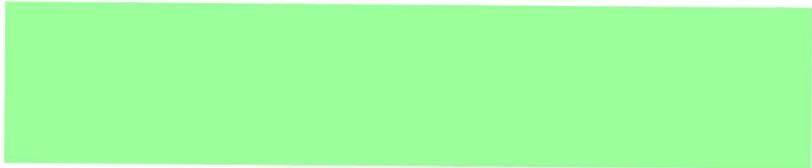


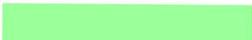
(b)(6)

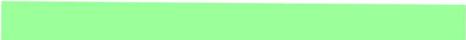
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

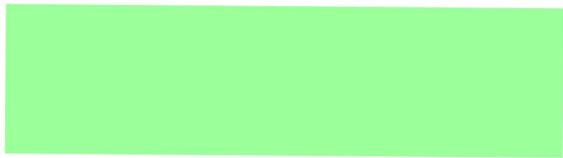


DATE: **FEB 18 2015** Office: CALIFORNIA SERVICE CENTER FILE: 

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:



INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California 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 nonimmigrant visa petition seeking to classify the beneficiary pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (“Act”), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien with extraordinary ability in the field of athletics, as a “Head Squash Coach.” After issuing a request for evidence (RFE) and then considering the evidence of record, the director denied the petition, finding that the petitioner did not establish that the beneficiary qualifies as an alien of extraordinary ability in athletics.

On appeal, the petitioner submits additional evidence and a brief. On appeal, the petitioner asserts, in part, that there is a lower evidentiary standard for the O-1 nonimmigrant classification than for the extraordinary ability immigrant classification and that the director “appears to have erroneously used” a higher standard. The petitioner did not, however, provide any examples which demonstrate that the director held the petitioner to a higher standard. Regardless, in the instant petition, we will adjudicate the petition under the plain language of the regulations. Upon review of the entire record, including the evidence the petitioner submitted on appeal, we agree with the decision of the director and will dismiss the appeal.

#### I. 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) states, in pertinent part, that: “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) 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 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 the “truth is to be determined not by the quantity of evidence alone but by its quality.” Thus, in adjudicating the petition pursuant to the preponderance of the evidence standard, USCIS 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).

## II. Analysis

### A. Translations

The director’s request for evidence notified the petitioner that “[a]ll foreign language documents must have a complete English translation.” The record of proceeding reflects that the petitioner submitted numerous English language translations and foreign language documents without complete English language translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

- (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

In addition, the petitioner submitted a blanket certification that does not identify the translations it certifies or the beneficiary. The submission of a blanket translation certification that does not identify the document or documents it accompanies is not probative evidence that the translator of the translations in the record certified those translations pursuant the regulation at 8 C.F.R. § 103.2(b)(3). Further, the petitioner submitted a number of documents which were translated by “google translate” and other internet translation services and, therefore, do not meet the plain language requirements of the regulation.

In response to the director’s request for evidence, the petitioner submitted a new foreign language document titled “1<sup>st</sup> National Coaching Course, 2012” with a full, certified English translation. On appeal, the petitioner submitted the document ‘[REDACTED] 2012, [REDACTED]’ with only a partial translation and a photocopy of the March 7, 2014 blanket translation certification the petitioner submitted with the initial filing. As discussed above, without a full English language translation and accompanying translator certification, the document has no probative value. Accordingly, with the

exception of the 1<sup>st</sup> National Coaching Court 2012 document, the remaining foreign language evidence is not probative.

#### B. Evidentiary Criteria<sup>1</sup>

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

The director determined that the petitioner did not establish that the beneficiary's establish eligibility for this criterion. The petitioner did not contest the findings of the director for this criterion or offer additional arguments on appeal or in response to the director's request for evidence. Therefore, the petitioner abandoned this issue. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at \*1, \*9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

*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.*

The petitioner asserts that the beneficiary satisfies this criterion based upon his previous coaching roles. The director found that while the beneficiary's previous employment may be indicative of a leading or critical role, it was not sufficient to meet this criterion. On appeal, the petitioner again asserts that the beneficiary "has a valid claim to being a 'member' of" the teams he coached. Evidence relating to, or even meeting, the leading or critical role criterion is not presumptive evidence that the beneficiary also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a beneficiary meet at least three separate criteria. Therefore, while the beneficiary's prior roles as a coach will not be considered under this criterion, they will be considered under the leading or critical role criterion.

The director stated that "it cannot be determined how the beneficiary held membership that has requirements for admission." It is the petitioner's burden to demonstrate that the beneficiary meets every element of a given criterion, including that coaching a team, even at the national level, is indicative of membership in an association which requires outstanding achievements of its members, as judged by recognized national or international experts.

The petitioner also asserts on appeal that the beneficiary's "stature as coach for the team is 'comparable' to membership on the team and should be adjudicated under 8 C.F.R. [§] 214.2 (o)(3)(iii)(C)." That regulation provides "[i]f 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." Thus, it is the petitioner's burden to explain why the regulatory criterion is not readily applicable to the beneficiary's occupation and how

<sup>1</sup> The petitioner does not claim the beneficiary meets or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that this criterion does not readily apply to the beneficiary’s occupation. Specifically, the petitioner has not documented that there are no qualifying associations for squash coaches. An inability to meet a criterion is not necessarily evidence that the criterion does not apply to the beneficiary’s occupation. Also, performing a role for an association or team falls under a separate criterion, the critical or essential role criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). Direct evidence for one criterion is not also presumptively comparable evidence for a separate criterion in a classification that requires “extensive documentation.” Section 101(a)(15)(o)(i) of the Act.

Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii) does not allow for the submission of comparable evidence.

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

*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.*

The director found that the petitioner did not present evidence to establish how the publications in the record are major media. 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 major media. It is insufficient to establish eligibility for this criterion based on any material that only lists, mentions, or indicates the petitioner’s name, such as the posting of a player’s results from a match in a newspaper. A mention of the beneficiary’s name does not meet the plain language of the regulation. *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 petitioner did not submit the required complete, certified translations for the material posted on the Mexican websites [REDACTED] and [REDACTED] a review of the partial translations does not suggest that the articles are about the beneficiary. Rather, they are about events and/or athletes and mention the beneficiary’s role as a coach in passing. The one exception is “For the [REDACTED] [the beneficiary]” posted on [REDACTED]. While the translation suggests that this article is about the beneficiary, the material does not provide the author, a requirement under 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Moreover, the materials on which the petitioner relies to show that this site is major media are translated through google.translate or by an incomplete uncertified translation. The translated materials also do not establish whether the site is an open forum on which anyone can post an article, consistent with the posting of an article that does not list the author, or a journalistic media site.

While the petitioner asserts on appeal that the article at [REDACTED] “prominently featured” the beneficiary, the article is about the [REDACTED] program and includes quotes from the Secretary of the federation and the chief coach of the program. The two-page article only mentions the beneficiary once, naming him as the assistant coach of the program. Finally, the article in [REDACTED] only lists the beneficiary’s name as coach. As such, these articles are not about the beneficiary, consistent with the plain language of the regulation.

We note that the petitioner also submitted additional articles about the beneficiary’s students and event successes, but the articles do not mention the beneficiary and, therefore, are not about the beneficiary.

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

*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*

The director found that judging the work of others is inherent to the beneficiary’s position as a coach. Serving as a coach where part of one’s job duties includes evaluating athletes and hiring and supervising assistant coaches for one’s employer does not equate to participation as a judge of the work of others in the field. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually, as specified pursuant to the plain language of the regulation. Informal instances of evaluating athletes as a coach do not meet the elements of this criterion.

In response to the director’s request for evidence, the petitioner asserts that the beneficiary meets this criterion based upon “coach[ing] a national course for coaches-and therefore [he is] a ‘judge of the work of his peers.’” To support this assertion, the petitioner submitted a certified translation of [REDACTED] “1<sup>st</sup> National Coaching Course, 2012,” which indicates only that the beneficiary is scheduled to be a presenter. The petitioner did not provide evidence to establish that the beneficiary actually presented at the course, or evidence to demonstrate what specifically the beneficiary presented. Regardless, the petitioner has not demonstrated that presenting to a group of individuals who, according to the document, must “[b]e affiliated with a[n] Association[] of the [REDACTED] and “[b]e at least 17 years old” is tantamount to judging the work of others, as required by the plain language of the regulation.

On appeal, the petitioner asserts that unlike an “ordinary coach,” the beneficiary’s “coaching duties involved judging the work of his peers (other coaches) and athletes (an allied field) at a far-higher level than other coaches.” It is not the level at which the individual is coaching that is determinative; the issue is whether the beneficiary judged the work of others. The beneficiary’s roles as a national coach are impressive, and, as previously discussed, will be considered under the leading or critical role criterion. There is no evidence on record demonstrating that the beneficiary actually served “as a judge of the work of others.”

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

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

Although the petitioner never asserted that the beneficiary satisfies this criterion, the petitioner did submit a number of reference letters which, as stated by the director in her decision, “speak highly of the beneficiary’s skills as a squash coach.”

The petitioner did not contest the findings of the director for this criterion or offer additional arguments on appeal or in response to the director’s request for evidence. Therefore, the petitioner has abandoned this issue. *See Sepulveda, 401 F.3d at 1228 n.2; Hristov, 2011 WL 4711885, at \*9.*

Accordingly, the beneficiary does not meet this criterion.

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

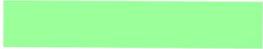
The director found that the petitioner submitted sufficient evidence to establish that the beneficiary meets this criterion. A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence establishing the beneficiary’s roles as the coach of the national squash team for more than one country and, thus, satisfies this criterion.

*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*

The director found that the petitioner submitted sufficient evidence to establish that the beneficiary meets this criterion. A review of the record of proceeding reflects that the petitioner submitted sufficient documentary evidence, including contracts, establishing that the beneficiary will command a high salary for his services.

### C. Summary

Based on the foregoing, the petitioner has not submitted qualifying evidence under at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Therefore, the petitioner has failed to demonstrate that the beneficiary satisfies the regulatory requirement of three types of evidence. In addition, the evidence in the aggregate, which mostly focuses on the beneficiary’s high level experience and salary as a coach, which is a role and not a membership in an association or on a team, and the inherent judging duties of that role, does not constitute extensive evidence to establish the beneficiary’s sustained national or international acclaim or that the beneficiary has a level of expertise indicating that he is one of the small percentage who have arisen to the very top of the field of endeavor. Section 101(a)(15)(o)(i) of the Act; 8 C.F.R § 214.2(o)(3)(ii), (iii).



### III. CONCLUSION

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.