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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: 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

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

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner, a musical production/promotion company, filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1101(a)(15)(O)(i), as an alien of extraordinary ability in the arts. The petitioner seeks to employ the beneficiary as a percussionist for a period of three years.

The acting director denied the petition, concluding that the submitted evidence did not satisfy the evidentiary requirements applicable to aliens of extraordinary ability in the arts, pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B). The acting director also concluded that the petitioner did not establish that it will engage the beneficiary's services for a specific event or events as required by the regulations.

The petitioner subsequently filed an appeal. The acting director declined to treat the appeal as a motion and forwarded the appeal to us. On appeal, the petitioner asserts that the beneficiary is eligible for the classification sought. The petitioner submits a brief in support of the appeal, and evidence previously submitted into the record.

For the reasons discussed below, while we withdraw the director's finding pertaining to whether the petitioner intends to engage the beneficiary's services for a specific event or events, we agree that the petitioner did not establish the beneficiary's eligibility as an individual with extraordinary ability. Accordingly, we will uphold the acting director's decision and dismiss the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified alien who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides, in pertinent part: "*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts."

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's recognition in the field through evidence that the alien has been nominated for, or the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy, or a Director's Guild Award. 8 C.F.R. § 214.2(o)(3)(iv)(A). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). If the petitioner demonstrates that certain criteria in paragraph (o)(3)(iv)(B) of this section do not readily apply to the beneficiary's occupation,

the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(3)(iv)(C).

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

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

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

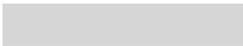
Additionally, the regulation at 8 C.F.R. § 214.2(o)(2)(iii) provides:

The evidence submitted with an O petition shall conform to the following:

- (A) Affidavits, contracts, awards, and similar documentation must reflect the nature of the alien's achievement and be executed by an officer or responsible person employed by the institution, firm, establishment, or organization where the work was performed.
- (B) Affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability . . . shall specifically describe the alien's recognition and ability or achievement in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

Further, pursuant to 8 C.F.R. § 214.2(o)(1)(i), a qualified beneficiary may be authorized to come to the United States to perform services relating to an event or events if petitioned for by an employer. The regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O aliens shall be accompanied by the following:

- (A) The evidence specified in the particular section for the classification;
- (B) Copies of any written contracts between the petitioner and the alien beneficiary or, if there is no written contract, a summary of the terms of the oral agreement under which the alien will be employed;
- (C) An explanation of the nature of the events or activities, the beginning and ending dates for the events or activities, and a copy of any itinerary for the events or activities; and



- (D) A written advisory opinion(s) from the appropriate consulting entity or entities.

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines “event” as follows:

Event means an activity such as, but not limited to, a scientific project, conference, convention, lecture series, tour, exhibit, business project, academic year, or engagement. Such activity may include short vacations, promotional appearances, and stopovers which are incidental and/or related to the event. A group of related activities may also be considered to be an event. In the case of an O-1 athlete, the event could be the alien’s contract.

II. Discussion

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on December 5, 2013. The acting director issued requests for additional evidence (RFEs) on December 19, 2013, and March 24, 2014, respectively, to which the petitioner replied. We have considered the evidence of record in its entirety in reaching this decision.

In a letter dated October 23, 2013, the petitioner stated that the beneficiary’s work as a musician “has been recognized by the Latin music industry at the national and international level with distinction and high achievement.” The petitioner indicated that the beneficiary “has been exclusively selected by renowned Latin artists including Grammy award winners such as [redacted] and many others in various productions” and “has traveled the world as a musician playing for crowds in countries such as Colombia, Ecuador, Peru, Chile, Paraguay, Nicaragua, Guatemala, and Europe.”

The petitioner indicates that it is a company “specializing in representing and promoting the works and talents of new and established Latin artists.” The petitioner states that it will begin production of a new album scheduled for release in January 2015. The petitioner explains that the beneficiary will be its percussionist and “will lead instrumental rehearsals and performances” and will also “lead instrumental recordings of [the] new album.” The petitioner further explained that “[o]nce the album has been completed and released we will begin a national tour in the United States followed by another tour at the international level.” The petitioner further stated:

Considering we have personally known of [the beneficiary’s] high level of achievement as a musician, we have offered him a position with our company as our percussionist for this upcoming production and tour. Enclosed is a separate letter providing a description of the planned events and musical productions [in] which we hope [the beneficiary] will participate.”

In a February 28, 2013 letter in support of the original petition, the petitioner’s president, [redacted] stated that the beneficiary “belongs to our staff of artist [redacted] . . . an institution in Colombian folklore and of our artist [the petitioner’s president], singer [and] composer . . .

popular in Latin America, the United States and Europe. Because of [the beneficiary's] extraordinary abilities as a percussionist, we have required his services for our musical productions and presentations during events and concerts in Colombia, Ecuador, Peru, Chile, Paraguay, Nicaragua, Guatemala and Europe."

In response to the first RFE, the petitioner submitted a letter dated October 30, 2013 but referencing the acting director's December 19, 2013 RFE, in which the petitioner explained that it "will not be acting as an agent for [the beneficiary]. [The beneficiary] will be working directly for our musical productions and presentations and be part of our artist portfolio."

A. Event or Events

The first issue addressed by the acting director is whether the petitioner established that it seeks to engage the beneficiary's services for a specific event or events as contemplated by the regulations. The acting director concluded that the petitioner's submitted itinerary did not "give any details, such as who the beneficiary will be performing for . . . a complete address or contact person."

On appeal, the petitioner asserts that the itinerary clearly provided the "dates of the event, the location, description of the event and duties to be performed by the beneficiary." The petitioner further asserted as follows:

Regarding the beneficiary's remuneration, this was clearly specified in the "summary of oral agreement." The agreement specified that the beneficiary's offered salary was \$35,000 dollars per year, thus, he was going to be a direct employee with a base salary. Regarding the allegation that the beneficiary had repeated dates of employment for [REDACTED] that is incorrect. The itinerary states that the beneficiary was scheduled to perform on June 5th and 6th in [REDACTED] Florida, June 22nd in [REDACTED] on June 18th and 19th.

The petitioner indicated on the Form I-129 that it seeks to employ the beneficiary as a percussionist for its musical production/promotion company on a full-time basis for a period of three years. The petitioner indicated that it would pay the beneficiary an annual salary of \$35,000. The petitioner's supporting letter provided a description for the beneficiary's position and stated that it has offered the beneficiary an annual salary of \$35,000 for the position.

The petitioner also provided an itinerary of the beneficiary's musical events. From December 2013 until January 2015, the itinerary lists events at the petitioner's worksite, to include rehearsing, recording, editing and releasing the new album. From February 25, 2015 to June 22, 2015, the itinerary lists promotional tour dates and locations at various cities in Florida, the Bahamas and the Dominican Republic. From July 14, 2015 to May 10, 2016, the itinerary lists promotional "world tour" dates in Colombia, Venezuela, Panama, Nicaragua, Puerto Rico, the Dominican Republic and the United States.

The petitioner also submitted a copy of a statement of the summary of the terms of its oral agreement with the beneficiary, which the petitioner signed.

The acting director issued an RFE on December 19, 2013, instructing the petitioner to provide the oral agreement summary signed by the beneficiary "to verify that he agrees." The petitioner submitted a copy of the oral agreement summary that both parties signed.

The acting director issued a second RFE on March 24, 2014, instructing the petitioner to provide an updated itinerary, noting that "[y]ou are requesting for intended dates of employment December 1, 2013 to November 30, 2016." The acting director erroneously indicated in this RFE that the submitted itinerary ends on June 22, 2015, however, the itinerary ends on May 10, 2016. The acting director requested that the petitioner "please submit a complete itinerary"

The petitioner submitted an updated itinerary listing additional tour dates in Florida from July 4, 2016 to November 15, 2016.

The acting director's decision concluded, in part, that the beneficiary did not "give any details, such as who the beneficiary will be performing for . . . a complete address or contact person" but did not provide adequate support for her conclusion that this type of information is required by the statute and regulations. In addition, the acting director did not previously request this information.

Upon review, the petitioner has satisfied its evidentiary burden by explaining the beneficiary's terms of employment, confirming that there is no formal written contract, and providing a detailed explanation of the nature and scope of the beneficiary's proposed activities, as required by 8 C.F.R. § 214.2(o)(2)(ii)(B) and (C).

The regulatory definition of "event" at 8 C.F.R. § 214.2(o)(3)(ii), which includes an "academic year" and, for athletes, "the alien's contract," as qualifying activities, provides only a short list of examples of qualifying activities and specifically states that it is not an exhaustive or definitive list, thus suggesting that officers would have the discretion to determine on a case-by-case basis what constitutes a qualifying "event." This flexibility in the regulatory definition is also reflected in the evidentiary requirements at 8 C.F.R. § 214.2(o)(2)(ii)(C) which instruct the petitioner to provide "an explanation of the nature of the events or activities, and to provide a copy of any itinerary." The regulations recognize that not every petitioner will be able to provide an itinerary or evidence of a list of discrete performances, competitions, or tour dates, depending on the field of employment. The definition of event must be interpreted broadly, as the O-1 visa classification is expected to encompass a diverse array of occupations spanning the professions, athletics, and the arts and entertainment fields.

Upon review the petitioner has provided a summary of the terms of its oral agreement with the beneficiary, a detailed description of the nature of the beneficiary's activities on the petitioner's worksite and an itinerary of discrete performances or appearances for the beneficiary when acting as a touring musician. The petitioner has therefore fulfilled the regulatory requirements set forth at 8 C.F.R. § 214.2(o)(2)(ii). The acting director's determination to the contrary will be withdrawn.

B. The Beneficiary's Eligibility under the Evidentiary Criteria¹

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

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will meet its burden of production with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes. Here, the petitioner has not submitted evidence that the beneficiary has been nominated for, or has been the recipient of, significant national or international awards or prizes, nor has the petitioner claimed that the beneficiary satisfies this criterion.

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

Evidence that the alien has performed, and will perform, services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements

The petitioner asserts that the beneficiary has been the percussionist in various productions for several Latin artists including [redacted] and the petitioner's president, [redacted]. The petitioner submitted the beneficiary's [redacted] Member Profile, confirming that the beneficiary has been a member of [redacted] since 2011, and his job duties are stated as including "Colombian percussionist for folklore music."

As evidence of specific events or productions in which the beneficiary has appeared, the petitioner submitted the beneficiary's staff concert passes indicating that the beneficiary performed in [redacted] in Colombia and Costa Rica at concerts featuring other artists, including [redacted].

In response to the acting director's first RFE, the petitioner stated as follows:

Considering [the beneficiary] has been part of various renowned musical Salsa groups and is not a "solo" musician, we must first determine how important is the "percussion" within the Salsa music industry.

¹ The petitioner does not claim to satisfy or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

The petitioner also submitted information from the Internet site [REDACTED] entitled '[REDACTED]' stating "[t]he most important instrumentation in salsa is the percussion." The petitioner also asserted that it submitted information from www.Wikipedia.org, containing the same quote. The record does not contain the information from *Wikipedia*. We note that there are no assurances about the reliability of the content from *Wikipedia*, which is an open, user-edited Internet site. Therefore, we will not assign weight to information from *Wikipedia*. See *Laamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008).² Similarly, the petitioner has not established that experts vet the information on [REDACTED] or that it is otherwise more reliable than open sites that allow all users to post information.

The petitioner further provided a list of twelve recordings of various artists and album covers for the recordings crediting the beneficiary as a performer on the recordings. The petitioner stated as follows:

Considering we have established the percussion instrument to be the most important instrument in the recording and production of salsa music, it must be determined that the beneficiary has performed in a lead or starring role in the above referenced productions.

The petitioner is relying on claims from Internet sites pertaining to the critical role percussionists in general play in Latin music, in lieu of providing specific documentary evidence relating to any particular events or productions in which the beneficiary has participated or will participate. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The content of the album covers and concert passes does not confirm the beneficiary's performance in a lead or starring role at any particular event or production.

In addition, the petitioner has not submitted sufficient critical reviews, advertisements, publicity releases, publications, contracts or endorsements to establish that the events themselves have a distinguished reputation, as required pursuant to the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). For example, with the exception of some media coverage of [REDACTED] performances, the petitioner has not submitted articles or reviews to establish that the beneficiary's

² See also a copy of the online content from [http://en.wikipedia.org/wiki/Wikipedia: General_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on February 27, 2015, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

recordings and live shows have a distinguished reputation among industry publications that cover the beneficiary's genre of music. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.) Upon review, we agree with acting director that the content of the album covers and concert passes does not confirm the beneficiary's performance in a lead or starring role at any particular event or production with a distinguished reputation.

Regarding the media coverage of [REDACTED] the petitioner has provided translations of these foreign language articles. The regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to USCIS [the United States Citizenship and Immigration Services] 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." While not addressed by the acting director in her decision, the petitioner submitted translations that do not comport with the regulation. Instead these translations are accompanied by two blanket certifications that do not identify the translations the translator is certifying or even name the petitioner or beneficiary. Moreover, initially the petitioner submitted two blanket certifications dated May 14, 2013 and November 22, 2013. The certification the petitioner submitted in response to the first RFE and on appeal is a copy of the May 14, 2013 certification. The blanket certification without reference to specific translations or even the petitioner or beneficiary is not probative evidence that the certifier completed and is certifying all of the translations in the record. Regardless, the petitioner did not establish the significance of the published material as the petitioner did not provide any evidence of the viewership, circulation or distribution of the websites and publications.

Further, this regulatory criterion also requires the petitioner to submit evidence that the beneficiary *will perform* services as a lead or starring participant in productions or events which have a distinguished reputation upon approval of the petition. With respect to the beneficiary's upcoming performances in the United States, the evidence of record indicates that the beneficiary, as a percussionist, will lead instrumental recordings of the petitioner's new album, and will tour nationally in the United States and then internationally after the album's release. The petitioner has submitted a three-year performance schedule showing the beneficiary will be touring with the petitioner at specific performance venues. The petitioner has not submitted critical reviews, advertisements, publicity releases, publications, contracts, or endorsements to establish that the events themselves have a distinguished reputation, as required pursuant to the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

Based on the forgoing, the petitioner has not submitted evidence in the form of critical reviews, advertisements, publications, contracts, or endorsements to establish that the beneficiary satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) based upon his role as the percussionist for the studio recordings and live performances of the artists with whom he has performed.

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or

about the individual in major newspapers, trade journals, magazines, or other publications

In general, in order for published material to satisfy the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), it must be by or about the beneficiary and, as stated in the regulations, be printed in major newspapers, magazines or other publications. To qualify as major media, the publication should have significant national or international distribution.

As stated above, the petitioner submitted foreign language articles pertaining to events at which the beneficiary performed in Colombia, Nicaragua, and Panama; however, the blanket certification that does not identify the translations it is certifying or name the petitioner or beneficiary is not probative evidence that the translator of the translations in the record certified the translations as required under 8 C.F.R. § 103.2(b)(3).

The acting director further found that the content of the articles does not attest to the beneficiary's achievement of national or international recognition as a percussionist, since none of the articles specifically mention the beneficiary by name. Therefore, the acting director determined that such evidence is insufficient to satisfy this criterion.

On appeal, the petitioner acknowledges that the submitted articles do not mention the beneficiary by name, but asserts that "the enclosed copies of the albums crediting the beneficiary, confirms that he has performed as a percussionist for these renowned artists." The petitioner has provided copies of twelve record album covers that credit the beneficiary as a percussionist on the recording. However, an album cover constitutes neither a critical review nor published material about the beneficiary.

Upon review, we agree with the director's determination that the petitioner has not submitted evidence to satisfy this criterion. The petitioner has not submitted any published materials that are by or about the beneficiary. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190.) Accordingly, the petitioner has not submitted evidence that satisfies the plain language of the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

Evidence that the alien has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field in which the alien is engaged. Such testimonials must be in a form which clearly indicates the author's authority, expertise, and knowledge of the alien's achievements

The petitioner has provided a total of nine testimonial letters in support of the petition. For the reasons discussed below, the letters do not satisfy the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

As stated previously, the regulation at 8 C.F.R. § 103.2(b)(3) states: "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." Although not addressed by the acting director in her decision, the petitioner submitted translations of foreign language recommendation letters that do not comport with the regulation. Instead these translations are accompanied by a single blanket certification that does not identify any specific document being translated and, accordingly, is not probative evidence that the translator of the translations in the record certified the translations. Because these translations do not comply with 8 C.F.R. § 103.2(b)(3), they have no probative value. Regardless, the content of the letters is not persuasive.

The petitioner submitted the above-referenced letter from its president, [REDACTED] stating that "[b]ecause of [the beneficiary's] extraordinary abilities as a percussionist, we have required his services for our musical productions and presentations during events and concerts in Colombia, Ecuador, Peru, Chile, Paraguay, Nicaragua, Guatemala and Europe." [REDACTED] does not specify the beneficiary's achievements as a percussionist.

The petitioner provided a peer review letter from [REDACTED] legal representative of [REDACTED] stating that the beneficiary "has performed as a percussionist and assistant percussionist since February 6, 2006, for our various national and international artists that we contract." [REDACTED] praises the beneficiary's "high level of professionalism" and describes the beneficiary as possessing "exceptional talent" and being "in high demand for his services."

[REDACTED] a professional vocalist and producer, certifies that the beneficiary "has actively performed as a percussionist during various musical shows and productions such as [REDACTED] a world festival and many others." [REDACTED] describes the beneficiary as "well known to be a musician with great skill and a master with percussion instruments."

The petitioner submitted a letter from [REDACTED] in Miami, stating that the beneficiary "has performed as a percussionist for our company since 2006." [REDACTED] states that that her company has contracted the beneficiary's services for the "tours and presentations abroad for our artist, [REDACTED] and that "because of [the beneficiary's] high musical level and excellent work, [the beneficiary] is regarded as one of the best Colombian percussionist[s]."

[REDACTED] a musical producer with [REDACTED] in Miami, describes the beneficiary as "a musician of high level with great abilities and talent as a percussionist" who is "highly regarded as one of the best."

[REDACTED], a musical performer, certifies that the beneficiary "is a highly recognized percussionist in Colombia." [REDACTED] states that the beneficiary's "talent, professionalism and honesty have earned [the beneficiary] a great reputation in the recording industry" and that the beneficiary has "performed with the greatest artists in Latin music."

[REDACTED] confirms that the beneficiary has worked for the orchestra as a percussionist since 2004, "during presentations at the national

level.” [REDACTED] attests to the beneficiary’s “great level of professionalism,” describing the beneficiary as a “talented musician.”

[REDACTED] states that the beneficiary has performed as a percussionist “with the various groups of our label since 2008,” and praises the beneficiary’s “excellent level of music, efficiency, and creativity as an artist.”

Finally, [REDACTED] states that the beneficiary “has performed for our group in the capacity of independent percussionist during our presentations at the national level since January 2002.” [REDACTED] describes the beneficiary as “one of the best in his specialty.”

As noted above, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(B) requires that affidavits written by recognized experts “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 letters do not establish their authors’ credentials as recognized experts, do not explain the manner in which they acquired information about the beneficiary, and do not specifically describe the beneficiary’s achievements in factual terms. The letters consist of general assertions regarding the beneficiary’s international acclaim and renown, but do not detail the beneficiary’s specific achievements.

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

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

The letters considered above primarily contain general assertions regarding the beneficiary’s talent, achievements or recognition, without specifically identifying his achievements and the significant recognition he has received for those achievements in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.³

³ *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *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).

In light of the above, the petitioner has not submitted qualifying evidence that meet the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

III. Conclusion

The petitioner has established that it seeks to engage the beneficiary's services for a specific activities or events as contemplated by the regulations. Pursuant to 8 C.F.R. § 214.2(o)(1)(i). The acting director's determination to the contrary is withdrawn.

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

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.