



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

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

MATTER OF B-C-

DATE: JUNE 7, 2016

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

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

The Petitioner, a dance studio, seeks to classify the Beneficiary as a foreign national of extraordinary ability in the arts. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i). This O-1 classification makes nonimmigrant visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

The Director, California Service Center, denied the petition. The Director determined that the Petitioner did not establish that the Beneficiary is primarily involved in a creative activity or endeavor, such that he can be classified as a foreign national of extraordinary ability in the arts. The Director further concluded 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).

The matter is now before us on appeal. In its appeal, the Petitioner submits a brief and additional evidence and asserts that the Director erred in determining that the Beneficiary is not eligible for the classification sought.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

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) 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.” The arts have different a different standard and evidentiary

criteria than athletics.<sup>1</sup> Section 101(a)(46) of the Act states that the term “extraordinary ability” means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction. Pursuant to the definition at 8 C.F.R. § 214.2(o)(3)(ii) pertaining to foreign nationals of extraordinary ability in the arts, “distinction” means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts. In contrast, this regulation defines extraordinary ability in the field of science, education, business, or athletics as 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.

The regulation at 8 C.F.R. § 214.2(o)(3)(iv) sets forth the evidentiary criteria to establish a beneficiary’s prominence in his or her field of endeavor within the arts.<sup>2</sup> First, a petitioner can provide a one-time achievement (that is, a significant national or international award). If the petitioner does not document such an achievement, then a petitioner must include sufficient qualifying exhibits that 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 the petitioner shows that the criteria in paragraph (o)(3)(iv) of this section do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence in order to demonstrate the beneficiary’s eligibility.

The submission of documents relating to at least three criteria does not, in and of itself, establish 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.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). That decision explains that, pursuant to the preponderance of the evidence standard, we “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.” *Id.*

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) sets forth evidence that must accompany petitions for O foreign nationals, which includes documentation relating to the terms of the proposed employment and the nature of the activities and events in which the beneficiary will participate.

## II. ANALYSIS

### A. Introduction

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation, seeking to employ the Beneficiary as a DanceSport (competitive ballroom dancing) professional for a period of three years. The record shows that the Beneficiary began competing in

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<sup>1</sup> *See* 59 Fed. Reg. 41818, 41819 (Aug. 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the “distinction” standard for the arts).

<sup>2</sup> The evidentiary criteria for an individual of extraordinary ability in the fields of science, education, business or athletics are set forth at 8 C.F.R. § 214.2(o)(3)(iii).

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ballroom dance in Russia, his native country, in 1998 at the age of [REDACTED] years old, and that he has competed in numerous national, regional, and municipal DanceSport competitions. He received the designation as a [REDACTED] and certification to teach Latin American and Standard Ballroom dance from the [REDACTED] in [REDACTED] England.

In its initial letter, the Petitioner describes the Beneficiary as “a world-renowned competitive professional ballroom dancer and teacher,” and his duties in the proffered position as “to train our students and professionals and to represent us in national and international dancesport championships.” The Petitioner’s agreement with the Beneficiary states that he will be employed in the United States as a dance instructor and a competitive dancer. The testimonial evidence provided also indicates that the Beneficiary is seeking to coach and compete in the United States. The initial submission included an itinerary for the Beneficiary showing annual DanceSport competitions throughout the United States sponsored by the [REDACTED] in which it is anticipated that the Beneficiary will compete between January 2015 and December 2017.

The Director denied the petition, finding that the Beneficiary is not engaged in the field of arts and that the Petitioner’s submissions did not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A) or any of the six categories listed at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1)-(6). In its appeal, the Petitioner offers a brief and additional items and maintains that the Director erred in determining that the record did not establish the Beneficiary’s eligibility for the requested classification. This decision will address whether the Petitioner properly filed the petition under the O-1B arts classification, and whether the Beneficiary meets three of the six criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). We will further examine whether the Petitioner has established that the Beneficiary is coming to the United States to continue work in the area of extraordinary ability. Section 101(a)(15)(O); 8 C.F.R. § 214.2(o)(1)(ii)(A). After careful review of the record and for the reasons discussed herein, we conclude that the Beneficiary is not eligible for the classification sought.

**B. Beneficiary’s Area of Extraordinary Ability**

While dancers in stage, film, and television productions are considered performing artists for the purposes of this classification, the Petitioner has neither claimed nor submitted evidence that the Beneficiary will be performing as a dancer in any other capacity than that of a competitive ballroom dancer and instructor/coach. The evidence of record reflects that the International Olympic Committee (IOC) has formally recognized DanceSport as a sport under consideration for inclusion in the Olympic Games, although it is not yet a medal sport in the Olympic Games. The World DanceSport Federation (WDSF), formerly the IDSF, has been designated as the world governing body of the sport. The recognition of DanceSport by the IOC is a clear indication that DanceSport has evolved into an acknowledged form of athletic competition.

On appeal, the Petitioner submits an advisory letter from [REDACTED] national vice president of [REDACTED] the [REDACTED] which [REDACTED] describes as “the competitive version of artistic ballroom dancing.” [REDACTED] letter does not mention the Beneficiary by name or reference any of his duties in the

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proffered position. Rather, he characterizes his letter as suggesting “guidelines for preparing and adjudicating petitions for O-1A Dance Athletes and O-1B Dance Artists.” Based in part on his review of several unpublished United States Citizenship and Immigration Services (USCIS) decisions, he concludes that “determination should come down to whether the position is primarily that of competition by the [B]eneficiary, which would entail the O-1A standard or, as would be appropriate for O-1B designation, the primary duties and most of the time devoted to coaching, choreography, or non-competition performing.” Here, a representative of the relevant oversight body interprets the regulatory criteria for the O-1B classification in the performing arts as not applicable to the competitive DanceSport industry, which he refers to as a “sport” and its practitioners as “athletes.” We note that USCIS may in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an individual’s eligibility for the benefit sought. *Id.* In addition, although we acknowledge [REDACTED] affirmation that DanceSport involves a degree of artistry and creativity, the same can also be said for many other competitive sports.

We note that there may be instances in which a competitive ballroom dancer seeks to enter the United States to provide services as an entertainer or performing artist, rather than as a competitive dancer-athlete. The nature of the intended events or activities in the United States is critical in determining whether the Beneficiary is entering the United States to provide services as an “athlete” or as an “artist.” Here, as the Beneficiary is clearly coming to the United States to participate in or train others for athletic events, the Petitioner should have requested review of the petition according to the “extraordinary ability” criteria applicable to athletes, and pursuant to the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii).

As noted previously, the regulations clearly prescribe different evidentiary criteria and standards of review for foreign nationals of extraordinary ability in the arts as opposed to those of extraordinary ability in athletics. The extraordinary ability provisions of this visa classification are intended to be highly restrictive for foreign nationals in the fields of business, education, athletics, and the sciences. See 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the less restrictive standard for the arts). However, a petitioner sponsoring an O-1 athlete cannot seek consideration of the petition under the less restrictive standard of “distinction” by characterizing the Beneficiary’s field as arts. In sum, we agree with the Director’s conclusion that the Beneficiary is not engaged in the field of arts and that the Petitioner has not sought the correct O-1 visa classification for the Beneficiary. Accordingly, the petition will be denied for this reason.

### C. Beneficiary’s Eligibility under the Requested Classification

The Director noted that the Petitioner maintained eligibility under the evidentiary criteria for foreign nationals of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv)(B), and therefore reviewed the petition under these criteria. We find that the Director appropriately reviewed the petition according to the classification requested on the Form I-129. USCIS will only consider the visa classification

that a petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that a foreign national is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the foreign national is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008). Therefore, the next issue to be addressed is whether the Petitioner submitted evidence to establish that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

In denying the petition, the Director determined that the Petitioner did not claim to meet the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(A) and did not meet any of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).<sup>3</sup> Regarding the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2), (3), and (5), the Director discussed the submitted evidence and found that the Petitioner did not establish that the Beneficiary met these criteria. The Director also concluded that the Petitioner had not claimed that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4). On appeal, the Petitioner does not contest the findings of the Director for these criteria or offer additional arguments. Instead, the Petitioner provides evidence related to two of the six criteria, set forth at C.F.R. § 214.2(o)(3)(iv)(B)(1) and (6). We will address these two criteria below. After careful review, the evidence of record does not establish that the Petitioner has overcome the grounds for denial.

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

The Director determined that the Petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). The Director acknowledged that the Beneficiary has participated in various competitive events, but found the Petitioner did not provide sufficient evidence that he performed services as a lead or starring participant in relation to any of the other competitors who participated in the same events, or that any of the competitive events in which the Beneficiary has performed have a distinguished reputation. In addition, the Director found that the Petitioner did not submit evidence of critical reviews, advertisements, publicity releases, publications, contracts or endorsements about the Beneficiary as a dancer as required by the plain language of the regulation. As noted by the Director, the Petitioner has not submitted documentary evidence to support its conclusion

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<sup>3</sup> Although not mentioned by the Director, the Petitioner has not consistently identified and articulated the regulatory criteria under which it is claiming eligibility. For example, in its initial letter it characterized the submitted evidence under regulatory criteria found at 8 C.F.R. § 214.2(o)(3)(iii)(B), relating to foreign nationals of extraordinary ability in the fields of science, education, business, or athletics. Specifically, the Petitioner indicated it was submitting evidence of "major national and international awards for excellence in the field of ballroom dance" consistent with 8 C.F.R. § 214.2(o)(3)(iii)(B)(1) (receipt of nationally or internationally recognized prizes or awards for excellence), "memberships in associations in [the Beneficiary's] field of endeavor which require outstanding achievements of their members" consistent with 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) (memberships in associations in the field which require outstanding achievements of their members), and "contributions of major significance in the field" consistent with 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) (original scientific, scholarly, or business-related contributions of major significance in the field).

that the Beneficiary's finishes at competitive DanceSport events have been tantamount to providing services as a lead or starring participant in productions with a distinguished reputation.

In addition, as mentioned by the Director, a distinction must be made between winning or placing in an athletic competition and providing services as a lead or starring participant in an artistic production or event. Achieving a favorable result in an athletic competition is not indicative of providing services in a lead or starring capacity for an artistic production or event. Further, the Director noted that the record contains documentation related to many upcoming dance competitions to be held in various U.S. cities. The Petitioner submitted background information regarding those events from the websites of the event sponsors. However, it has not provided adequate documentation in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements to show that the Beneficiary would perform services as a lead or starring participant in those productions or events.

On appeal, the Petitioner attests to the critical role the Beneficiary will play in bringing an international style of ballroom dance to the United States in general and to the Petitioner's studio specifically. It submits additional materials pertaining to the professional certifications and competitive achievements of leading members of its studio. The Petitioner's general affirmations that the Beneficiary will play a leading role for it and for dance in the United States are insufficient to meet this criterion. The regulation requires evidence that the Beneficiary will provide services as an artist in a leading or starring role for a "production or event" that has a distinguished reputation. Broad and unsupported statements that the Beneficiary will elevate the competition level in the sport as a whole merely by entering events as a dancer, or that he will play a leading role in a specific production or event by training the Petitioner's students do not satisfy the plain language of the regulation. In addition, statements made without supporting documentary evidence are of limited probative value and are 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)). Based on the foregoing, the Petitioner has not submitted evidence to satisfy this criterion.

*Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.*

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)(6). The record does not contain any documentation regarding the Beneficiary's past earnings. Assuming that the Beneficiary's annual salary will be \$55,000 per year as stated on the Form I-129, we agree with the Director's conclusion that the Petitioner has not established this salary is high in relation to others in the field. Initially the Petitioner submitted, as a point of comparison, an O\*Net printout from the Department of Labor, Office of Foreign Labor Certification, reflecting that the Level 4 prevailing wage for dancers in the Petitioner's geographic area is \$48,942 per year. While the Beneficiary's salary exceeds the Level 4 prevailing wage for the Petitioner's area, the prevailing wage only reflects the *average* wage paid to all similarly employed workers in the same occupation in the same area. 20 C.F.R. § 655.10. The prevailing wage, alone, is

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insufficient to establish whether a salary is high in relation to others in the field, as required by the plain language of the regulation. In response to the RFE, the Petitioner submitted a screenshot from [www.bls.gov](http://www.bls.gov) regarding 2013 Occupational Employment and Wages, reflecting that the 90<sup>th</sup> percentile of dancers earned an hourly wage of \$34.22, or approximately \$71,178 per year. The Petitioner also provided a screenshot from [REDACTED] showing that the average salary for a dancer in the Petitioner's area is \$52,000.

As noted by the Director, the Beneficiary's duties will also include dance coaching/instruction. The Petitioner did not submit any documentary evidence comparing his salary to others with comparable job responsibilities. Even when compared to the salaries of dancers, the Petitioner has not shown the proposed salary on the Form I-129 constitutes a high salary consistent with the plain language of the regulation. The salary screenshots mentioned above only provided average and median salary data for dancers and did not identify the high end salaries for those performing work with similar responsibilities as the Beneficiary. The Petitioner must submit evidence showing that the Beneficiary has earned or will earn a high salary, not a salary that is above the amount paid to the majority of fully competent workers.

Further, although not mentioned by the Director, according to the Petitioner's proposed employment agreement the Beneficiary will be paid "\$45 per hour based on lessons taught plus appropriate commissions," which equates to approximately \$93,600 per year. The inconsistency between the wage stated on Form I-129 and that in the employment agreement prevents us from determining the Beneficiary's salary and whether it is considered high in relation to others in the field.

On appeal, the Petitioner claims that USCIS has approved cases with similar salaries to that of the proffered position. While the Petitioner provided a list of nine names and receipt numbers, it did not provide any documentary evidence to establish that USCIS did, in fact, find eligibility under this criterion and approve the petitions based upon the same set of facts present here. In making a determination of the Beneficiary's eligibility, USCIS is limited to the information contained in the instant record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Upon review, the Petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(6).

Finally, as noted previously, in order to establish eligibility for O-1 classification as a foreign national of extraordinary ability in the field of arts, the Petitioner must establish the Beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). On appeal, the Petitioner only asserts the Beneficiary's eligibility under two criteria, at 8 C.F.R. §§ 214.2(o)(3)(iv)(B)(1) and (6). Therefore, even if the Petitioner were able to establish the Beneficiary's eligibility under those criteria, the Petitioner would not satisfy the regulatory requirement of three types of evidence.

In sum, based on the foregoing the Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in the arts. For this additional reason, the petition may not be approved.

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#### D. Intent to Continue to Work in the Area of Extraordinary Ability in the United States

Finally, although not mentioned by the Director, the Petitioner did not establish that the Beneficiary is coming to the United States to continue work in the area of extraordinary ability. Section 101(a)(15)(O); 8 C.F.R. § 214.2(o)(1)(ii)(A).

In the instant matter, the Petitioner indicates that the Beneficiary is coming to the United States to perform both as a professional dance instructor and a professional dancer.<sup>4</sup> As described in the Petitioner's initial letter, the Beneficiary's proposed employment is to teach "all levels of students including beginners, intermediate, advanced students as well as coach dance teachers." The Petitioner also stated that the Beneficiary "will represent [its] studio in national and international ballroom competitions." Since the Petitioner claims that the Beneficiary will be employed as both a dance instructor as well as a competitive ballroom dancer, the Petitioner must establish that the Beneficiary has extraordinary ability in both areas.

While a professional dancer and a dance instructor certainly share knowledge of dance, the two rely on very different sets of basic skills. Thus, dance performance and dance instruction are not the same area of expertise. This interpretation, as applied to competitive athletes and athletic coaches, has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

This office has recognized that there exists a nexus between performing as a competitive athlete and teaching as an athletic coach. To assume that every athlete's area of expertise includes teaching or instruction, however, would be too speculative. To resolve this issue, the following balance is

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<sup>4</sup> The Petitioner has provided inconsistent evidence regarding the nature of the Beneficiary's proposed employment in the United States. For instance, the Petitioner's proposed employment agreement with the Beneficiary specifically states that he will be working as a dance instructor, eight hours a day, Monday through Friday, with additional Saturday instruction. The employment agreement also states vaguely that the Beneficiary would be performing unspecified "services on certain weekends that may involve competitions and special events." Concurrently, the Petitioner indicates that the Beneficiary will be predominantly employed as a competitive ballroom dancer. The Petitioner submitted a list of future competitions consisting of *all* calendar events from the [redacted] and stated that it expects the Beneficiary will participate as a DanceSport professional "in many, if not all, of these [listed] events." Considering that [redacted] calendar indicates that competitions are held every couple of days, or even on the same days, in various locations throughout the United States, it would be impossible for the Beneficiary to compete in "many, if not all" of the listed competitions as a dancer, while concurrently working as a full-time dance instructor for the Petitioner's studio. This ambiguity raises some doubt regarding the actual nature of the Beneficiary's proposed employment in the United States.

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appropriate. In a case where an alien has clearly achieved distinction as an athlete and has sustained that acclaim in the field of instruction, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the beneficiary's area of expertise.

Here, however, while the Petitioner has discussed and submitted evidence pertaining to the Beneficiary's ability as a professional dancer, there is little evidence pertaining to the Beneficiary's ability as a dance instructor. The record contains the Beneficiary's above-mentioned [REDACTED] teaching certifications. Several of the submitted testimonial letters describe the Beneficiary as an "exceptional," "gifted," or "talented" coach/teacher/trainer/instructor, and a letter from [REDACTED] Executive Director of the [REDACTED] France, states that the Beneficiary "has produced several strong competitive students, as well as coaching many of the professional couples in the Ukraine and Russia." The record does not contain evidence establishing the Beneficiary's past coach-athlete relationship with any successful athletes, such as the names of any athletes the Beneficiary coached and evidence that they were national or international champions or medalists. The Petitioner has, therefore, not established that the Beneficiary's area of extraordinary ability includes dance instruction. Consequently, the Petitioner has not established that the Beneficiary will be coming to the United States to *continue* work in his area of extraordinary ability.

### III. CONCLUSION

The Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B), therefore, it has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in the arts and the petition may not be approved. Furthermore, the evidence of record indicates that the Beneficiary's claimed area of extraordinary ability, competitive ballroom dance, falls within the field of athletics, rather than the arts. Lastly, the Petitioner has not established that the Beneficiary is coming to the United States to continue work in the area of extraordinary ability, as it has not submitted evidence establishing that the Beneficiary's area of extraordinary ability includes dance instruction.

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, that burden has not been met.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-C-*, ID# 16671 (AAO June 7, 2016)