



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF T-K-T-M-A-D-I-O-N-Y-(K-A-W-) INC.

DATE: NOV. 18, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner, a Korean performing arts organization, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) § 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). The Director, Vermont Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner requests that the Beneficiary be granted O-1 classification so that she may work as a performing artist for a period of three years. The Director denied the petition, concluding that the exhibits 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). On appeal, the Petitioner requests approval of the petition and submits a brief. For the reasons discussed below, we agree that the Petitioner did not establish the Beneficiary's eligibility as an individual with extraordinary ability in the arts.

#### I. PERTINENT LAW AND REGULATIONS

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified foreign national who has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim, whose achievements have been recognized in the field through extensive documentation, and who seeks to enter the United States to continue work in the area of extraordinary ability. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part: "*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the field of 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 documentation that the beneficiary has been nominated for, or is 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 a petitioner does not provide this information, then that petitioner must satisfy at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). If a petitioner shows that certain criteria in paragraph (o)(3)(iv)(B) of this section do not readily

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

The satisfaction of 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, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) provides that petitions for O foreign nationals 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 end dates for the events or activities, and a copy of any itinerary for the events or activities; and

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

## II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on September 25, 2014. The Director issued a request for additional evidence (RFE) on October 10, 2014, to which the Petitioner replied. The Petitioner submits a brief on appeal. We have considered the record in its entirety in reaching this decision.

According to the record, the Beneficiary has more than 10 years of experience as a Korean traditional musician in South Korea. She attended The [REDACTED] in New York between 2012 and 2013. The Petitioner affirmed that it was founded in [REDACTED] and is the oldest Korean performing arts organization in [REDACTED]. It explained that it specializes in teaching and performing Korean traditional music and dance, and is also a performing artist representation agency. The Petitioner stated that the Beneficiary will work as a performing artist for it and for the [REDACTED]. The record indicates that [REDACTED] is a government institution supported by the Korean Consulate General which, since 2011, has run a program titled [REDACTED] that educates students about Korean culture through demonstrations and workshops in 47 schools.

The record contains signed copies of the Petitioner's agency agreement with the Beneficiary dated September 14, 2014, an itinerary for the period from October 2014 to October 2017, and a Detailed Performance Plan for that period. The Petitioner's initial evidence also included signed copies of the Petitioner's and [REDACTED] employment agreements with the Beneficiary, stating their intention to employ her during the requested period.

## III. ANALYSIS

### A. Consideration of the Evidentiary Criteria

The sole issue to be addressed is whether the Petitioner documented 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). While the Petitioner has included copies of several award certificates the Beneficiary received, the Petitioner has neither claimed nor offered information to confirm that any of these awards are comparable to the types of significant national or international awards or prizes listed as examples in the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(A), namely an Academy Award, an Emmy, a Grammy, or a Director's Guild award. The Director determined that the Petitioner did not submit evidence to satisfy this criterion, and the Petitioner raises no objection to this finding on appeal. Accordingly, the Petitioner has not established that the Beneficiary has received or been nominated for a significant national or international prize or award that would qualify for her for O-1 status.

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under 8 C.F.R. § 214.2(o)(3)(iv)(A). Therefore, the Petitioner must satisfy 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.<sup>1</sup>

*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 Director determined that the Petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). The Petitioner asserts that the Beneficiary satisfies this criterion by her performance as [REDACTED] mother in the [REDACTED] production of the musical [REDACTED] performed at the [REDACTED]. The Petitioner also affirms that the Beneficiary's performances in the [REDACTED] the [REDACTED] exhibit [REDACTED] the [REDACTED] New Year Celebration, and the Petitioner's [REDACTED] anniversary festival [REDACTED] satisfy this criterion.

Regarding the Beneficiary's performance in [REDACTED] the Petitioner initially submitted a promotional poster, a schedule of the festival from [REDACTED] and press releases from [REDACTED] about the musical. The Petitioner also provided an article from the website [REDACTED] Performing Arts Team's Musical [REDACTED] in New York," which mentioned the Beneficiary by name and affirmed that she plays the role of [REDACTED] mother. The record contains a letter from [REDACTED] Art Director for the [REDACTED] stating that the Beneficiary's role as [REDACTED] mother was one of the three main characters of the show. Therefore, we find that the Beneficiary's role in the musical was leading or starring, and we withdraw the Director's finding to the contrary. Nevertheless, we disagree with the Director's implication that the Petitioner demonstrated that this event had a distinguished reputation. While the Petitioner did include an article and press releases, these items do not establish the distinguished reputation of the show. Rather, they confirm that the theater was founded in [REDACTED] and has performed abroad and that the [REDACTED] had 200 participating teams. Without additional information regarding the critical, commercial, or other success of the [REDACTED] productions overseas or information regarding the selection of "teams" for the [REDACTED] the Petitioner has not documented the reputation of [REDACTED]

The Petitioner also asserted that the Beneficiary satisfies this criterion by her previous performance in its [REDACTED] anniversary festival, and her performances with the Petitioner in the above-stated dance parade, museum exhibit, and [REDACTED]. The published materials pertaining to these additional events did not mention the Beneficiary by name and did not establish the Beneficiary's roles in those additional events. [REDACTED] President, the [REDACTED] New York, confirmed that he saw the Beneficiary perform Korean traditional dance in the dance parade, which he explained consisted of 10,000 dancers of 75 culturally diverse dance styles,

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<sup>1</sup>The Petitioner does not assert that it satisfies the regulatory categories of evidence not discussed in this decision.

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and that “[the Beneficiary] showed no hesitation, and led her members confidently . . . .” [REDACTED] President, the [REDACTED], stated that the Beneficiary was “the leader of the Korean representative dance [REDACTED] at the [REDACTED]. The Petitioner’s President/Music Director, [REDACTED] described the Beneficiary’s role in its 27th Anniversary celebration, explaining that the Beneficiary “played as the leading role in the [REDACTED] and the last [REDACTED] and led all the members on the stage to a successful show.” The Petitioner’s Dance Director, [REDACTED] discussed the Beneficiary’s role in its performance of the [REDACTED] at the museum exhibit, affirming that when “the music stopped in the middle of the dance, [the Beneficiary] led her teammates without hesitation and finished the dance smoothly,” and that as a result the [REDACTED] was “the most complimented stage [*sic*] all night.”

First, these letters do not constitute reviews, advertisements, publicity releases, publications, contracts or endorsements, the initial evidence required by the plain language of the regulation. In addition, while the authors explained that the Beneficiary’s performances of Korean traditional music were well received, the Petitioner did not provide corroborating documentation of the type specified in the regulation to confirm that the Beneficiary performed services as a lead or starring participant for an event with a distinguished reputation.

The Director’s RFE requested that the Petitioner offer evidence of the Beneficiary’s role in those events, and in future productions with distinguished reputations. In response to the RFE the Petitioner provided two foreign-language articles about the Beneficiary, with translations, published in [REDACTED]. On appeal, the Petitioner relies significantly on these two articles. However, they were published after the date the petition was filed on September 25, 2014. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after a 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). Regardless, the articles did not discuss the Beneficiary’s roles in events other than [REDACTED].

Moreover, in order to meet this criterion, the Petitioner must establish 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. The Petitioner indicated that it will employ the Beneficiary as a performing artist/Korean performing arts instructor at various Korean cultural community events, some of which the Petitioner will sponsor. The record also shows that the [REDACTED] will employ the Beneficiary as a performing artist/instructor for [REDACTED] described as a program operating since 2011 in 47 schools. The Petitioner has offered no information that would distinguish the Beneficiary’s proposed role as leading or starring within its productions or those of [REDACTED], or critical reviews, advertisements, publicity releases, publications, or other exhibits to confirm that the specific productions in which the Beneficiary will perform have a distinguished reputation. 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)).

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Finally, the Petitioner initially asserted that the Beneficiary's participation in [REDACTED] is comparable evidence under this criterion, "[b]ecause Performing Art is a field in which an individual's extraordinary ability tends to be shown by the receipt of significant award in the field." The Director did not address this assertion. The Petitioner offered a press release about the competition published in the [REDACTED] stating that the competition was held in New Jersey, and involved 171 teams from seven states. This item, however, relates directly to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5), which we discuss below. The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) allows comparable evidence if the criteria in subparagraph (B) "do not readily apply" to the Beneficiary's occupation. The Petitioner has not explained why this criterion is not applicable or why we should consider an item that relates to one criterion as comparable evidence under a separate criterion. In summary, the Petitioner has not established that the Beneficiary satisfied 8 C.F.R. § 214.2(o)(3)(iv)(B)(1) as written or with comparable evidence.

*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*

The Director found that the Petitioner has not established that the articles are evidence of national or international recognition for her achievements in the arts, published in major newspapers, trade journals, magazines, or other publications. To qualify as major media, the publication should have significant national or international distribution.<sup>2</sup> The Petitioner submitted the above-referenced two articles about the Beneficiary published in [REDACTED]. On appeal, the Petitioner asserts that one of the articles appeared in the "#8 daily newspaper in the world." As previously discussed, the articles were published after the date the petition was filed on September 25, 2014. The Petitioner must demonstrate 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 the Beneficiary becomes eligible under a new set of facts. *Michelin Tire Corp.*, 17 I&N Dec. at 248.

In addition, the record does not contain the circulation or distribution data for [REDACTED] or the [REDACTED] or other information that the publications could be considered major media, as required by the regulations. Those publications appear to be local to the [REDACTED] area. While Internet materials confirm that the [REDACTED] is a "sister publication" of [REDACTED] it remains that the article about the Beneficiary appeared in the [REDACTED], and not [REDACTED]. The Petitioner did not include the circulation figures for the [REDACTED] or the [REDACTED] rather, the Petitioner submitted circulation figures for [REDACTED] and [REDACTED]. The Petitioner offers no further evidence on appeal. Accordingly, the Petitioner has not shown that the newspapers in which the

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<sup>2</sup> Some newspapers, such as the [REDACTED], nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers. Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the [REDACTED] but in a section that is distributed only in [REDACTED] Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

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articles appeared are major news publications. Therefore, the record supports the Director's determination that the published articles do not establish that the Beneficiary has achieved national or international recognition for her individual achievements in the arts. For the foregoing reasons, these items do not meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

*Evidence that the alien has performed, and will perform, in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation evidenced by articles in newspapers, trade journals, publications, or testimonials.*

The Director determined that the evidence did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). The Petitioner asserts that the Beneficiary meets this criterion based on her previous performances for its organization and as an instructor for [REDACTED], and that the organizations enjoy a distinguished reputation. A leading role may be evident from its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. The Beneficiary's performance in this role should confirm whether the role was critical for an organization or establishment as a whole. A critical role should be apparent from the Beneficiary's impact on the entity's activities. The Petitioner has not demonstrated how the Beneficiary's role as one of the organization's performers in a show, festival, museum exhibit or dance parade, rises to the level of a lead, starring or critical role for the Petitioning organization.

In support of this criterion, the Petitioner submitted the letter from [REDACTED], affirming that the Beneficiary "is a vital member of [the Petitioner]." As previously stated, [REDACTED] described the Beneficiary's leading role in dances during the Petitioner's [REDACTED] celebration. [REDACTED] concluded that the Beneficiary "is a key member of the [REDACTED] that we cannot afford to lose." The Petitioner also provided the letter from [REDACTED] discussing the Beneficiary's role in the Petitioner's performance of the [REDACTED] at the [REDACTED] exhibit, [REDACTED]. [REDACTED] characterized the Beneficiary as "a leading artist on the stages for [REDACTED]"

The letters from [REDACTED] do not explain how the Beneficiary performed in a leading or a critical role for the organization, beyond concluding that she did. U.S. Citizenship and Immigration Services (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). The record reveals that [REDACTED] performs the roles of the Petitioner's "Dancer/Performer/Choreographer/Artistic Director" and that another of the Petitioner's employees, [REDACTED] performs the role of the Petitioner's "Dance Instructor." The letters do not reveal where the Beneficiary's position fits within the Petitioner's overall organizational hierarchy.

The record further contains a letter from [REDACTED] Director of [REDACTED], stating that he saw the Beneficiary's performances at the Petitioner's [REDACTED] celebration and the [REDACTED] and recommended the Beneficiary as an instructor for [REDACTED] which requires her to demonstrate and assist students in Korean Traditional Performance. [REDACTED] affirmed that after observing the Beneficiary teach a session, he "believed that [the Beneficiary] was the best instructor of the program we had." This letter did not indicate that the Beneficiary performed a

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critical or leading role for [REDACTED]. None of the remaining letters mention the Beneficiary's roles with respect to any specific organization or establishment and thus do not satisfy the plain language of the criterion.

The reference letters are not without weight and have been considered above. We may, in our discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we are ultimately responsible for making the final determination regarding a beneficiary's eligibility for the benefit sought. *Id.* The submission of letters of support from the Petitioner's personal contacts is not presumptive evidence of eligibility; we may evaluate the content of those letters as to whether they support the Beneficiary's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500 n.2 (BIA 2008). Thus, the content of the writers' letters and how they became aware of the Beneficiary's reputation are important considerations. We affirm the Director's finding that the Petitioner did not demonstrate that the Beneficiary has performed in a lead, starring, or critical role for organizations or establishments that have a distinguished reputation.

The record also does not reflect that the Beneficiary's proposed role with either organization would satisfy the requirement that she will be performing in leading or starring role. As discussed above, the Petitioner's employment offer provided that it will employ the Beneficiary as a performing artist/Korean performing arts instructor at various Korean cultural community events, some of which the Petitioner will sponsor. The record also shows that the [REDACTED] will employ the Beneficiary as a performing artist/instructor for [REDACTED] described as a program operating since 2011 in 47 schools. Although [REDACTED] employment offer confirmed that it will employ the Beneficiary for 20-25 hours per week, the three-year Detailed Performance Plan only indicated that the Beneficiary will perform for [REDACTED] between [REDACTED] 2015 and [REDACTED] 2015. The Petitioner has offered no evidence that would elucidate where the Beneficiary's proposed position falls in the overall hierarchy of those organizations or her proposed impact on the organizations.

Further, the Petitioner did not sufficiently demonstrate that its organization and [REDACTED] enjoy a distinguished reputation. The Petitioner initially included general information regarding the Petitioner and [REDACTED] downloaded from each organization's website. In response to the Director's RFE, the Petitioner forwarded two press releases published in [REDACTED] stating that it performed at a [REDACTED] and sponsored a festival, [REDACTED] for its [REDACTED] Anniversary celebration. The record contains additional copies of materials from the website of the [REDACTED] pertaining to the exhibit [REDACTED] at which it performed. While the Petitioner has a lengthy history and is active, the record does not contain articles in newspapers, trade journals, publications, or testimonials to confirm that the Petitioner or [REDACTED] enjoy a distinguished reputation in the arts. In light of the above, the Petitioner did not meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

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*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 Director determined that the record did not establish that the Beneficiary meets this criterion. In support, the Petitioner submitted one award certificate and two certificates of merit/recognition. On appeal, the Petitioner asserts that the Director did not accord the proper weight to this evidence in making her determination.

The record contains a certificate awarded to the Beneficiary for [REDACTED], from [REDACTED] at its [REDACTED] Annual [REDACTED] Competition. [REDACTED] described the event as one that “can be a significant event to inspire pride in our culture, and to establish the identity of the Koreans,” and in which “about 100 dancers performed and 12 teams were awarded.” A press release about the event published in the [REDACTED] indicated that 131 teams from seven states performed in the competition. The record contains [REDACTED] advertisement of the event which explained that those eligible to compete are “[i]ndividuals and groups with skills and passion for Korean Traditional music.” This documentation did not provide sufficient explanation with respect to the context in which the Beneficiary was chosen and the significance of this award in the field. As such, we have no basis on which to conclude that such awards constitute “significant recognition for achievements.” Additionally, the Petitioner included copies of the Beneficiary’s Certificate of Special Congressional Recognition from U.S. Congresswoman [REDACTED] and a Certificate of Merit from [REDACTED] both given at the Petitioner’s [REDACTED] Anniversary celebration on March 21, 2014. The Petitioner did not submit any support for the significance of these certificates and the context in which the Beneficiary was chosen.

Further, the letter from [REDACTED], the Petitioner’s president, mentioned that the Beneficiary “received the Grand Prize two years in a row, as a leader for her [REDACTED].” The regulation at 8 C.F.R. § 214.2(o)(2)(iii)(B) provides that affidavits written by recognized experts certifying to the recognition and extraordinary ability shall specifically describe the foreign national’s recognition and ability in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information. [REDACTED] mentioned an award for which there is no corroboration, and she does not state where she acquired this additional information regarding the Beneficiary. Reference to an award in an opinion letter is insufficient to establish that the award constitutes “significant recognition for achievements.” Primary evidence of an award is a copy of the award itself. The Petitioner has not shown that a copy of the award does not exist or is unavailable, and that secondary evidence such as media coverage of the award selection is similarly unobtainable, such that the Petitioner may rely on testimony. 8 C.F.R. § 102.3(b)(2). The record does not demonstrate that the Beneficiary received the Grand Prizes [REDACTED] referenced or that the remaining honors constitute significant recognition for achievements from organizations or government agencies pursuant to the plain language of the criterion. Based on the foregoing, the Petitioner has not satisfied the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

B. Summary

Based on the foregoing, the Petitioner has not shown either that the Beneficiary meets the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(A) or at least three of the six criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). The appeal will be dismissed on this basis.

IV. CONCLUSION

The Beneficiary has not been nominated for or received a qualifying award under 8 C.F.R. § 214.2(o)(3)(iv)(A) and the record does not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in the arts.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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