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



U.S. Citizenship  
and Immigration  
Services

DATE: **MAR 23 2015** Office: VERMONT SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

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,

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

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, a New York-based law firm, 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 requests that the beneficiary be granted O-1 classification for a period of two years<sup>1</sup> so that he may accept employment as a wrestling coach in the United States with the [REDACTED]

After issuing a request for evidence (RFE) and then considering the evidence of record, the acting director denied the petition. The acting director determined that the petitioner did not establish that the beneficiary has received “sustained national or international acclaim” in his field of endeavor. Specifically, the acting director determined that the evidence submitted did not satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us for review. On appeal, the petitioner requests approval of the petition and submits a brief and additional evidence.

### 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 satisfies 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

<sup>1</sup> The petition indicates the dates of intended employment for the beneficiary as December 2, 2013 to December 1, 2013. The itinerary and employment agreements indicate that the beneficiary’s dates of intended employment are from December 2, 2013 to December 1, 2015.

<sup>2</sup> This entity is also referred to as [REDACTED] in the record.

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).

Finally, 8 C.F.R. § 214.2(p)(2)(iv)(E) addresses situations in which agents serve as petitioners:

A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act on its behalf. A United States agent may be: the actual employer of the beneficiary; the representative of both the employer and the beneficiary; or, a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by a United States agent is subject to the following conditions:

- (1) An agent performing the function of an employer must specify the wage offered and the other terms and conditions of employment by contractual agreement with the beneficiary or beneficiaries. The agent/employer must also provide an itinerary of definite employment and information on any other services planned for the period of time requested.
- (2) A person or company in the business as an agent may file the P petition involving multiple employers as the representative of both the employers and the beneficiary or beneficiaries if the supporting documentation includes a complete itinerary of services or engagements. The itinerary shall specify the dates of each service or engagement, the names and addresses of the actual employers, the names and addresses of the establishment, venues or locations where the services will be performed. In questionable cases, a contract between the employer(s) and the beneficiary or beneficiaries may be required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

## II. Discussion

### A. Extraordinary Ability in Athletics

The record consists of: the Form I-129 petition and supporting evidence; the acting director's request for evidence dated December 12, 2013, and the petitioner's response; and, the acting director's

decision dated April 25, 2014. We have reviewed the evidence of record in its entirety in reaching our decision.

The record indicates that the beneficiary is a [REDACTED] year-old wrestler who has competed as a wrestler between 1995 and 2004, winning several state/national youth judo championships and several college wrestling championships. The petitioner seeks to classify the beneficiary as an alien with extraordinary ability as a wrestling coach. The petitioner requests that the beneficiary be granted O-1 classification so that he may accept employment as a wrestling coach in the United States with the [REDACTED]. The beneficiary's employment agreement with [REDACTED] indicates that [REDACTED] is an amateur wrestling club associated with [REDACTED].

According to the beneficiary's employment agreement with [REDACTED] which the beneficiary signed on November 26, 2013 and November 19, 2013, respectively, the beneficiary's duties in the United States for both will include the following:

[The beneficiary] agrees to be responsible for supervising practices for 25-40 students and attending tournaments . . . . [The beneficiary] will also assist in creating a healthy competitive environment according to policies and procedures stipulated by [REDACTED] and [REDACTED]

The acting director denied the petition on April 25, 2014, concluding that the petitioner did not establish that the beneficiary has satisfied at least three of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

While a competitive wrestler and a wrestling coach share knowledge of the sport of wrestling, the two rely on different sets of basic skills. Thus, competitive wrestling and wrestling coaching/instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918.

The statute requires that the beneficiary seek entry into the United States "to continue work in the area of extraordinary ability." Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i) (2007). United States Citizenship and Immigration Services (USCIS) will not assume that an alien with extraordinary ability as an athlete has the same level of expertise as a coach or instructor of his or her sport. However, given the nexus between athletic competition and coaching or sports instruction, in a case where the beneficiary has achieved recent national or international acclaim as



an athlete and has sustained that acclaim in the field of coaching at a national or international level, an adjudicator may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that it can be concluded that coaching is within the beneficiary's area of expertise. Specifically, in such a case, USCIS will consider the level at which the beneficiary acts as a coach. In this matter, the beneficiary's athletic accomplishments are not recent and he has been coaching for several years. Accordingly, we will address the evidence regarding the beneficiary's accomplishments as a wrestling coach.

For the reasons discussed below, the petitioner has not established that the beneficiary is one of the small percentage who has risen to the very top of his field of endeavor.

1. Consideration of the Evidentiary Criteria<sup>3</sup>

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.* Here, the petitioner has not submitted evidence that the beneficiary has received a major, internationally recognized award; nor has the petitioner asserted that the beneficiary satisfies this criterion. Therefore, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

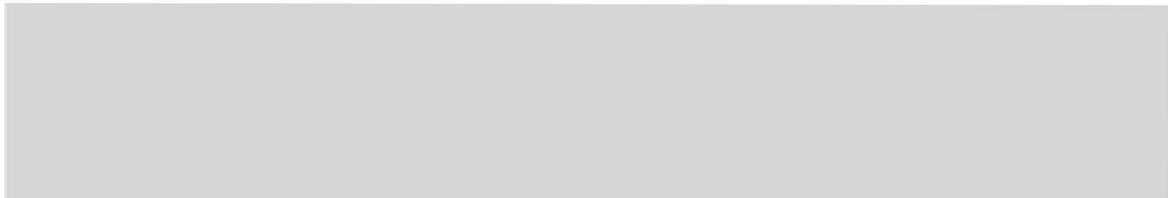
After careful review of the record and for the reasons discussed herein, the petitioner has not established eligibility under three of the eight evidentiary criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B).

*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 beneficiary'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 acting director determined that the petitioner did not establish that the beneficiary satisfies this criterion.

As evidence of the beneficiary's achievements as an athlete, the petitioner indicates that the beneficiary received the following awards:

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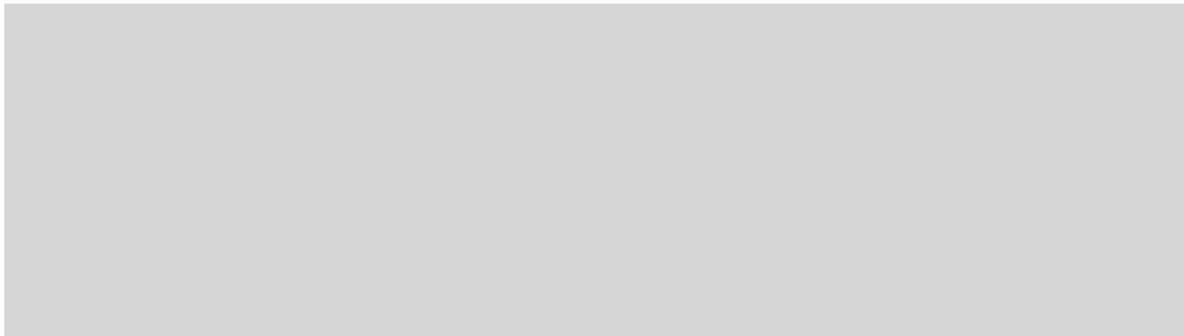
<sup>3</sup> The petitioner does not claim to satisfy or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

The petitioner submitted copies of documentary evidence of the beneficiary's receipt of the above-referenced prizes. The prizes the beneficiary has received establish that he has awards from several state/national judo competitions, all at the junior level of competition, several college wrestling competitions, and a corporate-sponsored men's wrestling competition of unknown significance in the field.

A competition may be open to athletes 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 associated with the beneficiary's awards. The petitioner has not submitted supporting documentary evidence, such as official entry requirements from the sponsoring organizations of these events or published articles about the events in trade or general media, to establish the significance of the events within the sport. Overall, the evidence of record is insufficient to establish that the beneficiary's competition victories resulted in his receipt of nationally or internationally recognized prizes or awards for excellence in competitive wrestling and, as such, do not satisfy the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

The petitioner has submitted participation certificates indicating that the beneficiary coached in the following competitions:

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- 



The record also contains results for a May 11-13, 2012 event, but does not contain a certificate confirming the beneficiary's services as a coach at that event.

The petitioner also submitted a certificate indicating that in November 2013 the beneficiary passed a course in Freestyle wrestling at the

The petitioner did not establish that the above certificates themselves are nationally or internationally recognized awards or prizes.

The petitioner has also submitted copies of awards for athletes one of the petitioner's references identifies as coached by the beneficiary. The plain language of this regulatory criterion, however, requires evidence of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The submitted awards were not received by the beneficiary, and the record contains no evidence of any nationally or internationally recognized

awards the beneficiary has received as a coach. The petitioner has not established that the beneficiary satisfies this criterion.

The next issue is whether the achievements of the beneficiary's students should be considered under this criterion as comparable evidence of the beneficiary's extraordinary ability, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C). The burden is on the petitioner to show that the evidence submitted as comparable is comparable to the evidence the criterion describes. Accordingly, the petitioner can rely on comparable evidence if it can establish that the beneficiary has coached athletes who have received nationally or internationally recognized awards for excellence in the sport. Upon review, the record contains insufficient evidence to establish that the beneficiary has instructed or coached players who have won national or international competitions or other nationally or internationally recognized prizes or awards for wrestling excellence.

The beneficiary's coaching experience was documented through coaching certificates and testimonial evidence. The coaching certificates do not identify the athletes the beneficiary was coaching. The petitioner submitted a letter from a representative of [REDACTED] Delhi, certifying that the club employed the beneficiary from April 1, 2012 to March 2013, and stating "[the beneficiary's coaching was exemplary, and his students become [sic] acclaimed athletes with his exceptional training. Under [the beneficiary's] dynamic coaching, more than 50 wrestlers won medals at National and International competitions." The petitioner further submitted a letter from [REDACTED] of the [REDACTED] Delhi, certifying that the school employed the beneficiary from April 1, 2011 to March 31, 2013, and stating that "[the beneficiary's] service was found exceptional and the best in his field. . . Under his training, more than 100 students won medals in National and International Wrestling competitions." The letters do not identify any athletes the beneficiary coached, nor do they identify any specific victories at national or international competitions. 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.).

The petitioner also submitted a letter from [REDACTED] President of the [REDACTED] certifying that the beneficiary "was nominated as Coach of [REDACTED] Wrestling Team for participation in the . . . Junior National Wrestling Championship held at . . . [REDACTED] from 9th to 12th May, 2013." [REDACTED] further stated as follows:

Under the dynamic supervision of [the beneficiary] as a Coach of the Team, the [REDACTED] Junior Free Style, Greco Roman Style and Female Wrestling Teams won 4 Gold, 3 Silver & 7 Bronze Medals. The Free Style Team was team Champion by winning 3 Gold & 3 Silver and 1 Bronze Medal in the Championship. The Greco Roman Style and Female Team got third place by winning 1 Gold & 3 Bronze Medals in GR and 3 Bronze Medals in FW.

In a letter, [REDACTED] Technical Director, [REDACTED], the national governing body of wrestling in India, asserts that the beneficiary "has coached wrestlers who regularly compete at a national level and who have won national awards." He then summarizes the

competition victories of [REDACTED] and attributes the success of these athletes to the beneficiary's coaching the athletes at their respective events. [REDACTED] concludes that "[t]here is no doubt that [the beneficiary] who has obtained significant success himself has also led a number of athletes to obtain national recognition and awards."

As stated above, the petitioner additionally submitted awards won by athletes [REDACTED] identifies as coached by the beneficiary at two junior competitions held in India in 2012 and 2013, respectively, as follows:

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

The record also contains a junior award certification for [REDACTED] but the record does not establish that the beneficiary coached [REDACTED]. While [REDACTED] printouts indicate that a [REDACTED] had first and second finishes at senior events in 2011 and 2012, the record contains no evidence that the beneficiary is the coach of this [REDACTED] especially as the award certificate the petitioner submitted for the [REDACTED] the beneficiary coached shows him competing at the junior level in 2013.

Regarding the gold, silver and bronze finishes of the athletes and team that [REDACTED] discuss, the petitioner has not established the significance of the competitions. While the record supports a finding that the individual athletes and team were successful in wrestling competition in the age/weight category, the evidence of record does not establish that the gold, silver and bronze finishes in junior national competitions in India constitute "nationally or internationally recognized prizes or awards for excellence in the field" pursuant to the plain language of the criterion. While the petitioner did submit printouts from the [REDACTED] website, [REDACTED] listing the dates and results of the events, the submitted evidence does not establish that the awards rise to the level of "nationally or internationally recognized prizes or awards." Upon review, while it appears that the beneficiary has participated in coaching promising young athletes, the evidence of record does not establish that the wrestlers [REDACTED] identifies as coached by the beneficiary have achieved nationally or internationally recognized prizes or awards.

[REDACTED] letter also states that the beneficiary coached [REDACTED] a competitor who is now competing internationally while representing India."

The petitioner asserts as follows:

[REDACTED] one of the wrestlers [the beneficiary] coached, is now competing at the international level, and has won bronze medals at the [REDACTED]

Championships of 2013 and at the [REDACTED] Championships of 2013, both in the category of Men's Free Style, weight class 60 kg. Therefore, [the beneficiary's] coaching in the previous year played an integral part in preparing [REDACTED] for his future international success.

Upon review, [REDACTED] statement is too vague to corroborate the petitioner's statement that [REDACTED] success is attributable to the beneficiary's coaching. [REDACTED] letter does not indicate when or for how long the beneficiary coached [REDACTED] won any nationally or internationally recognized awards while primarily under the beneficiary's tutelage. [REDACTED] letter is accompanied by an article dated September 17, 2013, published on the Internet site [REDACTED] entitled [REDACTED]. Although it appears that [REDACTED] has competed at the national/international level, there is no evidence that such success occurred while primarily under the beneficiary's tutelage. [REDACTED] does not state that the beneficiary ever served as his personal or team coach or trainer, in fact, the article does not mention the beneficiary by name. The record does not contain sufficient evidence of the coach-athlete relationship between the beneficiary and the successful athlete he is alleged to have coached. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof.

The petitioner further submitted charts from the [REDACTED] highlighting the competition results for all athletes competing on behalf of Delhi in the [REDACTED] competitions described above, in which the beneficiary participated as a coach in 2007, 2009, 2011, 2012 and 2013. On appeal, the petitioner asserts that the beneficiary "trained wrestlers in preparation for" all those events. However, the record does not contain any corroborating evidence that the beneficiary may have coached any wrestlers other than those [REDACTED] identifies.

For the reasons previously discussed, the record is lacking in documentation of the nationally or internationally-recognized achievements in the sport of wrestling of individual athletes coached by the beneficiary. Accordingly, this evidence does not constitute comparable evidence sufficient to satisfy this criterion.

In sum, the petitioner has not established that the beneficiary has received nationally or internationally recognized awards for excellence in coaching or that he has coached athletes who have received such awards while primarily under his tutelage. Upon review, the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

*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*

To meet the third criterion, the petitioner must submit published material in professional or major trade publications or major media about the beneficiary, relating to the beneficiary'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 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. The acting director determined that the petitioner did not establish that the beneficiary satisfies this criterion.

The petitioner's initial evidence contained two articles referencing the beneficiary's work as a wrestling coach. The petitioner submitted an article entitled "[the Beneficiary]," which states as follows:

[REDACTED]

The second article the petitioner submitted is entitled "[REDACTED]"

[REDACTED]

The plain language of the regulation requires "that the published material shall include the title, date, and author of the material; the second article referenced above does not include the author of the material.

In response to RFE, the petitioner asserted:

Two articles on [the beneficiary] regarding his activities and success as a wrestling coach have been published in major media . . . These articles were printed in the daily Hindi/English language newspaper [REDACTED] . . . These articles note [the beneficiary's] international recognition for his success as a wrestling coach, having trained successful wrestlers in both India and the United States.

The petitioner submitted additional copies of the articles in response to the RFE, indicating that the articles appear in the publication [REDACTED] however, the petitioner did not document the circulation or distribution of the publication.

On appeal, the petitioner submitted a 2014 foreign-language article published on the website [REDACTED] entitled [REDACTED]. As previously stated, the plain language of the regulation requires “that the published material shall include the title, date, and author of the material”; however, the translation does not include the author of the material.

Further, the petitioner submitted two foreign-language articles about the beneficiary’s work as a wrestling coach in India and his anticipated work with the petitioner in the United States. The first article, entitled [REDACTED] was published in September 2014 in [REDACTED]. The second article entitled [REDACTED] was published in the fortnightly issue of August 1-15, 2014, of the Indian newspaper [REDACTED]. The petitioner did not document the circulation or distribution of the publications that published the three articles the petitioner submits on appeal.

Finally, the three articles the petitioner submits on appeal are not relevant to the issue of the beneficiary’s eligibility for the benefit sought at the time of filing, because the articles were published after November 29, 2013, the date of filing the petition. *See* 8 C.F.R. § 103.2(b)(12). The petitioner must establish the beneficiary’s eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg’l Comm’r 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

Upon review, the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

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

The seventh criterion requires the petitioner to establish that the beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The acting director determined that the petitioner did not establish that the beneficiary satisfies this criterion.

The petitioner submitted the previous letter from [REDACTED], President of [REDACTED], indicating that the beneficiary “was nominated” as coach of the [REDACTED] Wrestling Team for participation in the Junior National Wrestling Championship held at [REDACTED] in May 2013. On appeal, the petitioner asserts that the beneficiary’s position as a coach for [REDACTED] was critical and essential because the beneficiary “was responsible for the instruction and preparation of wrestlers for competition in national-level competitions and championships.” Upon review, there is no evidence that the beneficiary was ever formally employed by the organization or that his position with the organization was in a critical or essential capacity.

Similarly, while [REDACTED] are organizations with a distinguished reputation in the sport, there is no evidence that the beneficiary was ever formally employed by either [REDACTED] in a critical or

essential capacity. At most, it appears that the beneficiary attended and passed [REDACTED] Advanced School for Coaches course while in the United States on a nonimmigrant tourist visa.

While the petitioner submitted evidence that the beneficiary was employed by the [REDACTED] the evidence does not establish that the beneficiary was employed by those organizations in a critical or essential capacity. The scope of this evidentiary criterion focuses on the beneficiary and the relative importance of his position within the organizations that have employed him, such as evidence establishing how the beneficiary's coaching position related to other coaching positions in the organizations, the number of coaches employed or how many of the coaches took athletes to national events. Further, the record does not contain any evidence that either organization has a distinguished reputation in the sport of wrestling.

Based on the forgoing, the petitioner has not established that the beneficiary 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*

Preliminarily, the petitioner asserts on appeal that the acting director erred by determining in the RFE that this criterion was satisfied, then determining in her decision that this criterion was not satisfied. The petitioner contends that its right to due process was violated, because the acting director's RFE did not provide the petitioner an opportunity to submit additional information to satisfy this criterion before the petition was denied. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) gives the director the discretion to deny a petition without issuing an RFE if the initial evidence does not establish eligibility. Even if the acting director had committed a procedural error by not soliciting further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence. We review each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). Accordingly, we will consider all evidence pertaining to this criterion.

Regarding the beneficiary's past salary, the petitioner submitted a letter from a representative of [REDACTED] Delhi, certifying that the club employed the beneficiary from April 1, 2012 to March 31 2013, at an annual salary of 20 Lakh (lakh rupees), the equivalent of 2 million rupees. The petitioner also submitted a letter from [REDACTED] of the [REDACTED] Delhi, certifying that the school employed the beneficiary from April 1, 2011 to March 31, 2013, and stating that beneficiary was paid 16 Lakh (1.6 million rupees) for the 2011-2012 payment period, and 17.60 Lakh (1.76 million rupees) for the payment period 2012-2013.

The petitioner submitted an article from the website [www.articles.timesofindia.indiatimes.com](http://www.articles.timesofindia.indiatimes.com) entitled "Many Pvt. School. Teachers Eyeing Govt Jobs." However, this article discusses teachers seeking academic coaches to advance their teaching skills in India generally, and not athletic coaches. Thus, the petitioner has not established that a comparison of the beneficiary's salary as a wrestling coach with the salaries mentioned in the article is meaningful.

The petitioner submitted an article from the website [www.india.blogs.nytimes.com](http://www.india.blogs.nytimes.com) entitled "India's Olympic Program Under Spotlight Again," discussing India's recent performance in the London Olympics, and reporting as follows:

India's sports ministry recently promised that all 81 Olympians in India's contingent this year would receive permanent government jobs. It is understood that these will be midlevel coaching jobs with a salary of 40,000 rupees (\$715) a month at India's premier sporting institution, the Sports Authority of India. The athlete can continue with their sporting careers and then get a diploma in coaching before they start working as coaches.

This article does not provide a description of the occupation, such as what sports are contemplated, other than to state that it is "understood that these will be midlevel coaching jobs." Again, the petitioner has not established that a comparison of the beneficiary's salary as a wrestling coach with the salary mentioned in the article is meaningful. In addition, the petitioner submitted a job posting from the [REDACTED] Delhi, for a fulltime "Coach Grade – III (Wrestling) – 2012," indicating a pay scale of "Rs. 9300 - 34,800 – plus Grade Pay Rs.4200." The frequency of payment of the quoted wage and the quoted Grade Pay are not noted.

On appeal, the petitioner asserts that "the Indian government does not have direct resources indicating the average wage for a wrestling coach." Nevertheless, to evaluate whether the salary is high, USCIS needs to compare it to the median and highest wages offered nationwide to wrestling coaches. The petitioner has provided the wages for one wrestling coach position in Delhi as a basis to judge the beneficiary's past wage as a wrestling coach. The petitioner's reliance on data limited to one position in Delhi is not an appropriate basis for comparison in demonstrating that the beneficiary's past earnings constituted a high salary compared to others in the field.

Regarding the beneficiary's wage for the proffered position, the petitioner did not indicate the beneficiary's weekly or annual wage on the Form I-129 petition. The petitioner submitted a copy of [REDACTED] contract with the beneficiary for the term beginning on December 2, 2013, and ending on December 1, 2015, indicating that [REDACTED] will pay the beneficiary an annual salary of \$40,000. The petitioner submitted a copy of [REDACTED] contract with the beneficiary, indicating that the position is part-time for the term beginning on December 2, 2013, and ending on December 1, 2014, and indicating that [REDACTED] will pay the beneficiary an annual salary of \$20,000.

With regard to the salaries the beneficiary will receive, the petitioner submitted salary information for the occupation of "Coaches and Scouts" from O\*NET OnLine ([www.onetonline.org](http://www.onetonline.org)). The data provided is for the U.S. nationally for 2012 and indicates that the median salary for the occupation is \$28,360, but the material does not provide the 90<sup>th</sup> percentile wages.

The petitioner also submitted an article from the Internet website [www.minnesota.cbs.local.com](http://www.minnesota.cbs.local.com), discussing the average high school coaching salaries in Minnesota. Reliance on data limited to the state of Minnesota is not an appropriate basis for comparison in demonstrating that the beneficiary's future earnings constitute a high salary compared to others in the field.

Finally, the petitioner submitted salary information from the website [www.simplyhired.com](http://www.simplyhired.com) stating that as of November 21, 2013, the "Average Head High School Wrestling Coach" salary is \$15,000. The data provided indicates the average salary for the occupation, but the material does not provide the 90<sup>th</sup> percentile wages.

The plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8) requires the petitioner to submit evidence showing that the beneficiary will earn a "high salary." Average or median salary information is not a proper basis for comparison. Accordingly, as the petitioner has not provided meaningful comparisons to the beneficiary's past and proposed salary, the submitted evidence does not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8).

## 2. Summary

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 his 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 through the satisfaction of at least three of the regulatory criteria.

### B. Itinerary

Beyond the decision of the acting director, although the petitioner identifies itself as the beneficiary's "agent for immigration purposes," it has clearly not satisfied the regulatory requirements to file the petition on behalf of the beneficiary and multiple employers. Pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2) a person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of events, the dates of each service or engagement, the names and addresses of the actual employers and the names and addresses of the establishments, venues, or locations where the services will be performed.

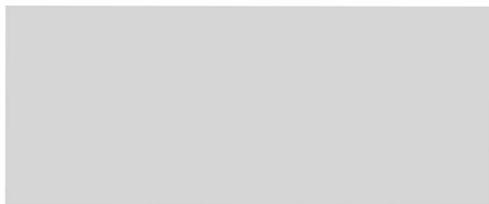
The petitioner submitted a copy of letters dated November 26, 2013, from [REDACTED] and November 19, 2013, from [REDACTED] authorizing the petitioner to serve as their agent in filing the petition. On the O and P Classification Supplement to the Form I-129 petition, where asked to indicate the nature of the event, the petitioner indicated "See Attached." The itinerary submitted by the petitioner states as follows:

#### ***Service One:***

Dates: 12/02/13 and ending 12/01/15

Name and Address of Entity –

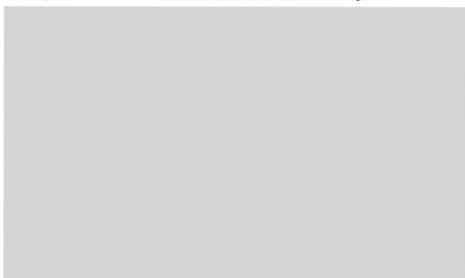
[REDACTED]



***Service Two:***

Dates: 12/02/13 and ending 12/01/14

Name and Address of Entity –



The question of whether a petitioner is required to submit an itinerary is dictated entirely by regulation, which requires a petitioner to show that an O-1 beneficiary is entering the United States for definite, non-speculative, employment by submitting an itinerary or a specific explanation of the events or activities scheduled for the beneficiary. 8 C.F.R. § 214.2(o)(2)(ii)(C). This requirement exists because “O classification may not be granted to an alien merely to enter the United States to freelance and seek employment,” but must only be admitted “to perform in specific events as detailed on the initial petition.” 59 Fed. Reg. at 41828.

Upon review, the petitioner has not complied with the regulatory requirements for an agent, in that it has not submitted an itinerary of the beneficiary’s services or engagements. The beneficiary’s wrestling coach agreements with [redacted] are noted. While the beneficiary may have employment commitments with those organizations, the petitioner is not relieved of its regulatory obligation as the agent on an O-1 petition to submit a detailed itinerary of the beneficiary’s services or engagements with the dates and locations of the work. The petitioner did not provide an itinerary of the beneficiaries’ service dates and locations of the work. For example, the itinerary does not indicate the days of the week the beneficiary will work for each employer and explain how they will share his services.

An application or petition that fails to comply with the technical requirements of the law may be denied by us even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis). The petition will be denied on this additional basis.

### 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) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). The evidence shows that the beneficiary is a skilled wrestling coach. Upon review of the totality of the evidence submitted, the petitioner has not established that the beneficiary has extraordinary ability as a wrestling coach, which has been demonstrated by sustained national or international acclaim and that his achievements have been recognized in the field through extensive documentation, as required by section 101(a)(15)(O) of the Act.

In addition, the petitioner has not complied with the regulatory requirements for an agent, in that it has not submitted a detailed itinerary with the dates and locations of the beneficiary's work. 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). For this reason, the petition may not be approved.

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.

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