by [REDACTED] and then by [REDACTED] from 2003 to 2012. He asserts that the beneficiary "and his team were material contributors to the success of the [REDACTED] and the [REDACTED] business." He further asserts that the beneficiary's accomplishments with the company include being "instrumental in the development of and implementation of internet fraud and payment systems" and providing "leadership with respect to the development of back-office and customer relationship management systems."

Mr. [REDACTED] argues that "[m]any of the systems and processes developed under [the beneficiary's] leadership have now become the standard in the sector." USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Mr. [REDACTED] does not provide any specific examples of the systems and processes developed by the beneficiary and their utilization by others in the field. In his second letter, dated February 20, 2014, Mr. [REDACTED] explains that "[m]ost of these developments were internal to the business operations and were deemed confidential and not to be shared with any outsider. Therefore, there is no detailed reproduction of these internal systems . . . ." While the beneficiary's contributions may be proprietary to his employer, the petitioner must still establish the significance in the field of the beneficiary's innovations, such as setting a standard to which other gaming companies aspire. Mr. [REDACTED] does not provide evidence of the beneficiary's business-related contributions to the field as a whole as of the date of filing. The record also does not contain letters from independent experts confirming that they have been influenced by the beneficiary's developments, media reports on the innovative nature of the systems to which the beneficiary contributed, or similarly probative evidence indicative of any influence

beyond the beneficiary's employers. Mr. [REDACTED] concludes by asserting that the beneficiary "will greatly benefit the company he works for."

The petitioner provided a letter from [REDACTED] former CEO of [REDACTED] who states that he hired the beneficiary in the position of Site Director for the company's Manila operations, "with responsibility for payments, fraud prevention and customer service functions." Mr. [REDACTED] states that he can attest to the beneficiary's "expertise in the field of payment fraud and security." He states that "it is hard to find anyone that would have the same experience and accomplishments that [the beneficiary] has." The beneficiary indicates in his resume that he worked for [REDACTED] from August 2012 until November 2013. Mr. [REDACTED] confirms that the beneficiary joined [REDACTED] in August 2012 where he was responsible for the migration "of all support operations of [REDACTED] from [REDACTED] to [the company's] own operational entity," with duties that "included oversight of all support operations such as payroll, human resources, finance, legal, logistics, administrative support, and procurement."

The record contains a letter from [REDACTED] who states that he worked with the beneficiary "for a number of years" as the beneficiary's immediate reporting manager at [REDACTED] and [REDACTED]. Mr. [REDACTED] reviewed the beneficiary's positive contributions to his prior employers, describing the beneficiary as "a key manager in the continued success of all the companies in which we worked together." Like Mr. [REDACTED], Mr. [REDACTED] states that "[m]any of the systems and processes developed under [the beneficiary's] leadership have now become the standard in the sector," however, he does not provide any specific examples of the systems and processes developed by the beneficiary and their utilization by others in the field.

The record also contains letter from [REDACTED] Chief Technology Officer (CTO) of [REDACTED] and [REDACTED], stating that he worked with the beneficiary "for a number of years" and can attest to the beneficiary's "expertise in the areas of online payments, fraud and customer support specifically within the online gaming market place." Like Mr. [REDACTED] Mr. [REDACTED] states that the beneficiary "and his team were material contributors to the success of the [REDACTED] and the bwinparty business" and that "[m]any of the systems and processes developed under [the beneficiary's] leadership have now become the standard in the sector." Mr. [REDACTED] does not provide any specific examples of the systems and processes developed by the beneficiary and their utilization by others in the field.

Mr. [REDACTED] Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] use almost identical language in describing the beneficiary throughout their letters, for example, all of the letters include the following language:

He has a unique skill set and management competence in the online gaming poker market as he is one of a few people in the world who has the experience of developing and managing fraud, payments and customer support functions for the online poker operators. Therefore he is recognized internationally in the industry as a leader in his area of expertise. . . . During his time with [REDACTED] [the beneficiary] was a thought leader and instrumental in the development of and

implementation of internet fraud and payment systems used by one of the world's largest listed gaming operators. He provided leadership with respect to the development of back-office and customer relationship management systems built at [REDACTED] which was the world's largest online poker network.

In fact, the letters contain several entire paragraphs that are nearly identical. While the authors signed their letters affirming the contents, nevertheless, the use of boilerplate language reduces the evidentiary weight of these letters. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits; *see also Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source).

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien's contributions must be not only original but of major significance. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Upon review, the preceding letters of recommendation demonstrate that the beneficiary's work has earned the respect and admiration of those with whom he has collaborated and consulted, but these letters do not establish that he has made original business-related contributions of major significance in his field. While the beneficiary is admired for his skills in the field of online gaming, customer support, payments and fraud, and his work on projects has benefited his clients and employers, there is no evidence demonstrating that he has made original contributions of major significance in his field. For example, the record does not indicate the extent of the petitioner's influence on others in his field nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the recommendation letters submitted by the petitioner are not sufficient to meet this criterion. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *Cf. Visinscaia v. Beers*, 4 F. Supp. 3d 126, , 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not demonstrated contributions of major significance because she did not demonstrate her impact in the field as a whole). Without extensive documentation showing that the beneficiary's work has been unusually influential, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets this criterion. In its response to the RFE the petitioner asserts that the beneficiary contributed to his prior employers by developing "a number of fraud detection technologies and processes that didn't previously exist" and that "[n]ow those technologies and processes are used by multiple companies." However, the record does not contain evidence of the beneficiary's impact beyond his employers and clients or customers. 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'l Comm'r 1972)).

Based on the foregoing, the petitioner has failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation*

In order to meet the seventh criterion, the petitioner must submit evidence that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The petitioner requests consideration of the above four employment recommendation letters under this criterion. The director determined that the letters of recommendation from the beneficiary's prior employers were sufficient to satisfy this requirement.

state that the beneficiary "and his team were material contributors to the success of the business." Messrs. state that during the beneficiary's time with , the beneficiary was "a thought leader and instrumental in the development of and implementation of internet fraud and payment systems." They also state that the beneficiary "provided leadership with respect to the development of back-office and customer relationship management systems built at ' The record also contains a letter dated March 29, 2012, from the chief operating officer (COO) of stating that the beneficiary was granted "an exceptional retention award" as "one of a relatively small group of employees identified as a key resource and critical to retain within the organization."

states that as Site Director for the beneficiary was responsible for the migration of operations from a subsidiary, to the company's operations in Manila, Philippines, with duties that "included oversight of all support operations such as payroll, human resources, finance, legal, logistics, administrative support, and procurement." describes the beneficiary as "a key manager in the continued success of all the companies in which we worked together."

While the four initial letters contain near-identical language, in response to the director's RFE, the petitioner submitted a new letter from Mr. who confirms that the beneficiary saved \$4 million per year in proven fraud instances. Based on all of the information in the letters in the aggregate, including information quoted in our discussion of the previous criterion, the petitioner has submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7).

*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*

The petitioner has offered the beneficiary an annual base salary of \$200,000 for the proffered position "VP of Customer Support, Payments and Fraud." The support letter states the beneficiary "is eligible for a bonus in the amount of 50% of his base salary per year." In support of this assertion, the petitioner submitted an executed employment agreement. The director found that the beneficiary met this criterion. The record does not support this determination.

Regarding the beneficiary's past salary, the petitioner submitted an executed employment agreement between the beneficiary and his prior employer, [REDACTED] indicating that the beneficiary was employed as a Site Director effective December 2012 at a monthly salary of 355,750 Philippine pesos, or an annual salary of approximately 4,269,000 Philippine pesos. The agreement also indicates that the beneficiary will receive a communication and housing allowance and is eligible for participation in [REDACTED] management performance bonus scheme in the amount of 25% to 50% of his salary. The petitioner also submitted pay statements from [REDACTED] indicating a bi-weekly salary in 2013 of 177,875 Philippine pesos, consistent with an annual salary of 4,269,000 Philippine pesos. The petitioner also submitted material from [REDACTED] reflecting that the average pay for operations managers in the Philippines is 661,187 Philippine pesos, with the top ten percent earning 1,000,000 Philippine pesos or more. The documentation, however, does not provide a description of this occupation other than to state that, "[t]he skills that increase pay for this job the most are People Management and Operations Management." Thus, the petitioner has not established that a comparison of his salary as a site director with the salaries of operations managers is meaningful. The petitioner also did not submit evidence pertaining to the reliability of this website. Therefore, this documentation does not sufficiently establish that the beneficiary's past salary in the position of Site Director was a "high salary."

With regard to the \$200,000 salary the beneficiary will receive, the petitioner also submitted salary information for the occupation of "Administrative Services Managers" from the Foreign Labor Certification (FLC) Data Center Online Wage Library ([www.flcdatacenter.com](http://www.flcdatacenter.com)). The information provided indicates that the average salary in the field in the San Diego – Carlsbad – San Marcos area is \$86,736, while the top 25% wage level in that geographic area is \$105,498. This local data is less probative than national data. The petitioner also provided salary data for the occupation of "Administrative Services Managers" from O\*Net Online ([www.onetonline.org](http://www.onetonline.org)). The data provided is for the U.S. nationally for 2012 and indicates that the average salary for the occupation is \$81,080, but the material does not provide the 90<sup>th</sup> percentile wages. Moreover, the petitioner has not demonstrated that comparing the beneficiary's wages with those of Administrative Service Managers is meaningful. According to the materials the petitioner submitted, this title includes office managers and administrative assistants, among others. The tasks include:

- Direct or coordinate the supportive services department of a business, agency, organization;
- Prepare and review operational reports and schedules to ensure accuracy and efficiency;
- Set goals and deadlines for the department;
- Acquire, distribute, and store supplies;
- Analyze internal processes and recommend and implement procedural or policy changes to improve operations, such as supply changes or the disposal of records;
- Plan, administer and control budgets for contracts, equipment and supplies;
- Monitor the facility to ensure that it remains safe, secure, and well-maintained;
- Hire and terminate clerical and administrative personnel;
- Oversee the maintenance and repair of machinery, equipment, and electrical and mechanical systems;

- Oversee construction and renovation projects to improve efficiency and to ensure that facilities meet environmental, health, and security standards, and comply with government regulations.

None of the beneficiary's duties as set forth on exhibit A of the employment agreement, quoted above, appear as the duties of Administrative Service Managers.

Accordingly, as the petitioner has not provided meaningful comparisons to the beneficiary's past and proposed salary, the petitioner has not satisfied this criterion. Therefore, we withdraw the director's favorable finding with respect to this criterion.

### III. Conclusion

Based on the foregoing, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iii)(A) or satisfied at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in business. For this reason, the petition may not be approved.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.