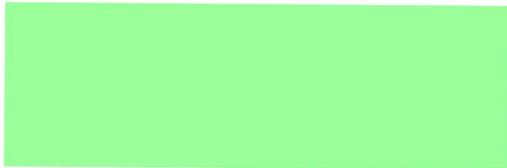




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **DEC 29 2014** Office: VERMONT 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 Vermont Service Center Acting Director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an O-1B alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i). The petitioner, self-described as a show horses business, seeks an extension of the beneficiary's O-1 status so that he may work in the position of "horse trainer/show horses" for a period of one year.¹

The acting director denied the petition, finding that the petitioner did not establish that the beneficiary qualifies as an alien of extraordinary ability in the arts. The acting director determined that the petitioner did not establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), and that the submitted evidence did not satisfy any of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), of which the petitioner must meet three to establish the beneficiary's eligibility. The director also determined that the petitioner did not establish eligibility under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C).

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 asserts that the submitted evidence establishes the beneficiary's qualification as an alien of extraordinary ability in the arts. The petitioner also asserts that the director erred by not considering all of the record evidence as "comparable evidence" submitted under 8 C.F.R. § 214.2(o)(3)(iv)(C). Counsel submits a brief in support of the appeal. For the reasons discussed below, the AAO will dismiss the appeal.

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.

Section 101(a)(46) of the Act states that the term "extraordinary ability" means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.

Pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii) pertaining to aliens of extraordinary ability in the arts, "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.

¹ In the record, the petitioner has also referred to the position as "Hunter Jumper Horse Trainer."

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.

II. Discussion

A. Beneficiary's Eligibility under the Requested Classification

The petitioner claimed eligibility under the evidentiary criteria for aliens of extraordinary ability in the "arts" at 8 C.F.R. § 214.2(o)(3)(iv), and asserted that the beneficiary meets the standard of "distinction," pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii). The acting director reviewed the petition under these criteria and determined that the petitioner did not establish the beneficiary's eligibility as an alien of extraordinary ability in the arts. However, we find that the petitioner did not establish that the beneficiary is primarily involved in a creative activity or endeavor, such that he can be classified as an alien of extraordinary ability in the arts.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines the term arts:

Arts includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts. Aliens engaged in the field of arts include not only the principal creators and performers but other essential persons such as, but not limited to, directors, set designers, lighting designers, sound designers, choreographers, choreologists, conductors, orchestrators, coaches, arrangers, musical supervisors, costume designers, makeup artists, flight masters, stage technicians, and animal trainers.

The regulations prescribe different evidentiary criteria and standards of review for aliens of extraordinary ability in the arts versus in business/athletics. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part: "Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor." The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 Fed. Reg. 41818, 41819 (Aug. 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the "distinction" standard for the arts).

Although the petitioner asserts that the beneficiary should be evaluated based upon the standard applicable to those engaged in a creative activity or endeavor, the petitioner's description of the beneficiary's job duties demonstrates that the beneficiary is engaged, as a horse trainer, in the field of athletics. While the regulation at 8 C.F.R. § 214.2(o)(3)(ii) specifically includes animal trainers as an example within the field of the arts, not all types of animal trainers can properly be classified as within the field of the arts. As noted in 8 C.F.R. § 214.2(o)(3)(ii), the definition of "arts" focuses on "any field of creative activity or endeavor." Notably, "animal trainers" are included in a list of stagecraft and related occupations filled by "essential persons" supporting "principal creators and

performers.” Thus, certain types of animal training, such as animal acts and circuses, would reasonably be among this group of creative workers in the performing arts. Other types of animal training, however, such as of animals engaged exclusively in show jumping competitions, would not be among this group, based upon the petitioner’s description of the nature of the beneficiary’s intended employment in the United States.

The nature of the intended events or activities in the United States is critical in determining whether the beneficiary is entering the United States to provide services in the arts. Here, according to the initial cover letter, the beneficiary’s services are required as follows:

The [petitioning organization] . . . is owned by [REDACTED] . . . a young professional rider, competing successfully in the [REDACTED] competitions against international and Olympic riders. She was chosen to represent the United States as one of the United States [REDACTED] . . . She is riding top quality horses and requires the services of a top trainer so her horses are trained and ready when she enters the show ring . . . **Through the efforts of [the beneficiary], as her trainer for the past 4 years, [the petitioner] has moved up in the rankings and as of [REDACTED]**

In addition, Ms. [REDACTED] states that the beneficiary assists her in the show ring, when he “walks the jump courses with [Ms. [REDACTED] and [they] calculate the strides and strategies between each jump” and “to critique so [they] can make adjustments as necessary.”

Initially, the petitioner provided its Employment Contract with the beneficiary, in which the beneficiary’s duties are listed as, among others:

[The beneficiary] will train and ride horses at [the petitioning organization] and train with the rider on the horse show circuit. The horses will jump to over 5’. [The beneficiary] will be in control of the diet, living conditions, grooming, exercising, and conditioning for the horses on the national and international show circuit. [The beneficiary] will be treating ailments as they arise, under veterinarian’s direction. [The beneficiary] will arrange shipping to shows.

The initial cover letter asserts that the beneficiary’s work as a trainer in [REDACTED] national and international showjumping competitions “is working in the area of his creative field of endeavor.” However, the petitioner’s description of the beneficiary’s specific duties show that he will not create, perform, or serve as essential personnel to a “creative activity,” but instead will follow and evaluate programs to be used to prepare horses used solely for competitive showjumping, which the initial cover letter describes as a “sport.” In addition, the evidence of record indicates that showjumping, has been an Olympic medal sport since 1912. The [REDACTED] has been designated as the world governing body of the sport. Therefore, showjumping is an acknowledged form of athletic competition.

While there may be instances in which a horse trainer seeks to enter the United States to provide services in the field of the arts rather than in the field of athletics, based on the nature of the

beneficiary's intended employment in the United States, the beneficiary cannot be included among individuals engaged in the arts or a field of "creative activity or endeavor." Where, as here, a petitioner seeks to employ a beneficiary as a horse trainer for the sport of competitive showjumping, extraordinary ability in the arts is not the applicable standard.

A petitioner sponsoring an O-1 athlete cannot seek consideration of the petition under the lower standard of "distinction" by characterizing the beneficiary's non-creative field as arts. The petitioner has not sought the correct O-1 visa classification for the beneficiary, nor has it claimed or submitted evidence to establish that the beneficiary meets the criteria and standards for individuals of extraordinary ability in business or athletics as set forth at 8 C.F.R. § 214.2(o)(iii)(A) or (B). As the beneficiary's occupation does not fall within the O-1 classification requested on the petition, the petition may be denied for this reason alone. An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the Service Center does not identify all of the grounds for denial in the initial decision. *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). We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Moreover, the fact that the petitioner seeks the wrong O-1 classification is fundamental to why the petitioner may not rely on comparable evidence, as discussed below.

As the acting director did not raise the foregoing issue in her decision, we will nevertheless review the petitioner's claim that it satisfied the evidentiary requirements and less restrictive standard of "distinction" applicable to aliens of extraordinary ability in the arts.

B. Consideration of Evidentiary Criteria and Extraordinary Ability in the Arts.

Despite our finding that the beneficiary is not engaged in the field of arts, the director appropriately reviewed the petition according to the classification requested on the Form I-129. USCIS will only consider the visa classifications that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc. v. Chertoff*, 286 Fed. Appx. 963, 2008 WL 2743927 (9th Cir. July 10, 2008).

As such, the issue addressed by the director is whether the petitioner established that the beneficiary qualifies as an alien of extraordinary ability athletics through submission of evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B).

Receipt of a major, internationally recognized award, such as the Nobel Prize

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 have submitted the requisite initial evidence 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 assert, and the record does not reflect, eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(A). As such, the petitioner has not established that the beneficiary has won or been nominated for a significant national or international prize or award that would qualify for her for O-1 status under 8 C.F.R. § 214.2(o)(3)(iv)(A).

Accordingly, the petitioner must establish the beneficiary's eligibility under at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B), or, if these criteria do not readily apply to the beneficiary's occupation, submit comparable evidence under 8 C.F.R. § 214.2(o)(3)(iv)(C). 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. 369, 376 (AAO 2010).

In denying the petition, the acting director determined that the petitioner's evidence did not satisfy any of the six evidentiary criteria. With regard to the six criteria under which the director found the beneficiary ineligible, the petitioner contests the director's findings with respect to five of the criteria on appeal, specifically, at 8 C.F.R. § 214.2(o)(3)(iv)(B) subparagraphs (1), (2), (3), (4) and (5).² After careful review of the record and for the reasons discussed herein, the petitioner has not established eligibility under any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B).

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*

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the petitioner asserts that the beneficiary played "an important role" in his employment with the petitioning organization since 2010, training horses for showjumping competitions. Specifically, Ms. [REDACTED] claims that she has competed successfully at showjumping competitions because she and her horses were trained by the beneficiary.

As evidence under this criterion, the petitioner has submitted letters from the petitioner and from the beneficiary's colleagues, including professional international equestrian riders [REDACTED] [REDACTED] as well as from equine veterinarian [REDACTED] [REDACTED].

² The director correctly determined that the petitioner did not submit evidence related the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(6), and the petitioner raises no objection to the director's determination on appeal. Therefore, the petitioner has abandoned this criterion. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

The petitioner submitted two letters, dated November 4, 2013 and January 5, 2014, respectively. In the initial letter Ms. [REDACTED] states that the beneficiary is her trainer at the petitioning organization, and she describes him as being, “in complete control of my horses, their exercise, conditioning, diet and treatments at home and while traveling and showing. The petitioner states that during the past year she has been “riding professionally competing in [REDACTED] jumping events primarily in the United States and Canada.” She credits the beneficiary’s training with her having “been showing very successfully at the top levels.” The petitioner states that she requires the services of an outstanding trainer, “who not only can care for the horse’s physical well-being and conditioning, but can ride these high strung horses and train the horses so that they will jump effortlessly.” She concludes by praising the beneficiary’s training abilities, stating that “[o]nly a trainer of extraordinary ability like [the beneficiary] can work with the horses and riders on the [REDACTED] circuit” and “be able to recognize the abilities of each horse and adjust his training methods with the rider’s ability.”

In the second letter, provided in response to the acting director’s request for further evidence (RFE), Ms. [REDACTED] asserts that “[s]ince [the beneficiary] has worked for me beginning in 2010, he has trained numerous horses to [REDACTED] level, the most elite level of competition,” and provides examples of three horses trained by the beneficiary and the national competitions at which the horses have competed:³

- [REDACTED] won three [REDACTED] competitions: two at [REDACTED] Florida and one in [REDACTED], New Jersey (2013), and is “now ready for [REDACTED] level competitions;”
- [REDACTED] won two [REDACTED] (2010), won prize money for placings at three [REDACTED] ***** events and competed at two [REDACTED] ***** events (2013);
- [REDACTED] is stated as having won money her first several competitions at one [REDACTED] ***** and two [REDACTED] ***** events, and is “now prepared for international [REDACTED] level competition.

As additional evidence under this criterion, the petitioner submitted a letter from the beneficiary’s former employer, [REDACTED] a professional equestrian show jumper and Olympic medals winner. He describes the beneficiary as “an outstanding horse trainer.” He describes the duties of a horse trainer for showjumping, and states, “[d]uring the time that [the beneficiary] worked for me, he became particularly experienced in training horses for [REDACTED] level competitions.”

The petitioner also provided a January 6, 2014 letter from [REDACTED], a professional equestrian show jumper, who was part of the [REDACTED] at the [REDACTED] Olympics and the [REDACTED] Olympics.⁴ Ms. [REDACTED] states that she has “observed [the beneficiary] working with [Ms. [REDACTED] and with Olympic rider [REDACTED] on the show circuit. She describes the beneficiary as having “the ability and knowledge and is well respected in the field of show jumping. [The beneficiary] is a trainer of exceptional ability.”

³ The record reveals that showjumping events administered by [REDACTED] are ranked with stars to indicate the level of competition, with five stars, or [REDACTED] ***** being the highest, or [REDACTED] level of competition. The record also reveals that [REDACTED] is the national governing body for most equestrian sports in the United States.

⁴ The record also contains a January 7, 2009 letter from Ms. [REDACTED] but only the first page of the letter. As her signature is missing, that letter has no probative value.

The record also contains a letter dated December 1, 2009, from [REDACTED], a professional international equestrian rider and trainer. The letter was submitted in support of the beneficiary's prior O-1 petition. He describes the beneficiary as being "at the top of his field." Mr. [REDACTED] states that "[the beneficiary's] skills and abilities as a trainer have played a large role in the success of and achievements of his riders." He states that he has "observed [the beneficiary] with [REDACTED], in New Jersey, in [REDACTED] Florida and on the international show circuit training horses who have competed successfully. . . ."

The letter from [REDACTED] a veterinarian for the [REDACTED] states that he has worked closely with the beneficiary "during the time [the beneficiary] was working for [REDACTED] on the international horse show circuit" and that he continues to work with the beneficiary in his employment with the petitioner. He describes the beneficiary's training programs as "constructed to maximize a horse's ability" and he states that the beneficiary "produces horses that are able to compete at the highest levels."

The petitioner also submitted a letter from [REDACTED] a horse trainer and former professional international equestrian show jumper, who describes the beneficiary as "highly experienced and skilled at the specific care required by international show jumping horses." He states that he invited the beneficiary and Ms. [REDACTED] to "compete internationally as part of my stable team in Germany in the summer of 2014" based upon "the successes I have seen of horses trained by [the beneficiary] and ridden by [the petitioner]."

[REDACTED] do not explain the factual basis of their knowledge that horses trained by the beneficiary have competed successfully at national showjumping competitions beyond a vague claim to have observed him working with horses. As such, their assertions are conclusory regarding the essentiality of the beneficiary's role in the success of the horses at these events, and carry little, if any, probative value. 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.). While the remaining letters are from those with more direct knowledge of the beneficiary's work, these letters do not constitute reviews, advertisements, publicity releases, publications, contracts or endorsements, the initial evidence required by the plain language of the regulation.

As additional evidence under this criterion, the petitioner has submitted press releases which discuss the wins of Ms. [REDACTED] in various showjumping events for horses the beneficiary purportedly has trained, and screen shots from the [REDACTED] website and the website of the [REDACTED], showing the petitioner's rankings.

While acknowledging that the job of horse trainer "is a behind-the-scenes position," the acting director found that regarding the listed events "[t]here is no documentation to show the beneficiary was the lead or star in any of the wining events," as required by the plain language of the criterion. Upon careful review of the submitted evidence, we find that the petitioner has not established that the beneficiary performed a lead role in training the showjumping competition winners. We acknowledge the letters

from the petitioner and [REDACTED] however, these letters contain general language regarding the beneficiary's responsibilities over showjumping horses and, with the exception of the petitioner, the authors of the letters do not identify any of the horses the beneficiary actually trained. In addition, none of the letters establish that it was primarily the beneficiary who trained these horses for the specified competitions, as the petitioner claims. Further, the corroborating documentation submitted by the petitioner does not specifically identify the beneficiary as the actual trainer of the claimed winning showjumping horses. While the petitioner asserts on appeal that the beneficiary "was essential to the process of producing winning jumper horses," the petitioner did not submit sufficient objective evidence, such as contracts, publications, and other documentary evidence tying the beneficiary to the winning horses to corroborate this statement.

For the reasons above, the petitioner has not established eligibility under the plain language of 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

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.*

As noted by the acting director, the petitioner has not submitted any "critical reviews or other published materials by or about the beneficiary in major newspapers, trade journals, magazines, or other publications," as required by the plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

On appeal, the petitioner asserts that it provided evidence of the recognition of riders for whom the beneficiary has trained horses and that such evidence is comparable evidence under this criterion. We will address the petitioner's reliance on comparable evidence below. It remains, the record does not contain critical reviews or other published material by or about the beneficiary.

For the reasons above, the petitioner has not established eligibility under this criterion.

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 as evidenced by articles in newspapers, trade journals, publications, or testimonials.*

The petitioner asserts that it has established the beneficiary's eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) on the basis of the beneficiary's work for the petitioning organization and [REDACTED]. As evidence under this criterion, the petitioner requests consideration of the above testimonial letters.

Mr. [REDACTED] describes the beneficiary as "an outstanding horse trainer, who has worked with my horses and trained them to the national and international level." He asserts: "I can attribute my success with my horses to [the beneficiary's] skills and abilities as a trainer. [The beneficiary] has played a critical role in my success as a [REDACTED] rider and in the success of my customers." Merely stating in

conclusory terms that the beneficiary's employment was "critical," without sufficient detail or explanation, is insufficient to meet the burden of proof in these proceedings. While Mr. [REDACTED] praises the beneficiary's skill in presenting horses to the ground jury at [REDACTED] level competitions, and the beneficiary's knowledge of [REDACTED] medication rules, his letter provides little or no discussion of the beneficiary's role or responsibilities within his organization or establishment. For example, he does not name the horses the beneficiary trained for him or where they competed. His conclusory statements fall significantly short of establishing that the beneficiary achieved the rank of a lead or critical role within the establishment. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, 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).

Upon review of the above letters from the petitioner establish that the beneficiary has performed and will perform in a lead, starring or critical role for the petitioner. The director's finding and comments to the contrary will be withdrawn.

However, while the petitioner's letters establish that the beneficiary performed and will perform in a critical or essential capacity for the petitioning organization, the petitioner did not establish that the petitioning organization is or was a company with a distinguished reputation, as required at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). While the record contains the above press release pertaining to the petitioner titled "Ridge at [REDACTED] Series Concludes with finale at [REDACTED]," March 24, 2013 ([www.\[REDACTED\]](http://www.[REDACTED])), which briefly mentions the petitioning organization, this does not constitute evidence regarding its reputation. The petitioner has provided no independent evidence to establish that the petitioning organization has a distinguished reputation in the field, and the testimonial letters submitted do not address the reputation of the organization. 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 (Assoc. Comm'r. 1998).

For the above reasons, the petitioner has not established eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

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 pictures or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications*

The plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) requires evidence in the form of published indicators, such as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and media reports.

Under this criterion the petitioning organization provided a screen shot from the [REDACTED] website, showing that Ms. [REDACTED] in the organization's show jumping ranking list accessed on November 7, 2013. The evidence of record also indicates that Ms. [REDACTED] competes under the [REDACTED] Ranking System. The petitioner provided documentation from the [REDACTED] website, stating that the ranking system "nationally and regionally ranks young professionals [REDACTED]

competition ages between 21 and 35) based on their competition merits in the hunter and jumper rings.” The documentation from the [REDACTED] Ranking System Rider Lists for 2013 (accessed on October 28, 2013) confirms Ms. [REDACTED]’s earnings and rank in different events as follows: earnings of \$37,120 ranked 20th on the [REDACTED] Rider List; and earnings of \$33,105 ranked 4th on the [REDACTED] Rider List. The petitioner did not provide copies of all pages of those lists to indicate the total number of riders against whom the petitioner was ranked. The rankings from [REDACTED] and the [REDACTED] Ranking System do not indicate how much of these earnings, if any, can be attributed to the beneficiary. The petitioner did not submit a trainer profile for the beneficiary indicating his individual earnings and ranking.

The petitioner also submitted [REDACTED] profile with rankings of 2nd in individual and 1st in team equestrian events at the [REDACTED] Olympic Games in [REDACTED] with a horse named [REDACTED]. However, neither this profile nor Mr. [REDACTED] indicates that the beneficiary was the horse’s trainer, such that Mr. [REDACTED] ranking can be attributed to the beneficiary.

For the above reasons, the evidence of record supports the acting director’s determination that the petitioner’s evidence does not establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

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.*

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

Under this criterion, the petitioner has again requested consideration of the testimonial letters from the petitioner and from the beneficiary’s colleagues, including professional international equestrian riders [REDACTED] as well as from equine veterinarian [REDACTED]. Upon review of the letters, the petitioner has not established that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. The letters emphasize the beneficiary’s talents and work ethic rather than any specific achievements in the field.

These letters emphasize that the beneficiary’s achievements are best measured by the performances of the horses he has trained. The letter from the beneficiary’s former employer, [REDACTED] describes the duties of a horse trainer for showjumping, and states, “[d]uring the time that [the beneficiary] worked for me, he became particularly experienced in training horses for [REDACTED] level competitions.” Mr. [REDACTED] concludes as follows:

Articles and press are always about the rider and not the trainer. In the sport of show jumping recognition comes from the success of the horses and the riders for which the trainers are responsible. . . . I can attest to the fact that [the beneficiary] excels as a Trainer both at the show ring and in preparation. I can truly say that he is one of the top trainers of show jumpers.

describes the beneficiary as being “a trainer of exceptional ability.”

The letter from submitted in support of the beneficiary’s prior O-1 petition, describes the beneficiary as being “at the top of his field” and as “one of the most talented young trainers to come along.”

The letter from asserts that the beneficiary “produces horses that are able to compete at the highest levels.”

Other than Mr. , the authors of the above letters do not sufficiently explain the factual basis of their knowledge. Their assertions regarding the beneficiary’s recognition for achievements are conclusory and carry little, if any, probative value. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc.*, 1997 WL 188942 at *5.

In addition, as previously discussed, only the petitioner has specifically mentioned the horses the beneficiary trained, and the record does not establish that it was primarily the beneficiary who trained these horses for the specified competitions, as the petitioner claims.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations.

While the individuals who provided letters praise the contributions the beneficiary has made to organizations and individuals with whom he has worked, and hold a very high opinion of the beneficiary as a person and as a trainer, the testimonial letters do not explain with any specificity the beneficiary’s achievements in the field.

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).

In summary, the petitioner has not established eligibility under at least three of the six regulatory criteria listed at 8 C.F.R. § 214.2(o)(3)(iv)(B).

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

The petitioner asserts that the acting director erred in not also considering the petitioner's submitted evidence under the "comparable evidence" regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C).

The petitioner did not initially claim eligibility under the "comparable evidence" regulation, but did indicate that it was submitting such evidence in response to the RFE, as follows:

The beneficiary, as a [REDACTED] plays a critical role for the petitioner who is competing in events with a distinguished reputation. The evidence submitted is comparable to that listed in the regulations, but the trainer is not the person who gets the acclaim in the press.

The evidence referred to in the petitioner's letter relates to the successful participation of horses claimed to be trained by the beneficiary in national [REDACTED] competitions.

Also in response to the RFE the petitioner stated:

USCIS has long accepted that certain professionals including horse trainers do not lend themselves to traditional types of evidence and documentation. Recognition comes from the success and acclaim of the horses and riders for which the trainers are responsible. As a result, sustained national or international acclaim and recognition for horse trainers in the field of show jumping can only be documented by comparable evidence in the form of letters from recognized experts familiar with the beneficiary's work and reputation, who are in a position to compare the results of top horse trainers, and who know the skills, achievements and qualities necessary to qualify someone to be considered a top trainer in the field.

The petitioner is claiming that comparable evidence is appropriate because the regulatory criteria for the O-1B classification in the performing arts are not applicable to the competitive showjumping industry, which the petitioner describes as a "sport." As discussed above, the petitioner's attempt to classify the beneficiary's field as in the arts is improper. The comparable evidence provision pertains to situations where the criteria relating to the beneficiary's field do not readily apply to the beneficiary's occupation, and not where criteria for the beneficiary's field exist, but the petitioner instead chooses to file under the provisions relating to a different field than the one in which the beneficiary works.

III. Prior Approval

The record indicates that USCIS has previously approved a petition for O-1 status filed on behalf of the beneficiary. The prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts,

USCIS will generally give 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'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. See 8 C.F.R. § 103.8(d). 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 acting director reviewed the record of proceeding and concluded that the petitioner did not meet all eligibility requirements for the requested classification. If the previous nonimmigrant petition was approved based on the same evidence that is contained in the current record, the approval would constitute material and gross error on the part of the acting director. Furthermore, as discussed above, the petitioner has classified the beneficiary's claimed area of extraordinary ability as "arts" rather than "athletics." Based on the lack of required evidence of eligibility in the current record, we find that the acting director was justified in departing from the previous petition approval by denying the instant petition.

We are 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 CIS 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). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner does not meet its burden of proof in a subsequent petition. See section 291 of the Act.

IV. Conclusion

The petitioner has not established that the beneficiary's duties, which consist primarily of evaluating and training horses, or beneficiary's field of endeavor, competitive showjumping, can properly be considered as a creative activity or endeavor falling within the field of the arts. Regardless, the petitioner also has not established the beneficiary's eligibility under any of the regulatory criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C).

The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial. When we deny a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if he shows that we abused our discretion with respect to all of our enumerated grounds. 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).

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.

(b)(6)

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ORDER: The appeal is dismissed.