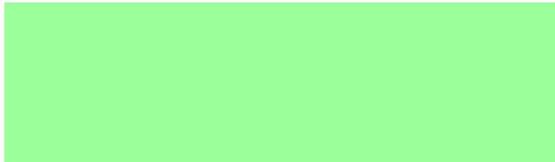
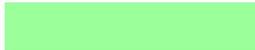


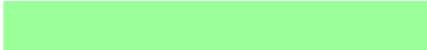


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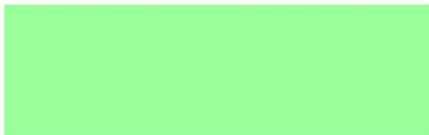


DATE: **MAR 03 2015** Office: CALIFORNIA SERVICE CENTER FILE: 

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,

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 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, a Nevada-based sole proprietor, is a talent manager. The petitioner requests that the beneficiary be granted O-1 classification for a period of three years so that she may work as a professional bodybuilder in the United States.

After issuing a request for evidence (RFE) and then considering the evidence of record, the 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 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.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to us for review. The petitioner submits a brief and additional evidence 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 of the eight categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8).

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 major internationally recognized award. 8 C.F.R. § 214.2(o)(3)(iii)(A). 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 certain criteria in paragraph (o)(3)(iii)(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)(iii)(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).

II. Discussion

A. Extraordinary Ability in Athletics

This petition, which the petitioner filed on November 18, 2013, seeks to classify the beneficiary as an alien with extraordinary ability as a Professional Athlete. The record indicates that the beneficiary is a 39-year-old bodybuilder who has participated in competitive bodybuilder competitions in the United States and Canada between [REDACTED]. The record further indicates that in 2011, the beneficiary turned professional after obtaining professional level qualification from the [REDACTED].¹ In the petitioner’s letter dated October 21, 2013, summarizing the terms of its agreement with the beneficiary, the petitioner states it seeks to employ the beneficiary “to compete in adult professional bodybuilding and fitness competitions” and for “youth training activities.” The petitioner has provided an itinerary of bodybuilding events at which the beneficiary will compete.

The record consists of: the Form I-129 petition and supporting evidence; the director’s request for evidence dated November 29, 2013; the petitioner’s response; and, the director’s decision dated January 4, 2014. We have reviewed the evidence of record in its entirety in reaching our decision.

1. Consideration of the Evidentiary Criteria

The sole issue to be determined is whether the petitioner submitted evidence to establish that the beneficiary enjoys the requisite sustained national or international acclaim. If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will have submitted the requisite initial evidence pertaining to the beneficiary’s acclaim and recognition. The regulations cite to the Nobel Prize as an example of a major award. *Id.* The petitioner does not assert that the beneficiary has satisfied this criterion. Instead, the petitioner has submitted evidence relating to the criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

At the time of filing, the petitioner indicates that the beneficiary meets the criteria listed at 8 C.F.R. § 214.2(o)(3)(iii)(B) subparagraphs (1), (2), and (3). In denying the petition, the director determined that the evidence submitted satisfied only two of the eight evidentiary criteria. The petitioner has not

¹ According to the [REDACTED] constitution, “[REDACTED] . . .”

submitted any evidence relating to the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(4), (5), (6), (7) and (8), and raises no objection to the director's determination that these criteria have not been met. We will discuss the three criteria the petitioner claims below. After careful review of the record and for the reasons discussed herein, the petitioner has not established eligibility under three of the eight evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

2. Consideration of the Evidentiary Criteria

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

To meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

The petitioner indicates that the beneficiary satisfies this criterion based on the following awards:

- [REDACTED]

The petitioner submitted copies of trophies and documentary evidence of the beneficiary's receipt of the above-referenced prizes, including testimonials and newspaper articles.

The petitioner also submitted evidence that as of [REDACTED] the beneficiary was ranked [REDACTED] in the [REDACTED]

The record indicates that as a result of winning the overall [REDACTED] at the [REDACTED] [REDACTED] the beneficiary turned professional, obtaining [REDACTED] professional level qualification and earning an [REDACTED]). Since turning professional in 2011, the petitioner's competition at the professional level resulted in the [REDACTED] 1 place finish at the [REDACTED], as well as [REDACTED] place finishes at the [REDACTED].

The petitioner submitted testimonials and published articles to establish the significance of the events sponsored by the [REDACTED]³ and the [REDACTED] within the sport. The beneficiary's ranking in the field is also commensurate with having won nationally or internationally recognized awards. The director determined that the beneficiary meets this criterion. The evidence of record demonstrates that the above-referenced [REDACTED] and [REDACTED] competitions are considered nationally or internationally-recognized events within the sport of female bodybuilding and, as such, satisfy the plain language of the evidentiary 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 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.

The petitioner relies on the beneficiary's professional memberships in the [REDACTED] to meet this criterion. The petitioner submitted two letters from Ms. [REDACTED] secretary of the [REDACTED] Professional League.⁴ In a letter dated June 16, 2013, Ms. [REDACTED] states that the beneficiary "is a current active, professional in good standing with [REDACTED]" Ms. [REDACTED] also states that "in order to be designated as a professional athlete by the [REDACTED] an athlete must prove herself to be worthy of the distinction" and that "[t]he qualification process to become an [REDACTED] professional bodybuilding athlete is extremely selective." In a letter dated November 1, 2013, Ms. [REDACTED] states that [REDACTED] "accepts only members with outstanding achievements and all members' achievements are judged by recognized national or international experts in their disciplines." Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). More specifically, she states: "To become an [REDACTED] professional member and to be eligible to enter the world of professional bodybuilding, the member has to qualify by competing in a pro-qualifying show and achieve outstanding results."

³ According to the [REDACTED] website, the [REDACTED]

⁴ Ms. [REDACTED] did not sign either letter; rather her name appears as typed in a cursive font at the bottom of the letter.

In support of Ms. [REDACTED] letters, the petitioner submitted [REDACTED] constitution, which provides:

9.2 Direct Membership:

Although the [REDACTED] shall not offer direct individual membership, members of National, Regional and Continental Federations, by virtue of their acceptance into the [REDACTED] family, agree to be bound by the Constitution or Rules.

9.3 Membership by Association:

Athletes, judges, administrators, and other officials become Members of the [REDACTED] by virtue of their association with their National, Regional or Continental Federation pursuant to the terms and conditions as set out in the constitution and rules of the respective National, Regional or Continental Federation.⁵

While counsel quotes the above provisions, counsel adds the following language: “Professional athletes, judges, administrators and other officials become members of the [REDACTED] by virtue of their association with the [REDACTED] Professional Division.” This language, however, does not appear in the [REDACTED] constitution that the petitioner submitted. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Upon review, membership in [REDACTED] is based on membership in a National, Regional or Continental Federation. However, the petitioner initially did not provide evidence of the membership criteria for the National, Regional or Continental Federations of which the beneficiary is a member. The director concluded that the petitioner has not established that membership in the [REDACTED] requires outstanding achievements as judged by national or international experts.

The petitioner also submitted several letters of support discussing the beneficiary’s amateur and professional victories.

The petitioner provided a letter from Mr. [REDACTED] past Secretary, [REDACTED] Pro and Amateur Judge, [REDACTED] past Secretary, [REDACTED] Judge, South Region Director [REDACTED]. He confirms that the beneficiary has been competing in amateur bodybuilding competitions in Canada “since [REDACTED],” and that the beneficiary became a professional bodybuilder in [REDACTED]. Mr. [REDACTED] describes the beneficiary as “one of our top [REDACTED] and Professional Canadian bodybuilders.”

Mr. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED] body building athletes, reiterate the petitioner’s achievements of having obtained her [REDACTED], and having been ranked [REDACTED] for female bodybuilding.

Mr. [REDACTED], a family friend of the beneficiary for eight years, praises the beneficiary’s “positive energy” and “winning spirit.” Dr. [REDACTED] a client of the beneficiary, attributes

⁵ On appeal, the petitioner has quoted language purportedly from this portion of the [REDACTED] constitution, but the quoted language is inconsistent with the actual language contained in the constitution.

his high level of conditioning and weight loss to the beneficiary's "excellent guidance and professional expertise" as a nutritional consultant and trainer.

Ms. [REDACTED], a professional bodybuilder, states that she has known the beneficiary as her competitor for two years. Ms. [REDACTED] describes the beneficiary as having "a lot of potential." She notes that "[the beneficiary] has several titles under her belt, she is ranked among the top [REDACTED] Professional bodybuilders [REDACTED]" She further describes the beneficiary as having "great symmetry, anesthetically [sic] pleasing to the eye and marketable."

The petitioner provided two undated letters from Mr. [REDACTED], President of [REDACTED] Pro Judge. The first letter contains three sentences that also appear in the June 16, 2013, letter from Ms. [REDACTED]. Mr. [REDACTED] further states that the beneficiary "has worked diligently to achieve the status of [REDACTED] professional Athlete." He notes that "[c]urrently in Canada there are only seven active [REDACTED] professional bodybuilding competitors." While a large number of members suggests that an association is not exclusive, we will not presume that every association with a small number of members is sufficiently exclusive to meet this criterion. In his second letter, Mr. [REDACTED] verifies that the beneficiary is "a member in good standing with the [REDACTED] pro league, the [REDACTED] and the [REDACTED]."

The petitioner also submitted extensive documentation pertaining to the [REDACTED] Qualification Series rules for determining who may qualify to compete at [REDACTED] division competitions, as an example of the prestige of the [REDACTED]. However, as previously stated, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner further contends that in "many" previous decisions the United States Citizenship and Immigration Services (USCIS) determined that "membership in [REDACTED] requires outstanding achievements of their members" and, as such, satisfied this evidentiary criterion. However, counsel has not furnished evidence establishing that the facts of the instant petition are analogous to those unidentified cases. Regardless, we are not bound by a decision of a service center or district director. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

On appeal, the petitioner provided the actual membership criteria for the [REDACTED] the Regional Federation of which the beneficiary is a member. The petitioner submitted [REDACTED] rules and regulations, which provides:

E) MEMBERSHIP/ENTRY FEES:

1. You must be a resident of [REDACTED] for a minimum of 6 months before you can apply for membership unless you are transferring from another Province.
2. Membership fees are \$100.00/calendar year

The petitioner also submitted [REDACTED] bylaws, which similarly provides:

7.01: Regular Member

Any individual, having officially resided in [REDACTED] for a period of at least six (6) months immediately prior to applying for membership, may become a member of the Association.

The evidence of record does not establish that the [REDACTED] requires outstanding achievements of its members.

While the above letters of support indicate that the petitioner's amateur victories allowed her to compete professionally at [REDACTED] events, the evidence of record does not establish that earning the right to compete for prize money is indicative of outstanding achievement in professional bodybuilding. The petitioner has not provided the official membership criteria for the [REDACTED], the National Federation of which the beneficiary is a member. Without that information, we cannot determine whether that membership requires outstanding achievements as judged by national or international experts. Thus the petitioner has not established that she meets this criterion.

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 major media. To qualify as major media, the publication should have significant national or international distribution.

The director concluded that the petitioner meets this criterion. The petitioner has submitted several articles from fitness websites. Two of the articles, on [REDACTED] and [REDACTED] merely report the results of competitions where the beneficiary competed. Two additional articles, on [REDACTED] and [REDACTED] focus primarily on the petitioner. The petitioner did not submit evidence of the circulation for the publications that have covered the beneficiary, as opposed to those publications that merely report the results of competitions where she competed. The burden is on the petitioner to establish the significance of these sites.

In addition, we acknowledge that photographs and the beneficiary's bodybuilder profile appear on [REDACTED] and [REDACTED] Internet websites devoted to bodybuilders. The petitioner has provided a letter from [REDACTED] the Vice President of Operations at [REDACTED] Magazine, who states that the publication's website "is the #1 most visited bodybuilding website in Canada." USCIS need not rely on the general self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Mr. [REDACTED] did not provide monthly

page views for the magazine's website. He also states that the magazine has written about the beneficiary, but the petitioner did not submit those articles to demonstrate that they are about the beneficiary, relating to her work. Mr. [REDACTED] provides information that [REDACTED] Magazine is published six times per year with a print circulation of 20,000 copies per issue, and that the magazine is "distributed in Canada with subscriptions in the United States." The record does not contain numbers for other magazines in the field to establish that these numbers are consistent with a major trade publication or major media.

Upon review, the submitted evidence does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). Based on the forgoing, we withdraw the director's favorable finding with respect to this criterion.

III. Conclusion

The petitioner submitted no evidence that the beneficiary has received a major, internationally recognized award and the documentation submitted does not meet three of the eight other 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 bodybuilder. Upon review of the totality of the evidence submitted, the petitioner has not established that the beneficiary has extraordinary ability as a bodybuilder, which has been demonstrated by sustained national or international acclaim and that her achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of her field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). While we have considered the recommendations submitted, the petitioner has not established that the beneficiary's achievements have already risen to this level. The petitioner has not presented the type of sustained national or international recognition of accomplishments necessary for O-1 classification. 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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.