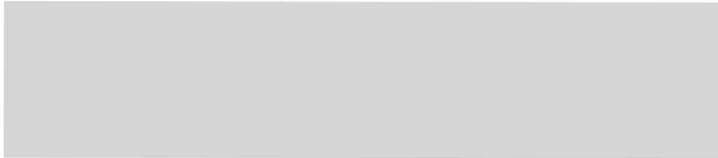


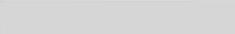


U.S. Citizenship
and Immigration
Services

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DATE: **AUG 05 2015**

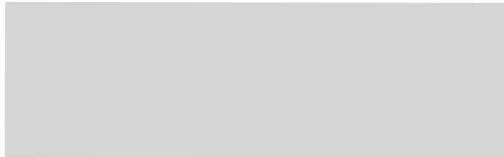
RECEIPT #: 

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Vermont Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. We 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 athletics. The petitioner is a swim school and currently employs the beneficiary as a swim site supervisor pursuant to an approved O-1 petition. It seeks to extend the beneficiary's employment for a period of three years. The petitioner's November 21, 2013 letter indicates that the beneficiary has been working for the petitioner as a swim instructor and site supervisor since March 2011.

After issuing a request for evidence (RFE) and then considering the evidence of record, the acting director denied the petition concluding that the petitioner did not establish that the beneficiary has achieved the required national or international acclaim in her field. Specifically, the acting director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii), which requires documentation of a one-time achievement or evidence that meets at least three of the eight regulatory criteria. Further, the acting director determined that the proffered position of swim site supervisor does not constitute continuing work in the alien's area of extraordinary ability, as the beneficiary's documented achievements are as a competitive swimmer.

The petitioner subsequently filed an appeal and submits a brief in support of the appeal. For the reasons discussed below, the petitioner has not submitted probative evidence satisfying the plain language requirements of at least three criteria.

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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). The regulation at 8 C.F.R. § 214.2(o)(3)(ii) 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 regulation at 8 C.F.R. § 214.2(o)(3)(iii) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's sustained acclaim and the recognition of the beneficiary's achievements in the field through evidence of a one-time achievement (that is, a significant nationally or internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner demonstrates that 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. 8 C.F.R. § 214.2(o)(iii)(C).

The submission of evidence relating to at least three criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 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 acting 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. at 376.

II. Discussion

A. Beneficiary's Area of Extraordinary Ability

This petition, filed on December 9, 2013, seeks to classify the beneficiary as an alien with extraordinary ability as a swim instructor. The statute and regulations require that the beneficiary seek to continue work in her area of extraordinary ability in the United States. *See* section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i); 8 C.F.R. § 214.2(o)(3)(i). The record indicates that the beneficiary is a 32-year-old swimmer who participated in competitive swim competitions in the United States and Brazil between 1999 and 2004. The petitioner seeks to continue to employ the beneficiary for "the training of instructors, supervising the daily operation of the classes" and other "administrative" duties. The record indicates that the beneficiary has been certified as a coach at Level 2 by the American Swimming Coaches Association (ASCA). The petitioner has not indicated that the beneficiary will continue her career as a competitive swimmer in the United States under the terms and conditions of employment with the petitioning studio; rather, the petitioner describes the beneficiary in a November 21, 2013 letter as "a former competitive swimmer."

The acting director was not persuaded that the beneficiary's proposed position as a swim site supervisor was in the beneficiary's claimed area of extraordinary ability. On appeal the petitioner claims that the director defined the beneficiary's claimed area of extraordinary ability too narrowly as "swimmer." The petitioner notes that the statute and regulations require that the beneficiary seek to continue work in the same area of extraordinary ability, not the same job position. The petitioner asserts that the acting director's interpretation is discriminatory because athletes can only compete for so long, they retain their recognition after they stop competing, and, in this case, the petitioner wants to continue the beneficiary's employment because of the experience she brings as a swimming champion.

While a competitive swimmer and a swim instructor share knowledge of the sport, the two rely on different sets of basic skills. Thus, competitive swimming and swim instruction are not the same area of expertise. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (holding that it is reasonable to conclude that extraordinary ability as a baseball player does not imply extraordinary ability in all positions or professions in the baseball industry, such as manager, umpire, or coach).

Nevertheless, we recognize that there exists a nexus between playing or practicing and coaching a given sport. To assume that every competitive swimmer's area of expertise includes teaching or instruction, however, would be too speculative. In a case where the petitioner has clearly demonstrated the beneficiary's extraordinary ability as a swimmer-athlete and establishes that the beneficiary has sustained that acclaim in the field of instruction, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the beneficiary's area of expertise. Specifically, in such a case we will consider the level at which the beneficiary acts as an instructor. An instructor who has an established successful history of instructing swimmers who compete regularly or perform at a high level has a credible claim; an instructor of novices does not.

B. Extraordinary Ability

1. Consideration of the Evidentiary Criteria

As the requisite initial evidence, the petitioner has submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), (2), (3), (5), and (7). The petitioner raises no objection to the acting director's determination that the remaining criteria have not been met. We will discuss the five criteria the petitioner has addressed below. After careful review of the record and for the reasons discussed herein, the petitioner has not established eligibility under any of the evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

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

The petitioner submitted a translation, but not the original foreign language version, of the beneficiary's resume as documentation of the beneficiary's receipt of the claimed prizes or awards, in which the beneficiary listed her awards in a section titled "Most Important Swimming Titles." The original foreign language document must accompany any certified English translation submitted to USCIS. 8 C.F.R. § 103.2(b). Moreover, 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Accordingly, the translation is not probative. The petitioner also provided numerous articles, pertaining to prizes the beneficiary received in swimming competitions.

The evidence submitted with respect to the beneficiary's awards does not demonstrate that they are nationally or internationally recognized. Of the prizes the beneficiary has received, we note that the Jose Finkel Trophy competition appears to be a regional event, rather than a national or international competition. In addition, the petitioner has not established that the Hall of Fame award from the [REDACTED] is a nationally or internationally recognized award.

Although several articles indicate that the beneficiary successfully participated in the "[REDACTED]", the petitioner has not submitted

official competition results or standings for this event or documentation regarding the nature, scope and significance of the competition.

The petitioner submitted a letter dated January 14, 2011, from [REDACTED] an executive¹ of [REDACTED]. Ms. [REDACTED] describes the association as “a recognized entity in the sport of swimming in Brazil.” In her letter, Ms. [REDACTED] states that the beneficiary “had represented our organization and several others [sic] recognized entities in Brazil.” She states that the beneficiary “is a recognized athlete in Brazil and had received many [n]ational and international awards.” This letter does not indicate what national or international awards the beneficiary has received.

With respect to the remaining awards, without documentary evidence regarding the actual competitions themselves, such as the level of those who participated, the selection criteria and the distribution or circulation of the media that reported the results, the petitioner has not established, based on the name of the competitions alone, that the contests or tournaments are national or international, and therefore that the results are recognized beyond the awarding entities as qualifying awards. A competition may be open to individuals from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is “nationally or internationally recognized.” The burden is on the petitioner to demonstrate the level of recognition and achievement associated with the beneficiary’s awards. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). The petitioner has not established that the beneficiary received nationally or internationally recognized prizes or awards in the sport of swimming.

Finally, the record contains no evidence that the beneficiary has received a nationally or internationally recognized award for excellence as a swim teacher or coach. The evidence supports the acting director’s determination that the beneficiary’s claimed national and international awards do not demonstrate the requisite sustained national or international acclaim as a swim coach.

Overall, the petitioner has not submitted evidence that meets the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

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 national or international experts in their disciplines or fields.

In order to demonstrate that membership in an association meets this criterion a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, passing certification exams to work in

¹ The text of Ms. [REDACTED] letter states she is president of the association and the signature line states she is vice president.

the field, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

At the time of filing, the petitioner submitted evidence that the beneficiary has been certified as a coach at Level 2 by the American Swimming Coaches Association (ASCA). This certificate indicates on its face that the beneficiary "has met all areas within the certification structure of achievement, education and experience" of the organization. In response to the RFE, the petitioner, in a March 3, 2014 letter, asserts that the petitioner earned a "Gold Card" from the ASCA and that this credential is "the highest level of Certification given to [the petitioner's] teachers by [the ASCA]." The Gold Card is not in the record. The acting director determined that the petitioner did not submit evidence that the beneficiary meets this criterion. The acting director concluded that the petitioner has not established that membership in the organization "requires outstanding achievements of their members."

On appeal, the petitioner states that the beneficiary "had to pass [sic] some tests and be evaluated by the association to receive her level of membership. Only individuals with high level in the field [sic] could receive the membership level of the beneficiary." Upon review, although not discussed by the acting director, the petitioner has not submitted any evidence of the beneficiary's membership in the ASCA, such as the beneficiary's ASCA membership card. Even if the petitioner established that the beneficiary's documented certification as a coach at Level 2 by the ASCA constituted membership in the organization, the petitioner has not submitted evidence from the ASCA establishing the requirements for membership in the organization. The petitioner did not provide documentary evidence to support the petitioner's explanation of the membership process. *See Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Even accepting the petitioner's assertions pertaining to the certificate requirements, passing competency exams for certification as a coach is not an outstanding achievement for a coach.

Based on the foregoing, the petitioner has not satisfied the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

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 "about" the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution.

As previously discussed, the petitioner provided numerous articles pertaining to prizes the beneficiary received in swimming competitions. Although the petitioner submitted the original

source material for the foreign language articles, the majority of the articles were accompanied by certified translations of only portions of the original sources. The regulation at 8 C.F.R. § 103.2(b) requires that the translator certify the completeness of the translation. As the petitioner has not submitted full English language translations, it has not complied with this regulation. For this reason, this evidence is of limited probative value.

The petitioner submitted the following published articles pertaining to the beneficiary, relating to her work in the field:

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

Regarding the items in [REDACTED] and [REDACTED] the petitioner did not include the author of the material as required under this criterion.

In evaluating the petitioner's evidence, the acting director noted that the petitioner has submitted various articles regarding the beneficiary's work as a competitive swimmer. The majority of the articles merely provide the beneficiary's results in various events. One article mentions that the beneficiary is ranked in the top 100 in the world in the 100-meter butterfly. While the petitioner has submitted some documentation reflecting published material about the beneficiary relating to her work as a competitive swimmer, the petitioner did not establish that the material was published in professional or major trade publications or other major media. The burden is on the petitioner to establish every element of this criterion.

Counsel also states that the beneficiary was "interviewed by [a] large TV channel in Brazil, in a sport program," however the petitioner has not submitted any documentary evidence in support of this claim. 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)

Finally, as noted by the director, the petitioner has not provided any published materials about the beneficiary referencing the beneficiary's work as a swim coach, instructor or trainer. Accordingly, the petitioner has not satisfied this third criterion as it pertains to the beneficiary's national or international recognition as a swim coach.

Based on the forgoing, the evidence of record supports the acting director's determination that 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.

To meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), the petitioner has submitted a number of testimonial letters, as well as the above-referenced articles pertaining to prizes received at swimming competitions between 1999 and 2004.

The record contains the above mentioned letter from Ms. [REDACTED] Vice President of [REDACTED] stating that the beneficiary “was responsible for attracting a large audience to the events [in which] she participated” and that “[the beneficiary’s] contribution was critical for the success of the sport clubs she had represented and for all swimming competitions where she had performed.” Ms. [REDACTED] does not identify an original contribution that the beneficiary has made to the sport. We will consider the beneficiary’s impact on organizations or establishments below pursuant to 8 C.F.R. § 212.2(o)(3)(iii)(B)(7).

The petitioner provided a letter from [REDACTED] a professional swimming coach and employee of the petitioner. Mr. [REDACTED] describes the beneficiary as “an outstanding swimmer who has performed exceptional work in her field,” “a world class athlete who possesses unique skills and knowledge and occupies a vital role in her field” and one whose “achievements as an athlete have place her firmly in the forefront of her field.” Referring to the above competition results from 1999 to 2004, he states that the beneficiary has “attained national and international recognition for her performance as an athlete.”

In response to the RFE, the petitioner submitted an additional letter from its president, [REDACTED], stating that one of the swimmers who trained with the company, “went on to swim a world record in the 50 meter backstroke in [REDACTED]” As Ms. [REDACTED] acknowledges that the beneficiary began working for the petitioner in 2011, the record does not establish that the beneficiary played a role in the instruction of this swimmer. Ms. [REDACTED] also discusses the beneficiary’s administrative and institutional knowledge but does not address the beneficiary’s contributions to the sport of swimming.

The petitioner submitted letters from [REDACTED] the head coach of the [REDACTED] [REDACTED], a swimming champion and friend of the beneficiary and [REDACTED] whose son the beneficiary has coached. These letters address the ability of the beneficiary’s students to progress to more competitive programs but do not address the beneficiary’s contributions to the sport itself.

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)(iii)(B)(5). All of the submitted letters, which are from the beneficiary’s colleagues and personal acquaintances, praise the beneficiary’s accomplishments and skills as a competitive swimmer and abilities as a swim coach, but none of these letters indicate that the beneficiary has made original contributions of major significance to her field.

In general, attestations regarding the beneficiary’s talent, skills and success will not satisfy 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) as evidence of the beneficiary’s original contributions.

Competitive success is already taken into account by 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), pertaining to prizes and awards, and 8 C.F.R. § 214.2(o)(3)(iii)(B)(3) provides for the submission of media coverage of an athlete or coach. Finally, regarding the beneficiary's coaching experience the petitioner did not submit any primary evidence of awards won by the beneficiary's student athletes while under her tutelage.

Overall, while all of the submitted letters are highly complimentary and suggest that the beneficiary is a capable and well-liked swim coach, the petitioner has not established that the beneficiary has made original contributions of major significance to the sport. Based on the foregoing, the petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation

With respect to the beneficiary's career as a competitive swimmer, the acting director determined that the submitted evidence does not establish that the beneficiary has held a critical or essential position for an organization that has a distinguished reputation.

At issue for this criterion are the position the beneficiary was selected to fill, her impact on the organization or establishment, and the reputation of the entity that selected her. On appeal, the petitioner contends that the beneficiary satisfies this evidentiary criterion based upon her competitive swimming "under [a] sport contract, for famous sport clubs in Brazil such as [REDACTED] and [REDACTED] and having been "sponsored by the State of Rio de Janeiro Government." The petitioner asserts that the beneficiary was "critical to the success of events sponsored by those recognized entities." The petitioner also contends that the beneficiary "has performed a critical role for the Brazilian National Team" and that she "represented Brazil in several international competitions."

The petitioner submitted the above-referenced letter from Ms. [REDACTED] stating that the beneficiary "had represented our organization and several others [sic] recognized entities in Brazil such as [REDACTED] and [REDACTED]" and that the beneficiary "was responsible for attracting a large audience to the events she participated [sic]" and that "[the beneficiary's] contribution was critical for the success of the sport clubs she had represented and for all swimming competitions where she had performed." However, Ms. [REDACTED] does not explain the manner in which she acquired knowledge about the beneficiary's claimed role in representing other swim entities in Brazil. 8 C.F.R. § 214.2(o)(2)(iii)(B). As her assertions are not supported by corroborating factual information, either in her letter or in the above-referenced articles, her claims are not probative evidence.

Furthermore, the petitioner did not submit evidence to establish the distinguished reputation of the organizations or establishments for which the beneficiary swam competitively.

With respect to the beneficiary's coaching experience, the submitted evidence does not establish that the beneficiary has held a critical or essential coaching position for an organization that has a

distinguished reputation. To the extent that submitted evidence documents the beneficiary's swim career in Brazil and the United States, it does so only with respect to her career as a swimmer, rather than as a coach. As noted above, the beneficiary's achievements as a competitive athlete, while not without evidentiary weight, do not establish her eligibility for this classification as a swim instructor.

The beneficiary's only documented coaching experience is her work as a swim instructor and site supervisor for the petitioning company. The petitioner has submitted letters from the petitioner's representatives, a client of the petitioner and the [REDACTED] commending the beneficiary's work as a swim coach, and her role in helping to train the petitioner's swimmers. The letter from Mr. [REDACTED] describes the beneficiary as "one of the best swim instructors I have ever met" and that swimmers coached by the beneficiary "have become the top age group swimmers in [REDACTED] program." He describes the beneficiary's ability to teach as "unmatched." The letter from Ms. [REDACTED] describes the beneficiary's achievements as including having instructed an "endless number of swimmers that have become great competitive placing in the top of Florida swimming rankings," although, as previously noted, Ms. [REDACTED] does not identify any such swimmers coached by the beneficiary.

The letter from Ms. [REDACTED] describes the beneficiary as "the only person qualified" to run the petitioner's swim program in Ms. [REDACTED] absence. Ms. [REDACTED] asserts that the beneficiary possesses skills that "no other of my current employees is capable of." She cites as examples that only the beneficiary knows how to move the company's students from its swim club to the appropriate part of the [REDACTED] swim team and "[s]he is familiar with the unique computer program for scheduling students. She also runs the office in my absence." On the basis of the above, the petitioner has submitted sufficient evidence establishing that the beneficiary was employed in a critical or essential capacity as a swim instructor and site supervisor at the petitioning swim school. The director's finding and comments to the contrary will be withdrawn.

While it is not disputed that the beneficiary was employed in a critical or essential capacity for the petitioning swim school, the petitioner failed to establish that the petitioner is or was a company with a distinguished reputation, as required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The petitioner submitted no evidence regarding the reputation of the petitioner as a company.

Based on the foregoing discussion, the petitioner has not submitted evidence that satisfies the plain language of the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(7).

2. Summary

In this case, the evidence of record supports the acting director's determination that the petitioner has not demonstrated the beneficiary's receipt of a major, internationally recognized award, or that the beneficiary meets at least three of the eight evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The evidence shows that the beneficiary is a skilled and experienced competitive swimmer. The petitioner seeks to employ the beneficiary as a swim site supervisor and has been employing the beneficiary as a swim instructor and site supervisor, which includes training instructors and supervising the daily operation of classes. The record does not suggest that she will be competing. Upon review of the totality of the evidence submitted, for the reasons discussed above, the petitioner has not established that the beneficiary has extraordinary

ability as a swim instructor or site supervisor, demonstrated by sustained national or international acclaim, as required by section 101(a)(15)(O) of the Act. Because the petitioner has also not demonstrated the beneficiary's eligibility as an extraordinary swimmer, we need not reach the question of whether the petitioner has established that coaching is within her area of expertise as a swimmer. Regardless, the petitioner has not documented the level of the swimmers who are currently under the primary tutelage of the beneficiary. Accordingly, the petitioner has not established that the totality of the evidence of the beneficiary's accomplishments as an athlete, combined with the level of coaching she has performed, is indicative of her eligibility as an acclaimed athlete whose area of expertise includes coaching.

Consequently, the beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act. For this reason, the petition may not be approved.

III. Prior Approval

The record indicates that USCIS has previously approved a petition for O-1 status filed on behalf of the beneficiary. The prior approval does not preclude USCIS from denying an extension of the original visa based on a reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner, beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, the mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the acting director reviewed the record of proceeding and concluded that the petitioner did not meet all eligibility requirements for the requested classification. If the previous nonimmigrant petition was approved based on the same evidence that is contained in the current record, the approval would constitute material and gross error on the part of the acting director. Based on the lack of required evidence of eligibility in the current record, we find that the acting director was justified in departing from the previous petition approval by denying the instant petition.

We are not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner does not meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

IV. Conclusion

Based on the foregoing, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iii)(A) or satisfied at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has also not established that swim instruction falls within the petitioner's area of expertise as a competitive swimmer. Consequently, the petitioner has not established that the beneficiary is eligible for classification as an alien with extraordinary ability in athletics. For this reason, the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility 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.