



U.S. Citizenship  
and Immigration  
Services

(b)(6)

Date: FEB 18 2014 Office: VERMONT SERVICE CENTER

IN RE: Petitioner:  
Beneficiary:

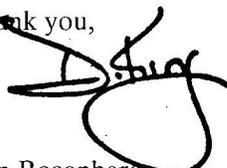
PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:

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

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

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O) as an alien with extraordinary ability in the arts.<sup>1</sup> The petitioner requests that the beneficiary be granted O-1 classification for a period of two years so that the petitioner may engage the beneficiary's services as a music performer/singer.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director's decision is erroneous. No brief or additional evidence was submitted in support of 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.

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

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

*Event* means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental to and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien's contract.

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that

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<sup>1</sup> On Form I-129, Petition for a Nonimmigrant Worker, and in the supporting documentation, the petitioner is identified as [REDACTED] On the O and P Classification Supplement to Form I-129, the petitioner is identified as [REDACTED]

ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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

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

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

- (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence; or
- (C) If the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following:

- (A) The evidence specified in the particular section for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and end dates for the events or activities, and a copy of any itinerary for the events or activities; and
- (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

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

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

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

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

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 580 F.3d 1030 (9<sup>th</sup> Cir. 2009) *aff'd in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Instead of parsing the significance of evidence as part of the initial inquiry, the *Kazarian* court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

The court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet two of the criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. While involving a different classification than the one at issue in this matter, the similarity of the two classifications makes the court's reasoning persuasive to the classification sought in this matter.

The AAO finds the *Kazarian* court's two-part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

## II. Facts and Procedural History

The primary issue to be addressed is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

The beneficiary, a music performer/singer, is a native and citizen of Nigeria who was last admitted to the United States as a B1/B2 visitor. The petitioner, which is described as an entertainment-music production company, filed the petition on February 13, 2013.

In support of the initial petition, the petitioner submitted a document entitled "Project [the beneficiary] Objective," prepared by [REDACTED]. This document states in pertinent part:

Every artist/musician has a starting point. [REDACTED] will work with [the beneficiary] from the point that she is a new artist in the United State [sic]. [The petitioner] will promote [the beneficiary] by placing her CD on major radio station play lists and rotations. [The petitioner] will also place [the beneficiary's] video on music channels such as [REDACTED] [REDACTED] [sic] in the US.

[The petitioner] expects [the beneficiary's] commitment in every aspects of this endeavor, including being on time to all schedule [sic] events as punctuality and discipline is key to any artist's success.

Initially, [the petitioner] will book promotional performances and appearances locally within Washington, DC and Baltimore area to create a buzz. These appearances will extend to Philadelphia and New York.

It's [the petitioner's] believe [sic] that once there's a buzz, the momentum of the buzz will create opportunities for [the beneficiary] to be booked as an opening act on tour circuits by [the beneficiary] would be compensated from ticket sales [sic].

[The petitioner] will source for reputable producer(s) for [the beneficiary's] up coming release on [the beneficiary's] label; however [the petitioner] will shop for a distribution deal with major distributor(s) in the US.

Initially, since [the beneficiary] will be performing in small venues with a backing track, [the petitioner] suggests a compact PA system at the cost of \$6,000.00 . . . .

The petitioner submitted a "Recording Artist Agreement" between the petitioner ("Company") and the beneficiary ("Artiste"), stating that the petitioner "hereby engages Artist's exclusive personal services as a recording artist" for a term of two years.

The petitioner submitted the copyright registration claim for the work "[REDACTED]"

The petitioner submitted a DVD copy of the beneficiary's initial song. Counsel asserted that this song was "published and played on iTunes from August 19, 2012," and that the music video for this song was "published and played on YouTube from August 19, 2012 and presently generated 174,649 interests."

The director issued a request for additional evidence ("RFE"), instructing the petitioner to submit: a complete itinerary of engagements which shows the specific dates of each engagement, the name of the actual employer, and the name and address of the facility where the services will be performed; and evidence of the beneficiary's extraordinary ability.

In response to the RFE, the petitioner submitted an advisory letter from the [REDACTED]. This letter states in pertinent part:

We have reviewed the Draft I-129 Petition and supporting documentation regarding your request for our advisory opinion on behalf of the above referenced Nigerian artist.

Based upon the new and applicable statutory and regulatory requirements, it is our advisory opinion that the evidence presented clearly establishes that [the beneficiary] is a vocalist/entertainer of extraordinary ability, which has been demonstrated by sustained international acclaim. This artist therefore meets the recently revised standards of distinction in the arts to qualify for an O-1 visa.

Accordingly, we have no objection to the granting of this visa petition.

In response to the RFE, the petitioner also submitted a letter from [REDACTED], which states in pertinent part:

Please accept this letter in support of the above mentioned artist. My name is [REDACTED] and I have over thirty years [sic] experience in the music industry – promotion, production and television. In the years, I have worked directly or indirectly on projects by several internationally recognized artists in the industry and based on my experience in the field, it is my humble opinion that the songs by [the beneficiary] are perhaps some of the best –artistically, that I have reviewed in the last fifteen years.

From the album [REDACTED] which has been playing on YouTube and iTunes since the second quarter of 2012, to her present recordings that are due to enter the market soon, I have no doubt that her products would generate tremendous acceptance in the market. Further, [the beneficiary] has a standing promotional agreement with a reputable marketing company - [the petitioner], and under that agreement, is positioned to travel to several cities in the US and Europe as a support singer for major artists.

Finally, the petitioner resubmitted copies of the “Project [the beneficiary] Objective” and copyright registration claim for the work “[REDACTED]”

The director denied the petition on May 15, 2013, concluding that the petitioner failed to establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). In the denial, the director analyzed the petitioner’s evidence under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). The director determined that the petitioner did not assert eligibility under any other regulatory criteria.

The petitioner now files the instant appeal. On appeal, counsel asserts the following:

The herein appeal is based on the following:

1. Erroneous application of the documents provided in drawing a conclusion that fails to reach a proper decision in the case. Several submitted documents including supporting document from the Association of Musicians of American [sic] and Canada were not considered in the process as genuine documents.
2. Other submitted documents including promotional schedule was misapplied (Criterion 3).
3. Documents submitted under Criterion 4 and 5 were also misapplied.
4. Erroneous conclusion of law in its decision.

Finally, petitioner hereby wishes to submit complete brief together with additional supporting documents within 30 days of submitting the herein Notice of Appeal.

As of this date, no brief or additional evidence has been submitted. The record will be considered complete.

### III. Discussion

#### A. *The Evidentiary Criteria*

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes. The petitioner does not claim eligibility under this criterion. Therefore, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Counsel indicates that the beneficiary satisfies the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), (4) and (5). The remaining criterion will not be discussed.

*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.*

On appeal, counsel vaguely asserts that “[o]ther submitted documents including promotional schedule was misapplied (Criterion 3).” Other than the “promotional schedule,” which appears to be the document entitled “Project [the beneficiary] Objective,” counsel does not specify which documents were submitted under 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). Counsel provides no explanation for how the “promotional schedule” or any other

documents in the record constitute evidence that the beneficiary 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, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

First, there is no evidence establishing that the beneficiary has performed in a lead, starring, or critical role. To the contrary, the “promotional schedule” states that the beneficiary is a new artist in the United States. The petitioner provided no documentation regarding the beneficiary’s past performances in the United States or elsewhere.

Second, there is no evidence establishing that the beneficiary will perform in a lead, starring, or critical role. The letter from [REDACTED] states that the beneficiary “is positioned to travel to several cities in the US and Europe as a support singer for major artists.” Moreover, the “promotional schedule” states that the petitioner believes that “once there’s a buzz, the momentum of the buzz will create opportunities for [the beneficiary] to be booked as an opening act.” These documents indicate that the beneficiary will begin her career in the United States in minor or non-leading roles, with the hope that she will be “booked as an opening act” sometime in the future, once (and if) her work garners attention.

Third, there is no evidence establishing that the beneficiary has performed or will perform for organizations and establishments that have a distinguished reputation. The petitioner submitted no objective, reliable documentation establishing that it has a distinguished reputation. The only document in the record that references the petitioner’s reputation is the letter from [REDACTED] which states: “Further, [the beneficiary] has a standing promotional agreement with a reputable marketing company - [the petitioner].” This conclusory, uncorroborated statement is insufficient to establish that the petitioner is an organization or establishment with a distinguished reputation. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm’r 1972)). According to the “promotional schedule,” the beneficiary initially will be performing “promotional performances . . . in small venues.” The petitioner provided no further information identifying these “small venues” and establishing the reputation of these small venues.

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

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

On appeal, counsel asserts that “[d]ocuments submitted under Criterion 4 and 5 were also misapplied” but provides no explanation to support this assertion. Upon a review of the record, the petitioner has not submitted any relevant evidence pertaining to this criterion. Specifically, the petitioner submitted no evidence

of the beneficiary's commercial or critical successes in the form of published evidence from trade journals, major newspapers or other publications, as required. The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) requires the petitioner's commercial or critically acclaimed successes to be "evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications."

The AAO notes counsel's claim that the beneficiary's song "[REDACTED]" was "published and played on iTunes from August 19, 2012," and that the music video for this song was "published and played on YouTube from August 19, 2012 and presently generated 174,649 interests." However, counsel submitted no objective documentation to support this assertion. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, even assuming *arguendo* that the petitioner submitted evidence that the beneficiary's song was published and played on iTunes, and that her music video generated 174,649 interests on YouTube, the petitioner nevertheless failed to establish that this constitutes "major commercial or critically acclaimed successes," as required by the plain language at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

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

*Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements.*

On appeal, counsel asserts that "[d]ocuments submitted under Criterion 4 and 5 were also misapplied" but provides no explanation to support this assertion. It appears that the petitioner submitted the advisory letter from the [REDACTED] as evidence under this criterion.

The advisory letter states that the organization has reviewed the petitioner's draft petition and supporting documentation, and concludes that "the evidence presented clearly establishes that [the beneficiary] is a vocalist/entertainer of extraordinary ability, which has been demonstrated by sustained international acclaim. This artist therefore meets the recently revised standards of distinction in the arts to qualify for an O-1 visa." This advisory letter is insufficient to establish eligibility under this criterion. This letter contains only conclusory language about the beneficiary's extraordinary ability and sustained international acclaim, but provides no details explaining the factual basis behind these conclusions. This letter does not describe any of the beneficiary's recognition and ability or achievement in factual terms, as required under 8 C.F.R. § 214.2(o)(2)(iii). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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.).

The letter from [REDACTED] is also insufficient to establish eligibility under this criterion. First, the petitioner failed to establish that Ofon Samson can be considered a “recognized expert in the field.” Although [REDACTED] asserts that he or she has “over thirty years [*sic*] experience in the music industry – promotion, production and television” and has “worked directly or indirectly on projects by several internationally recognized artists in the industry,” the petitioner submitted no corroborating evidence to support this assertion and to establish the level of [REDACTED] expertise in the industry.

Assuming *arguendo* that [REDACTED] can be considered a “recognized expert in the field,” this letter does not establish that the beneficiary has already received significant recognition for achievements. Rather, this letter states that the writer has “no doubt that [the beneficiary’s] products *would* generate tremendous acceptance in the market (emphasis added).” Again, the writer did not specifically describe the alien's recognition and ability or achievement in factual terms, as required under 8 C.F.R. § 214.2(o)(2)(iii). Speculation as to the beneficiary’s potential future success is insufficient to establish that the beneficiary has already received significant recognition for her achievements.

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).

## **B. Summary**

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under any of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B). The AAO will not conduct a final merits determination.<sup>2</sup>

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<sup>2</sup> The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding on motion or as a result of litigation, the AAO maintains the jurisdiction to conduct a final merits determination as the official who made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* Section 103(a)(1) of the Act; Section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii)(2003); *Matter of Aurelio*, 19 I & N Dec. 458, 460 (BIA 1987)(holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

**C. *Beyond the director's decision***

Beyond the director's decision, the AAO will address whether the petitioner adequately described the nature of the beneficiary's planned events or activities, the beginning and end dates for such activities, and provided an adequate itinerary for the events or activities.<sup>3</sup> Upon review of the record, the petitioner failed to submit an adequate itinerary or other documentation establishing that the beneficiary would be performing at specific events.

In the RFE, the director specifically instructed the petitioner to submit a complete itinerary of engagements which shows the specific dates of each engagement, the name of the actual employer, and the name and address of the facility where the services will be performed. The petitioner failed to submit the itinerary as requested. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The petitioner did not submit documentation that sufficiently explains the nature of the beneficiary's events or activities, and the beginning and ending dates for these events or activities. Instead, the documentation in the record describes the beneficiary's proposed performances in vague and general terms. The letter from [REDACTED] states only that the beneficiary has "a standing promotional agreement" with the petitioner that requires her to "travel to several cities in the US and Europe as a support singer for major artists." No further details regarding these performances were provided in the letter. The "Project [the beneficiary] Objective" states that the petitioner "will book promotional performances and appearances locally within Washington, DC and Baltimore area . . . [and these] appearances will extend to Philadelphia and New York." This document also states that the beneficiary will initially be performing in "small venues with a backing track." Again, no further details regarding these proposed performances were provided in the letter. The petitioner provided no evidence establishing that the beneficiary will be performing at specific events, pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(C).

For this additional reason, the appeal will be dismissed.

**D. *Conclusion***

The petitioner failed to establish the beneficiary's eligibility pursuant to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Therefore, the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts. In addition, the petitioner failed to submit an adequate itinerary or other documentation establishing that the beneficiary will be performing at specific events, as required at 8 C.F.R. § 214.2(o)(2)(ii)(C).

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

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<sup>3</sup> The AAO maintains *de novo* review. *Soltane v. DOJ*, 381 F.3d at 145.

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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.