



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

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

MATTER OF W-V-T-USA- LLC

DATE: SEPT. 14, 2015

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a baseball instruction and coaching business, seeks to classify the Beneficiary as a foreign national of extraordinary ability in athletics. *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 currently employs the Beneficiary as a baseball coach pursuant to an approved O-1 petition. The Petitioner seeks to extend the Beneficiary's employment for a period of five years.¹ After issuing two requests for evidence (RFEs) and then considering the record, the Director denied the petition, concluding that the Petitioner did not establish that the Beneficiary has achieved the required national or international acclaim in his field. Specifically, the Director determined that the Petitioner had not satisfied the initial evidentiary requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii), which requires documentation of a one-time achievement or materials that meets at least three of the eight regulatory criteria. On appeal, the Petitioner submits a brief and additional documentation. For the reasons discussed below, the Petitioner has not satisfied the plain language requirements of at least three criteria.

I. PERTINENT LAW AND REGULATIONS

Section 101(a)(15)(O)(i) of the Act provides classification to a qualified beneficiary 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 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."

¹ Pursuant to 8 C.F.R. § 214.2(o)(12)(ii), an extension of stay may be authorized in increments of up to one year for an O-1 beneficiary to continue or complete the same activity for which he or she was admitted plus an additional 10 days to allow the beneficiary to get his or her personal affairs in order. A five-year extension of stay cannot be granted.

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The regulation at 8 C.F.R. § 214.2(o)(3)(iii) sets forth a multi-part analysis. First, a petitioner can demonstrate a beneficiary's sustained acclaim and the recognition of the beneficiary's achievements in the field through a one-time achievement (that is, a significant nationally or internationally recognized award). In the alternative, a petitioner may provide sufficient qualifying documentation that meets at least three of the eight categories of documentation listed at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). If the petitioner shows that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility. 8 C.F.R. § 214.2(o)(iii)(C).

The submission of materials relating to at least three criteria does not, in and of itself, evince eligibility for O-1 classification. *See* 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 acting 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. at 376.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on May 19, 2014. The record of proceeding includes the Form I-129 and supporting documentation, RFEs dated June 3, 2014, and August 7, 2014, respectively, the Petitioner's responses to the RFEs, the Director's decision dated November 21, 2014, the Petitioner's appeal, and additional evidence the Petitioner submits in support of the appeal. We have reviewed the record in its entirety in reaching our decision.

The Petitioner seeks to classify the Beneficiary as a foreign national with extraordinary ability as a baseball coach so that it may continue to employ him at its baseball coaching and instruction business. According to [REDACTED] Director of the Latin American Program for the [REDACTED] [REDACTED] the Beneficiary played professional minor league baseball from 1988 until 1994. From 1995 to 2003, the Beneficiary became a baseball scout, instructor and coach for minor league affiliates of the [REDACTED] in countries including his native Panama, the Dominican Republic and the United States.

In the initial letter dated April 11, 2014, the Petitioner explained that it has employed the Beneficiary for the past seven years as a baseball coach and instructor and that the Beneficiary has been instrumental in the Petitioner's success. In discussing the Beneficiary's background and qualifications for the position, the Petitioner described the Beneficiary as "the best of the best" and an employee of unique expertise, experience and talent. The Petitioner emphasized that the Beneficiary has played professional baseball for "the [REDACTED] the [REDACTED] the [REDACTED] [REDACTED], and the [REDACTED]". In discussing the Beneficiary's success in the position, the Petitioner asserted that the Beneficiary's best students have received college scholarships "in the states of North Carolina, Kentucky and West Virginia." The Petitioner also confirmed that "many" of the Beneficiary's high school students "were selected as First Team All State and All

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Conference” and that one of his students played “in the NCAA College World [S]eries for [University of ██████████]. According to the Petitioner’s employment contract with the Beneficiary, which the parties dated and signed on January 1, 2014, the Beneficiary’s duties in the United States will include providing private instruction to students “as it relates to baseball and girls softball,” and other administrative duties. The Petitioner provided the Beneficiary’s pay stubs for several months immediately preceding the filing of the Form I-129.

The director denied the petition on November 21, 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). The director also noted that competitive athletics and coaching/instructing are not the same area of expertise. 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). On appeal, the Petitioner asserts that “as a former baseball player for Major League Baseball (MLB) teams . . . [the Beneficiary] is one of the best baseball coaches in the country.” While a competitive baseball athlete and a baseball coach share knowledge of the sport of baseball, the two rely on different sets of basic skills. Thus, we agree with the director’s finding that competitive baseball and baseball coaching/instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (holding that extraordinary ability as a baseball player does not imply the same ability in all positions or professions in the baseball industry).

United States Citizenship and Immigration Services (USCIS) will not assume that a beneficiary 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 a 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 reflecting 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, however, the Beneficiary’s athletic accomplishments are not recent and the Petitioner asserts the Beneficiary has been coaching for many years. Accordingly, we will address the Beneficiary’s accomplishments as a baseball 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.

III. PRIOR APPROVALS

The record indicates that USCIS has previously approved petitions for O-1 status filed on behalf of the Beneficiary. The prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the Petitioner’s or Beneficiary’s qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). In matters relating to an extension of nonimmigrant visa petition validity involving the same petitioner,

beneficiary, and underlying facts, USCIS will generally give deference to a prior determination of eligibility. However, USCIS is not required to approve a petition for renewal of a visa because, by mistake or oversight, it previously approved a visa petition. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *see also Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). Each nonimmigrant petition filing is a separate proceeding with a separate record and a separate burden of proof. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

In the present matter, the Director reviewed the record of proceeding and concluded that the Petitioner did not meet all eligibility requirements for the requested classification. Based on the lack of required evidence of eligibility in the current record, we find that the Director was justified in departing from the previous petition approval by denying the instant petition. We are not required to approve applications or petitions where eligibility has not been demonstrated because of prior approvals. *See, e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988). Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner does not meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

IV. ANALYSIS

A. Extraordinary Ability in Athletics

1. Consideration of the Evidentiary Criteria²

If the Petitioner provides documentation 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 provided 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 demonstrated 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 show 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 at 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

The Petitioner did not initially assert that the Beneficiary satisfies this criterion, and the Petitioner's initial submission did not include copies of the Beneficiary's prizes or awards for excellence in the

² The Petitioner does not claim to satisfy or submit evidence relating to the regulatory categories not discussed in this decision.

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field. Accordingly, the Director determined that the Petitioner did not submit any evidence to establish that the Beneficiary satisfies this criterion.

On appeal, the Petitioner indicates that the Beneficiary received awards and trophies as an athlete playing for minor league baseball teams in Panama, including awards for batting champion and stolen base champion. Submitting the Beneficiary's prizes or awards is insufficient to meet the plain language of the regulation without documentary evidence reflecting that the prize or award is nationally or internationally recognized for excellence in the field of endeavor. The Petitioner provides six foreign language participation certificates dated from 1981 to 1985, pertaining to the Beneficiary's performance as an athlete in little league baseball in Panama. The Petitioner does not provide any translation for the certificates. Because the Petitioner has not submitted certified translations of the certificates, the certificates have limited probative value. *See* 8 C.F.R. § 103.2(b)(3).

In a letter dated June 26, 2015, in support of the appeal, the Petitioner asserts that the Beneficiary also received special recognition from [REDACTED] "for his extraordinary abilities and impressive [trajectory] and positive influence on the country's baseball industry," but the record does not support the appellate statement. The Petitioner provides a copy of an undated photograph with a handwritten foreign-language notation that it shows the Beneficiary and his team with [REDACTED]. The record does not contain sufficient information establishing the context of the photograph. Specifically, nothing about the photograph itself reflects that those depicted in the photograph are receiving a nationally or internationally recognized award or prize.

The Petitioner also provides letters from [REDACTED] Treasurer of the Baseball League of [REDACTED] Panama dated June 28, 2008. [REDACTED] states that the Beneficiary participated as an athlete in youth baseball in Panama, representing the province of [REDACTED] in national championships from 1986 to 1989, and the world championship in 1987 in Canada. [REDACTED]; letter indicates that the Beneficiary was awarded the title of [REDACTED].

The Petitioner further submits a letter from [REDACTED] a major league baseball catcher, stating that the Beneficiary "has been named [REDACTED] and [REDACTED] by recognized authorities in Panama" (emphasis in original), and that former [REDACTED] recognized the Beneficiary "for his extraordinary ability, impressive trajectory and positive influence on the country's baseball industry."

As additional evidence in support of the significance of the [REDACTED] awards, the Petitioner submits four articles published in [REDACTED] as follows:

- "The [REDACTED] Express Tied the Record," published in an unidentified newspaper;
- An untitled article reporting game results published in [REDACTED]

³ While the translation of the letter reflects "[REDACTED]" the foreign language original states [REDACTED]

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- [redacted] and
- [redacted] and [redacted] [the Beneficiary] [redacted] published in [redacted].

All four articles note that the Beneficiary won the award for [redacted] in the [redacted] national junior baseball championship, and one of the articles noted that he also won the award for [redacted] in the same competition. As the above awards are for athletic achievements, they cannot serve as qualifying evidence that the Beneficiary meets this criterion as a coach.

In the alternative, the petitioner has not documented that these awards are qualifying athletic awards. The burden is on the petitioner to demonstrate the level of recognition associated with the Beneficiary's two awards at this national junior competition. Upon review, the submitted news articles do not reflect that the level of recognition of the Beneficiary's competition victories is commensurate with nationally or internationally recognized prizes or awards for excellence in the field of competitive baseball. The competitions in which the Beneficiary received awards were for youth or junior level competition and by definition not open to all baseball athletes, but to a restricted segment of athletes. The petitioner has not shown that these awards were open to experienced professionals already working in the field. While age restricted awards may be nationally or internationally recognized, it is the petitioner's burden to substantiate this level of recognition. The Petitioner did not provide any information pertaining to the audience, circulation and distribution of the above publications, as might be indicative of major trade or general media coverage of the awards, or equivalent evidence of their recognition in the field. Overall, the record is insufficient to establish that the Beneficiary's titles resulted in his receipt of nationally or internationally recognized prizes or awards for excellence as a baseball athlete and, as such, do not satisfy the plain language of this evidentiary criterion.

With regard to the Beneficiary's coaching experience, [redacted] states that the Beneficiary "participated as Technical instructor [coach] in Panama" (brackets in original), and that in that position he "prepared the Major [redacted] Teams of [redacted] where he was awarded 4 titles," and "[d]irected and prepared the Juvenile Team of [redacted] on three occasions, taking them to win the Championships in [redacted]" As additional evidence in support of the significance of the Beneficiary's [redacted] award, the Petitioner submits one article dated January 6, [redacted] that appeared on the website www.mensual.prensa.com, and is titled "[redacted] is Ready for the National Youth." The article discusses the composition of the team coached by the Beneficiary prior to its competing in the [redacted] series. The record does not reflect that the Beneficiary was a named recipient of this award. Regardless, the competition was for junior or youth athletes and, by definition, not open to all baseball athletes. The Petitioner has not shown that this award was open to established professionals already working in the field rather than limited to junior athletes. While age restricted awards may be nationally or internationally recognized, it is the Petitioner's burden to substantiate this level of recognition. The Petitioner also did not provide any information pertaining to the audience, circulation and distribution of the publication, to demonstrate major trade or general media coverage of the award or equivalent evidence of its recognition in the field. Thus, the record does not satisfy the plain language of this criterion.

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Finally, the record does not establish the significance of the remaining titles that [REDACTED] asserts teams coached by the Beneficiary won in adult competition in [REDACTED] and in junior national competition in [REDACTED]. Similarly, the record does not show that the Beneficiary was the recipient of these awards. 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)).

In sum, the Petitioner has not established that the Beneficiary has received nationally or internationally recognized awards for excellence in coaching. Upon review, the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields

The Director determined that the Petitioner did not address or submit any evidence to establish that the Beneficiary satisfies this criterion. On appeal, the Petitioner asserts that the Beneficiary satisfies this criterion based upon his employment with the following teams:

- As an athlete with minor league baseball teams from 1988 to 1994, including minor league teams affiliated with the [REDACTED] and [REDACTED] and [REDACTED] and [REDACTED]
- As a coach and scout for minor league level teams affiliated with the [REDACTED] in Latin America and the United States from 1995 to 2003.

The record contains several published articles pertaining to the Beneficiary and several testimonial letters discussing the Beneficiary's employment. The Beneficiary's athletic membership on teams from 1988 to 1994 would be based on his ability as a competitive athlete, not as a coach, the field for which classification is sought. The Beneficiary's athletic accomplishments as a member of those teams, before he was active as a coach, cannot serve to meet this regulatory criterion.

The Petitioner next asserts that the Beneficiary satisfies this criterion based upon his employment as a coach, instructor and scout for minor league level teams associated with the [REDACTED]. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. At issue is the nature of the membership requirements rather than the association's overall reputation. In response to the Director's RFE dated June 3, 2014, and on appeal, the Petitioner has provided letters from past colleagues of the Beneficiary at the [REDACTED] including [REDACTED] the director of the team's Latin American Program, [REDACTED] one of the team's minor league coaches, [REDACTED] Manager of Minor League Operations, [REDACTED] the team's scouting director, and [REDACTED], the Beneficiary's scouting supervisor, all praising the Beneficiary's abilities as a coach and scout.

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First, the Petitioner has not demonstrated that employment constitutes membership in an association. Regardless, upon review, the submitted letters do not establish that the Beneficiary's employment with the [REDACTED] organization requires outstanding achievements in the field of baseball coaching. While the Beneficiary's employment as a minor league coach with the team is noteworthy, the record is devoid of any evidence that "outstanding achievement" is a pre-requisite to employment with the team, or that membership in the organization required the Beneficiary to be judged by recognized national or international experts in his field.

Finally, the Petitioner submitted a letter from [REDACTED] of the [REDACTED] [REDACTED] confirmed the Beneficiary's membership in that association, describing the Beneficiary as "a highly specialized professional teacher of the game," and "an exemplary coach." The letter explained that [REDACTED] "promotes active learning, camaraderie and rapport among all baseball coaches, including that between professional and amateur levels." [REDACTED] did not discuss the manner in which [REDACTED] screens and selects members. Therefore this testimonial evidence does not confirm that [REDACTED] is an association which requires outstanding achievements of its members as judged by recognized national or international experts in the discipline of baseball coaching. As such, the Petitioner has not shown that membership in this group is indicative of the Beneficiary's national or international acclaim as a baseball coach. For all of the reasons discussed above, the Petitioner has not established that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation

In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be "about" the Beneficiary and, as stated in the regulations, be printed in professional or major trade publications or major media. To qualify as major media, the publication should have significant national or international distribution. The Petitioner did not initially assert that the Beneficiary satisfies this criterion, and the Petitioner's initial submission did not include published material about the Beneficiary that meets this criterion. Accordingly, the Director determined that the Petitioner did not submit any evidence to establish that the Beneficiary satisfies this criterion.

On appeal the Petitioner asserts that the Beneficiary satisfies this criterion based upon numerous articles written about him during the time that he was a baseball athlete. The Petitioner submitted eight published articles profiling or highlighting the Beneficiary's minor league level competition results, some in unidentified publications and others in the following publications: [REDACTED]

[REDACTED] This documentation reflects published material about the Beneficiary relating to his work as a baseball athlete, not as a coach. However, in this case the field for which classification is sought is coaching. Therefore, this published material cannot serve to meet this regulatory criterion. Regardless, the Petitioner did not establish that any

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of the above material was published in professional or major trade publications or other major media by submitting evidence pertaining to the audience, circulation and distribution of the publications.

The Petitioner also provides articles pertaining to his experience as a coach. First, the record includes two articles published in [REDACTED] respectively, briefly mentioning new positions that the Beneficiary obtained with the [REDACTED] in 1995 as a scout in Panama, and in 2000 as coach of [REDACTED] of the [REDACTED]. The articles discuss multiple recent hires by several teams and are not about the Beneficiary or even the team that hired him. Second, the Petitioner submits a third article dated January [REDACTED] that appeared on the website [REDACTED] and is titled, [REDACTED] is [REDACTED].⁴ The Petitioner did not provide a certified translation of this article as required under 8 C.F.R. § 103.2(b)(3). Accepting the translation, the article discusses the composition of the team from [REDACTED] province coached by the Beneficiary prior to its victory in the [REDACTED] series, and the Beneficiary's assessment of the team's strengths and weaknesses. While this article is about the Beneficiary, relating to his work as a baseball coach, the Petitioner must also show that it appeared in a professional or major trade publication or other major media. The Petitioner did not submit evidence pertaining to the audience, circulation and distribution of that online publication, to establish that the article appears in qualifying media. Accordingly, the Petitioner has not demonstrated that this article meets all of the requirements of the regulation. Finally, while the Petitioner has provided several published materials relating to [REDACTED] and [REDACTED], baseball players the Beneficiary coached, the articles do not specifically mention the Beneficiary and, therefore, are not "about" the Beneficiary, as required by the plain language of the statute. Based on the forgoing, the Petitioner has not satisfied the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought

The Petitioner did not initially suggest that the Beneficiary satisfies this criterion. Accordingly, the Director determined that the Petitioner did not submit any evidence to establish that the Beneficiary satisfies this criterion. On appeal, the Petitioner asserts that the Beneficiary satisfies this criterion based upon his work as a sports commentator in Panama for [REDACTED] from 1989 to 1991, and [REDACTED] in 1992 and 1993. The Petitioner did not provide certified translations for the letters confirming this experience as required. 8 C.F.R. § 103.2(b)(3). More persuasively, the Petitioner also explains that the Beneficiary satisfies this criterion based upon his work as a scout for the [REDACTED]. [REDACTED] confirmed that "[f]rom 1995 through 2003 [the Beneficiary] scouted, managed, coached, instructed, trained, and counseled players at the Minor League level for the [REDACTED] organization." He lists several players

⁴ The foreign language original contains the Beneficiary's name and "[REDACTED]" typed at the top of the document, which the translator included, but this language does not appear to be part of the article as posted on the website.

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from the team's Dominican Republic branch that the Beneficiary assisted to advance to the Major [REDACTED] including [REDACTED] of Panama.

On appeal, the Petitioner submits materials from the Department of Labor's *Occupational Information Network (O*Net)*, which provides general information regarding the tasks and work activities associated with a particular occupation. More specifically, the Petitioner provides the Summary Report for the occupation of coaches and scouts, indicating that the position may require one to "evaluate athletes' strengths and weaknesses as possible recruits or to improve the athletes' technique to prepare them for competition." We are persuaded that the Beneficiary's duties as a scout meet this criterion.

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

The Director determined that the Petitioner did not establish that the Beneficiary satisfies this criterion. The Petitioner does not challenge that conclusion on appeal. Accordingly, the Petitioner has abandoned that claim. *See Sepulveda v. U.S. Atty Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

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

The Director determined that the Petitioner did not establish that the Beneficiary satisfies this criterion. On appeal, the Petitioner asserts that the Beneficiary satisfies this criterion based, in part, upon his having played for minor league teams affiliated with the [REDACTED] and the [REDACTED]. The Beneficiary's employment on those teams from 1988 to 1994 would be based on his ability as a competitive athlete, not as a coach. In this case the field for which classification is sought is coaching. The Beneficiary's athletic accomplishments as a member of those teams, before he was active as a coach, cannot serve to meet this regulatory criterion.

The Petitioner also asserts that the Beneficiary satisfies this criterion based his having been a coach, instructor and scout for minor league teams affiliated with the [REDACTED]. On appeal the Petitioner submits copies of several letters from persons working in professional baseball, including persons associated with the [REDACTED] organization.

As previously discussed, the Petitioner has submitted two letters from [REDACTED] a past Director of the Latin America Program for the [REDACTED] confirming that from 1995 through 2003 the Beneficiary scouted, coached and instructed players at the minor league level for the [REDACTED] organization. In the initial letter, [REDACTED] described the Beneficiary as "an essential key for the continuous development of Minor League players for advancement to the Major League [REDACTED] and he lists several players from the team's Dominican

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Republic branch that the Beneficiary assisted to advance to the Major League [REDACTED] including [REDACTED] of Panama.

The Petitioner provided a letter from [REDACTED] a coach for the [REDACTED] who states that he worked with the Beneficiary as a minor league coach for the team. He highlights two players, [REDACTED] and [REDACTED], whom the Beneficiary assisted to become Major League baseball players.

The Petitioner also submits a letter from [REDACTED] Manager of Minor League Operations with the [REDACTED] who states that the Beneficiary's coaching ability "has played a pivotal role in enabling several players to achieve great success." He provides, as an example, [REDACTED] of the [REDACTED] describes the Beneficiary as "among the most outstanding coaches in the United States."

The Petitioner further includes a letter dated August 28, 2007, from [REDACTED], previously a scouting director and assistant general manager of player personnel of the [REDACTED] who confirms that he hired the Beneficiary in 1995 as the team's scout in Panama and its on-field coach with the rookie team in the Dominican Republic. He indicates that in 1997, the Beneficiary was promoted to field manager with the team's Dominican affiliate. He further explains that the Beneficiary was subsequently promoted to work in the United States "with various minor league clubs in the [REDACTED] development system" where he states the Beneficiary "continued to assist entry level players as an accomplished hitting instructor[,] with several of the players he worked with moving on and attaining success at the major league level."

The appellate submission also contains letters from professional baseball players [REDACTED] and [REDACTED] both of whom the Beneficiary coached in minor league affiliates of the [REDACTED]. [REDACTED] confirms that the Beneficiary was his hitting instructor and coach during the 2001 and 2002 seasons. [REDACTED] explains that during the 2006 and 2007 season he was selected to be a member of the [REDACTED]. The record also reflects that [REDACTED] advanced to the [REDACTED] major league team in [REDACTED] credits his success to his "great coaches and instructors," and asserts that the Beneficiary helped him to develop into a better hitter. [REDACTED] confirms that the Beneficiary signed him to play for the [REDACTED] in 1999, and that, during his early years with the [REDACTED] the Beneficiary would instruct him in pitching, "during spring training and again in Panama during the off season." [REDACTED] states, "I credit a great deal of my success to [the Beneficiary's] teaching of the art of pitching." The record reflects that [REDACTED] advanced to the [REDACTED] major league team in 2006.

While the [REDACTED] is an organization with a distinguished reputation in the sport, and while the Beneficiary has clearly been able to provide expertise in the area of baseball coaching within the [REDACTED] organization, the record does not confirm that his role as a baseball coach was essential or critical for that organization as a whole. The scope of this evidentiary criterion focuses on the Beneficiary and the relative importance of his position within

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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 the major leagues. The Petitioner's submissions do not demonstrate that the Beneficiary, as one of a number of minor league coaches, instructors and scouts, was responsible for the success or standing of the [REDACTED] minor league affiliates for which he worked, to a degree consistent with the meaning of "critical or essential capacity."

The Petitioner further asserts that the Beneficiary's position as a coach for the youth team of [REDACTED] Province, Panama was critical and essential. The Petitioner refers to published material discussing the Beneficiary's participation as a coach in Panama's [REDACTED]. In addition, as previously discussed, [REDACTED] letter indicated that the Beneficiary "participated as Technical instructor [coach] in Panama" (brackets in original), and that in that position he "prepared the Major [REDACTED] Teams of 1996 and 2000 where he was awarded 4 titles," and "[d]irected and prepared the [REDACTED] on three occasions, taking them to win the [REDACTED]." However, the record confirms that the Beneficiary was employed in 1994 as a professional baseball player, and from 1995 to 2003 by the [REDACTED] as a coach, instructor and scout of minor league baseball players. Upon review, there is no documentation that the Beneficiary was ever formally employed by the baseball league of [REDACTED] Province. Further, the record does not contain any evidence that the organization has a distinguished reputation in the sport of baseball.

The Beneficiary has also performed as a baseball coach for the Petitioner. On appeal, the Petitioner asserts that it "features [the Beneficiary] as their premiere baseball batting coach" and that the Beneficiary's "physical presence will guarantee further exposure for the school, thus further enhancing its standing in the world of baseball." However, the record does not contain the required documentation in the form of articles in newspapers, trade journals, publications or testimonials establishing that the Petitioner has a distinguished reputation in the sport of baseball. While the remaining letters are recommendation letters from acquaintances of the Beneficiary describing his contributions to the community and praising his athletic achievements and coaching ability, the letters do not speak to the reputation of the petitioning entity, nor has the Petitioner shown that its baseball instruction business enjoys a distinguished reputation in the field. *See* 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). 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 65 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Based on the foregoing, the Petitioner has not satisfied the plain language of this evidentiary criterion.

In sum, 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.

V. CONCLUSION

The Petitioner did not provide a major, internationally recognized award and the documentation submitted does not satisfy three of the eight other evidentiary criteria specified in the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B). The record shows that the Beneficiary is a skilled baseball coach. Upon review of the totality of the evidence submitted, the Petitioner has not established that the Beneficiary has extraordinary ability as a baseball 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. Consequently, the Beneficiary is not eligible for nonimmigrant classification under section 101(a)(15)(O) of the Act.

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

ORDER: The appeal is dismissed

Cite as *Matter of W-V-T-USA-; LLC*, ID# 13265 (AAO Sept. 14, 2015)