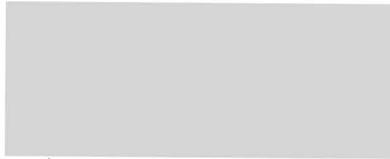




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 03 2015** Office: VERMONT SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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

ON BEHALF OF PETITIONER:

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,

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The petitioner, a non-profit music and cultural organization, 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 arts. The petitioner seeks to employ the beneficiary as an opera singer for a period of three years.

The acting director denied the petition, concluding that the submitted evidence did not satisfy the evidentiary requirements applicable to aliens of extraordinary ability in the arts, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B).

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner asserts that the beneficiary is eligible for the classification sought and that the acting director erred by dismissing the beneficiary's achievements while a student. The petitioner submits a brief and additional evidence in support of the appeal. For the reasons discussed below, while the beneficiary's student status does not preclude approval, we agree that the petitioner did not establish the beneficiary's eligibility as an individual with extraordinary ability. Accordingly, we will uphold the acting director's decision and dismiss the appeal.

### I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, in pertinent part: "*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that 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) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's recognition in the field through 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. 8 C.F.R. § 214.2(o)(3)(iv)(A). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). If the petitioner demonstrates that certain criteria in paragraph (o)(3)(iv)(B) 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. 8 C.F.R. § 214.2(o)(3)(iv)(C).

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994). In addition, we have held that "truth is to be determined not by the quantity of evidence alone but by its quality. Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

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

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

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.

## II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on May 9, 2014. The acting director issued a request for additional evidence (RFE) on May 20, 2014, to which the petitioner replied. We have considered the evidence of record in its entirety in reaching this decision.

According to the beneficiary's resume, she has been training in voice and/or opera in South Korea and the United States since at least 2007, and attended [REDACTED] as a pre-college, undergraduate and graduate student. The beneficiary has performance experience at various venues and lists, as her leading role, her recent performance as [REDACTED] in the [REDACTED] production of the same name, performed at the [REDACTED] and the [REDACTED]. The evidence submitted in support of the petition includes numerous testimonial letters, programs for some of the beneficiary's performances, articles pertaining to the productions in which the beneficiary performed and copies of awards the beneficiary received in Korea and the United States.

In a letter dated May 6, 2014, the petitioner stated that the beneficiary “is an artist of extraordinary ability as exemplified by her career with the [REDACTED] and the [REDACTED] among others.” The petitioner also notes that the beneficiary “has performed as a soloist at [REDACTED], and has been led in concert by the world-famous conductor [REDACTED].”

The petitioner indicates that it “is a non-profit, originally producing opera company dedicated to the enrichment of the community through first-class presentations by internationally known artists” and that it is “ranked among the top four opera companies in the U.S.” The petitioner states that the beneficiary will join the petitioner’s [REDACTED], which it states “has engaged many of the most influential operatic artists today, including [REDACTED] and [REDACTED].” The record contains petitioner’s contract with the beneficiary dated February 19, 2014. The contract indicates that the beneficiary will be an artist in the petitioning company’s studio, which the petitioner describes, in a February 19, 2014, letter addressed to the beneficiary, as “a directed training program of [the petitioning company], designed to prepare young opera and music theater artists for professional careers.”

#### A. The Beneficiary’s Eligibility under the Evidentiary Criteria

The sole issue to be addressed is whether the petitioner submitted evidence to establish that the beneficiary satisfies the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). In denying the petition, the acting director determined that the evidence submitted does not satisfy any of these criteria. After careful review, the evidence of record does not establish that the petitioner has overcome the grounds for denial.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will have submitted the requisite initial evidence for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director’s Guild award as examples of qualifying significant awards or prizes. The petitioner asserts that the beneficiary received two awards, which it contends are a “significant national or international award or prize” comparable to an Academy Award or Grammy Award. Upon review, the evidence of record does not establish eligibility pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A).

The petitioner has submitted evidence of the beneficiary’s receipt of the following awards:

1. [REDACTED] (which the petitioner also refers to as a [REDACTED], High School Female Division, 1st Prize ([REDACTED])).
2. [REDACTED], [REDACTED] Region, Winner \$2,500 Prize, 2nd Prize ([REDACTED]).

With regard to item 1, it appears that competition for this award was by definition not open to all vocalists, but to a very restricted segment of vocalists—high school students. The petitioner argues that it is irrelevant at what age the beneficiary won the award. However, the issue is not that the

beneficiary won the award while a high school student, but that the petitioner has not shown that this award was open to established professionals already working in the field rather than limited to students. The award may well be evidence of a significant national award when compared to other vocalists of high school age; it does not evidence, however, that the beneficiary has received a significant national award when compared to all vocalists of all ages. Thus, while the restriction limiting this award to high school students does not diminish the merit of the beneficiary's achievements in the class for which the award is presented, it nevertheless does not meet the requirement of 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) for an award "for excellence in the field of endeavor."

Item 2 above reflects local or regional, rather than national or international recognition. On appeal, the petitioner acknowledges that the stated mission of the [REDACTED] is, as stated by the acting director, "to discover promising young opera singers and assist them in the development of their careers." The petitioner argues that "in reality many well-established singers compete in the auditions with the goal of winning prize money" and that "[w]inners of this competition are always individuals who perform at an exceptional level and have talent that is well-beyond the ordinary."

However, this criterion specifically requires that the petitioner's awards be significant nationally or internationally in the field of endeavor, and it is the petitioner's burden to establish every element of this criterion. The record contains insufficient evidence establishing the significance and magnitude of the preceding competitions and the extent to which the nominees or winners of such awards are recognized beyond the issuing body. The petitioner did not provide general information about the competitions (such as the eligibility criteria, the number of entrants, or the percentage of entrants who earned some type of recognition). Nor is there supporting evidence showing that the recipients of the preceding honors were announced in major media or in some other manner consistent with a significant national or international award. For example, the winners and nominees of Emmy and Grammy awards receive significant national and international media attention as the result of their recognition, and the awards themselves are considered among the highest achievements attainable in the performing arts.

Nor can it be concluded based on the testimonial evidence in the record that such awards are comparable in importance to the highly recognizable awards mentioned in the regulations. For example, although Ms. [REDACTED], an assistant conductor and pianist at [REDACTED], refers to the beneficiary as "the top prizewinner in [REDACTED] . . . and also a prizewinner in [REDACTED]," Ms. [REDACTED] does not discuss the significance of either award. Ms. [REDACTED], a collaborative pianist at [REDACTED], states that in [REDACTED] the beneficiary won First Prize in the [REDACTED] which she describes as one "of the two the largest competitions Korea offers."<sup>1</sup> However, Ms. [REDACTED] does not state the basis of her knowledge of the significance of the beneficiary's award in Korea, and the record does not contain corroborating evidence in support of her assertion about the significance of the award. The testimonial evidence alone does not provide

<sup>1</sup> Ms. [REDACTED] and Ms. [REDACTED] also refer to the beneficiary's receipt of the [REDACTED]. However, the evidence of record does not establish either the beneficiary's actual receipt of this award or the significance of the award in the field.

sufficient context in which to evaluate the significance of the beneficiary's awards. As such, the petitioner has not established that the beneficiary has won a significant national or international award or prize in her field.

Therefore, the petitioner must establish the beneficiary's eligibility under at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will address these criteria below.

*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*

The acting director determined that the petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). The petitioner asserts that the beneficiary satisfies this criterion by her performances in the following productions:

1. [redacted] in [redacted] production of [redacted] at the [redacted] and the [redacted] South Carolina ([redacted]).
2. [redacted] in [redacted] production of [redacted] at [redacted] ([redacted]).
3. A performer in [redacted] concert of [redacted].
4. A performer in [redacted] concerts of [redacted].
5. A performer in [redacted] production of excerpts from [redacted].
6. A performer in [redacted] concert of [redacted] ([redacted]).
7. A participant in a public master class at [redacted] with soprano [redacted].
8. A participant in [redacted] public master class with soprano [redacted].
9. A participant in a public master class at [redacted] with pianist [redacted].

The petitioner has submitted numerous programs, articles, critical reviews from classical music publications, and publicity releases that mention the beneficiary by name. The beneficiary is identified as a student of [redacted] in the singer biographies that are included in the programs.

The acting director determined that the record indicates that the beneficiary sang solo parts and principal roles in [redacted] and [redacted] while the beneficiary was a student at [redacted]. Regarding the beneficiary's other performances listed above, the beneficiary appears to have been one of several students featured during these programs and it cannot be concluded that her role was leading or starring.

The acting director also determined that, although the programs were accompanied by critical reviews, advertisements or publicity releases, the publications do not establish the distinguished reputation of the events. As indicated in a press release for [REDACTED] production of [REDACTED], [REDACTED] "provides frequent performance opportunities, featuring singers in its own recital halls, on [REDACTED] stages, and around [REDACTED]." Upon review of the published materials, it appears that these performances serve as a showcase for students of the school's opera and its period instrument orchestra.

Upon review, the petitioner has not established that the beneficiary has performed in lead, starring or critical roles for productions or events that have a distinguished reputation. All of the beneficiary's performances to date have been as an opera student, rather than as a professional opera singer, and the specific roles mentioned appear to have taken place within the context of student showcases rather than professional productions that have a distinguished reputation. The petitioner has not established that the specific productions in which the beneficiary performed have a distinguished reputation.

Moreover, in order to meet this criterion, the petitioner must establish that the beneficiary will perform services as a lead or starring participant in productions or events which have a distinguished reputation upon approval of the petition. The petitioner indicates that the beneficiary will "perform multiple roles in opera productions as part of [the petitioner's] 2014-15, 2015-16 and 2016-17 seasons." The beneficiary's first-season contract, dated February 19, 2014, indicates that the beneficiary will study the role of [REDACTED] and sing the role of [REDACTED] ([REDACTED]). The petitioner has provided no information regarding the beneficiary's proposed roles in its upcoming productions for the second and third seasons of the beneficiary's proposed employment. The petitioner has offered no additional evidence on appeal that would distinguish the beneficiary's proposed role as leading or starring within the company's upcoming productions.

In sum, the petitioner has neither identified nor documented through submission of the evidence prescribed by regulation, the beneficiary's previous or forthcoming lead or starring role in events with a distinguished reputation. The petitioner has not established that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

*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*

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) requires the petitioner to demonstrate that the beneficiary has achieved national or international recognition for achievements through submission of critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. In general, in order for published material to meet this criterion, it must be about the beneficiary and, as stated in the regulations, be printed in major newspapers, magazines or other major publications. To qualify as major media, the publication should have significant national or international distribution.

The petitioner has not submitted any published materials that are specifically "about" the beneficiary as an individual. The petitioner submitted numerous articles that mention the beneficiary by name, several with photographs of the beneficiary, in reviewing productions of [REDACTED] in publications including the [REDACTED]

[REDACTED] The petitioner also provided information regarding the distribution of many of the publications.

The articles in these publications, however, are not about the beneficiary. Rather, they only briefly mention the beneficiary. The plain language of this regulatory criterion requires that the published material be "about the individual." See, e.g., *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at \*1, \*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). While the authors of the published material speak very positively of the beneficiary's performance in the productions, referring to her voice as "mesmerizing" and "ravishing," the articles do not recognize the beneficiary's individual achievements as a singer or the national and international recognition she received for such achievements.

In light of the above, the petitioner has not submitted evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

*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.*

The petitioner asserts that the beneficiary meets this criterion based on her previous performances for organizations that enjoy a distinguished reputation, including [REDACTED]. The acting director determined that the evidence of record does not establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

The petitioner has submitted several testimonial letters in support of the petition. However, only one of the letters provides information that is relevant to this criterion. Mr. [REDACTED], a faculty member at [REDACTED], states that he began working with the beneficiary in 2007 when the beneficiary was a pre-college student at the school. Mr. [REDACTED] states that he directed the beneficiary in "several opera scenes programs in her undergraduate years" and states that "[the beneficiary] is constantly sought out by my directing colleagues as someone they must work with. [The beneficiary] is often fought over as the ONLY artist who could fulfill their particular vision of a piece." None of the remaining letters mention the beneficiary's roles with respect to any specific organizations or establishments and thus do not satisfy the plain language of the criterion.

The petitioner does not submit any additional evidence on appeal that would distinguish the beneficiary's proposed role as leading or starring with respect to any specific organizations or establishments.

Sufficient documentary evidence has been submitted to establish that [REDACTED] enjoy a distinguished reputation in the classical music field. The remaining question is whether the beneficiary has performed in a lead, starring or critical role for these establishments.

Upon review, for the reasons discussed above with respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the evidence of record does not establish that the beneficiary performed in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. The majority of the beneficiary's performances to date have been as an opera student, rather than as a professional opera singer, and the specific roles mentioned appear to have taken place within the context of student showcases rather than professional productions that have a distinguished reputation. The evidence does not demonstrate that any of the beneficiary's roles for those organizations were in a lead or critical role. In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The letters submitted from the beneficiary's current and former teachers and colleagues provided little or no discussion of the beneficiary's role or responsibilities for an organization or establishment. Mr. [REDACTED] statement that his directing colleagues often consider the beneficiary "as the ONLY artist who could fulfill their particular vision of a piece" falls significantly short of establishing that the beneficiary achieved the rank of a lead or critical role within the establishment.

The evidence of record also does not establish that the beneficiary's proposed role with the petitioning organization would satisfy the requirement that she will be performing in such a role. As discussed above, the beneficiary's first-season contract, dated February 19, 2014, indicates that the beneficiary will study the role of [REDACTED] and sing the role of [REDACTED]. The petitioner has provided no information regarding the beneficiary's proposed roles in its upcoming productions for the second and third seasons of the beneficiary's proposed employment. The petitioner has offered no additional evidence on appeal that would elucidate where the beneficiary's proposed position falls in the overall hierarchy of the petitioner's organization or her proposed impact on the organization.. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the foregoing, the petitioner has not submitted evidence to satisfy the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

*Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by 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*

The acting director determined that the petitioner did not submit any evidence in support of this criterion. On appeal, the petitioner asserts that it has satisfied this criterion without reference to specific evidence in the record.

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4) requires 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. The record includes no evidence of documented "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim. For example, there is no indication that the beneficiary's performances in Korea or the United States consistently drew notable crowds, were sell-out performances, resulted in greater audiences than other similar performances that did not feature the beneficiary, or other evidence of tangible achievements in the classical music industry. Favorable reviews of the beneficiary's performances while a student at pre-professional performances are not sufficient evidence of a record of "major critically acclaimed success;" the petitioner did not provide objective evidence to establish the significance of these favorable reviews, thus the petitioner has not established that they constitute a "major" success as required by the plain language of 8 C.F.R. § 214.2(o)(3)(v)(B)(4).

In light of the above, the petitioner has not established that the beneficiary meets this criterion.

*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 acting director determined that the evidence of record does not establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

The petitioner submitted eight letters of recommendation. On appeal, the petitioner argues that the acting director did not take into proper consideration the reference letters submitted from "highly respected, accomplished opera professionals who have the credentials to identify a truly extraordinary artist." The petitioner further asserts that "[a]ll of these individuals have explained their working relationship with the beneficiary, listed her accomplishments, and identified her as one of the very best artists with whom they have ever worked." The letters of support submitted by the beneficiary's colleagues will be addressed below.

Ms. [REDACTED] director of the petitioning organization, states that she first heard the beneficiary in audition last fall. Ms. [REDACTED] describes the beneficiary as possessing a voice that is "stunningly beautiful, especially at the top of her range." She also states that the beneficiary demonstrated "a real dedication to her craft and an advanced understanding of how to succeed at the highest international level."

Ms. [REDACTED] an assistant conductor and pianist at [REDACTED] states that she first met the beneficiary at the school in 2010, and praises the beneficiary's "mature interpretation of music and the ability to captivate the audience on stage." Ms. [REDACTED] states that the beneficiary's "successful debut in the opera [REDACTED] at the prestigious [REDACTED] and [REDACTED] [REDACTED] was highly praised by the [REDACTED] [REDACTED]" Ms. [REDACTED] describes the beneficiary as being "a leading soprano in her generation."

Mr. [REDACTED] a faculty member at [REDACTED], states that he was the beneficiary's primary acting coach while she was a student at the school. He describes her as being "one of the strongest we have had in recent memory." He describes her talent as "extremely rare and highly exceptional; paired with her outstanding training, she has developed excellent vocal and performance technique." Mr. [REDACTED] states that the beneficiary "is certain to have a long, prosperous professional career."

Mr. [REDACTED], Director of Undergraduate Opera Studies at [REDACTED] and the [REDACTED] states that he taught and directed the beneficiary at the school, and that the beneficiary "proved herself an extraordinary artist." He states that he has worked with the beneficiary for six years on many projects, "both at [REDACTED] and beyond," including helping prepare the beneficiary "for the role of [REDACTED] at the [REDACTED] and [REDACTED] where she triumphed." Mr. [REDACTED] describes the beneficiary as "[v]ocally truly gifted" and having "a musicianship and sense of the dramatic that is remarkable" and "a major voice in a major career."

Ms. [REDACTED] principal coach in the Department of Vocal Arts at [REDACTED] states that she has known and coached the beneficiary for more than five years. Ms. [REDACTED] describes the beneficiary as "one of the most exceptional talents I have met," "a gifted dramatic persona" having "a deep understanding of musical styles and the importance of textual nuances," and possessing "a superb soprano."

Ms. [REDACTED] Master Coach-Breath Specialist, states that she has worked with the beneficiary for two years. Ms. [REDACTED] praises the beneficiary's "unique dramatic flair" and describes her as "among the finest singers I have encountered," "a world-class artist with an impressive vocal technique," and "one of the opera world's rising stars."

Mr. [REDACTED], a faculty member at [REDACTED] states that he began working with the beneficiary in 2007 when the beneficiary was a pre-college student at the school. Mr. [REDACTED] states that he directed the beneficiary in "several opera scenes programs in her undergraduate years" and states that "[the beneficiary] is constantly sought out by my directing colleagues as someone they must work with. [The beneficiary] is often fought over as the ONLY artist who could fulfill their particular vision of a piece." He describes the beneficiary as a "world-class actor/singer" and her talents as "EXTREMELY rare in the profession."

Ms. [REDACTED] a collaborative pianist at [REDACTED], describes the beneficiary as "years ahead of most of her also exceptional colleagues." She explains that [REDACTED] is "one of eleven major cultural institutions at [REDACTED]" and "is the only school

within the other performance organizations.” She states that the beneficiary’s “American premiere performances in 2013 of the leading role in . . . [redacted] at the . . . [redacted] . . . as well as at [redacted] were critically acclaimed.” Ms. [redacted] describes the beneficiary as “one of the very most interesting talented, outstanding unusually and distinctively gifted sopranos of her international generation before the public today.”

Upon review, the evidence of record supports the acting director’s determination that the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). As noted above, to satisfy this evidentiary criterion, the petitioner must submit evidence that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which he is engaged. Any testimonials must be in a form which clearly indicates the author’s authority, expertise, and knowledge of the alien’s achievements.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* 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 id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations.

The submitted reference letters all praise the beneficiary’s talent and abilities. All of the submitted letters are from the beneficiary’s own current and former teachers and colleagues, and therefore do not demonstrate significant recognition outside of that circle.

While reference letters can provide useful information about an alien’s qualifications or help in assigning weight to certain evidence, many of the submitted reference letters did not address the beneficiary’s specific achievements in the field of opera. Those letters that did address specific achievements of the beneficiary, such as her participation in the operas [redacted] and [redacted], do not explain how the beneficiary’s achievements to date have received significant recognition from organizations, critics, government agencies or other recognized experts in the field.

Although two of the testimonials mention the beneficiary’s singing awards, received in Korea in [redacted] and New York in [redacted] respectively, as discussed above, the scope and significance of these competitions has not been established through any corroborating evidence. The submitted evidence does not establish that the prizes rise to the level of a “significant recognition for achievements from organizations in the field” pursuant to the plain language of the criterion.

We acknowledge the petitioner’s assertions on appeal that “an F-1 student visa does not disqualify one for Extraordinary Ability” and that “[a]lthough the beneficiary recently completed a master’s degree program on an F-1 visa . . . [w]hile enrolled at [redacted] [the beneficiary] simultaneously went

about a notable professional career, far beyond that ordinarily encountered.” However, it remains the petitioner’s burden to establish the beneficiary’s significant recognition for achievements in the field. As discussed, the testimonial evidence submitted does not meet this burden. Overall, while the beneficiary has earned the respect of her colleagues and well-known figures in the art of opera, the evidence submitted is insufficient to establish that the beneficiary has received significant recognition for achievements in the field.

Based on the foregoing, the petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) that the beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field.

*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.*

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary 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. The acting director determined that the evidence of record does not establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

The petitioner focuses on the beneficiary’s hourly wage in asserting that the petitioner’s intended salary is high in relation to others in the field. On appeal the petitioner, through counsel, states as follows;

[The beneficiary’s] total compensation for each year of her work at [the petitioning organization] comes to \$31,700. This amount is for nine months (39 weeks of work), with a maximum of 36 hours each week. The hourly wage, therefore, is \$22.58/hr., well above the Level 3 Wage for Musicians and Singers in the [redacted] area, and near to the Level 4 Wage.

First, the beneficiary’s salary as indicated on the Form I-129 and in the contract will be \$30,300 per year. The petitioner has added to that salary an amount of \$1400, stated in the beneficiary’s contract to be a reimbursement “fund . . . made available to [the beneficiary] for costs related to [her] career development.” The contract also states that “[i]n no instance will reimbursement be made without supporting receipts” and that “the Director’s decision as to whether reimbursement will be made will be final.” The beneficiary’s contract does not refer to the \$1400 fund as part of the beneficiary’s salary, for example at part II.C, instead referring to the beneficiary’s “\$30,300 stipend.” The contract makes clear that the \$1400 is a maximum available amount, and that any submitted expenses may not be approved for reimbursement. Also, the beneficiary may not have \$1400 in career-related expenses. In addition, the petitioner has not demonstrated that it is a meaningful comparison to compare the beneficiary’s wages plus expenses to other wages in the field. For these reasons, we conclude that the \$1400 amount is too speculative and not properly included in the beneficiary’s salary for the purpose of calculating her hourly wage.

Further, counsel's statement that the beneficiary will be employed 36 hours per week as opposed to the standard 40 hours per week is not supported by any evidence in the record. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regardless, assuming that the petitioner's calculation of the beneficiary's hourly wage was sufficiently supported by the evidence of record, the petitioner has not established this salary is high in relation to others in the field. As a point of comparison, the petitioner submitted salary information from the Foreign Labor Certification Online Wage Library, [www.flcdatacenter.com](http://www.flcdatacenter.com) (accessed on May 28, 2014) for Musicians and Singers in the [REDACTED] Texas area. According to this information, a Level 3 singer earned \$18.74 hour, and a Level 4 singer earned \$24.08. Therefore, the beneficiary's wage of \$22.58 hour falls between the average wage for a Level 3 and Level 4 singer in the area of proffered employment. The wage does not appear to be a particularly "high salary" for a singer in Houston.

Accordingly, the petitioner has not established that the beneficiary meets the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(B)(6).

### III. Conclusion

The petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in the arts and 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.