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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

[Redacted]

DATE: **MAR 12 2014** Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the field of business. The petitioner states that it is in the business of “[i]nternational tours and cultural exchanges.” It seeks to employ the beneficiary as a “Special Theme Tours Program Director” for two years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has received "sustained national or international acclaim" or to demonstrate that she is one of the small percentage who has risen to the very top of the field. Specifically, the director determined that the evidence submitted did not satisfy the criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the director “failed to recognize the correct ‘field of endeavor’ and thus based the decision on an improper reasoning.” The petitioner asserts that the evidence establishes that the beneficiary meets at least four of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of 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 . . . and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in the area of extraordinary ability

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

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).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum, Lawrence Weinig, Acting Asst. Comm'r., INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

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

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

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
 - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
 - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
 - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
 - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
 - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
 - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

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

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

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

The 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*, 596 F.3d 1115 (9th 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).

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the 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 also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

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. 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*. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker. On Form I-129, the petitioner stated that it is in the business of "[i]nternational tours and cultural exchanges." In a letter submitted with the initial petition, the petitioner described itself as "a startup Southern California travel agency." The petitioner explained that, while there are several travel agencies in Southern California specializing in [REDACTED] US travel, the petitioner seeks to distinguish itself by offering "a greater variety of theme tours that include, but not limited to, sports tours, national parks tour, summer camps tour, etc."

In the same letter, the petitioner described the duties of the beneficiary's proffered position as a "special theme tours program director" as follows:

As a theme tour program director for our company, [the beneficiary's] responsibilities include, but not limited to, creating theme tours. First theme tour that comes to our mind is a golf tour. But we also have NBA, tennis, American football game tours in our mind too. [The beneficiary] will be in charge of the whole process of creating, arranging and organizing the tours. She will be responsible in writing a plan, contacting the U.S. corresponding organizations and supervising the carrying out of each tour plan [*sic*].

The petitioner submitted its business plan, which described the services offered as “including making travel arrangements, making lodging arrangements, arranging all-inclusive golf vacations, booking tours, arranging local transportation, arranging summer camp and educational training services, importing Hollywood movies to China.”

The petitioner submitted a list of its projected employees and their duties. The Program Director’s duties are listed as: train, oversee, develop, and assist with the hiring of the Program Coordinators; make weekly progress reports to the General Manager regarding development of new services and execution of existing service orders; develop sports tours and oversee the services of the all-inclusive golf vacations; contact Hollywood studios, select and import Hollywood movies to China; oversee the development of services and summer and winter camps for students; oversee the arranging of travel services for [the petitioner’s] customers; and coordinate with order processing division to receive all service orders and ensure that all customers are satisfied.

In support of the initial petition, the petitioner also submitted, *inter alia*, the following documents:

1. Letter of support from [redacted] Associate Chancellor for Public Affairs, [redacted] [redacted] attesting to the beneficiary’s qualifications in the field of “[c]ultural exchange through sport events;”
2. Letter of support from [redacted] Secretary General of [redacted] and General Manager of [redacted] attesting to the beneficiary’s qualifications in the field of “golf tourism, event management;”
3. Letter of support from [redacted] Manager of Distribution Services, [redacted] [redacted] writing in support of the beneficiary “as a professional in the area of cultural exchange and entertainment;”
4. Letter of support from [redacted] Chairman, [redacted] indicating the beneficiary’s field of expertise as “golf tourism;”
5. The beneficiary’s “Statement of Accomplishments,” attesting to her experience and knowledge of “sport management,” “golf management and sport tourism,” and “golf tourism business;”
6. The beneficiary’s [redacted] for the [redacted]
7. The beneficiary’s certificate of contribution to the [redacted] and the Test Event for [redacted]
8. The beneficiary’s certificate of participation from the [redacted]
9. The beneficiary’s diploma of contribution at the [redacted]
10. The beneficiary’s certificate of completion for the [redacted]
11. The beneficiary’s [redacted]
12. The beneficiary’s internship certificate at the [redacted]
13. The beneficiary’s internship certificate at [redacted]
14. The beneficiary’s [redacted]
15. The beneficiary’s [redacted]

16. Various articles regarding the [REDACTED] at the [REDACTED]
17. Various articles regarding the beneficiary's selection as a [REDACTED] at the [REDACTED]
18. An article co-authored by the beneficiary entitled [REDACTED]
19. An article co-authored by the beneficiary entitled [REDACTED] and,
20. Chapter written by beneficiary in the book [REDACTED]

The director issued a request for evidence (RFE), advising the petitioner that the evidence submitted was deficient to establish the beneficiary as an alien of extraordinary ability. In the RFE, the director also stated that, the specific duties of the offered position combined with the nature of the petitioner's business appear to indicate the proffered position closely relates to a travel agent position.

In response to the RFE, the petitioner stated, in part:

With due respect, we also must stress the fact that, despite the employer [petitioner] is basically a travel agency, the field of endeavor [the beneficiary] seeks classification is a "Special Program Director." Specifically, the petitioner-employer wants to hire [the beneficiary] to organize and supervise sports tours, starting with a golf tour of the Chinese golf lovers. So we should keep this in mind when evaluating [the beneficiary's] petition [sic].

In addition, the petitioner clarified that the beneficiary meets the eligibility criteria at 8 C.F.R. § 214.2(o)(1)(ii)(B)(1), (3), (5), and (6). The petitioner also asserted that the evidence should be considered as "comparable evidence" under 8 C.F.R. § 214.2(o)(1)(ii)(C).

In response to the RFE, the petitioner submitted:

1. Letter of support from [REDACTED] Chairman of [REDACTED] attesting to the beneficiary's expertise in the field of "golf tourism;"
2. Invitation to the [REDACTED] of [REDACTED]
3. Evidence of media coverage of the beneficiary; and
4. The beneficiary's [REDACTED]

The director denied the petition. First, the director observed that the record was unclear as to what is the beneficiary's field of endeavor, which is relevant to the requirement that the beneficiary come to the United States to continue work in the area of extraordinary ability. Section 101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(1)(ii)(A)(1). The director indicated that the beneficiary's field of endeavor appears to be "travel

agency” or “special theme tours director.”¹ The director then evaluated the beneficiary’s eligibility under the regulatory criteria at 8 C.F.R. § 214.2(o)(1)(ii)(B), and concluded that the beneficiary met none of the six criteria at 8 C.F.R. § 214.2(o)(1)(ii)(B). The director also concluded that the petitioner did not establish eligibility for the “comparable evidence” provision at 8 C.F.R. § 214.2(o)(1)(ii)(C).

On appeal, the petitioner asserts that the director “has failed to acknowledge the clear connection of the beneficiary’s talents with the field of endeavor of the job offer from [the petitioner].” The petitioner also asserts that the director “failed to acknowledge the fact that [the beneficiary] has established herself as a person with extraordinary talents in sports culture and is perfect for the temporary job as the special theme tours program director for [the petitioner].”

With respect to the beneficiary’s field of endeavor, the petitioner claims that the director defined the field of endeavor too narrowly as a “travel agency.” The petitioner states that the beneficiary’s “real” field of endeavor is ““special theme tours,’ specifically organizing a golf tour.” The petitioner asserts that, despite the fact that its business is “basically a travel agency,” the beneficiary’s field of endeavor as a “special program director” requires the beneficiary to “organize and supervise sports tours, starting with a golf tour of the Chinese golf lovers [and] high achievements, education and training in sports and experience and ability in organizing cross-culture events [*sic*].” The petitioner asserts:

It must be stressed that the job [the beneficiary] is offered has gone beyond a mere sport tour arrangement or scheduling that a normal travel agency can handle, it is a sport culture exchange that needs the organizer equipped with much higher qualities. As the petitioner stated in its petition letter that it is the first of this kind of theme tour seen in this industry in southern California, and a success of this tour will help to establish a new revolutionary trend in cultural tourism. Therefore, when and only when we classify the petition in this perspective, we can make more pertinent analysis of the petition, especially the qualifications of the beneficiary.

Upon review of the record, and for the reasons discussed herein, the AAO concludes that the petitioner has failed to establish the beneficiary’s eligibility for the classification sought.

At the outset, the AAO agrees with the director that the record is unclear as to the precise parameters of the beneficiary’s field of endeavor. In the petitioner’s letter submitted with the initial petition, the petitioner did not identify the beneficiary’s field of endeavor, but described itself as a travel agency and the beneficiary’s job duties as “creating theme tours.” In the letter of support from [REDACTED] the beneficiary’s field of endeavor is listed as “cultural exchange through sports events.” In the letter of support from [REDACTED] the beneficiary’s field of endeavor is listed as “golf tourism, event management.” In the letter of support from [REDACTED] the beneficiary’s field of endeavor is listed as “cultural exchange and entertainment.” In the beneficiary’s “Statement of Accomplishments,” she does not specifically identify her field of endeavor, but describes her experience and knowledge of “sport management,” “golf management and sport tourism,” and “golf

¹ Both the director and the petitioner confuse the concepts of “field of endeavor” and job title.

tourism business.” In response to the RFE, the petitioner asserted that the beneficiary’s field of endeavor is “Special Program Director,” and that it wants to hire the beneficiary to “organize and supervise sports tours, starting with a golf tour of the Chinese golf lovers [sic].” In the letter of support from [REDACTED] the beneficiary’s field of endeavor is identified as “golf tourism.” On appeal, the petitioner asserts that the beneficiary’s field of endeavor is not a travel agent, but “a program director of ‘special theme tours’, specifically organizing a golf tour is the real ‘field of endeavor.’” The petitioner then asserts on appeal that the beneficiary has extraordinary talents in “sports culture,” and that the petitioner seeks to establish a new trend in “cultural tourism.”

In review, the petitioner has claimed several different fields of endeavor: sports tourism (which includes golf tourism); sports management (which includes golf management); event management; cultural exchange; special theme tours; and, entertainment. While these fields of endeavor may all share common characteristics, each field is nevertheless a distinct and separate field of endeavor. The petitioner may not change its characterization of the beneficiary’s “real” field of endeavor depending on which characterization best fits a particular piece of evidence. If the petitioner chooses to represent the beneficiary’s fields of endeavor as all of the above, then the petitioner must establish that the beneficiary has extraordinary ability in all of the above fields. Nonetheless, the petitioner failed to establish that the beneficiary is an alien of extraordinary ability in any one of the above fields of endeavor.

For the purposes of this decision, the AAO will analyze the beneficiary’s field of endeavor as sports tourism (including golf tourism), which relates to the activities of organizing and supervising sports-themed tours.

A. The Beneficiary's Eligibility under the Regulatory Criteria

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulations cite to the Nobel Prize as an example of a major award. *Id.* The petitioner does not claim that the beneficiary can meet this criterion.

As there is no evidence that the beneficiary has received a major, internationally recognized award, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has claimed eligibility under the criteria 8 C.F.R. § 214.2(o)(1)(ii)(B)(1), (3), (5), and (6), as well as the “comparable evidence” provision at 8 C.F.R. § 214.2(o)(1)(ii)(C). The remaining criteria will not be discussed.

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

As evidence under the criterion at 8 C.F.R. § 214.2(o)(1)(ii)(B)(1), the petitioner submitted evidence that the beneficiary was chosen as a [REDACTED] for the [REDACTED], and was invited to attend the Fifth Anniversary Celebration of the [REDACTED]. The petitioner also submitted various certificates the

beneficiary has received, such as her Referee Qualification Certificate by the [REDACTED] and her internship certificate at the [REDACTED]

In the denial, the director determined that the beneficiary's honor of being chosen as an [REDACTED] and her various certificates do not directly relate to the field of endeavor as a travel agent. The director also determined that the petitioner failed to establish how the evidence qualifies the beneficiary as an alien of extraordinary ability. Specifically, the director found that the beneficiary's selection to be a [REDACTED] in the [REDACTED] was unrelated to her field of endeavor. On appeal, the petitioner asserts that the beneficiary's selection as a [REDACTED] and her various certificates are directly relevant to her field of endeavor, stating:

[REDACTED] is the most celebrated sports event in the world and the honor of being chosen from 1.4 billion people as a [REDACTED] should suggest the recognition of [the beneficiary's] overall achievements at a national level. Again, the position that [the beneficiary] is hired for is an organizer of sport tours from China. [The beneficiary's] being a [REDACTED] on the most grandiose world sport stage should certainly be considered directly relative to her field of endeavor. Also, since the first sport tour [the petitioner] is to organize is a golf tour made of Chinese golf fans, [the beneficiary's] reception of certificates such as Golf Referee Qualification Certificate by the [REDACTED] and [REDACTED] [REDACTED] become extremely relevant . . . We firmly believe that with all the honors and experiences [the beneficiary] has received in relation to golf sport, she will certainly be capable to do very well in organizing the golf tours for [the petitioner] [sic].

Upon review, the AAO agrees that the submitted evidence does not establish that the beneficiary has been recognized for excellence in her field of endeavor.

The petitioner has not established that the beneficiary's selection as an [REDACTED] is directly relevant to the field of sports tourism. While the [REDACTED] and sports tourism both involve sports in some way, they are significantly different in nature. The [REDACTED] is a sports event featuring sports competition, whereas sports tourism is the business of organizing and supervising sports-themed leisure tours for visitors. Similarly, the beneficiary's Referee Qualification Certificate by the [REDACTED] and internship certificate at a golf championship game is not directly relevant to the field of sports tourism. Merely establishing that the beneficiary's honors and certificates are generally related to sports or golf as a whole is insufficient to establish that they are directly related to the field of sports tourism. *See Lee v. Ziglar*, 237 F. Supp.2d 914, 918 (N.D. Ill. 2002) (affirming that the "area" of athletics should not be considered as a whole to include every occupation involving athletics, and that the beneficiary's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach).

Specifically, the petitioner has failed to establish how being chosen as an [REDACTED] constitutes an "award for excellence in the field of endeavor," as required by the plain language of 8 C.F.R. § 214.2(o)(1)(ii)(B)(I). In order to be an "award for excellence in the field of endeavor," the award must have been given to a beneficiary primarily in recognition of her excellence in the field of endeavor. The evidence

reflects that the beneficiary was chosen as a [REDACTED] by a TV audience, but the petitioner has not explained and documented what specific criteria the TV audience used to select her. The AAO observes that the petitioner's article [REDACTED] states that the public selection process for the [REDACTED] "aimed at nominating ordinary individuals." The petitioner has submitted no evidence to establish that the beneficiary was selected as a [REDACTED] based upon the TV audience's recognition of her excellence in the field of sports tourism.

The petitioner also failed to establish that the beneficiary's various internship and volunteer certificates, or her golf referee certificate, constitute "awards for excellence in the field of endeavor" as required by the plain language of the criterion. The beneficiary's internship and volunteer certificates merely recognize her participation in the various events; they do not state or indicate that the beneficiary was individually recognized for excellence in the field of endeavor. For example, the beneficiary's internship certificate from the [REDACTED] states that the beneficiary "was the Assistant of Competition Director [REDACTED] from March to July 2008," and provided a brief description of her duties. The certificate makes no statement as to the beneficiary's excellence in the field of sports tourism. Similarly, the beneficiary's Referee Qualification Certificate states only that the beneficiary "has passed the comprehensive assessment, hereby is registered the title of [REDACTED] [sic]." Again, the award makes no statement as to the beneficiary's excellence in the field of sports tourism.

On appeal, the petitioner asserts that, "with all the honors and experiences [the beneficiary] has received in relation to golf sport, she will certainly be capable to do very well in organizing the golf tours for [the petitioner] [sic]." The AAO does not dispute the petitioner's assertion that the beneficiary is well qualified for the proffered position. However, merely establishing that the beneficiary is well qualified for the proffered position does not automatically establish that the beneficiary possesses extraordinary ability in her field of endeavor. The visa classification demands a much higher showing than simply being well-equipped for a given occupation. *Lee*, 237 F. Supp.2d at 916.

Overall, the petitioner has failed to establish that the beneficiary has received any awards or prizes for excellence in the field of sports tourism. The petitioner has failed to establish the beneficiary's eligibility under the criterion at 8 C.F.R. § 214.2(o)(1)(ii)(B)(I).

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

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be primarily "about" the beneficiary and, as stated in the regulations, relate to the beneficiary's work "in the field for which classification is sought." The material must also have been published in major publications or major media.

The petitioner has submitted several media reports about the beneficiary, specifically focusing on her selection as a [REDACTED]. While these reports are primarily about the beneficiary and were

published in major publications or media, these reports do not relate to the beneficiary's work "in the field for which classification is sought." As discussed above under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), the beneficiary's selection as an [REDACTED] is not directly relevant to the beneficiary's field of endeavor in sports tourism. The mere fact that both the [REDACTED] and sports tourism involve sports in some way does not establish that they constitute the same field of endeavor.

The petitioner submitted media articles about the beneficiary, specifically focusing on her volunteer activity during the [REDACTED]. These articles indicate that the beneficiary's volunteer duties during the [REDACTED] consisted of translating materials into English and reporting. Again, while these reports are primarily about the beneficiary and were published in major publications or media, these reports do not relate to the beneficiary's work "in the field for which classification is sought."

The petitioner submitted several media articles about the [REDACTED] at the [REDACTED] [REDACTED] that briefly quoted or mentioned the beneficiary as one of the initiators of this event. These articles are not primarily "about" the beneficiary; rather, they are primarily "about" the [REDACTED] event. Even though these articles mention the beneficiary, the submission of evidence that simply mentions the beneficiary's name, quotes the beneficiary, or is not otherwise primarily about the beneficiary fails to constitute published material "about the alien," as required by the plain language at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). See *Negro-Plumpe v. Okin*, 2008 WL 2354694 (D. Nev.) (upholding a finding that articles about a show are not "about" the actor).

On appeal, the petitioner asserts that the media reports about the [REDACTED] are related to the beneficiary's field of endeavor because "[t]he success of the event shows [the beneficiary's] ability of organizing a cross-cultural event . . . [and the] position [the beneficiary] is being offered from [the petitioner], again, is to organize cultural/sports tours." However, the petitioner's explanation still fails to explain how the media reports about the [REDACTED] satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), which requires the media reports to be "about" the beneficiary. The petitioner has failed to meet this threshold showing. The petitioner has not submitted evidence that meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field

As evidence under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), the petitioner submitted evidence of the beneficiary's volunteer work including at the [REDACTED] and the [REDACTED]. In the denial, the director concluded that the petitioner failed to establish how the beneficiary's volunteer work can be considered original scientific, scholarly, or business-related contributions of major significance in the field.

On appeal, the petitioner asserts that the director "failed to give due acknowledgement of the beneficiary's unique contribution to sports in general as well as the Sino-U.S. cultural exchange." The petitioner asserts

that the beneficiary's achievements and contributions should be viewed from the perspective of their "social significance . . . in today's Chinese society." The petitioner asserts that, through her volunteer work, the beneficiary is a "model figure" for the younger Chinese generation that feels "lost and aimless in today's all-go-for-money social mentality." With particular respect to the beneficiary's volunteer work at the [REDACTED] the petitioner asserts that this event "stands out as a unique contribution to the sports and cultural exchange between the U.S. and China" because it "drew the attention from both nations' young students to something that is more fundamental and valuable than the mere economic benefits/conflicts between these two nations."

Upon review, the AAO concurs with the director that the petitioner has failed to establish that the beneficiary's volunteer work can be considered original, scientific, scholarly, or business-related contributions of major significance in the field of sports tourism.

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien's contributions must be scientific, scholarly, or business-related, and be in the field of endeavor. The petitioner has not established how the beneficiary's volunteer activities at a student and sporting events constitute "scientific, scholarly, or business-related contributions." Furthermore, the petitioner has not established how the beneficiary has made contributions to the field of sports tourism. Instead, the petitioner asserts that the beneficiary has made contributions to "sports in general" and to "today's Chinese society." The petitioner does not specifically explain how the beneficiary has made contributions to the field of sports tourism. *See Lee v. Ziglar*, 237 F. Supp.2d 914, 918 (N.D. Ill. 2002) (affirming that the "area" of athletics should not be considered as a whole to include every occupation involving athletics).

Moreover, according to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), an alien's contributions must be of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. The petitioner has not established how the beneficiary's limited volunteer activity at sporting events and a student event constitutes contributions of "major significance" in the field of sports tourism. Specifically, the petitioner has not established how the beneficiary's being a single [REDACTED] in the [REDACTED] constitutes a contribution of "major significance" to sports tourism as a whole. Likewise, the petitioner has not established how a single student event held during a volleyball match at a single university in the United States constitutes a contribution of "major significance" to sports tourism as a whole. The petitioner's vague and general assertions regarding the value of the beneficiary's volunteer work to "sports in general" or "Chinese society" as a whole is insufficient to establish eligibility under this criterion. The petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media.

The petitioner submitted evidence that the beneficiary has authored or co-authored three articles: [REDACTED]

[REDACTED] and a chapter in the book [REDACTED]

The director determined that the above articles do not appear to primarily relate to the travel

agency field. Furthermore, the director determined that the above articles are not scholarly articles in the field in professional journals, or other major media.

On appeal, the petitioner asserts that “all three articles are sports related and thus related to the field of endeavor of [the beneficiary] as a sports tour program director.” The petitioner suggests that, whereas an academic professor or researcher would certainly publish scholarly articles, the beneficiary’s position as a sport tour organizer requires that her publications “be evaluated as to see whether the published articles reflect the unique qualifications needed for this position.” The petitioner then explains that while the beneficiary’s articles “may not be scholarly in the sense that it is not written as a study of certain sport theory, but it is an indication that [the beneficiary] has an extraordinary sense of approaching sports as the most effective means of revealing the deepest humanity in all of us and connecting people from all the races. This sense is really a great qualification for a travel agency working as a sport tour director [*sic*].”

The AAO finds that the petitioner has failed to establish that the beneficiary’s articles: are scholarly articles; are in the field of sports tourism; and are published in professional journals or other major media. First, with regards to the requirement of scholarly articles, the petitioner has conceded that the beneficiary’s articles are not “scholarly articles” pursuant to the plain language of 8 C.F.R. § 214.2(o)(3)(iii)(B)(6). The petitioner’s request to evaluate the beneficiary’s articles “to see whether the published articles reflect the unique qualifications needed for this position” is unsupported by the plain language of the regulation or any citations to legal authority. Second, the petitioner has failed to establish that the beneficiary’s articles are in the field of sports tourism. Merely asserting that the articles are “sports related” is insufficient to establish that they are in the specific field of sports tourism. Finally, the petitioner provided no claims or evidence regarding whether the beneficiary’s articles were published in professional journals or other major media. The petitioner has not submitted any evidence that meets the plain language requirements of the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6).

B. Comparable Evidence

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) provides that an alien of extraordinary ability in the fields of science, education, business or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of receipt of a major internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), or by submitting evidence to satisfy at least three of the eight forms of documentation set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). We further acknowledge that the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) provides “[i]f the criteria in paragraph (o)(3)(iii) of the section do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence in order to establish the beneficiary’s eligibility.” It is clear from the use of the word “must” in 8 C.F.R. § 214.2(o)(3)(iii) that the rule, not the exception, is that the petitioner is required to submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to the beneficiary’s occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) through (8).

While the petitioner appears to claim eligibility under the "comparable evidence" regulation, it has also claimed eligibility under 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (3), (5) and (6). The regulatory language precludes the consideration of comparable evidence in this case, as the petitioner has not established that eligibility for O-1 classification in the beneficiary's occupation cannot be established by submitting documentation relevant to at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). In fact, as indicated in this decision, the petitioner specifically asserts that it is submitting evidence relating to four of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation. Where an alien is simply unable to meet or submit documentary evidence meeting three of these criteria, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(C) does not allow for the submission of comparable evidence.

Even if the petitioner were able to establish that comparable evidence could be considered in this case, the only document it has submitted as comparable evidence is the letter of support from [REDACTED] Chairman of [REDACTED]. On appeal, the petitioner emphasizes the significance of this letter, in which Mr. [REDACTED] discusses the petitioner's "wise and timely" business decision to develop golf tourism packages, and the beneficiary's "rare" and "ideal" qualifications for the proffered position. Mr. [REDACTED] letter concludes: "In summary, I strongly support [the beneficiary's] petition. It is not easy to find such an ideal and creative candidate for this position. I believe her exceptional marketing and event management skills, her understanding of business in both countries and her educational background will make her a great asset of [the petitioner]." However, this letter does not in any way establish that the beneficiary is an alien of extraordinary ability in the field of sport tourism. This letter focuses only on the petitioner's business plans and the beneficiary's qualifications for the proffered position; it makes no assertions regarding the beneficiary's extraordinary ability in the field of sports tourism. The beneficiary's qualification for the proffered position, no matter how rare or ideal, is insufficient to establish that the beneficiary possesses extraordinary ability in her field of endeavor.

C. Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that she meets any of the eight categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 214.2(o)(3)(iii). 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.²

² 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,

III. Conclusion

The petitioner has failed to establish that the beneficiary has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. In fact, the petitioner has not even articulated exactly what field of endeavor the beneficiary has extraordinary ability in and seeks to enter. Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act. The petition may not be approved.

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.