



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

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

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DATE: JAN. 8, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a company that curates and promotes art shows, 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 Fluxus artist for a period of three years. The Director denied the petition, concluding that the exhibits did not satisfy the evidentiary requirements applicable to foreign nationals 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 and additional material. 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 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 apply to the

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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 August 25, 2014. The Director issued a request for additional evidence (RFE) on September 8, 2014, to which the Petitioner replied. The Petitioner submits a brief on appeal and additional exhibits. We have considered the record in its entirety in reaching this decision.

The Petitioner explained that it is a sole proprietorship involved in directing, curating, and promoting the work of various artists at art shows and projects at numerous venues throughout the United States. According to the record, the Beneficiary attended the [REDACTED] in New York between 2011 and 2013 and was a full-time, unpaid intern for the Petitioner between June 2013 and June 2014. The Petitioner initially described the Beneficiary as a professional Fluxus artist with distinct and extraordinary artistic talent. [REDACTED] the Petitioner's director, explained that Fluxus is a relatively new international movement in the arts field composed of avant-garde artists, composers and designers, "noted for blending different artistic media and disciplines as part of Neo-Dadaism that emerged in the early 1960s." The Petitioner asserted that "Fluxus art has been ignored by the art world and its critics for decades," and that the Beneficiary "will bring Fluxus art, or even [a] new Fluxus art movement with new technology, to light."

The Petitioner stated that it seeks the Beneficiary to work as a Fluxus artist for its art exhibitions and projects. The record contains signed copies of the Petitioner's agency agreement with the Beneficiary dated August 19, 2014, and an itinerary of events for the period between September 2014 to June 2017, including college lectures, a book signing, and solo and group art exhibitions of the Beneficiary's past and present artworks at various galleries in New York, New Jersey, Washington, and California. The Petitioner's initial evidence also contained the required advisory opinion, the Beneficiary's resume, and a general article regarding the Fluxus movement and Fluxus art from *Wikipedia*.¹ The Beneficiary's resume indicates that during her internship with the Petitioner, she exhibited her artwork at many of the galleries listed on the itinerary.

¹ 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); see also the General Disclaimer at <http://en.wikipedia.org/wiki/Wikipedia>, accessed on December 31, 2015, and copy incorporated into the record of proceeding noting that the content is subject to the following general disclaimer:

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.

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III. ANALYSIS

A. Consideration of the Evidentiary Criteria

At issue 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). The record included confirmation that [REDACTED] awarded the Beneficiary a two-year academic scholarship, and the Petitioner asserted that this award was “the top award given to an artist with extraordinary ability in the field of art, as judged by the art industry as a whole.” The Petitioner, however, has not offered information to corroborate that this award is 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 her for O-1 status 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.²

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 did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). The Petitioner asserts that the Beneficiary satisfies this criterion based upon her relationship as a studio artist with artist [REDACTED] in 2013, her receipt of the [REDACTED] scholarship while a student at [REDACTED], and her past and proposed employment with the Petitioner. The Petitioner further maintains that the Director erred in focusing on whether the exhibits garnered the Petitioner a distinguished reputation rather than whether she performed as a leading or starring participant for productions or events with a distinguished reputation. While the Petitioner correctly frames the question on appeal, the evidence required under this criterion, namely the critical reviews, advertisements, publicity releases, publications, contracts or endorsements, must document that the Petitioner participated at the required level rather than simply the reputation of those with whom she has been associated.

That is not to say that you will not find valuable and accurate information in Wikipedia; much of the time you will. However, 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. Note that most other encyclopedias and reference works also have disclaimers.

² The Petitioner does not assert that it satisfies the regulatory categories of evidence not discussed in this decision.

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The Petitioner's initial evidence included the Beneficiary's resume, which indicates that in 2013 she worked as a silkscreen artist at [REDACTED] "for world-renowned artist, [REDACTED] Studio." In a letter dated December 3, 2014, in response to the Director's RFE, the Petitioner stated that the Beneficiary "participated in studio art work production of the world-renowned artist, [REDACTED] one of the world's leading contemporary artists," and the Petitioner asserted that "obtaining [a] studio artist internship with [REDACTED] in itself is considered an outstanding achievement even among top artists due to [REDACTED] stature in the art world." The Petitioner submitted numerous articles pertaining to the distinguished reputation of [REDACTED] as an artist and exhibitions of his work, none of which mention the Beneficiary. Accordingly, these articles do not demonstrate the level of the Petitioner's participation for [REDACTED] one of the factors set forth in the plain language of this criterion.

The initial filing contained letters from [REDACTED], one of the Beneficiary's professors at [REDACTED] and [REDACTED] Chief Executive Officer (CEO), [REDACTED] an online service provider for the international art market, both of whom stated that the Beneficiary was "carefully selected" to work as a studio artist for [REDACTED], and that such selection is a testament to her extraordinary ability in the field of art and a great honor and prestige. On appeal, the Petitioner offers a letter from [REDACTED] Director of the [REDACTED] in New York, explaining that an art exhibit garners a distinguished reputation not only based on the prominence of the "hosting artist," but also because "the exhibition/project was successfully coordinated by other participated [*sic*] artists who worked with the hosting artist." [REDACTED] concludes: "[the Beneficiary's] participation in art exhibitions by [REDACTED] and [the Petitioner] is self-evident to professional artists that [the Beneficiary] has unique and unmatched artistic ability in the field of art." The Petitioner has not, however, submitted evidence in the form of "critical reviews, advertisements, publicity releases, publications, contracts, or endorsements" that reflect that the Beneficiary, as [REDACTED] studio artist, participated in any of his art exhibitions, or has otherwise performed for him services in a lead or starring role in any particular event or production with a distinguished reputation. It is not sufficient to establish only that the Beneficiary has worked for a distinguished artist whose work is regularly exhibited. 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. Although these letters do not satisfy the plain language of this regulatory criterion, we will discuss them below under the criteria at 8 C.F.R. §§ 214.2(o)(3)(iv)(B)(3) and (5).

The Petitioner also initially asserted that the Beneficiary satisfies this criterion based upon her receipt of the [REDACTED] Scholarship, and provided the Beneficiary's award letter, from [REDACTED] Director of Admissions at [REDACTED] which noted that the Beneficiary, as a recipient of the scholarship, was "among a small group of exceptional candidates identified in a very competitive selection process." In a letter dated December 3, 2014, in response to the RFE, the Petitioner stated the scholarship was established by the founder of [REDACTED] and awarded to "students who have demonstrated outstanding artistic achievements, based on a review of the applicants' portfolios and academic records." However, the Petitioner did not offer sufficient evidence that the Beneficiary, as a scholarship recipient, performed services as a lead or starring participant for a production or event with a distinguished reputation. Even

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if the Petitioner had established the distinguished reputation of the scholarship competition, achieving a favorable result in a scholarship competition is not indicative of providing services in a lead or starring capacity for an artistic production or event. While relevant to the Beneficiary's level of recognition for her achievements, such material cannot be used to satisfy this criterion and will be considered further below.

The Beneficiary's resume also provided a list of three solo exhibitions and six group exhibitions between 2011 and 2014, some of which took place while she was an intern with the Petitioner. While we note that such exhibitions could qualify as events in which the Beneficiary performed services as a lead or starring participant, the Beneficiary's level of participation in these events was not documented in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements, as required by the plain language of this criterion, nor did the Petitioner offer such evidence to establish that the Beneficiary's exhibitions have been events which have a distinguished reputation. The published material pertaining to the Beneficiary includes an interview with the Beneficiary dated April 28, 2014, published in the [REDACTED]. The interview contained the Beneficiary's cover art and additional pictures of her work and discussed the materials she submitted to the journal. The item is not a critical review.

[REDACTED] an art critic and reviewer, indicated that she had evaluated the Beneficiary's work and considers her to have outstanding ability. This letter, while from an art critic, is not a published critical review and, regardless, did not address the Beneficiary's level of participation for a particular event. [REDACTED] affirmed that the Beneficiary's work received attention in several publications; however, she did not confirm that these materials were reviews. Moreover, primary evidence of the reviews referenced would be the reviews themselves.³ The Petitioner provided excerpts identified as from the websites of [REDACTED] and [REDACTED] reproduced on the Beneficiary's website. The February 2014 excerpt from [REDACTED] stated the current issue contained work from the Beneficiary, among other artists. The excerpt dated by the Beneficiary September 2013, from the blog [REDACTED] included the author's impressions upon viewing the Beneficiary's moving image piece, [REDACTED]. The author's name does not appear in this excerpt. None of the excerpted materials, however, referred to any exhibitions of the Beneficiary's work or other events in which the Beneficiary performed services as a lead or starring participant. Further, the Petitioner submitted advertisements for past exhibitions and events he has curated at various galleries between 2009 and 2012, but none of those involved the Beneficiary.

Finally, 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, as evidenced by critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. At the time of filing, the Petitioner provided an itinerary of the Beneficiary's upcoming exhibitions and activities for the period between September 2014 to June 2017, including college lectures, a book signing and solo and group art exhibitions of

³ The Petitioner may only rely on affidavits after showing that both primary and secondary evidence is either unavailable or does not exist. 8 C.F.R § 103.2(b)(2).

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the Beneficiary's past and present artworks at various galleries in New York, New Jersey, Washington, and California. On appeal, the Petitioner offers a letter from [REDACTED] President of [REDACTED] New York, an award-winning illustrator and animator, inviting the Beneficiary to a solo exhibition of her work at an event he will curate at the [REDACTED] and a signed contract indicating the exhibit will take place between September and October 2015. Again, while such exhibitions could qualify as events in which the Beneficiary will perform services as a lead or starring participant, the Petitioner has not submitted critical reviews, advertisements, publicity releases, publications, or other exhibits to confirm that the specific events at which the Beneficiary will exhibit her work have a distinguished reputation, nor does [REDACTED] letter constitute such evidence. Going on record without support 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)). Although [REDACTED] letter does not satisfy the plain language of this regulatory criterion, we will discuss the letter below under the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3) and (5). In light of the above, the material does not meet the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

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 work as a studio artist for [REDACTED] and her previous and proposed exhibitions for its organization. A leading role may be evident from its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. For a critical role, the Beneficiary's performance in this role should confirm whether it 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.

We concur with the Director's determination that, while the Petitioner provided evidence establishing the distinguished reputation of [REDACTED] the Petitioner has not demonstrated how the Beneficiary's role as a studio artist for [REDACTED] rose to the level of a lead, starring or critical role for his organization. First, we find that the Beneficiary's organizational role with [REDACTED] has not been adequately documented through the submission of articles in newspapers, trade journals, publications, or testimonials, as required by the plain language of the regulation. As previously stated, the Petitioner submitted her resume and RFE response cover letter affirming her work for [REDACTED] and numerous articles pertaining to the distinguished reputation of [REDACTED] as an artist and exhibitions of his work, none of which mention the Beneficiary.

The Petitioner also offered the above-referenced letters from [REDACTED] and [REDACTED] stating that the Beneficiary was "carefully selected" to work as a studio artist for [REDACTED] and that such selection is a testament to her extraordinary ability in the field of art and a great honor and prestige. The reference letters are not without weight and have been considered above. We may, in our

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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 and the Beneficiary's teacher 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. The authors do not state how the Beneficiary's role as a studio artist was a leading or critical role within [REDACTED] organization. While [REDACTED] explained that [REDACTED] does not provide recommendation letters, it remains that the record does not include a testimonial from [REDACTED] explaining the Beneficiary's role for his organization or establishment.

We also concur with the Director's determination that the Petitioner has not submitted evidence to establish that the Beneficiary's role for past and upcoming exhibitions were and are leading, starring or critical for organizations or establishments that enjoy a distinguished reputation in the field. The Beneficiary's planned exhibitions for the intended period of employment include [REDACTED] in New York City, [REDACTED], New Jersey, [REDACTED] New York, [REDACTED] Washington, and [REDACTED] California, and the Beneficiary's resume indicates these venues have previously exhibited her work. The Petitioner has not claimed that these particular establishments enjoy a distinguished reputation in the Beneficiary's field. On appeal, the Petitioner provides materials concerning the Beneficiary's proposed solo exhibition at the [REDACTED]. The letter from [REDACTED] who will curate a solo exhibit, states that "[REDACTED] works with some of the world's leading artists such as [REDACTED]. Our goal is to promote the top young artists"

Upon review of the record, while [REDACTED] may enjoy a distinguished reputation, the Petitioner has not shown that the Beneficiary will perform, in a lead, starring, or critical role for this establishment. [REDACTED] does not state that the Beneficiary's work had previously been exhibited in [REDACTED]. Materials accompanying [REDACTED] letter indicate that in 2015 the venue also hosted a solo exhibition of the works of [REDACTED] also curated by [REDACTED]. The Petitioner has not offered any corroborating evidence, such as brochures, publicity materials or other information regarding [REDACTED] to establish that the beneficiary has been and will be a featured lead, starring or critical artist within the gallery's collection. Finally, none of the submitted published materials about the Beneficiary reference any of the other galleries where the Beneficiary had or will have exhibitions of her work.

We also concur with the Director's finding that the Petitioner has not demonstrated how the Beneficiary's role as one of its exhibited artists is qualifying. The Director determined Petitioner did not sufficiently show that its organization enjoys a distinguished reputation. The Petitioner provided articles mentioning the Petitioner or [REDACTED] published between 2008 and 2010 on the websites of the [REDACTED] and at the website [REDACTED] and advertisements for past exhibitions and events he has curated at various galleries between 2009 and

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2012. In the articles [REDACTED] expressed his concern, as the director of the [REDACTED] in [REDACTED] New York, with a drop in art sales during the recession; described exhibits at that gallery; and expressed his opinion concerning a documentary, [REDACTED] by a British street artist. These published materials confirm some reliance on [REDACTED] as an authority and sufficient interest to review exhibits he has curated. The Petitioner, however, has offered no evidence that would elucidate where the Beneficiary's proposed position falls in the overall hierarchy of its organization or her proposed impact on the organization. Nor do the testimonial letters address the issue of the Beneficiary's past or proposed role within the Petitioning organization.

Finally, while we acknowledge the Petitioner's assertion in its support letter that Fluxus art has been ignored, and that the Beneficiary will play a critical role in the future of Fluxus art because she brings to light the movement, the Petitioner has not demonstrated that "Fluxus art" is an "organization or establishment" within the meaning of this regulatory criterion. Such claims will be addressed under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) below. Accordingly, the Petitioner has not provided evidence that the Beneficiary has performed in a critical role for organizations and establishments that have a distinguished reputation in the past and that she will perform such services under the approved petition. In light of the above, we concur with the Director's conclusion that the Petitioner did not meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3).

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 established that the Beneficiary meets this criterion, without specifically addressing the evidence upon which this conclusion was based. Upon review of the record we withdraw the Director's determination. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In support of this criterion the Petitioner submitted various testimonial letters from arts professionals stating that the Beneficiary has extraordinary skills in the field of Fluxus art. The Petitioner also provided copies of the Beneficiary's artwork, pages from the Beneficiary's website and blog webpage, the cover of the Beneficiary's book, [REDACTED] a listing for the book on [REDACTED] and the above-referenced confirmation that [REDACTED] awarded the Beneficiary a two-year academic scholarship.

The regulation at 8 C.F.R. § 214.2(o)(2)(iii)(B) provides that "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." Upon review of the letters, we find that the evidence does not establish that the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field of fine arts.

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First, the Petitioner has not sufficiently demonstrated that we should narrow the Beneficiary's field to Fluxus art. The Petitioner may not narrow the Beneficiary's field to include only other artists working in a small, niche movement. Secondly, the reference letters, considered in the context of the totality of the evidence submitted, are insufficient to meet this criterion. As previously stated, USCIS may, in its discretion, use as advisory opinions statements offered as expert testimony.

In the above-referenced letter, [REDACTED] affirmed that he is well acquainted with the Beneficiary's work and that it is his "unreserved professional o[pi]nion that [the Beneficiary] is undeniably a professional artist of extraordinary ability in the field of Fine Art, more specifically in Fluxus art." [REDACTED] letter described his personal reaction to the Beneficiary's work, stating that after viewing it, he immediately felt that he had discovered something special, "which finds a way to stand out in the contemporary art market," and that the Beneficiary is "one of the few Fluxus artists with emphasis on exploring the ambiguity of innocence with a uniquely distinctive style . . . through the use of contrasting imageries and materials" with a ". . . distinctive ability to take viewers of her works on a journey through melancholy memories of childhood and encourage them to form their own interpretation." He concluded that the Beneficiary "ranks among the top compared to her peers in the specialized field of Fluxus art," and that her receipt of the [REDACTED] Scholarship at [REDACTED] "is a testament to her outstanding and extraordinary ability in the field of art, as judged by the art industry." As discussed, [REDACTED] also affirmed the prestige of working with [REDACTED]. [REDACTED] explained that the Beneficiary "has not been able to obtain [REDACTED] recommendation letter because . . . he is famous for not providing [a] recommendation letter for anyone." [REDACTED] did not include the basis of his knowledge that the [REDACTED] scholarship constitutes significant recognition in the field of fine arts, that Beneficiary was carefully selected to work for [REDACTED] and that he does not author letters of recommendation.

The above-referenced letters of [REDACTED] and [REDACTED] and the letter from [REDACTED] the Beneficiary's professor at [REDACTED], provided similar information to that included in [REDACTED] letter, in expressing the opinion that the Beneficiary "is a professional artist of extraordinary ability in the field of Fine Art, more specifically in the field of Fluxus art," and in describing their personal reactions to the Beneficiary's work. Their letters also referred to the Beneficiary's receipt of an academic scholarship at [REDACTED] and/or her being selected to work as a studio artist for [REDACTED] as evidence in support of her extraordinary ability in the field of art.

In response to the RFE, the Petitioner provided the letter from [REDACTED] who stated that she has evaluated the Beneficiary's work and that she considers the Beneficiary "one of few professional Neo-Fluxus artists with a distinct and outstanding ability in taking viewers of her work on a journey through their forgotten childhood memories." She noted that there are "not that many young and emerging artists whose work fall[s] within the Fluxus movement or can be identified as a Neo-Fluxus artist." She states her "unreserved professional opinion that [the Beneficiary] is undeniably a professional Neo-Fluxus artist with outstanding extraordinary ability on expressing and exploring the junction of innocence, birth and absolutes." [REDACTED] affirmed that the Beneficiary's work "has already been recognized by art experts and received attention in several publications, including [REDACTED] (September 2013), [REDACTED] (February 2014), and, most recently,

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██████████ (March 2014)” and that this press recognition, “supports [the Beneficiary’s] standing as an outstanding Neo-Fluxus artist.” She did not identify specifically which art experts have recognized the Beneficiary’s work or the nature and time period of that recognition.

Similarly, ██████████ did not elaborate with respect to the kind of press recognition or attention the Beneficiary received. As previously stated, the record contains an interview with the Beneficiary in one publication and brief excerpts of other material as reproduced on the Beneficiary’s website. Nor does the record contain any documentation, such as articles or reviews, regarding exhibitions of the Beneficiary’s work. Thus, we find ██████████ general reference to art experts and press to be insufficient evidence of the Beneficiary’s “recognition.” 8 C.F.R. § 214.2(o)(2)(iii)(D) (providing that affidavits written by recognized experts certifying to the recognition and extraordinary ability shall specifically describe the foreign national’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).

Additionally, as previously stated, the record included evidence that ██████████ awarded the Beneficiary a two-year academic scholarship. The Petitioner and several testimonial letters asserted that this award was the top award given to an artist with extraordinary ability in the field of art, as judged by the art industry as a whole. The Petitioner initially provided the Beneficiary’s award letter, from ██████████ Director of Admissions at ██████████ which noted that the Beneficiary as a recipient of the scholarship was “among a small group of exceptional candidates identified in a very competitive selection process,” and that the Beneficiary received, “the highest level scholarship offered by the ██████████” This documentation did not contain a sufficient explanation with respect to the context in which the Beneficiary was chosen and the significance of this award in the field beyond ██████████. As such, the Petitioner has not demonstrated that the scholarship constitutes “significant recognition for achievements.”

Further, the Petitioner provided copies of the Beneficiary’s artwork, pages from the Beneficiary’s website and blog webpage, the cover of the Beneficiary’s book, ██████████ and a listing for the book on ██████████. While this material confirms that the Beneficiary’s work is available on the Internet and that her book is sold on ██████████, this evidence does not describe the Beneficiary’s achievements in factual terms. Finally, we acknowledge the Petitioner’s affirmation in its support letter that Fluxus art gets little attention and that the Beneficiary will attract more interest to the specialty; however, the Petitioner’s assertion of the role that the Beneficiary will play in the future of Fluxus art does not show how the Beneficiary’s achievements to date are recognized in the field. *Soffici*, 22 I&N Dec. at 165.

It remains the Petitioner’s burden to show the Beneficiary’s significant recognition for achievements in the field. As discussed, the testimonial evidence submitted does not meet this burden. Overall, while the Beneficiary has earned the respect of her colleagues and well-known figures in the fine arts field, the material is insufficient to establish that the Beneficiary has received significant recognition for achievements in the field. Based on the above, the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) has not been met.

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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). 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). 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.

Cite as *Matter of AM-*, ID# 15019 (AAO Jan. 8, 2016)