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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

Date: FEB 26 2014

Office: California Service Center

File: [REDACTED]

IN RE:

Petitioner:

Beneficiary: [REDACTED]

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

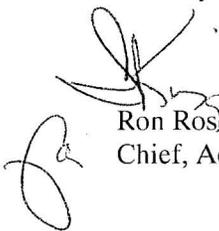
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner, a California corporation in the entertainment business, seeks to employ the beneficiary as an actor, assistant producer and publicist for a period of twenty-two months.

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

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that the beneficiary meets all of the criteria listed at 8 C.F.R. § 214.2(o)(3)(v)(B). The petitioner submits a brief statement and additional evidence in support of the appeal.

## **I. The Law**

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

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

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

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

*Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry.* To qualify as an alien of extraordinary achievement in the motion picture or

television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

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

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, or in the case of a motion picture or television production, the extraordinary achievement of the alien, 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. Discussion

The sole 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)(v)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B). The director determined that the petitioner failed to establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or that he has met any of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B). Upon review, the AAO concurs with the director that the petitioner has failed to establish eligibility at 8 C.F.R. § 214.2(o)(3)(v)(A), or any of the six criteria at 8 C.F.R. § 214.2(o)(3)(v)(B).

### 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)(v)(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.

In denying the petition, the director determined that the petitioner did not submit evidence establishing eligibility under 8 C.F.R. § 214.2(o)(3)(v)(A). On appeal, the petitioner initially requested additional time so that it could "use [its] best effort and knowledge to provide [the AAO] with . . . [e]vidence of [*sic*] the [redacted] is an Internationally recognized award comparable to that listed in 8 C.F.R. § 214.2(o)(3)(v)(A)." Subsequently, the petitioner submitted a more detailed brief in support of the appeal, in which the petitioner concedes that "there is no evidence in the record to establish that the award [from the redacted] beneficiary received [is] a major, internationally recognized award comparable to that listed at [8 C.F.R. § 214.2(o)(3)(v)(A)]."

Consequently, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B). On appeal, the petitioner indicates that the beneficiary satisfies all six of the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). The beneficiary's eligibility under each criterion will be discussed below.

(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.

In denying the petition, the director determined that the petitioner failed to submit evidence of the distinguished reputation of the television production, [REDACTED] in which the beneficiary would be a lead actor. On appeal, the petitioner submits sufficient evidence establishing the distinguished reputation of [REDACTED]. The petitioner has submitted evidence that the beneficiary will perform as a lead or starring participant in a production of distinguished reputation.

Regarding the beneficiary's past performances, however, the AAO finds that the petitioner has failed to establish that the beneficiary has performed in a lead, starring, or critical role for any other productions or events, which have a distinguished reputation, as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements.<sup>2</sup> While the record contains evidence that the beneficiary has performed in a lead, starring, or critical role in various productions and events, the petitioner has not offered an explanation regarding the reputation of these productions. For instance, the record reflects that the beneficiary played lead, starring, or critical roles in several productions or events, including [REDACTED]. The petitioner has also submitted evidence establishing that the beneficiary produced [REDACTED]. However, the petitioner has not identified or explained which of the above productions or events it believes has a distinguished reputation.<sup>3</sup>

While the petitioner claims that the beneficiary played a leading role in [REDACTED] which won an award at the [REDACTED] the evidence submitted by the petitioner

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<sup>1</sup> The AAO observes that the director's RFE requested evidence of the reputation of [REDACTED]. Generally, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); see also *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). However, the AAO will accept the submitted evidence regarding the reputation of [REDACTED] due to the timing of this series' production and release. The series started production in January 2013, after the initial petition had been filed, and first aired in November 2013, after the denial had been issued.

<sup>2</sup> The director noted in the RFE that the petitioner has shown that the beneficiary has previously performed as a lead role in productions that have a distinguished reputation. The director did not further discuss this element in the denial notice.

<sup>3</sup> The AAO observes that the news articles regarding [REDACTED] were not translated into English. Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

does not corroborate this claim. In particular, the catalogue for the [REDACTED] listed six main actors for the above film, none of whom were the beneficiary. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

The regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(1) requires evidence that the beneficiary has performed and will perform as a lead or starring participant in *productions* or *events*, which have a distinguished reputation (emphasis added). Other than [REDACTED] the petitioner has not established that the beneficiary has performed in lead, starring, or critical roles in productions or events with distinguished reputation. The petitioner has failed to establish that the beneficiary meets all requirements under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(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.*

In the RFE, the director advised the petitioner that the published materials submitted under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2) were insufficient because they did not indicate any specific achievements of the beneficiary as an actor, and because the petitioner did not establish that they were published in major newspapers, trade journals, magazines or other publications.

In response to the RFE, the petitioner re-submitted nine articles about the beneficiary printed in various newspapers and publications. The petitioner claimed that three of the articles were printed by the national newspapers [REDACTED] while the other articles were published by regional newspapers. The director determined that the submitted evidence was insufficient to meet the requirements of 8 C.F.R. § 214.2(o)(3)(v)(B)(2) because the petitioner failed to submit evidence of the circulation and distribution of the above newspapers, thus failing to establish that they were "major" publications.

On appeal, the petitioner submits a Wikipedia article about [REDACTED] describing it as "one of the oldest regional newspapers in Italy . . . [that is] published in numerous local editions for the regions of [REDACTED]" However, the AAO will not consider this evidence under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2). See *Matter of Soriano*, 19 I&N Dec. 764; *Matter of Obaighbena*, 19 I&N Dec. 533. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to

submit the requested evidence and now submits it on appeal. The appeal will be adjudicated based on the record of proceeding before the director.<sup>4</sup>

The petitioner submitted no information regarding the circulation and distribution of the publications in which the submitted articles about the beneficiary appeared. Therefore, the petitioner failed to establish that the submitted articles were published by “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)(v)(B)(2). The petitioner failed to establish 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 evidenced by articles in newspapers, trade journals, publications, or testimonials.*

In denying the petition, the director determined that the petitioner failed to submit evidence in the form of “articles in newspapers, trade journals, publications, or testimonials” establishing the reputation of the organizations and establishments for which the beneficiary would perform services, including the petitioning company. On appeal, the petitioner asserts that it would submit evidence establishing that the beneficiary will perform, in a lead, starring, or critical role for [REDACTED] and submits a news article describing [REDACTED] as “the largest religious media network in the world.”

While the petitioner has established the distinguished reputation of [REDACTED] the petitioner has failed to establish that the beneficiary will perform, in a lead, starring, or critical role for [REDACTED]. The beneficiary played a lead role in a single miniseries that aired on [REDACTED]. The petitioner failed to explain and establish the significance of [REDACTED] to the overall organization of [REDACTED]. Without such explanation and evidence, the petitioner failed to establish that the beneficiary played a lead, starring, or critical role for [REDACTED]. The AAO acknowledges the petitioner’s claim that it will seek the beneficiary’s services in another proposed production for [REDACTED] but the petitioner provided no credible, objective documentary evidence, such as an actual employment agreement and a production agreement, establishing that the proposed production will be aired on [REDACTED] and that the beneficiary will play a lead role in it. As such, the AAO finds insufficient evidence establishing that the beneficiary will perform in a lead, starring, or critical role for organizations or establishments with a distinguished reputation.

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<sup>4</sup> Even if the AAO were to consider the Wikipedia article, the AAO observes that the article describes [REDACTED] as a regional newspaper with numerous local editions. This contradicts the petitioner’s claim that [REDACTED] is a national newspaper. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Moreover, the petitioner provided no specific information as to which local edition(s) published the relevant articles, as well as the circulation and distribution of the particular local edition(s). Without this information, the petitioner is precluded from establishing that [REDACTED] is a “major” newspaper.

The AAO also finds that the petitioner has not established that the beneficiary has performed in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. While the record contains evidence that the beneficiary has performed in lead, starring, or critical roles in various films, the petitioner has not offered any evidence or explanation regarding the identity and reputation of the organization(s) or establishment(s) by or for which the films were produced. On appeal, the petitioner vaguely asserts that the “documents previously sent that pertain to the beneficiary’s past activities also meet this requirement [8 C.F.R. § 214.2(o)(3)(v)(B)(3)],” but does not specify which documents it is referencing. Overall, the petitioner has failed to make any articulable claim regarding what organization(s) or establishment(s) for which it claims the beneficiary has performed in a lead, starring, or critical role. The petitioner has failed to establish that the beneficiary meets the requirements under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(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 picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications.*

Under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4), the petitioner submitted evidence that the motion picture [REDACTED] directed by [REDACTED] was given a “Category Award” for “Independent and Experimental Films Section” at the [REDACTED]. On appeal, the petitioner submits the catalogue for the [REDACTED] under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4), in order to establish “the nature of the award and its international acclaim.” The petitioner does not appear to have submitted any other evidence under this criterion.

Upon review of the record, the petitioner has failed to establish the relevance of the above award with respect to the beneficiary’s eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(4). The award was not given to the beneficiary individually nor did it recognize the beneficiary individually. As discussed above under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1), the catalogue for the [REDACTED] did not list the beneficiary as one of the six main actors for the above film.

Even if the petitioner were able to successfully prove that the beneficiary played a lead role in [REDACTED] the petitioner failed to explain how the film’s “Category Award” for “Independent and Experimental Films Section” at the [REDACTED] constitutes “a record of major commercial or critically acclaimed successes,” as required under the plain language of at 8 C.F.R. § 214.2(o)(3)(v)(B)(4). While the catalogue for the [REDACTED] discusses its history, it does not indicate that the festival itself is a major event within the motion picture or television industry as to consider an award from this festival a “major commercial or critically acclaimed [success].” The catalogue also does not discuss the criterion for the “Category Award” for “Independent and Experimental Films Section.” 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)).

Notwithstanding, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B)(4) requires evidence that the beneficiary has a record of major commercial or critically acclaimed *successes*, in the plural (emphasis added). Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(v)(B) are worded in the plural. The AAO can infer that the plural in any regulatory criterion has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.<sup>5</sup> Other than *Il Primo Giorno di Sole*, the petitioner has not claimed any other productions or events under this criterion.

Based on the foregoing, the petitioner has failed to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(v)(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 support of this criterion, the petitioner submitted several letters attesting to the beneficiary's qualifications, including letters from the petitioner, [REDACTED]. These three letters all contain substantially the same content and assert that the beneficiary "has received international recognition" and that he is an "outstanding, talented young actor with a promising career" in the film industry. These letters also state the following:

[The beneficiary] has received extensive dramatic training in Italy and in the U.S.A. since 2001. He has been coached by Italian and American Internationally renowned trainers, and studied on Stanislavsky, Strasberg, and Meisner methods. He also improved his American accents with a specialized Language Coach, and starred in 3 feature films in Italy as leading actor. In America, he has worked on a pilot written by a Walt Disney screenwriter, and performed in it as leading actor. One of his Italian feature films, [REDACTED] has premiered at the [REDACTED] and awarded in various International Film Festivals in Europe.

All three letters conclude that the beneficiary's acting skills "will make" or "will give" an important contribution to the United States, and that his presence in the United States "will result" in major contributions to the art of acting in the film industry.

<sup>5</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(1)(2) requires a single degree rather than a combination of academic credentials).

Upon review, the AAO finds that the letters from the petitioner, [REDACTED] are insufficient to establish the beneficiary's eligibility under this criterion. The letters fail to describe with any specificity the beneficiary's achievements in the field. Moreover, the letters fail to describe with any specificity the recognition the beneficiary has received for his achievements, as required by the plain language of the criterion.

As the director observed, the letters from the petitioner, [REDACTED] do not clearly describe the beneficiary's achievements. The letters state that the beneficiary has starred in three Italian feature films as well as a pilot by a Walt Disney screenwriter, but fail to explain how this constitutes an achievement and what recognition the beneficiary received, if any, for these performances. These letters state that the beneficiary "has received international recognition" and is an "outstanding, talented young actor with a promising career," but conclusory assertions regarding the beneficiary's international recognition and speculations as to the beneficiary's promising future are insufficient to establish eligibility under this criterion.

Notably, the above letters state that one of the Italian feature films, [REDACTED] "premiered at the [REDACTED] and [was] awarded in various International Film Festivals in Europe." However, the petitioner has never claimed that [REDACTED] won any awards other than at the [REDACTED] [REDACTED] in contrast to the letters' assertion that this film was "awarded in various International Film Festivals in Europe." Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence; any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Further in support of the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5), the petitioner submitted letters from: [REDACTED]

[REDACTED] In his letter, [REDACTED] states his qualifications as "a military veteran, a retired police detective, and a licensed private investigator and [as] the Secretary of [REDACTED] states his or her qualifications as "a manager for authors and public speakers," having booked 475 speakers over a nine year period. Neither [REDACTED] nor [REDACTED] state their qualifications. The petitioner has failed to explain and establish that [REDACTED] Dr. [REDACTED] can be considered recognized experts in the motion picture or television industry, as required by the plain language at 8 C.F.R. § 214.2(o)(3)(v)(B)(5).

Here, it is important to note that the letters from [REDACTED] state the beneficiary's field as "Peace and International Dialogue." The letters from [REDACTED] all attest to the beneficiary's abilities as a speaker, but do not mention his abilities as an actor. The [REDACTED]

letter from [REDACTED] attests generally to the beneficiary's compassion and moral character, but does not mention his abilities as an actor or identify the beneficiary's field of endeavor. These letters bear little, if any at all, probative value and relevance to the instant petition, which seeks to classify the beneficiary as an alien of extraordinary ability in the motion picture or television industry.

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

*(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 other[s] in the field, as evidenced by contracts or other reliable evidence.*

The petitioner indicated on Form I-129 that the beneficiary will work earn a salary of \$4,800/year. The petitioner has not established that this constitutes a "high salary" in relation to others in the field.

On appeal, the petitioner provides new letters from the petitioner and [REDACTED] addressing the beneficiary's potential salary in their upcoming projects. The letter from the petitioner discusses its intent to hire the beneficiary for its upcoming production about [REDACTED] and states that the beneficiary's compensation "in the still undetermined budget will be the highest offered to any actor in the production." The letter from [REDACTED] discusses his intent to hire the beneficiary for his upcoming production, and states that he is "willing to compensate [the beneficiary] with the highest rate available for his role; the Production budget ranging from \$2 Million to \$20 Million."

However, the letters of intent from the petitioner and [REDACTED] are insufficient to establish the beneficiary's eligibility under this criterion. The letters only vaguely attest that the beneficiary will receive a "high" salary in relation to others in the production, but do not provide any concrete details about the beneficiary's actual proposed salary and compare it to the salaries of others in the field, as required by the plain language of the criterion. Furthermore, the letters of intent from the petitioner and [REDACTED] alone, do not constitute "contracts or other reliable evidence" to establish that the beneficiary will receive a high salary. The petitioner failed to submit any credible, objective evidence to corroborate the claims made in the letter, such as employment and production agreements. Accordingly, the petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(6).

**B. Summary**

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a consideration of the evidence in the context of a final merits determination. However, as discussed above, the petitioner failed to establish eligibility under at least three of the criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B). Therefore, the AAO will not conduct a final merits determination.<sup>6</sup>

### III. Conclusion

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

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>6</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).