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



U.S. Citizenship  
and Immigration  
Services

Date: **JUN 12 2014** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
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:

SELF-REPRESENTED

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Vermont 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 nonimmigrant petition as an agent, seeking to classify the beneficiary as an O-1B alien with extraordinary ability in the arts under section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(O)(i). The petitioner, a law firm and sports agent, requests that the beneficiary be granted O-1B classification so that he may be employed as a horse trainer by the beneficiary's company, [REDACTED] LLC, for a period of five years.<sup>1</sup>

The director denied the petition, in part, finding that the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts. The director also denied the petition, finding that the beneficiary is self-petitioning, which is impermissible pursuant to the regulation at 8 C.F.R. § 214.2(o)(2)(i).

On appeal, the petitioner asserts that the submitted evidence establishes the beneficiary's qualification as an alien of extraordinary ability in the arts. The petitioner does not contest or address the director's finding that the beneficiary is self-petitioning, and therefore the AAO considers this issue to be abandoned.<sup>2</sup> The petitioner submits a brief and additional evidence in support of its claim that the beneficiary is an alien of extraordinary ability in the arts.

### The Law

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

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

Pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii) pertaining to aliens of extraordinary ability in the arts, "distinction" means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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

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<sup>1</sup> Pursuant to 8 C.F.R. § 214.2(o)(6)(iii), an approved petition for an alien classified under section 101(a)(15)(O) of the Act shall be valid for a period of time determined by the director to be necessary to accomplish the event or activity, not to exceed 3 years.

<sup>2</sup> See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

*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.

## DISCUSSION

### A. The Field of Arts

As a preliminary matter, the petitioner seeks to classify the beneficiary as an alien of extraordinary ability in the arts, and contends that the beneficiary meets the standard of "distinction" under 8 C.F.R. § 214.2(o)(3)(ii). However, we find that the petitioner failed to establish that the beneficiary is primarily involved in a creative activity or endeavor, such that he cannot reasonably be classified as an alien of extraordinary ability in the arts.

For purposes of the O-1 classification, the applicable definition of "arts" at 8 C.F.R. § 214.2(o)(3)(ii) is as follows:

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

While the regulation at 8 C.F.R. § 214.2(o)(3)(ii) specifically includes animal trainers as an example within the field of the arts, not all types of animal trainers can properly be classified as within the field of the arts. As noted in 8 C.F.R. § 214.2(o)(3)(ii), the definition of "arts" focuses on "any field of creative activity or endeavor." Thus, certain types of animal training, such as animal acts and circuses, would reasonably be among this group of creative workers in the performing arts. Other types of animal training, however, such as of animals engaged exclusively in competitive racing, would not be among this group.

The nature of the intended events or activities in the United States is critical in determining whether the beneficiary is entering the United States to provide services in the arts. Here, the beneficiary will provide "the finest training and the highest level of care to ensure that these valuable animals win races and produce a return on their investment." According to the petitioner's initial letter, the beneficiary's duties are listed as, among others: evaluating each horse accepted into training for its conformation, condition, history and pedigree; tailoring an individual training program for each horse that encompasses its health, nutrition and fitness; closely monitoring each of the horses in training; overseeing practice starts, interval training, breezing and speed exercises; supervising exercise riders, grooms and other staff; checking and wrapping legs several times per day; communicating with the horse's owners; making decisions regarding which horse to run in which race; selecting the appropriate jockey; developing racing strategies for race day; coordinating

communications with owners, race officials, the other trainers, the veterinarians, the farriers (blacksmiths), the exercise riders, agents, jockeys and grooms; and generally running the business and attracting new clients.

Based on the nature of the beneficiary's intended employment in the United States, we cannot conclude that the beneficiary can be included among individuals engaged in the arts or a field of "creative activity or endeavor." The beneficiary's specific duties show that he will not create, perform, or serve as an essential personnel to a "creative activity," but instead will evaluate, monitor, supervise, and tailor programs for horses used solely for competitive horse racing. The petitioner failed to demonstrate how beneficiary's duties could be considered a "creative activity or endeavor," and more importantly, how horses engaged solely in competitive racing is a creative endeavor under the field of arts. The petitioner's request to classify the beneficiary as an alien of extraordinary ability in the arts is, thus, improper.

As the beneficiary is coming to the United States to train race horses and operate his business in competitive horse racing, the petitioner should have requested review of the petition according to the regulatory criteria applicable to the field of business or athletics at 8 C.F.R. § 214.2(o)(3)(iii).

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

However, a petitioner sponsoring an O-1 athlete or businessman cannot seek consideration of the petition under the lower standard of "distinction" by mischaracterizing the beneficiary's field as arts, whether by mistake or intention. The petitioner has not sought the correct O-1 visa classification for the beneficiary, nor has it claimed or submitted evidence to establish that the beneficiary meets the criteria and standards for individuals of extraordinary ability in business or athletics as set forth at 8 C.F.R. § 214.2(o)(iii)(A) or (B). Accordingly, the appeal will be dismissed for this additional reason.

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

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

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

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. at 41820; cf. *Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination).

A petitioner may establish eligibility for O-1B classification by submitting documentary evidence that 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). The petitioner does not assert, and the record does not reflect, eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(A). Thus, 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).

The petitioner submits evidence that he asserts is related to the criteria listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), (2), (3), (4), and (5).<sup>3</sup> In denying the petition, the director determined that the evidence submitted does not meet any of the regulatory criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B). After review of the record, and for the reasons discussed herein, we agree with the director that the petitioner failed to establish that the beneficiary meets any of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B).

1. *Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications contracts, or endorsements*

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the petitioner asserts that the beneficiary “has had a lead role in the sense that he has been a vital player performing critical services at events, and the ‘events’ are major horse races with distinguished reputations.” Specifically, the petitioner claims that the horses trained by the beneficiary have competed at the following graded stakes:<sup>4</sup>

- [REDACTED]

<sup>3</sup> The petitioner raises no objection to the director’s determination that the petitioner did not submit evidence of eligibility under the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6). Therefore this criterion will not be discussed in this decision.

<sup>4</sup> The petitioner explains that the most competitive, highest level races in the United States, Great Britain, and Europe are “graded stakes races,” graded 1, 2, and 3, with Grade 1 (also identified as Gr-1, G-1, G-I, or Group 1) being the highest level.

<sup>5</sup> As will be discussed *infra*, [REDACTED] horse profile reflects that this race was competed in June 2007, before the beneficiary’s employment with [REDACTED] who is listed as the trainer in the horse’s profile.

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

As evidence under this criterion, the petitioner submitted, *inter alia*: the horse profiles and/or race records for the horses the beneficiary purportedly has trained; letters from the beneficiary’s former employers, [REDACTED] and [REDACTED] and screen shots, from the websites of [REDACTED] and [REDACTED]

The petitioner submitted horse profiles and/or race records for [REDACTED] and [REDACTED]. These documents list the beneficiary’s former employer, [REDACTED] as the trainer for [REDACTED] and [REDACTED].<sup>8</sup> In addition, these profiles list the beneficiary’s former employer, [REDACTED] as the trainer for [REDACTED] and [REDACTED].<sup>9</sup>

The letter from [REDACTED] owner of [REDACTED] Ltd., confirms that the beneficiary worked for him as “one of [his] Assistant Trainers from 2007 until late 2010.” Mr. [REDACTED] elaborates that the beneficiary’s duties as Assistant Trainer included responsibility for the care, training, and development of about 30 horses out of approximately 150 in training, which involved working the horse on the gallops, and doing cantering and fast work. Mr. [REDACTED] explains that, in training operations of a certain level of size and sophistication, “it is imperative to employ the very best assistant trainers available in order to grow and continue to win.” He states: “With the help of extremely skilled assistant trainers I have been able to produce a steady stream of winning

<sup>6</sup> As will be discussed *infra*, [REDACTED] horse profile and racing record do not list a [REDACTED].” The website of [REDACTED] reflects that [REDACTED] won a race in [REDACTED] in 2006. Assuming *arguendo* that these are the same race, this race was competed in 2006, before the beneficiary’s employment with [REDACTED] who is listed as the trainer in the horse’s profile.

<sup>7</sup> As will be discussed *infra*, the horse profiles reflect that this race was competed in June 3, 2006 and June 1, 2007 by [REDACTED] and in June 1, 2007 by [REDACTED] all before the beneficiary’s employment with [REDACTED] who is listed as the trainer in the horse’s profile. In addition, while the petitioner claims this race is Gr-1, the horse profiles do not identify the grade of this race.

<sup>8</sup> While the race record of [REDACTED] lists the trainer as [REDACTED] the horse profile lists the trainer as [REDACTED]. Additionally, the petitioner asserts that the beneficiary’s former employer, [REDACTED] is the trainer for [REDACTED] and [REDACTED]. The horse profile of [REDACTED] lists the trainer as [REDACTED]. The race record of [REDACTED] lists the trainer as [REDACTED]. It is possible that these documents reflect a subsequent change in trainers; however, the petitioner has not submitted an explanation for these apparent discrepancies.

<sup>9</sup> The petitioner asserts that the beneficiary’s former employer, [REDACTED] is the trainer for [REDACTED]. The horse profile of [REDACTED] lists the trainer as [REDACTED]. Again, it is possible that this document reflects a subsequent change in trainers, however, the petitioner has not submitted an explanation for this apparent discrepancy.

horses trained under my overall umbrella of training methods, management and supervision. [The beneficiary] is not any less of a trainer because he worked as an assistant trainer for my business or for [REDACTED].” Mr. [REDACTED] asserts that the beneficiary “can take substantial credit” for the performance of the following horses:

- [REDACTED] <sup>10</sup>
- [REDACTED] <sup>11</sup>
- [REDACTED] <sup>12</sup>
- [REDACTED] <sup>13</sup>
- [REDACTED] <sup>14</sup>
- [REDACTED] <sup>16</sup>

The petitioner submitted a screen shot from the website of [REDACTED] highlighting the following winners as evidence of the beneficiary’s achievements:

- [REDACTED] <sup>17</sup>
- [REDACTED] <sup>18</sup> and
- [REDACTED]

The letter from [REDACTED], owner of [REDACTED] LLC, confirms that the beneficiary worked for him as an Assistant Trainer from January 2011 until January 2013. Mr. [REDACTED] explains that he has approximately 100 racehorses in training at tracks across the country, and with so many horses in training across the country, he cannot personally work with every horse. Because of the size and scope of his operation, he relies on “top-notch assistant trainers” like the beneficiary to “handle the training programs on a day-to-day basis, under the umbrella of [his] business.” Mr. [REDACTED] further explains that even though his name is listed on official racing records as the trainer of record for all horses racing from his barn, he “give[s] [the beneficiary] credit for the success, and disappointments, of horses specifically under his care.” He then states: “During the period he

<sup>10</sup> See footnote 5.

<sup>11</sup> See footnote 6.

<sup>12</sup> As will be discussed *infra*, [REDACTED] horse profile does not list a [REDACTED]. The only race at [REDACTED] won by [REDACTED] was Weight for Age Stakes of an unspecified grade on [REDACTED] 2007.

<sup>13</sup> The grade of this race is unknown. The website of [REDACTED] lists this performance under “Other Notable Winners.”

<sup>14</sup> According to [REDACTED] horse profile, the Gotham Stakes is Gr-3.

<sup>15</sup> As will be discussed *infra*, the website of [REDACTED] reflects that this race was won in 2004, prior to the beneficiary’s start of employment.

<sup>16</sup> [REDACTED] horse profile does not list a [REDACTED]. The only track in [REDACTED] in which *Forgotten Voice* finished first was a handicap race of an unspecified grade.

<sup>17</sup> See footnote 15.

<sup>18</sup> As will be discussed *infra*, this race was before the beneficiary’s start of employment with [REDACTED].

was with me he had significant responsibility for the following horses:

The petitioner submitted a screen shot from the website of highlighting the following stakes winners as evidence of the beneficiary's achievements:

- [redacted]
- [redacted]
- [redacted] and [redacted]
- [redacted]

Upon careful review of the submitted evidence, we find that the petitioner has not established that the beneficiary performed a lead role by training these stakes winners.

Foremost, none of the official records specifically identify the beneficiary as the actual trainer. Rather, the official records primarily list [redacted] or [redacted] as the trainers. While the petitioner asserts that "[i]t is known within the industry who did the actual training of any successful horse" and that "the Beneficiary is known in the industry as the actual trainer of numerous horses that were in training at [redacted] Ltd. in the U.K. and at [redacted] in the U.S.;" the petitioner failed to submit sufficient objective evidence, such as contracts, publications, and other documentary evidence tying the beneficiary to the horses, to corroborate these statements. We acknowledge the letters from [redacted] and [redacted] however, these letters are insufficient to establish which horses the beneficiary trained and when the beneficiary trained these horses. Both letters contain general language regarding the beneficiary's responsibilities over these horses. The letter from Mr. [redacted] states broadly that the beneficiary was "one of [his] Assistant Trainers . . . [with] responsibility for the care, training, and development of about 30 horses out of approximately 150 in training," and that the beneficiary "can take substantial credit" for [redacted] and [redacted]. Likewise, the letter from Mr. [redacted] states that the beneficiary was one of his "top-notch assistant trainers," and that he "had significant responsibility" for [redacted] and [redacted]. These letters and generalized assertions fail to establish that it was primarily the beneficiary who trained these horses for the specified races, as the petitioner claims.

Moreover, there are numerous deficiencies and inconsistencies within these letters and the other evidence of record that further undermine the petitioner's claims. For instance, Mr. [redacted] s letter indicates that the beneficiary was responsible for the winning performance of [redacted] at the [redacted] (G-1) at [redacted]. However, according to [redacted] race record, this race was won on [redacted] 2007, prior to the beneficiary's start of employment with [redacted] in July 2007. Mr. [redacted] s letter asserts that the beneficiary was responsible for the winning performance of [redacted] at [redacted] (G-1) in [redacted] but according to the website of [redacted] this race was won in 2006, also prior to the beneficiary's start of employment. On the print-out of the website of [redacted], the

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<sup>19</sup> As will be discussed *infra*, this race was before the beneficiary's start of employment with [redacted]

petitioner highlighted the 2006 winning performance of [REDACTED] at [REDACTED] in [REDACTED] which, again, was before the beneficiary's start of employment. Mr. [REDACTED]'s letter asserts that the beneficiary was responsible for the winning performance of [REDACTED] at [REDACTED] (G-1) in [REDACTED] but [REDACTED]'s horse profile does not list a [REDACTED]" and the only race in [REDACTED] won by [REDACTED] was [REDACTED] of an unspecified grade on July 11, 2007. Mr. [REDACTED]'s letter asserts that the beneficiary was responsible for the winning performance of [REDACTED] at the [REDACTED] (G-1), but according to the website of [REDACTED] this race was won in 2004, prior to the beneficiary's start of employment. The petitioner indicated that the beneficiary was responsible for the winning performance of [REDACTED] and [REDACTED] at [REDACTED], but according to the horse profiles, these races were competed in June 3, 2006 and June 1, 2007 by [REDACTED] and in June 1, 2007 by [REDACTED] all before the beneficiary's employment with [REDACTED]. On the screen shot from the website of [REDACTED] the petitioner highlighted the winning performance of [REDACTED] at the [REDACTED] (GRIII) in 2010, but this was before the beneficiary's start of employment in January 2011.

Overall, the record contains numerous discrepancies that undermine the credibility of the petitioner's claims regarding the beneficiary's achievements. 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. 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.*

Finally, the plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) requires the petitioner to establish that the beneficiary *will perform* services as a lead or starring participant in productions or events which have a distinguished reputation. The petitioner has not explained what productions or events the beneficiary will perform in the United States, or that these productions or events have a distinguished reputation.

For the reasons above, the petitioner failed to establish eligibility under the plain language of 8 C.F.R. 214.2(o)(3)(iv)(B)(1).

*2. Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications.*

In support of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), the petitioner submitted online articles and unpublished opinion letters from sports media quoting the beneficiary.

Opinion letters do not constitute evidence in the form of "critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications," as required by the plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2). The letter from [REDACTED] editor-in-chief of [REDACTED] addressed directly to USCIS and submitted specifically for the purpose of this visa request,

does not constitute a “[statement] from Sports Media” or “published” material under the ordinary meaning of that word.

The petitioner also submitted the following online articles quoting the beneficiary: [REDACTED] published on [REDACTED] published on [REDACTED] and [REDACTED] published on [REDACTED]. However, the petitioner failed to establish that any of the articles were published in “major” media, or that the sources in which the articles appeared on are “major newspapers, trade journals, magazines, or other publications.” The petitioner submitted no information about the distribution or readership of the above sources, thus failing to establish that they are “major” media publications as required by the plain language of 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

For the reasons discussed above, the petitioner has failed to establish eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

*3. Evidence that the alien has performed, and will perform, in a lead, starting, or critical role for organizations and establishments that have a distinguished reputation as evidenced by articles in newspapers, trade journals, publications, or testimonials*

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), the petitioner asserts that the beneficiary has had a critical role in two organizations with distinguished reputations: [REDACTED] and [REDACTED] LLC.

First, the plain language of 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) requires evidence that the beneficiary *will perform* in a critical role for organizations and establishments that have a distinguished reputation. The petitioner has not claimed nor submitted newspapers, trade journals, publications, or testimonials to establish that the beneficiary’s newly formed company, [REDACTED] LLC, has a distinguished reputation.

Second, the petitioner failed to establish the distinguished reputation of [REDACTED] Ltd. The petitioner repeatedly asserts that [REDACTED] is one of the top horse trainers in the United Kingdom and has won over [REDACTED] stakes level races, but submits no objective evidence to support this assertion, such as Mr. [REDACTED]’s trainer profile or media articles about Mr. [REDACTED]. Notably, the petitioner submitted the trainer profile and media articles establishing the distinguished organization of [REDACTED] but submitted no objective evidence regarding the reputation of [REDACTED] Ltd. 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)).

The plain language of the regulation at 8 C.F.R. 214.2(o)(3)(iv)(B)(3) requires evidence that the beneficiary has performed in a critical role for *organizations and establishments* that have a distinguished reputation, in the plural (emphasis added). Therefore, even if the beneficiary were employed in a critical role for [REDACTED] the beneficiary’s employment in a critical role for a single organization with a distinguished reputation,

alone, is insufficient to meet the plain language of the regulatory criterion. Significantly, not all of the criteria at 8 C.F.R. § 214.2(o)(3)(iv) are worded in the plural. Specifically, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6) only requires “a high salary” either in the past or future. 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)(3)(ii)(D) that the petitioner must submit a “written advisory opinion(s) from the appropriate consulting entity or entities.” Thus, 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>20</sup>

For the above reasons, the petitioner failed to establish eligibility under 8 C.F.R. 214.2(o)(3)(iv)(B)(3).<sup>21</sup>

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

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4), the petitioner explained that during the period the beneficiary worked for Kenneally Racing Stables, the business earned substantial purse money, over \$3.3 million overall, of which approximately \$997,000 came from the horses specifically trained by the beneficiary in the State of New York. The petitioner asserts that, as a first year Assistant Trainer, the beneficiary received 1% of \$997,000 (i.e., \$9,770), as is typical in the industry. As evidence, the petitioner submitted the beneficiary’s 2012 Form 1099 for \$9,770, as well as the beneficiary’s Form W-2.

The plain language of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) requires evidence in the form of published indicators, such as title, rating, standing in the field, box office receipts, motion pictures or television ratings, and media reports. The beneficiary’s Forms 1099 and W-2 are not “published” indicators within the ordinary meaning of the word “published.”

The petitioner submitted [REDACTED]’s trainer profile confirming his 2012 earnings of \$3,327,734, ranked [REDACTED] out of the top 100 rankings. This profile, however, does not indicate how much of these earnings, if any, can be attributed to the beneficiary. The petitioner did not submit a trainer profile for the beneficiary indicating his individual earnings and ranking. The petitioner’s evidence fails to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4).

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<sup>20</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>21</sup> Because the petitioner cannot establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3), we need not reach a finding on whether the petitioner established that the beneficiary was employed in a critical role for [REDACTED] Ltd. and [REDACTED] even though the inconsistencies and deficiencies mentioned above call into question the beneficiary’s “critical role” for these organizations.

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.

The petitioner has submitted several testimonial letters in support of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). The regulation at 8 C.F.R. § 214.2(o)(2)(iii)(B) provides that 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.”

Upon review of the letters, we find that the petitioner failed to establish that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field.

The petitioner submitted a letter from [REDACTED] Executive Director of the [REDACTED]. Mr. [REDACTED] attests that he is “acquainted with [the beneficiary] who has earned a reputation in the U.S. as a first-class horse trainer.” Mr. [REDACTED] further attests that the beneficiary “has earned a reputation in the U.S. as a first-class horse trainer” and has “produced numerous winning racehorses, including several winners of graded stakes races.” Mr. [REDACTED] asserts that the beneficiary can “take credit for the success of the horses he trained” including [REDACTED] and [REDACTED]. Mr. [REDACTED] explains: “in our industry, it is common knowledge which individual trainer is responsible for the reputation of a given horse and [the beneficiary] has thereby developed his own reputation for excellence.” Mr. [REDACTED] concludes that the beneficiary “has achieved prominence and distinction in American horse racing. He has indeed achieved a high level of achievement evidenced by his skill and recognition above other horse trainers in the field.”

Mr. [REDACTED] makes several assertions regarding the beneficiary's achievements and recognition, but does not explain the factual basis of his knowledge. His assertions regarding the beneficiary's recognition for achievements are conclusory and carry little, if any, probative value. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. 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.). Moreover, Mr. [REDACTED] fails to explain the manner in which he acquired knowledge of the beneficiary's achievements and recognition. He states vaguely that he is “acquainted with” the beneficiary, but does not explain how. While Mr. [REDACTED] referenced industry knowledge or “common knowledge” about assistant trainers in general, broad claims of industry knowledge or “common knowledge” are insufficient to establish the manner in which he acquired the information he seeks to assert as fact. Again, 8 C.F.R. § 214.2(o)(2)(iii)(B) states that affidavits from experts “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.” Mr. [REDACTED]'s affidavit fails to meet the regulatory standard for affidavits submitted under this criterion.

The petitioner submitted a letter from [REDACTED] Editor-in-Chief of [REDACTED] Mr. [REDACTED] states that, as a “member of the media, [he has] had the chance to follow [the beneficiary’s] career as an exceptional trainer.” Mr. [REDACTED] asserts that the beneficiary “has distinguished himself as a top-notch trainer in the [REDACTED] racing industry . . . [and] has had an impressive career.” Mr. [REDACTED] further asserts the beneficiary “trained and produced numerous graded stakes winning horses . . . [including] [REDACTED] who reached 6<sup>th</sup> place in the [REDACTED]” He speculates: “[REDACTED] undoubtedly hired [the beneficiary] as an assistant trainer because [the beneficiary] has an international reputation as an extraordinary trainer.” Mr. [REDACTED] concludes: “As Editor-in-Chief of one of the leading media sources in the industry, I recognize that [the beneficiary] is an exceptional horse trainer . . . [who] has trained and produced some incredible horses such as [REDACTED] and [REDACTED],”

Similar to Mr. [REDACTED]’s letter, the letter from [REDACTED] makes several assertions regarding the beneficiary’s achievements and recognition, but does not explain the factual basis of his knowledge. His assertions regarding the beneficiary’s recognition for achievements are conclusory. Moreover, Mr. [REDACTED] also fails to explain the manner in which he acquired such knowledge. See 8 C.F.R. § 214.2(o)(2)(iii)(B). Mr. [REDACTED] states vaguely that, as a member of the media, he has had “the chance” to follow the beneficiary’s career and that, as editor-in-chief of a media source in the industry; he “recognizes” that the beneficiary trained the afore-mentioned horses. These broad statements are insufficient to establish the actual manner in which Mr. [REDACTED] acquired the information he seeks to assert as fact. As such, Mr. [REDACTED]’s letter fails to meet the regulatory standard for affidavits submitted under this criterion, and carries little, if any, probative value.

The petitioner submitted a letter from [REDACTED] Chief Executive Officer of [REDACTED] Mr. [REDACTED] states that he was asked by the petitioner’s former attorney of record to provide a labor group consultation for the beneficiary. Mr. [REDACTED] states that the beneficiary “has distinguished himself as a first-class thoroughbred race horse trainer in the U.S., having produced multiple winning racehorses during his career with [REDACTED]” He further states that “[a]s part of the [REDACTED] [the beneficiary] has trained several horses that won some of the most competitive and prestigious [REDACTED] races across the United States,” and that “[t]herefore he can take much of the credit for the success of the horses he trained, including stakes winners [REDACTED] [REDACTED] and [REDACTED]” Mr. [REDACTED] concludes that the beneficiary has earned an “international reputation as an exceptional race horse trainer” and “has made a name for himself as a top-notch trainer.” However, Mr. [REDACTED] does not explain the factual basis of his knowledge. His assertions regarding the beneficiary’s recognition for achievements are therefore conclusory and carry little, if any, probative value. His letter fails to meet the regulatory standards set forth at 8 C.F.R. § 214.2(o)(2)(iii)(B).

The petitioner submitted a letter from [REDACTED] an equine veterinarian specializing in high performance racehorses who has directly worked with the beneficiary during his employment at [REDACTED] Dr. [REDACTED] describes the specific duties the beneficiary had as a trainer, including creating individualized training programs for each horse that covers its diet, exercise schedule, and medical health, and monitoring the horses on a daily or hourly basis. Dr. [REDACTED] also describes the beneficiary’s experience and ability to “read” a horse for injuries, and his understanding of technical and health-related aspects of racing, such as

regarding the rules and procedures regulating supplements and drugs and in post-competition issues. Dr. [REDACTED] asserts that the beneficiary is “a key factor in the ongoing success of the horses he trains and manages.” Finally, Dr. [REDACTED] asserts that he has “known hundreds of assistant trainers” and that the beneficiary “stands out as one [of] the very best.”

While Dr. [REDACTED]’s letter describes the beneficiary’s general responsibilities for the health and wellness of the horses in his care, as well as his general talents and abilities, he does not explain with any specificity the beneficiary’s achievements and recognition. Dr. [REDACTED]’s statement that he has “known hundreds of assistant trainers” and that the beneficiary “stands out as one [of] the very best” falls short of attesting that the beneficiary has received significant recognition from achievements.

The petitioner submitted a letter from [REDACTED] an equine veterinarian and partner at [REDACTED] who specializes in Sport Horses, orthopedics and diagnostic imaging. In this capacity, Dr. [REDACTED] worked closely with the beneficiary during his employment with [REDACTED]. Dr. [REDACTED] attests that the beneficiary “was the individual given responsibility for the health, care, nutrition, fitness and mental condition of about 20 horses in training at [REDACTED]’s facility.” Dr. [REDACTED] discusses the beneficiary’s specific duties for [REDACTED] Ltd., including selecting the diet, vitamins, and nutritional supplements, selecting training sessions and workouts for horses daily, immediately alerting the veterinarian for health issues, administering medications under veterinary supervision, and generally assisting the veterinarian to get to know each horse and its condition. Dr. [REDACTED] concludes that, based on his many years of experience as an equine veterinarian, the beneficiary is “one of the best trainers with whom I have worked . . . [He] is recognized in the British community for his expertise and unerring attention to detail. He has clearly achieved prominence and distinction in his field as evidenced by the success of the horses he has trained and prepared.”

Again, like Dr. [REDACTED]’s letter, Dr. [REDACTED] describes the beneficiary’s general duties, talents, and abilities, but does not explain with any specificity the beneficiary’s achievements and recognition. His assertions regarding the beneficiary’s recognition are conclusory.

It is noted that the letters from Mr. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] as well as the letters from Dr. [REDACTED] and Dr. [REDACTED] are strikingly similar to each other in language and format. As a general concept, when an applicant or petitioner has provided affidavits from different persons that contribute to the eligibility claim, but the language and structure contained within the affidavits is strikingly similar, the trier of fact may treat those similarities as a basis for questioning the claims. *See Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (finding that the “nearly identical language” of the submitted affidavits supported an adverse credibility determination). Moreover, in some parts of Mr. [REDACTED]’s letter, he identifies the owner as “Mr. [REDACTED] rather than [REDACTED] and uses the first person (“I”) when discussing [REDACTED]’s decision to entrust his horses to the beneficiary. Consequently, the probative value of these letters is further diminished. In evaluating the evidence, the truth is to be determined not by the quantity of evidence alone but by its quality. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

In response to the RFE, the petitioner submitted a letter from [REDACTED] an international bloodstock agent with 30 years of experience in the racing industry. Mr. [REDACTED] explains the factors considered in evaluating the performance of a racehorse trainer, namely, the performance record of the horses the trainer has trained. He lists other important factors, such as the opinions of past employers, opinions of experts in the industry familiar with the trainer and his methods, the level of competitions (races) where the trainer is engaged, and the value added to the horses by the trainer. Mr. [REDACTED] admits: "It is difficult to tease out [the beneficiary's] individual percentages because he was an Assistant Trainer for [REDACTED] in Britain and [REDACTED] in the US, and the statistics are calculated on all of the horses in training at a given establishment." However, he asserts that there are other means of "determining [the beneficiary's] specific contributions to an operation with multiple trainers," for example, looking at the resale value of horses trained by the beneficiary. Mr. [REDACTED] concludes, based on looking at race records for horses the beneficiary claims to have trained, that "[the beneficiary] fares well on every one of the above criteria." Finally, he states: "[The beneficiary] is well regarded in the British and European horse racing communities. He could not dare to open his own training operation in the U.S. unless he had earned considerable recognition from trainers and more importantly, owners in the U.S. Over the years [the beneficiary] has trained horses racing at the best tracks in the most prestigious races around the world."

Mr. [REDACTED]'s letter contains conclusory assertions regarding the beneficiary's achievements and recognition. While Mr. [REDACTED] states that the beneficiary "fares well" on all of the important criteria for measuring a trainer's performance, he does not state the factual basis behind his conclusion. Mr. [REDACTED] states that he came to this conclusion after looking at race records for horses the beneficiary claims to have trained, but then admits that it is "difficult to tease out [the beneficiary's] individual percentages because he was an Assistant Trainer for [REDACTED] in Britain and [REDACTED] in the US, and the statistics are calculated on all of the horses in training at a given establishment." He does not claim to have direct knowledge of the horses the beneficiary actually trained. Mr. [REDACTED] emphasizes that the beneficiary's achievements are best measured by the performances of the horses he has trained, but he fails to explain which horses, or which performances, through which he has measured the beneficiary. As discussed earlier, the record does not corroborate all of the petitioner's claims regarding which horses and which performances the beneficiary directly trained.

The petitioner submitted a letter from [REDACTED] former Chief Executive Officer of the [REDACTED]. Mr. [REDACTED] states that the beneficiary "has a distinguished, world-wide reputation as an exceptional [REDACTED] race horse trainer" and that throughout his employment with Mr. [REDACTED] and Mr. [REDACTED] the beneficiary "produced multiple champion horses." Specifically, Mr. [REDACTED] asserts that during the beneficiary's employment with Mr. [REDACTED] "the training team produced numerous championship horses, including [REDACTED] winner of [REDACTED] (G-1), and [REDACTED] winner of the [REDACTED]" During the beneficiary's employment with Mr. [REDACTED] "the training facility produced numerous champion horses . . . [including] [REDACTED] and [REDACTED] . . . [a]nd possibly most impressively, [REDACTED] who placed 4<sup>th</sup> in the [REDACTED], a Grade 1 Stakes Race." Mr. [REDACTED] opines that "neither Mr. [REDACTED] nor Mr. [REDACTED] would select anything less than an expert horseman as their assistant." Mr. [REDACTED] further opines that the fact that the beneficiary has launched his own training operation "clearly

demonstrates that [the beneficiary] is highly respected, has a solid reputation and enormous potential for success.” Mr. [REDACTED] concludes that the beneficiary has “established himself as a top-notch horse professional” and has “achieved prominence and distinction in the U.S. horse racing industry.”

Mr. [REDACTED] does not explain the manner in which he acquired knowledge about the horses and performances for which the beneficiary is directly responsible. Notably, Mr. [REDACTED] highlights the performances of [REDACTED] and [REDACTED] none of which the petitioner has demonstrated can be attributed to the beneficiary for reasons previously discussed. Mr. [REDACTED]’s assertions that the beneficiary’s employment by Mr. [REDACTED] and Mr. [REDACTED] as well as the beneficiary’s decision to launch his own training operation, are indications of his achievements and recognition are speculative and not supported by factual information. Mr. [REDACTED]’s letter bears little probative value, if any, and fails to meet the requirements set forth at 8 C.F.R. § 214.2(o)(2)(iii)(B).

The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See Matter of Caron International*, 19 I&N Dec. 791, 795-96 (Comm. 1988); *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. The content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Overall, the submitted letters, for the reasons discussed above, are insufficient to establish eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

On appeal, the petitioner states that this case presents “the age-old question—just how good is the number two person on a great team or group?” The petitioner states:

The question goes to the heart of the instant case because the petition requesting O-1B status for [the beneficiary] was supported by evidence of [the beneficiary’s] accomplishments as a number two. “Who does number two work for?” – [REDACTED] - one of the most accomplished [REDACTED] trainers in the United States. The nature of the [REDACTED] racing industry, however, puts the trainer in the spotlight. The work of assistant trainers is rarely recognized in articles or by awards. Despite the lack of recognition, the team’s success is a clear indication of the ability of the assistant trainer. Individuals within the industry know the reputation and ability of an assistant trainer such as [the beneficiary] and, therefore, are in the best position to provide evidence of the assistant trainers [*sic*] reputation and ability.

However, the petitioner’s assertion is not persuasive to explain the lack of objective evidence corroborating the submitted letters. In fact, the petitioner’s assertion undermines the beneficiary’s eligibility for the O-1B visa classification. Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the arts “which has been demonstrated by sustained national or international acclaim” and “whose achievements have been recognized in the field through extensive documentation.” 8 C.F.R. § 214.2(o)(3)(ii) defines the term “extraordinary ability in the field of arts” as “distinction,” as evidenced by “recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.” Thus, the statute and regulations focus on the level of recognition the beneficiary has received for his achievements in the field. Where there is, as the petitioner

admits, a “lack of recognition,” then the beneficiary inherently cannot qualify for the O-1 classification, regardless of his talent or contribution to his employers.

In summary, the petitioner failed to establish eligibility under at least three of the six regulatory criteria listed at 8 C.F.R. § 214.2(o)(3)(iv)(B). Accordingly, the petitioner failed to establish that the beneficiary qualifies as an alien of extraordinary ability in the arts.

### C. Comparable Evidence

The petitioner asserted that “[i]t is essential to note that the Petition relies upon **COMPARABLE EVIDENCE** as set forth in the regulations at 8 CFR Section 214.2(o)(3)(iii)(C).”<sup>22</sup> The petitioner asserted that comparable evidence is appropriate in this case because “[t]he regulatory criteria are couched in terms of the traditional performing arts that are not relevant to the training of racehorses. In horse training there are no ‘starring roles in productions,’ no ‘television ratings,’ no ‘critical reviews,’ no ‘original research.’”<sup>23</sup> The petitioner stated:

But there are important roles which are critical positions fundamental to putting on a horse race. At minimum the following is required: a horse, a horse trainer, a jockey, a groom, and lest we forget, an owner to pay the bills. Someone must have responsibility for training the horse in advance; the owners do not simply hand the horses over to the jockey on race day. The horse trainer brings the horse along from the time it is a yearling. He handles it, introduces it to the saddle, teaches it how to balance itself, how to accelerate, how to break from the starting gate, how to run on a track with other horses, how to make turns, and how to move through traffic, all in attempt to cross the finish line first. Throughout this period the trainer must keep the horse healthy, fit sound, and able to perform at its best. Consequently, different evidence is required to establish a horse trainer’s extraordinary ability [*sic*].

The petitioner summarized, “[t]he comparable evidence language was included in the regulations precisely to cover petitions such as this, and provide a legitimate alternative means to establishing O-1B qualification for other activities beyond the performing arts.”

We are not persuaded by the petitioner’s explanation as to why comparable evidence in this case is appropriate. The petitioner asserts that a horse trainer “must keep the horse healthy, fit [*sic*] sound, and able to perform at its best,” and states: “Consequently, different evidence is required to establish a horse trainer’s extraordinary ability.” However, other than describing a horse trainer’s duties, the petitioner has not explained why the beneficiary’s field is so obscure or unusual from other fields so that it could not fall under

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<sup>22</sup> 8 C.F.R. § 214.2(o)(3)(iii)(C), as cited by the petitioner, relates to aliens of extraordinary ability in the fields of science, education, business, or athletics, and not to the field of arts.

<sup>23</sup> With respect to “original research,” it is unclear what regulatory criteria under the O-1 classification the petitioner is referring to, as this term is not found in any of the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii), (iv), and (v).

the field of athletics or business for O-1A classification.<sup>24</sup> The petitioner has not articulated any persuasive reasoning for its claim that “different evidence is required to establish a horse trainer’s extraordinary ability.”

Moreover, the petitioner is claiming that comparable evidence is appropriate because the regulatory criteria for the O-1B classification in the performing arts are not applicable to the field of horse training for competitive horse racing. However, as discussed above, the petitioner’s attempt to classify the beneficiary’s field as in the arts is improper. The petitioner may not mischaracterize the beneficiary’s field as that in the arts, and then benefit from the comparable evidence provision because the regulatory criteria for the arts are not applicable to the beneficiary’s field.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) provides that the petitioner “must” demonstrate that the beneficiary possesses extraordinary ability by submitting the specific types of evidence listed therein. In contrast, the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that comparable evidence “may” be submitted if the regulatory criteria do not readily apply. It is clear from the use of the word “must,” as opposed to the word “may,” that the rule, not the exception, is that the petitioner is required to submit the types of evidence specifically listed in the regulatory criteria. Hence, the petitioner must first establish that the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary’s occupation. Then, only if the petitioner is able to establish that the regulatory criteria do not readily apply to the beneficiary’s occupation, may comparable evidence be considered. Here, the petitioner has not established that the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary’s occupation. Therefore, the petitioner has not established that “comparable evidence” may be considered.

#### D. Explanation of Events or Activities

Beyond the director’s decision, we find that the petitioner has not adequately explained the nature of the beneficiary’s events or activities in the United States, including the beginning and ending dates for the events or activities, as required under 8 C.F.R. § 214.2(o)(2)(ii)(C).<sup>25</sup>

On the Form I-129, the petitioner indicated that the beneficiary’s job title will be “horse trainer,” and that he will work at “[v]arious locations across the USA.” On the Form I-129 Supplement O/P, the petitioner explained the nature of the event as “[t]raining and preparing horses for [REDACTED] horse races across the United States.”

In a letter submitted with the initial petition, the petitioner explained that the beneficiary will be the primary horse trainer and owner of [REDACTED] LLC, responsible for “training, developing and managing [REDACTED] horses to race in [REDACTED] on the tracks of [REDACTED] and [REDACTED] and perhaps later in other jurisdictions as the business grows.” The petitioner stated: “The horses to be in training with the Beneficiary are very valuable, worth from tens of thousands of dollars to hundreds of thousands of dollars

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<sup>24</sup> The Service has explained that the comparable evidence criteria “merely allows petitioners in cases where the beneficiary is employed in an unusual or obscure field of endeavor to submit alternate, but equivalent, forms of evidence.” 59 FR at 41820.

<sup>25</sup> The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

each. The horses' owners demand the finest training and the highest level of care to ensure that these valuable animals win races and produce a return on their investment." The petitioner then described the beneficiary's duties as a horse trainer, including evaluating and training horses, supervising staff, and communicating with horses' owners.

The petitioner submitted its contractual agreement with the beneficiary in the form of a sports representation retainer, dated April 25, 2013, which states in pertinent part:

This will confirm your retention of our firm for sports representation in the area of professional sports and entertainment for a term of April 30, 2013 – April 94 [sic], 2018. Our representation includes, but is not limited to, obtaining invitations to participate in professional or commercial events, negotiating contracts for television, radio or other media programs, endorsement packages, sponsorship packages, public use of your name and image, and public appearances. We agree to use all reasonable efforts to obtain the most beneficial contracts available to further your career.

On appeal, the petitioner reasserts that that the beneficiary "has made enough of a name for himself to be able to gain the trust of many different owners and breeders. [The beneficiary] has been entrusted with million dollar horses." The petitioner previously submitted several letters similarly attesting that the beneficiary has already secured a "client base" in the United States.

Upon review, the petitioner failed to adequately explain the nature of the beneficiary's events or activities in the United States. The petitioner provided no explanation of the specific events or activities that the beneficiary will be participating in, including the beginning and ending dates for the events or activities, as required under 8 C.F.R. § 214.2(o)(2)(ii)(C). The petitioner has only provided vague descriptions of the beneficiary's events or activities in his capacity as the primary horse trainer and owner of [REDACTED] LLC, stating that the beneficiary will be racing in [REDACTED] on the tracks of [REDACTED] and [REDACTED]. The petitioner has not provided any detailed information as to which races the beneficiary will participate in, including the names and dates of the specific races. Furthermore, the petitioner indicated that the beneficiary has already secured clients and horses in the United States, but other than these general statements and assertions, the petitioner has not identified nor provided any evidence regarding these clients and horses, such as documents regarding the horses that the beneficiary will be training or the clients who will be using the beneficiary's services. The petitioner also indicated that it would obtain "invitations to participate in professional or commercial events," but provided no further explanation or documentation regarding these professional or commercial events. Overall, the petitioner has not submitted a specific explanation of the events or activities scheduled for the beneficiary as required by 8 C.F.R. § 214.2(o)(2)(ii)(C).

Given the lack of explanation, the petitioner has failed to establish that the beneficiary will be entering the United States for definite, non-speculative employment. The O-1 classification may not be granted to an alien merely to enter the United States to freelance and seek employment; an O-1 alien must only be admitted to perform in specific events as detailed on the initial petition. 59 Fed. Reg. at 41828. For these additional reasons, the appeal must be dismissed.

### Conclusion

The petitioner failed to establish that the beneficiary's duties, which consist primarily of evaluating and training horses, supervising staff, and communicating with horses' owners, or beneficiary's field of endeavor of competitive horse racing, can properly be considered as a creative activity or endeavor falling within the field of the arts. Regardless, the petitioner also failed to establish the beneficiary's eligibility under any of the regulatory criteria under 8 C.F.R. § 214.2(o)(3)(iv)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). Finally, the petitioner failed to explain the nature of the beneficiary's events or activities in the United States pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(C), thus failing to establish that the beneficiary will be entering the United States for definite, non-speculative employment.

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

**ORDER:** The appeal is dismissed.