



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

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

MATTER OF Z-P-

DATE: MAR. 25, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a sculptor, 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 an artist (painter) for a period of two 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). The Director also determined that the written contract did not sufficiently detail the terms of the agreement between the Petitioner and the Beneficiary and that the Petitioner did not sufficiently explain the events and activities scheduled for the Beneficiary. On appeal, the Petitioner affirms that the Director erred in not considering the Petitioner's filings under the "comparable evidence" provision at 8 C.F.R. § 214.2(o)(3)(iv)(C), and submits a brief and additional material.

This decision will first discuss the sufficiency of the written contract between the Petitioner and the Beneficiary and the explanation of the events and activities scheduled for the Beneficiary. We will then address whether the Petitioner has satisfied either 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B) and, further, the new position on appeal that the Petitioner has submitted qualifying comparable evidence pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(C). After careful review, the record does not establish that the Petitioner has overcome the Director's grounds for denial.

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 a 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;
- (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.

Finally, the regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E), in pertinent part, imposes the following requirements on petitions filed by United States agents:

Agents as petitioners. A United States agent may file a petition in cases involving workers who are traditionally self-employed or workers who use agents to arrange short-term employment on their behalf with numerous employers, and in cases where a foreign employer authorizes the agent to act in its behalf. A United States agent may be: The actual employer of the beneficiary; the representative of both the employer and the beneficiary; or a person or entity authorized by the employer to act for, or in place of, the employer as its agent. A petition filed by an agent is subject to the following conditions:

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.
- (2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary, if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.

II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on September 22, 2014. The Director issued a request for additional evidence (RFE)

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on October 2, 2014, to which the Petitioner replied. The Petitioner submits a brief on appeal and additional material. We have considered the record in its entirety in reaching this decision.

The Form I-129 indicated that the Petitioner would employ the Beneficiary as a fine arts painter and that her compensation would be based on commissions earned from various projects and the sales of art. The Petitioner provided a general description of the Beneficiary's duties in the proposed position as including preparing the studio, retouching artwork, preparing photographs, navigating the petitioning studio's social networking and promotional materials, and duties related to public relations. The initial letter also described the Beneficiary's proposed work with the Petitioner on specific projects, such as an exhibition in [REDACTED] restoration of a theater in [REDACTED] instructing Bulgarian art at a Bulgarian school, work on four identified sculptures and a statue, restoration of murals at a [REDACTED] in [REDACTED] and projects for sculpture fountains for private homes.

In response to the RFE, the Petitioner provided its undated, signed employment contract with the Beneficiary, listing the above-mentioned proposed duties of the Beneficiary and some proposed projects. Exhibit 8 of the Petitioner's response, the Petitioner's New York State Benefit Identification Card, is labeled as evidence of his status as an "agent." The Petitioner also submitted copies of prior project contracts with the Beneficiary dated between March 2013 and May 2014, and the required advisory opinion.

III. ANALYSIS

A. Contract Requirements and Description of Events

An O-1 petition "may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent." 8 C.F.R. § 214.2(o)(2)(i). The Director concluded that the Petitioner was acting as the Beneficiary's agent. The Petitioner did not specify the Beneficiary's weekly or annual wages on the Form I-129, but stated that she would receive "other compensation" in the form of "[c]ompensation . . . based on commission from sales of art and project – varies." The Director determined that the contractual agreement between the Petitioner and the Beneficiary "did not specify the wage offered and explain the terms and conditions under which the [B]eneficiary will perform these services." The Petitioner does not address this concern on appeal.

Three types of United States agents may file petitions for O-1 workers: (1) agents who perform the function of an employer for foreign nationals who are traditionally self-employed; (2) agents who arrange short-term employment with numerous employers as the representative of both the foreign national and the employers; and (3) agents who act on behalf of foreign employers. *See generally* 8 C.F.R. § 214.2(o)(2)(iv)(E). Upon review, the record reflects that the Petitioner is not an agent representing multiple employers and the Beneficiary, but is instead offering the Beneficiary's artist services as an artist, in combination with his own, to clients in need of those services. Although the Beneficiary would work with multiple third parties during the term of the proposed contract, the

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evidence indicates that these entities are the Petitioner's clients and not the Beneficiary's "actual employers."

The record suggests, therefore, that the Petitioner is an agent performing the function of the Beneficiary's employer. The O-1 regulations require that, under such circumstances, the Petitioner provide the contractual agreement that specifies the wage offered and the other terms and conditions of the Beneficiary's employment. 8 C.F.R. § 214.2(o)(2)(iv)(E)(1). Upon review, the Petitioner has not satisfied the requirements set forth in the regulations because the Petitioner has not included a description of the wage offered or an agreed upon fee structure. The employment contract does not specify the wage offered in an exact dollar amount or a specific percentage of the commission the Beneficiary will retain from projects and the sale of artwork, or otherwise indicate how the Beneficiary will be paid.

The Director also concluded that the Petitioner did not provide the beginning and ending dates for the Beneficiary's activities or the specific locations of those activities, required evidence in all O-1 visa petitions. 8 C.F.R. § 214.2(o)(2)(ii)(C). The Petitioner also does not address this concern on appeal. Upon review, the Petitioner did not supply the beginning and ending dates or the specific locations of many of the Beneficiary's activities. Based on these concerns with the employment contract, the petition may not be approved.

B. Translations and Signatures

While not raised by the Director, we note that the Petitioner has not provided any translation for several foreign language articles. The regulation at 8 C.F.R. § 103.2(b)(3) states: "Any document containing foreign language submitted to the United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." As the Petitioner did not supply certified translations of these items, these foreign language exhibits have limited evidentiary weight. Moreover, several of the letters in the record are unsigned and do not appear on letterhead. These unsigned letters also have limited probative value.¹

C. Evidentiary Criteria

A further issue to be addressed is whether the Petitioner submitted evidence to confirm 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 satisfy any of these criteria. After careful review, the record does not establish that the Petitioner has overcome the Director's grounds for denial.

¹ The letter from [REDACTED] Coordinator, Visitor Services, [REDACTED] contains a heading that reads: "Please attach author's biography or curriculum vitae. Please place final letter on letterhead."

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Evidence that the alien has been nominated for, or has been 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.

If the Petitioner establishes through the submission of documentation that the Beneficiary has been nominated for or has been the recipient of, significant national or international awards or 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 Director determined that the Petitioner did not submit any evidence to establish that the Beneficiary has been nominated for or has been the recipient of such an award. On appeal, for the first time, the Petitioner states that the Beneficiary meets this criterion through her "numerous national and international art exhibit awards."

The Petitioner submitted initial evidence in the form of certifications of the Beneficiary's receipt of the following:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]

The Petitioner also submitted an award certificate from the [REDACTED] for [REDACTED] [REDACTED] however, the line for the name of the recipient is blank. Therefore, the record does not contain primary evidence that the Beneficiary received this award. Further, in response to the RFE, the Petitioner offered a letter from [REDACTED] Director of [REDACTED] in [REDACTED] in which he explained that the Beneficiary would be teaching an artist residency at that gallery and that she received a [REDACTED] for a landscape competition from [REDACTED]. However, the record does not contain primary evidence that the Beneficiary received this award. Regardless, the Petitioner did not document that the award is recognized in the field beyond the gallery that issued it to one of their contributing artists. On appeal, the Petitioner includes a [REDACTED] 2015, award certificate the Beneficiary received in the [REDACTED]. However, this award was received after the date the petition was filed on September 22, 2014. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after a petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg'l Comm'r 1978).

Upon review, the Petitioner has not shown that the listed awards reflect the Beneficiary's eligibility pursuant to 8 C.F.R. § 214.2(o)(3)(iv)(A). The record contains insufficient evidence establishing the significance and magnitude of the preceding awards and the extent to which the nominees or winners

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of such awards are recognized beyond the issuing entity. The Petitioner did not provide general information about the competitions (such as the eligibility criteria, or the percentage of entrants who earned some type of recognition). Nor is there supporting evidence showing that the recipients of the preceding honors 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 record does not contain any media coverage of the Beneficiary's receipt of the above awards, or other exhibits reflecting that the Beneficiary received recognition for her achievement beyond receiving the certificates from the awarding organizations.

Nor can it be concluded based on the testimonial evidence in the record that such awards are comparable in significance to the highly recognizable awards mentioned in the regulations. [REDACTED]

[REDACTED] President of [REDACTED] signed the Beneficiary's award certificate for [REDACTED]. The Petitioner submitted an unsigned letter from him confirming that he gave the Beneficiary the award and that he is "proud to work with her incredible talent." [REDACTED] letter does not provide sufficient context in which to evaluate the significance of the Beneficiary's [REDACTED] award. He also refers to an "award [the Beneficiary] won for her exceptional talent at our art shows held in [REDACTED] but the record does not contain any corroboration of any additional awards received by the Beneficiary from [REDACTED]."

As the letter from [REDACTED] is unsigned, it has limited evidentiary value. Additionally, [REDACTED] membership chairman of the [REDACTED] and director of the [REDACTED] art show, signed the award and participation certificates from those groups. As noted above, the line for the recipient of the award from the [REDACTED] is blank. In addition to the limited value of an unsigned letter, a certificate of participation in a show is not an award. The Petitioner offered an undated, unsigned letter from [REDACTED] which mentioned that she is organizing a group exhibit to include the Beneficiary "at the [REDACTED] on [REDACTED]."

Without information to provide additional context regarding the Beneficiary's awards within the scope of her occupation, the Petitioner has not demonstrated that the Beneficiary's awards in the field of fine art painting are regarded as, for example, comparable in stature to an Academy, Emmy Grammy or Director's Guild award. It is the Petitioner's burden to support any statements with documentary evidence. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). In light of the above, the Petitioner has not corroborated that the Beneficiary has been nominated for or won a significant national or international award or prize in her field that would qualify for her for O-1 status under 8 C.F.R. § 214.2(o)(3)(iv)(A).

The Petitioner maintains on appeal that the Director failed "to apply the lesser evidentiary standard under 8 C.F.R. § 214.2(o)(3)(iv)(C), and to make a determination as to whether the [B]eneficiary's

comparable evidence of achievements or awards qualified her as having extraordinary ability.”² The regulation at 8 C.F.R. § 214.2(o)(3)(iv)(C) provides that if a petitioner demonstrates that certain criteria do not readily apply to a beneficiary’s occupation, that petitioner may submit comparable evidence in order to establish the beneficiary’s eligibility. Section 291 of the Act, 8 U.S.C. § 1361, places the burden of proof on the party seeking benefits. Thus, it is the Petitioner’s burden to explain why the regulatory criteria do not readily apply to the Beneficiary’s occupation and how the evidence is “comparable” to the objective items required at 8 C.F.R. § 214.2(o)(3)(iv).

The Petitioner states that the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A) is not readily applicable to the Beneficiary’s occupation because the specific awards cited in the regulation “are more adequately associated with musical or thespian talent or skill, and not associated with talent specifically related to [the Beneficiary’s] field of artistic talent. Therefore 8 C.F.R. § 214.2(o)(3)(iv)(A) can apply to less significant awards.” Even if we were to allow comparable evidence under 8 C.F.R. § 214.2(o)(3)(iv)(A) as well as subparagraph (B), the Petitioner must first show that a criterion does not readily apply to the Beneficiary’s occupation. While we acknowledge that the examples of qualifying awards are in the performing arts, it does not necessarily follow that there are no qualifying awards in the visual arts. Regardless, the Petitioner has not sufficiently explained how awards it characterizes as “less significant” are comparable to the examples provided, as required under 8 C.F.R. § 214.2(o)(3)(iv)(C). Based on the record as it now stands, we are not persuaded that these items constitute evidence comparable to that required 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) either through the exhibits described in those criteria or through comparable evidence. We will address these criteria below.³

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

The Director determined that the Petitioner’s evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1). The Petitioner avers that the Beneficiary satisfies this criterion based upon her past solo and group fine art exhibitions and projects between 2010 and 2014, her past and proposed work with the Petitioner, and future fine art showcases in which the Beneficiary will participate. While the record confirms additional presentations after the date of filing, those events cannot prove that the Beneficiary had already performed at the requisite level of participation for qualifying events as of that date. *Michelin Tire Corp.*, 17 I&N Dec. at 248.

The Petitioner’s initial letter provided a list of the Beneficiary’s past work, which included several private mural projects and solo and group exhibitions, all between 2010 and 2014. The Petitioner submitted several testimonial letters, some of which contain information that is relevant to this

² The Petitioner did not raise the issue of comparable evidence before the Director.

³ We will address those criteria the Petitioner has raised either expressly or through the submission of relevant evidence.

criterion.

[REDACTED] and [REDACTED] confirmed that the Beneficiary donated artwork to raise funds for their organizations. The letter from [REDACTED] is unsigned. These letters do not explain how the donations constitute participation at a leading or starring level for events with a distinguished reputation. Similarly, [REDACTED] Owner of [REDACTED] wrote that the Beneficiary “made brilliant mural work at one of our clubs – [REDACTED]” which he stated received a positive reaction from other business owners. He does not clarify how the Beneficiary, as the creator of artwork at his company, has performed in a lead or starring capacity for an event with a distinguished reputation. Further, as previously mentioned, the Petitioner supplied copies of his past contracts with the Beneficiary for fine art projects between March 2013 and May 2014, but the contracts do not establish either that the Beneficiary’s role in those projects was lead or starring or that those projects were events which have a distinguished reputation.

The record also contains descriptions of exhibitions. In the letter lacking a signature from [REDACTED] he stated that he has curated art shows that have included the Beneficiary’s paintings. [REDACTED] Chief Executive Officer (CEO) of [REDACTED] indicated that the Beneficiary’s work was on view at the [REDACTED] digital exhibition at the [REDACTED] along with that of “hundreds of [REDACTED] members” in the fields of photography, painting, sculpture, installation, fashion, and design. [REDACTED] Art Curator for [REDACTED] affirmed that in [REDACTED] the company chose the Beneficiary from among hundreds of applicants to be one of ten artists to present her work at its [REDACTED]. In an unsigned letter, [REDACTED] Membership Chairman of the [REDACTED] explained that she organized the 2014 group exhibit on behalf of the [REDACTED] at which the Beneficiary’s work was involved. [REDACTED] New York, clarified that “[the Beneficiary] was invited early on to exhibit her work at some of the most sought after places in Bulgaria’s [REDACTED] such as the exhibit halls of the [REDACTED].”

While the letters suggest that the Beneficiary was a main artist for some shows, consistent with a lead or starring level of participation, the regulation requires critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. Among the advertisements is one for [REDACTED] Biannual (2013), [REDACTED] a group exhibition that included the Beneficiary’s artwork among that of 15 other artists. This advertisement does not single out the Beneficiary as having performed as a lead or starring participant. Similarly, the record contains a program for a 2012 event that took place on the campus of [REDACTED] and an article pertaining to the dedication in 2011 of a Holocaust memorial at a [REDACTED] California. Those published materials do not mention the Beneficiary by name as a participant in either event. Other advertisements confirm the Beneficiary as a primary participant but do not corroborate the reputation of the event. For example, while a section of the June 28, 2013, edition of the [REDACTED] carried a small advertisement for the Beneficiary’s solo exhibit, [REDACTED] on the top of the [REDACTED] the size and nature of the advertisement does not illustrate that the event had a distinguished reputation. Further, the website [REDACTED] contained an advertisement for the Beneficiary’s solo art show at the [REDACTED].

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█ The Petitioner did not document the reach of this media such that a promotion on their website is indicative of the distinguished reputation of the event. In light of the above, the Petitioner did not satisfy the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

Evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications

The Director determined that the evidence of record does not establish that the Beneficiary satisfies this criterion. The Petitioner initially submitted the █, 2013, advertisement published in the █

In response to the RFE, the Petitioner provided the advertisement for the █. While these materials confirm that the Beneficiary participated in the showcases, they are not critical reviews or other journalistic coverage recognizing her achievements in the field of art. Further, in response to the RFE the Petitioner offered biographical statements and photographs of the Beneficiary's work published on the websites █ (in an advertisement for a 2011 exhibition at the █ at which her work was presented). On appeal, the Petitioner supplies an advertisement for the sale of the Beneficiary's work with an accompanying brief biography, published in the █ 2012 edition of █. These items do not recognize the Beneficiary's achievements in the field of art and the Petitioner includes no corroborative evidence to demonstrate the publications' reach, such as the level of circulation or readership.

Further, in response to the RFE and on appeal, the Petitioner submitted autobiographical statements, advertisements/press releases for exhibitions, and articles about the Beneficiary, published in various media after the date the petition was filed on September 22, 2014. The Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Michelin Tire Corp.*, 17 I&N Dec. at 248. In light of the above, the Petitioner has not provided evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

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

The Director determined that the evidence did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(3). It is the Petitioner's position that the Beneficiary meets this criterion based on her past solo and group fine art exhibitions and projects between 2010 and 2014, her past work and proposed work with █ and her past and proposed work with the Petitioner. A leading role may be evident from its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. The Beneficiary's performance in this role should confirm whether the role was critical for an organization or establishment as a whole. A critical role should be apparent from the Beneficiary's impact on the entity's activities.

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We concur with the Director's determination that the Petitioner has not submitted evidence to show that the Beneficiary's past exhibitions were in a lead, starring or critical role for organizations or establishments that enjoy a distinguished reputation in the field. The Beneficiary has previously presented her work in [REDACTED] with the [REDACTED] in Connecticut at the [REDACTED], and in Florida at the [REDACTED]. The Petitioner has not provided any corroboration, such as brochures, publicity materials or other information regarding those galleries, to establish that the Beneficiary has been featured as a lead, starring or critical artist within the collections of those galleries/organizations. The Petitioner has also not indicated that these entities enjoy a distinguished reputation in the Beneficiary's field. Although the Petitioner's initial letter affirmed that [REDACTED] has solidified its position as the premier showcase for international emerging contemporary art," the Petitioner offered no published materials demonstrating [REDACTED] distinguished reputation in the field of fine art, nor do the testimonial letters address that issue.

Some of the testimonial letters do proffer information that is relevant to this criterion. The Petitioner submitted a letter from [REDACTED] Head of Education, [REDACTED] in [REDACTED]. The Petitioner provided materials from the school that indicate that the school is "a registered educational program for Bulgarians abroad by the Bulgarian Department of Education, established in [REDACTED] with the support of the [REDACTED] and offers weekly Bulgarian language and literature classes to school-age students. The materials show that in 2012 the school's curriculum was expanded to offer education in art, as well as other subjects. [REDACTED] stated that the Beneficiary "designed and initiated" the school's Art Studio to teach the art of drawing and "to use drawing as a medium through which children would learn about Bulgarian customs, holidays and rituals" She praised the Beneficiary's "indisputable talent to work well with children and to provoke their artistic expression." She described the Art Studio as "a loved and significant part of our school curriculum . . . growing fast in popularity and significance" and that the Beneficiary is "an integral part of our team." In addition, in the above-referenced letter from [REDACTED], he noted that the Beneficiary is a creative director at the Bulgarian School in [REDACTED].

We may, in our discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron Int'l*, 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.* Thus, the content of the writers' letters and how they became aware of the Beneficiary's reputation are important considerations. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500 n.2 (BIA 2008). The authors do not elucidate where the Beneficiary's proposed position falls in the overall hierarchy of [REDACTED] or her impact on the organization. Further, the Petitioner did not demonstrate that [REDACTED] enjoys a distinguished reputation.

We also find that the Petitioner has not demonstrated how the Beneficiary's employment with him rises to the level of a lead, or critical role for his organization. The Petitioner has offered no evidence that would elucidate where the Beneficiary's past and proposed position falls in the overall hierarchy of his studio or her proposed impact on his studio. In light of the above, we concur with

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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 evidence did not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5). On appeal, the Petitioner states that the Director went beyond the language of the criterion by requiring testimonials from independent members of the field. In support of this criterion the Petitioner submitted various testimonial letters from art professionals and those working in the field of fine art, stating that the Beneficiary has extraordinary skills in the field of fine art painting. The Petitioner also provided copies of the Beneficiary's artwork and pages from the Beneficiary's website. While these items confirm that the Beneficiary's work appears on the Internet, they do not describe the Beneficiary's achievements in factual terms. Upon review of the letters, we find that the record 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 art.

In the above-referenced letter, [REDACTED] described the Beneficiary as "one of the exceptionally promising Bulgarian artists in the United States and Europe" who has "quickly become a recognizable name among the local art connoisseurs," an asset to the local Bulgarian community and an "example of young Bulgarian talents who will contribute their new vision to the art scene in the [United States] and internationally." [REDACTED] stated that the Beneficiary "has gained acclaim on both [the] national and international level." [REDACTED] Bulgaria described the Beneficiary as "a notable young artist" whose "creativity and art are on [an] international and national level." [REDACTED] have not, however, established their reputations as recognized experts in the field of fine art.

In the above-referenced letter, [REDACTED] of the [REDACTED] affirmed that the Beneficiary's participation at a group event at the gallery's [REDACTED] in December 2014 "earned tremendous attention from fellow artists, art critics and collectors." However, this showcase of the Beneficiary's work occurred after the date the petition was filed on September 22, 2014. As previously stated, the Petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. *Michelin Tire Corp.*, 17 I&N Dec. at 248. He further characterized the Beneficiary as "one of the most influential and sought after contemporary fine artists currently working in [REDACTED] and that her artwork "contributes significantly to the art world in [REDACTED] nationally and internationally." As noted above, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) provides 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

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affiant acquired such information. Broad attestations that the Beneficiary has achieved national and international acclaim are insufficient as they do not explain the Beneficiary's achievements in factual terms.

██████████ Dean of Academic Affairs at the ██████████ opined that the Beneficiary is "among the most important artists of her generation." He characterized her talent as "incomparable" and her accomplishments as "astonishing when you consider her age." He also described his personal response to the Beneficiary's work, stating that her paintings are "deeply probing psychological investigations into the human experience." He indicated that the Beneficiary "has already made a major impact on the art world" through exhibitions of her work at the ██████████ between 2013 and 2014, and that those shows "have reshaped the art world's understanding of gestural representational art." He stated that he can think of no other artist of her generation "who has had such a sudden and complete impact." Where an opinion is not in accord with other information or is in any way questionable, we are not required to accept or may give less weight to that evidence. *Caron Int'l*, 19 I&N Dec. at 791. While the Petitioner has produced advertisements for presentations and sales of the Beneficiary's work, they do not recognize her achievements in the field of art. This information confirms that the Beneficiary is enjoying some degree of exposure for her work, but does not support the testimony that the Beneficiary is "among the most important artists of her generation" and one who has "reshaped the art world's understanding of gestural representational art."

The Petitioner submitted letters from ██████████ a professor at the ██████████ in ██████████ and ██████████ Art Curator for ██████████. These letters have not been signed and, as such, the statements made therein cannot be attributed to ██████████ and ██████████, and cannot be given significant weight in this proceeding. ██████████ stated that the Beneficiary's work was on view at the ██████████ digital exhibition at the ██████████ (2013) in ██████████ along with that of "hundreds of ██████████ members" in the fields of photography, painting, sculpture, installation, fashion, and design, and that her work "was shown alongside some of the greatest contemporary artists." ██████████ did not elaborate with respect to the identity of "the greatest contemporary artists" with whom the Beneficiary's work was showcased. Thus, we find his general reference to the Beneficiary being among the world's greatest contemporary artists to be insufficient evidence of the Beneficiary's "achievements."

As noted by the Petitioner on appeal, the regulation does not require that the testimonials be from independent members of the field. The submission of letters of support from the Beneficiary's personal contacts, colleagues and instructors, however, is not presumptive of eligibility; we may evaluate the content of those letters as to whether they support the Beneficiary's eligibility. *Id.* at 795-96; *see also Matter of V-K-*, 24 I&N Dec. at 500 n.2 (BIA 2008). Thus, as emphasized by the Director, the content of the writers' letters and how they became aware of the Beneficiary's reputation are important considerations. It remains the Petitioner's burden to establish the

Beneficiary's significant recognition for achievements in the field. For the reasons discussed, the testimonial evidence submitted does not meet this burden.

While the Petitioner did not specifically address the awards under this criterion, we acknowledge that they represent some recognition of the Beneficiary's work. In light of our earlier discussion of these awards, however, the Petitioner has not documented their significance. Accordingly, the Petitioner has not established that they represent significant recognition for achievements from the award-issuing organizations. Overall, while the Beneficiary has earned the respect of her colleagues and other figures working in the field of fine art, the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5) has not been met.

B. Summary

Based on the foregoing, the Petitioner has not submitted qualifying items under 8 C.F.R. § 214.2(o)(3)(iv)(A) and the documentation does not satisfy at least three of the six criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). The appeal will be dismissed on this additional basis.

IV. CONCLUSION

The Petitioner has not submitted qualifying material under 8 C.F.R. § 214.2(o)(3)(iv)(A) and the documentation of record does not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) or the comparable evidence provision at 8 C.F.R. § 214.2(o)(3)(iv)(C). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as a foreign national with extraordinary ability in the arts. Further, the Petitioner did not sufficiently detail the terms of his agreement with the Beneficiary and the events and activities scheduled for the Beneficiary as required by the regulations at 8 C.F.R. §§ 214.2(o)(2)(iv)(E)(1) and 214.2(o)(2)(ii)(C).

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 Z-P-*, ID# 15020 (AAO Mar. 25, 2016)