



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

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

MATTER OF D-M-, LLC

DATE: JAN. 20, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a film production company, 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, California 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 he may work as an actor for a period of two and a half 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)(a significant national or international prize or award) or (B)(at least three of six possible forms of documentation). 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) of this section do not readily 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;

(b)(6)

Matter of D-M-, LLC

- (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
- (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 January 20, 2015. The Director issued a request for additional evidence (RFE) on February 4, 2015, 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 been studying theater in the United States since 2010, graduating from the [REDACTED] in 2014. The Beneficiary's resume lists acting credits in films, regional theater and commercials. The Petitioner's initial letter, dated December 4, 2014, affirmed that it was founded in [REDACTED] as a multimedia production company that produces feature films and documentaries for national clients. It explained that it is "undertaking the pre-production of two independent feature films, '[REDACTED]' and '[REDACTED]'" and that it "believes that [the Beneficiary's] extraordinary ability in the performing arts will make him a key part of both films." The Petitioner stated that the Beneficiary will play the role of [REDACTED] in [REDACTED]. The Petitioner further described the Beneficiary as "an actor with exceptional ability and a demonstrated record of achievement in theatrical, motion picture, and production in the United States."

The record contains a copy of the Petitioner's agreement with the Beneficiary dated October 12, 2014, signed by both parties, which reflected that "[f]or [REDACTED] and [REDACTED] [the Beneficiary] will receive a percentage of the film's profit in return for acting, producing financially, and by securing additional producers in order to enhance the quality and profitability of the films." The Petitioner confirmed that the Beneficiary "is likely to receive a royalty share of 5% of the final profit of the films" In an additional, undated letter, the Petitioner stated that it will also employ the Beneficiary as an actor and a producer in a third film, [REDACTED]. The record contains an itinerary for the period between January 15, 2015, and April 15, 2017.

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). If the Petitioner establishes through submissions that the Beneficiary has been nominated for or has been the recipient of, significant national or international awards or

(b)(6)

Matter of D-M-, LLC

prizes in the particular field pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A), then it will have submitted the requisite initial evidence for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes. The Petitioner asserted that the Beneficiary meets this criterion, based upon his having been "nominated for his performance in [REDACTED] for the [REDACTED]" which the Petitioner described as "the most prestigious college acting competition in the country." The Director determined that the Petitioner did not meet the requirements of this criterion. Upon review, the record does not establish eligibility pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A).

The record contains material that include general information about that competition from the website, [REDACTED]. According to this item, the [REDACTED] awards two national scholarships annually, to "provide recognition, honor, and financial assistance to outstanding student performers wishing to pursue further education . . . not necessarily limited to theatre arts." Sixteen regional scholarships are awarded to nominees in eight geographic regions, and one nominee from each region is invited to attend the national festival at the [REDACTED] to audition for the national scholarships.

First, although not discussed by the Director, the Petitioner's submissions are insufficient to establish the Beneficiary's actual nomination for this award. Specifically, the Petitioner did not include primary evidence of the Beneficiary's nomination for the award, i.e., a copy of the notification the Beneficiary received from the [REDACTED] and/or the [REDACTED] of his nomination for the award. 8 C.F.R. § 103.2(b)(2). The Petitioner did not explain why it did not submit a copy of the award nomination, or corroborate that such evidence was not available. *Id.* To show the Beneficiary's nomination for the award, the Petitioner offered letters from [REDACTED] Chair of [REDACTED] Department of Theatre, and [REDACTED] Associate Director, [REDACTED] Interactive Theatre Troupe.¹

This criterion specifically requires that the Beneficiary's awards be significant nationally or internationally in the field of endeavor, and it is the Petitioner's burden to establish every element of this criterion. On appeal, the Petitioner maintains that the Director erred in finding that the nomination for the [REDACTED] did not constitute a significant award in the field. The Petitioner cites as support the Ninth Circuit case of *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011), which concerned an immigrant petition for classification under section 203(b)(1)(A) of the Act as a foreign national of extraordinary ability. In *Rijal* the court noted that Congress entrusted the decision of defining a "major" award, one of the evidentiary criteria in that context, to the administrative process. 772 F. Supp. at 1345. Similarly, in the present case the decision of defining a "significant" nomination or award is left to us. As noted by the Director, competition for this acting scholarship was, by definition, not open to all theater actors, but to a very

¹ 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).

(b)(6)

Matter of D-M-, LLC

restricted segment of theater actors, college students. The Petitioner has not documented that this award was open to established professionals already working in the field rather than limited to students. While the limited pool of candidates does not necessarily preclude the award from qualifying, it is the Petitioner's burden to show that the honor is a significant national or international award.

The testimonial evidence in the record does not demonstrate that a nomination for the [REDACTED] is qualifying. Ms. [REDACTED] letter stated that the Beneficiary's skills as an actor were "evident as he was selected to represent our university at the [REDACTED] as an [REDACTED] actor in 2014," based upon his performance in [REDACTED]. She explained that, "[the Beneficiary] was selected by a team of judges from other universities when they came to adjudicate the play on our campus. They selected him as an outstanding actor based on the performance" According to Ms. [REDACTED] the Beneficiary subsequently performed in a [REDACTED] competition in Nebraska, which she characterized as "a significant honor." Ms. [REDACTED] letter confirmed that while working with the Beneficiary as part of the [REDACTED] Interactive Theatre Troupe she was "fortunate to see him be nominated to the [REDACTED] competition," which she described as "the most prestigious college acting competition in the country."

The record contains insufficient evidence establishing the extent to which the nominees or winners of the scholarships are recognized beyond the issuing body. While the Petitioner provided general information about the competition from the [REDACTED] website (such as the evaluation criteria, the number of regional and national finalists, and the scholarship amounts awarded), the Petitioner did not submit corroboration showing that nominees for the preceding honor were announced in major media or in some other manner consistent with a significant national or international award. For example, the winners and nominees of Emmy and Grammy awards receive significant national and international media attention as the result of their recognition, and the awards themselves are considered among the highest achievements attainable in the performing arts. The testimonial letters alone do not include sufficient context in which to evaluate the significance of the Beneficiary's award nomination, as it does not indicate that his nomination received attention consistent with a significant national or international award.

For all of the above reasons, the Petitioner has not shown that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A). Therefore, the Petitioner must establish the Beneficiary's eligibility under at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will address these criteria below.²

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

(b)(6)

Matter of D-M-, LLC

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). Specifically, the Director concluded that while the Beneficiary had performed as a lead or starring participant in some productions or events, the Petitioner did not demonstrate that those productions enjoyed a distinguished reputation. On appeal, the Petitioner maintains that the Director, imposed too high a burden of proof by ignoring the letters in the record.

The record confirms the following film roles:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.

The record, including the Beneficiary's resume, also confirms the following theater roles:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

The Petitioner submitted letters from several individuals involved in the above productions, one critical review, and printouts from the Internet Movie Database (IMDB) at [REDACTED] pertaining to the films [REDACTED] and [REDACTED] listing the filmmakers and cast of those films. The Director determined that although the letters affirmed that the Beneficiary played lead or starring roles in some of the productions, "there is no other evidence to indicate how it has been determined that

(b)(6)

Matter of D-M-, LLC

the Beneficiary's lead or starring role was in a production with a distinguished reputation." Upon review, the Petitioner did not establish that the Beneficiary meets this evidentiary criterion.

Regarding the Beneficiary's film performances, the Petitioner submitted a letter from [REDACTED] the director/writer of the short film [REDACTED] stating that the Beneficiary performed the lead role of [REDACTED]. Regarding the Beneficiary's other film performances listed above, the Beneficiary was one of several actors featured in those productions and it cannot be concluded based on the evidence that his role was leading or starring. [REDACTED] and the writer/director of [REDACTED] stated that the Beneficiary "was cast in a role in our production." [REDACTED], and a co-producer of [REDACTED] explained that the Beneficiary worked on the film but did not mention him when naming members of the film's leading cast. [REDACTED] the director of [REDACTED] affirmed that the Beneficiary played the role of [REDACTED], but did not indicate whether it was a leading character. [REDACTED], founder of [REDACTED] and the writer/producer of [REDACTED] wrote that the Beneficiary was one of a cast of four characters, but does not identify whether he had a leading role. In response to the RFE, the Petitioner provided a letter dated February 27, 2015, confirming that the Beneficiary has already performed in the Petitioner's movie [REDACTED] in the role of [REDACTED]. The Petitioner's response did not discuss whether that was a leading role in the film. The IMDB printouts, however, reflected that the Beneficiary was one of several cast members and, therefore, do not distinguish his role as leading or starring within those productions.

Regarding the Beneficiary's theater performances while a student at [REDACTED] the above-referenced letter from Ms. [REDACTED] stated that "the Beneficiary's leading roles on our stages were always at the highest level" and specifically praised his above-referenced roles as [REDACTED]. While some of the Beneficiary's roles may have been leading or starring, the Petitioner must also establish that the productions or events for which he performed such a role enjoyed a distinguished reputation.

With respect to the Petitioner's concern on appeal that the letters should be afforded more weight, the regulation mandates that the evidence supporting this criterion consist of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The Petitioner did submit two published materials pertaining to the Beneficiary's theater performances. The first article, a favorable critical review of the Beneficiary's performance in the play [REDACTED] dated [REDACTED], 2012, downloaded from the website [REDACTED] indicated that the Beneficiary was one of six players, "anonymously named Actors 1-6" who "morph into some 57 [characters]." The second item, a portion of an article published in the [REDACTED] on [REDACTED] 2014, reviewed some of the works offered by the [REDACTED] Theater Department's Summer Repertory Theatre. That exhibit did not specifically mention the Beneficiary by name but contained photographs of him, one performing the role of [REDACTED] in [REDACTED] and a second showing the Beneficiary with five other actors in the group. Upon review, the submitted published materials do not confirm that the productions in which the Beneficiary performed have been events which have a distinguished reputation. Rather, the filings reflect that the Beneficiary's performances in [REDACTED] productions to date have been while he was a theater student, and the specific roles mentioned have

(b)(6)

Matter of D-M-, LLC

taken place within the context of student showcases receiving local media coverage rather than professional productions that have a distinguished reputation.

In sum, while the Petitioner attested to the leading or starring nature of the Beneficiary's upcoming roles and the record contains some material relating to the reputation of the Petitioner's Chief executive Officer (CEO), the Petitioner has neither identified nor documented, through submission of the prescribed evidence, the Beneficiary's previous lead or starring role in events with a distinguished reputation. In light of the above, the submitted items do 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 Petitioner did not meet the evidentiary requirements of this criterion, considering only the Petitioner's reputation. When discussing this criterion on appeal, the Petitioner only addresses its own reputation. In a separate section, the Petitioner reasserts that the evidence establishes eligibility based on "the Beneficiary's exceptional participation in projects by [redacted], participation that [led] to the nomination of the [redacted] and participation in the [redacted] Interactive Theatre Group." We will consider all of the Beneficiary's roles below.

The Petitioner has submitted several testimonial letters and the published materials pertaining to the Beneficiary's past roles in [redacted] theater productions. Few of the letters provided information that is relevant to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). The above-mentioned letter from Ms. [redacted] acknowledges that the nomination for an [redacted] was "a significant honor and very important recognition for both [the Beneficiary] and our university," but she did not state that he played a lead, starring or critical role for [redacted]. Ms. [redacted] statement falls short of confirming that the Beneficiary achieved the rank of a lead or critical role within the establishment.

The above-referenced letter from Ms. [redacted] stated that she worked as a director with the Beneficiary in [redacted] Interactive Theatre Troupe, and credits him with creating "interesting, deep, and believable characters." The above-referenced letter from Ms. [redacted] indicated that she chose the Beneficiary to be a member of that troupe, which performs for faculty, staff and student audiences. She characterized the troupe as "a key component in [redacted] successful application for a [redacted] 'Difficult Dialogues' grant," and renewal of the grant, for the years between 2006 and 2010. Ms. [redacted] letter described "Difficult Dialogues" as interactive theater performances in which the Beneficiary participated, addressing a variety of controversial issues. She explained that the Beneficiary was a member of the troupe for one and a half years, during which time he became "a core member, learning and performing a variety of challenging roles with sensitivity and truthfulness, as well as comic flair." The Petitioner's initial letter characterized the letter from Ms. [redacted] as confirming that the Beneficiary was "the core member of the [redacted] Interactive Theatre Group in the successful application for the [redacted] 'Difficult Dialogues'" grant, and that "the recognition his theater group received is to some extent the recognition to his

(b)(6)

Matter of D-M-, LLC

performance.” However, as noted, Ms. [REDACTED] letter noted that both the application and renewal of those grants took place between 2006 and 2010, whereas the Beneficiary’s resume reflected that he was a member of this troupe from February 2013 through July 2014.

The submitted evidence does not confirm that the Beneficiary performed in a lead or critical role for [REDACTED] or its Interactive Theatre Troupe in his various roles, or otherwise establish how his position fit within the overall hierarchy of the organizations. Merely repeating the language of the statute or regulations does not satisfy the Petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). 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 reflect 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.

The reference letters submitted by the Petitioner are not without weight and have been considered above. We may, in our discretion, use as advisory opinion statements included 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 foreign national’s eligibility for the benefit sought. *Id.* The submission of letters of support from the Beneficiary’s personal contacts is not presumptive evidence of eligibility. We may evaluate the content of those letters as to whether they support the foreign national’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’ statements and how they became aware of the Beneficiary’s reputation are important considerations. The letters of Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] provided little discussion of the Beneficiary’s role or responsibilities for [REDACTED] or its Interactive Theatre Troupe, and, therefore do not explain how the Beneficiary performed in a leading or a critical role for the organizations. Specifically, Ms. [REDACTED] did not state how many members/core members the troupe had or otherwise identify where the Beneficiary fit within the organizational hierarchy of the troupe. Nor did Ms. [REDACTED] Ms. [REDACTED] or Ms. [REDACTED] address the Beneficiary’s role with respect to [REDACTED] organizational structure. The remaining above-referenced letters and the published materials do not mention the Beneficiary’s roles with respect to any specific organizations or establishments and thus do not satisfy the plain language of the regulations. We affirm the Director’s finding that the Petitioner did not submit evidence demonstrating that the Beneficiary has performed in a lead, starring or critical role for organizations or establishments that have a distinguished reputation.

Further, while the Petitioner’s CEO has won some awards, it must show that the Beneficiary will perform in a lead, starring or critical role for organizations or establishments that have a distinguished reputation. The evidence of record does not reflect that the Beneficiary’s proposed roles with the Petitioner would satisfy the requirement that he will be performing in such a role. According to the initial letters and the employment agreement, the Beneficiary will work as a film

(b)(6)

Matter of D-M-, LLC

actor/producer for the feature films [REDACTED]. The Petitioner's undated letter pertaining to the film [REDACTED] asserted that "[the Beneficiary's] importance is extremely high to me and my company."

In response to the RFE, the Petitioner affirmed that the Beneficiary "is a person that I view as being essential to my future productions" and that the CEO expected the Beneficiary, "to become an integral part of my film operation." The record does not demonstrate how the Beneficiary's role as an actor/producer on those films rises to the level of a lead, starring or critical role for the Petitioning production company. While the letters affirmed the Beneficiary's job title on upcoming film projects, the submitted exhibits do not describe how he will contribute to the Petitioning company as a whole or how his position fits within the overall hierarchy of the company. The Petitioner has offered no additional material on appeal that would elucidate where the Beneficiary's proposed position falls in the overall hierarchy of the organization or his proposed impact on the entity. For example, the record does not confirm the total number of films the Petitioner will produce during this time. Based on the foregoing, the Petitioner has not satisfied the plain language of the regulation 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.

As stated previously, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) provides that affidavits written by present or former employers or 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. The Petitioner submitted 11 letters of recommendation. The Director determined that the record does not establish that the Beneficiary meets this criterion. On appeal, the Petitioner characterizes the Beneficiary as "a unique talent" and asserts that the Director did not take into proper consideration "some of the facts presented by [the] Petitioner."

All of the letters praised the Beneficiary's talent as an actor, work ethic and professionalism. Ms. [REDACTED] stated that the Beneficiary "has the potential to succeed here in his chosen profession." Ms. [REDACTED] emphasized that "the fact that [the Beneficiary] is already a member of the Screen Actors Guild (SAG), and that he has professional representation, is a further testament to his talent and his ability to sustain a career as a professional actor in the United States." We note that the record contains a copy of the Beneficiary's 2014 union membership card in SAG-AFTRA (the American Federation of Television and Radio Artists). Ms. [REDACTED] letter did not sufficiently explain how being a member of SAG-AFTRA and having an agent, alone, are indicative of significant recognition for achievements in the field. Ms. [REDACTED] asserted that the Beneficiary "is a good student and is becoming an outstanding actor," and that he is "an innovative actor with outstanding

(b)(6)

Matter of D-M-, LLC

potential.” Mr. [REDACTED] affirmed that “[the Beneficiary] can have a professional career in the theatre, film and television.” Ms. [REDACTED] expressed that the Beneficiary “is going to be a star.”

Upon review, the record supports the Director’s determination that the evidence does not meet the requirements of the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). The reference letters all praise the Beneficiary’s talent and abilities. All of the submitted letters are from the Beneficiary’s own former teachers and colleagues and, therefore, do not demonstrate significant recognition outside of that circle. The reference letters can provide useful information about a foreign national’s qualifications or help in assigning weight to certain documents, and the letters in this matter did address specific achievements of the Beneficiary, such as his participation in the above-referenced films and plays. They do not, however, explain how his achievements to date have received significant recognition from organizations, critics, government agencies, or other recognized experts in the field.

Although two of the testimonials, those of Ms. [REDACTED] and Ms. [REDACTED] mention the Beneficiary’s nomination for the [REDACTED] in 2014, as discussed above, the record does not contain primary evidence of this nomination. Moreover, the Petitioner has not corroborated the scope and significance of this competition in the field of acting. The record indicates that the pool of candidates was limited to students. It is the Petitioner’s burden to establish the recognition that accrues from an award that excludes from competition those experienced in the field. As explained above, the testimonial letters do not meet this burden, nor has the Petitioner provided other documentation, such as press coverage at the nomination stage, evidencing “significant recognition for achievements from organizations in the field,” pursuant to the plain language of the criterion. Further, the submissions are insufficient to show that the nomination was for a national or international award, as opposed to a regional award. Overall, while the Beneficiary has earned the respect of his colleagues and professors in the field of acting, the exhibits are insufficient to demonstrate that he has received significant recognition for achievements in the field.

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 establish that the Beneficiary meets at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the Petitioner has not shown 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 D-M-, LLC*, ID# 15176 (AAO Jan. 20, 2016)