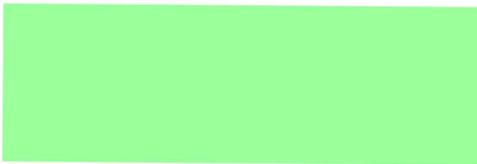




U.S. Citizenship  
and Immigration  
Services

(b)(6)

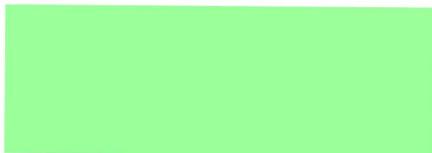


DATE: **DEC 29 2014** Office: VERMONT SERVICE CENTER FILE:

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 Director, Vermont 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 nonimmigrant visa petition seeking to classify the beneficiary pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (“Act”), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in the field of athletics. According to Part 5 of the petition, the petitioner seeks to employ the beneficiary as an equestrian 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 athletics.

On appeal, the petitioner asserts that “[t]he documentary evidence submitted with this brief establishes that [the beneficiary] has not only met his standard of proof, but that his is an [e]questrian of extraordinary ability.” Upon review of the record, including the evidence submitted on appeal, we agree with the decision of the director and will dismiss the appeal.

#### I. Law

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part, that: “Extraordinary ability in the field of science, education, business, or athletics means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.”

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

Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business, or athletics. An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
  - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

- (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
  - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
  - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
  - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
  - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
  - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
  - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.

- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

The 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 the “truth is to be determined not by the quantity of evidence alone but by its quality.” Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS 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).

## II. Analysis

We note that, while not addressed by the director, the record contains inconsistencies regarding the job duties of the beneficiary and the nature of the petitioner’s business. According to the document, “Summary of the Terms of the Oral Agreement,” between the petitioner and the beneficiary, the beneficiary’s “primary responsibilities will include training and competing as an EQUESTRIAN.” The petitioner listed the beneficiary’s job title as equestrian on both the Form I-129, Petition for a Nonimmigrant Worker, and in its letter of support. The petitioner’s letter of support also states that the beneficiary “would be a perfect addition to our roster of equestrians,” and discusses the beneficiary’s past as an equestrian, but does not include a description of the beneficiary’s duties and does not make any reference to the beneficiary as a trainer, either in the past or as part of his duties for the petitioner. The director issued a request for evidence which stated that the petitioner “must provide an explanation of the competition, event or performance in which the beneficiary will participate” and “[a]n explanation of the nature of the events or activities.” In response, the petitioner submitted a copy of the beneficiary’s itinerary, which states that the beneficiary “will be training and preparing riders for the following tentatively scheduled competitions,” but does not indicate that the beneficiary will be competing in any of the events.

The regulation at 8 C.F.R. § 214.2(o)(3)(i) requires “evidence that the work which the alien is coming to the United States to continue is in the area of extraordinary ability.” While previous riding experience as an equestrian may benefit a horse trainer, riders and trainers rely on very different sets of basic skills and thus, are not the same area of expertise. Although involving a different classification than in the instant petition, in *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918. The court noted a consistent history in this area.

Accordingly, whether the beneficiary will work as an equestrian or a trainer is material. Specifically, if the petitioner seeks to employ the beneficiary as a trainer, it must submit the required initial evidence to establish the beneficiary's eligibility as a trainer. While the petitioner might also be able to demonstrate eligibility based on the beneficiary's accomplishments as a rider and evidence that training is also within his area of expertise, the petitioner may not combine the beneficiary's riding and training accomplishments to satisfy the initial evidence requirement of meeting three criteria. As will be discussed in further detail below, the petitioner failed to establish that the beneficiary is an alien of extraordinary ability as either an equestrian or as a trainer.

Regarding the nature of the petitioner's business, the petitioner's letter of support states that the business "provides equestrian arena architecture, construction, installation and footing products. We specialize in constructing premium riding rings through careful site analysis, proper site preparation and correct installation of exclusive surfacing products." The petitioner does not provide any evidence to demonstrate why such a business would require the services of either an equestrian or a horse trainer. In contrast, Form I-129 states that the petitioner is an equestrian training center.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The petitioner has not resolved the inconsistencies regarding the proposed employment or the exact nature of the petitioner's business.

For the purposes of this decision, as the petitioner does not claim that the beneficiary meets at least three of the regulatory criterion required for this exclusive classification based solely on his accomplishments as a trainer, we will limit the discussion to his accomplishments as an equestrian.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

#### A. Evidentiary Criteria<sup>1</sup>

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

The director found that the petitioner did not establish "the level of the events in which the beneficiary competed." In addition, the director stated that the ribbons "fail[] to show the beneficiary has sustained international recognition." As evidence, the petitioner submitted thirty five ribbons won by the beneficiary between 1989 and 1994. Of the thirty five submitted ribbons, seventeen clearly state that they were awarded at the junior level. While the age of the competitors alone does not preclude the

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<sup>1</sup> The petitioner does not claim the beneficiary meets or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

competition from being nationally or internationally recognized, it is the petitioner's burden to demonstrate that any competition the beneficiary won is qualifying. Where the competition is restricted to individuals of certain ages, the petitioner must explain how such an age-limited competition enjoys national or international recognition.

We note that the record contains a letter from [REDACTED] which states that the beneficiary won the "[REDACTED]," but there is no legible evidence in the record in support of this statement.<sup>2</sup> The petitioner did not submit primary evidence of his receipt of the award. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. In this case, while the petitioner submitted letters, the petitioner did not submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or is unavailable. Regardless, the letters that the petitioner provided are not affidavits as the affiants did not swear to or affirm the truth of the information before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary 58 (9th Ed., West 2009)*. Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746.

On appeal, as in response to the director's request for evidence, the petitioner relies on a letter from [REDACTED] President of the [REDACTED] to establish the recognition of two of the awards. Mr. [REDACTED] states that "[a]t the national Championship on two occasions in 1989 and 1990,...[the beneficiary] was crowned [REDACTED]" but does not provide any additional information. Although the appellate brief asserts that "these awards were not obtained at the junior level," according to the handwritten information on the ribbons submitted, both of these ribbons were awarded at the junior level. In addition, an award with "National," "International," or "Excellence" in the title does not automatically elevate the award to a nationally or internationally recognized award. In fact, it does not necessarily demonstrate that the awards are national or international in nature. Without documentary evidence reflecting the national or international recognition of the award, the name of the award alone is insufficient.

The appellate brief asserts that because "these competitions were organized and sponsored by the [REDACTED]...it is clear that the level of events and competitions in which the beneficiary has competed have been the highest level of competition available in Mexico." The petitioner did not, however, submit corroborating evidence to establish that any of the beneficiary's ribbons are nationally or internationally recognized prizes or awards. Not every competition sponsored by the [REDACTED] automatically rises to the level of a nationally recognized event. Furthermore, only a limited number of the beneficiary's the ribbons indicate that they were awarded by [REDACTED]. Without documentary evidence to support the claim, the assertions in an appellate brief will not satisfy the

<sup>2</sup> We note that in addition to the legible photocopies and photographs of the beneficiary's ribbons, the initial filing included a set of photocopies which are mostly illegible.

petitioner's burden of proof. The unsupported assertions in an appellate brief do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Without documentary evidence to establish the national or international recognition of the ribbons, the petitioner has not established the beneficiary's eligibility under the plain language of 8 C.F.R. 214.2(o)(3)(iii)(B)(1).

*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.*

The director found that the petitioner had not established that the beneficiary's membership in the [REDACTED] and the [REDACTED] met this criterion. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Regarding the [REDACTED] the petitioner submitted an undated letter thanking the beneficiary for joining both the [REDACTED] and the [REDACTED] and printouts from the [REDACTED] website. These materials provide: "Equestrian competitors, leisure riders, coaches, fans and enthusiasts each share a special bond with the horse. This commonality defines the membership of the [REDACTED]" We note that the petitioner has never claimed that membership in [REDACTED] satisfies this criterion and that the petitioner did not submit any evidence regarding the membership requirements for [REDACTED]. The appellate brief asserts that membership in [REDACTED] is "**extremely selective**" and that "[t]he organization is renowned for its high caliber equestrian members that compete in elite equestrian competitions throughout the world." The petitioner, however, did not submit any evidence that the beneficiary is anything other than a dues paying member. Furthermore, the petitioner did not submit any evidence, such as by-laws or other documentary evidence of the membership requirements to support the appellate brief or to establish that the association requires outstanding achievements as a condition of membership, as required by the plain language of the regulation. Without documentary evidence to support the claim, the assertions in an appellate brief will not satisfy the petitioner's burden of proof. See *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Moreover, the Internet materials the petitioner did provide suggest that membership is open to leisure riders, coaches, fans and enthusiasts.

Similarly, regarding the beneficiary's membership in the [REDACTED] the petitioner did not submit any documentary evidence, such as by-laws or membership requirements to establish that outstanding achievements are an essential condition of membership. Rather, the petitioner relies on the letter from Mr. [REDACTED] which discusses the membership process to be a trainer member. As previously discussed, the petitioner's role as a trainer cannot be combined with his accomplishments as an

equestrian to establish his extraordinary ability. While we note that the letter indicates that the beneficiary was a “Rider member” before becoming a trainer member, the letter does not establish the requirements to become a “Rider member.” Furthermore, the plain language of the regulation at 8 C.F.R. 214.2(o)(3)(iii)(B)(2) requires evidence of “membership in associations” in the plural. Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(iii) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4) only requires service on a single judging panel. 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)(2)(ii)(D) that the petitioner must submit “[a] written advisory opinion(s) from the appropriate consulting entity or entities.” Thus, it can be inferred 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.<sup>3</sup>

For the reasons above, the petitioner has not established the beneficiary’s eligibility under the plain language of 8 C.F.R. 214.2(o)(3)(iii)(B)(2).

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

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be “about” the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the [REDACTED] nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup> In addition, it is insufficient to establish eligibility for this criterion based on any material that only lists, mentions, or indicates the petitioner’s name, such as the posting of a rider’s results from a riding event in a newspaper. A mention of the beneficiary’s name does not automatically meet the plain language of the regulation. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner submitted eight articles with certified English translations. The articles “[The beneficiary] [REDACTED]” “[The beneficiary], [REDACTED]” and “[The beneficiary] [REDACTED]” do not include the source of the article, such as the name of the publication, and, therefore, the petitioner has not established that the

<sup>3</sup> *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).

<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, would not have significant national distribution.

articles appeared in professional or major trade publications or major media.<sup>5</sup> We note that the petitioner submitted two identical articles titled “[The beneficiary] [REDACTED]” which appear in two different publications. The second article, which includes the source, will be discussed below.

The articles “[REDACTED]” and “[REDACTED]” and [the beneficiary] [REDACTED] which reference the beneficiary’s success as a junior-level competitor, appeared in [REDACTED]. According to the information the petitioner submitted, the weekly publication is “an artistically designed newspaper which recognizes the cultural diversity of all Hispanic communities while uniting them through their common faith.” The newspaper has 1100 subscriptions with “500 [m]ailed to [m]ajor [c]orp[orations] & [a]dvertising [a]gencies” and a circulation total of 30,000 for New Jersey and four boroughs of New York City.

The second article titled “[The beneficiary] [REDACTED]” appeared in [REDACTED]. The petitioner submitted information about the “information agency” [REDACTED] and specifically its website at [www.\[REDACTED\]](http://www.[REDACTED]) which launched in [REDACTED] approximately eight years after the publication of the article in [REDACTED] on June [REDACTED]. The information submitted does not provide any information for the publication [REDACTED] and thus, has no probative value.

The article “[The beneficiary] [REDACTED]” appeared in [REDACTED]. According to the information submitted, “[a] run of 25[,]000 copies distributed daily in all regions of [REDACTED]” with “[a]n average of 75[,]000 readers per day.” In addition, according to the same information, there are “100 newspapers that are read in the state.” The petitioner did not, however, submit any information to establish how [REDACTED] ranks in comparison to the other published newspapers or to demonstrate that a paper published in one state in Mexico is major media.

The article “[The beneficiary] [REDACTED]” appeared in [REDACTED]. The petitioner did not, however, provide any information to establish that [REDACTED] is major media.

For the reasons above, the petitioner has not established the beneficiary’s eligibility under the plain language of 8 C.F.R. 214.2(o)(3)(iii)(B)(3).

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

The director found that the “record is devoid of documentation relating to the beneficiary’s past employment.” The petitioner has asserted that the beneficiary meets this criterion in the initial filing, the response to the director’s request for evidence and on appeal. The appellate brief asserts that the beneficiary meets this criterion based upon his membership in the [REDACTED]. The

<sup>5</sup> We note that the petitioner asserts that the article “[The beneficiary] [REDACTED]” was published in [REDACTED] but the submitted copy of the article does not include any information on the source.

plain language of the regulation requires that “the alien has been employed” and there is no evidence that the beneficiary was ever employed by [REDACTED]

Regarding the [REDACTED] according to the letter from Mr. [REDACTED], also a trainer, the beneficiary “has been working as [a] trainer.” The petitioner did not, however, provide an organizational chart or other similar evidence to establish how this role fits within the overall hierarchy of the organization or to differentiate the beneficiary’s role from that of other trainers. Regardless, as previously stated, the beneficiary’s role as a trainer cannot be considered here in combination with his riding accomplishments. Regarding the beneficiary’s time as a rider for [REDACTED] there is no indication that the beneficiary was “employed” in a qualifying role by the organization. Rather, the beneficiary competed as a member.

For the reasons above, the petitioner has not established the beneficiary’s eligibility under the plain language of 8 C.F.R. 214.2(o)(3)(iii)(B)(7).

#### B. Summary

Based on the foregoing, the petitioner has not submitted qualifying evidence under at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Therefore, the petitioner has failed to demonstrate that the beneficiary satisfies the regulatory requirement of three types of evidence. In addition, the evidence in the aggregate does not establish the beneficiary’s sustained national or international acclaim as required by 8 C.F.R. § 214.2(o)(3)(iii) or that the beneficiary has a level of expertise indicating that he is one of the small percentage who have arisen to the very top of the field of endeavor as required by the regulation at 8 C.F.R. § 214.2(o)(3)(ii)

#### III. CONCLUSION

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

**ORDER:** The appeal is dismissed.