



U.S. Citizenship
and Immigration
Services

Non-Precedent Decision of the
Administrative Appeals Office

MATTER OF V-M-D-, INC.

DATE: MAY 16, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION

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

The Petitioner, a film and video production company, seeks to classify the Beneficiary as an individual with a demonstrated record of extraordinary achievement in the motion picture or television industry. 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 whose achievements in this industry have been recognized in the field through extensive documentation.

The Director, Vermont Service Center, denied the petition. The Director concluded that the exhibits did not satisfy the evidentiary requirements applicable to foreign nationals of extraordinary achievement in the motion picture or television industry, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(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. We initially rejected the appeal as untimely filed. Upon review of the entire procedural history, we reopened the Form I-290B appeal *sua sponte*, pursuant to 8 C.F.R. § 103.5(a)(5)(ii), to consider the merits of the Petitioner's claims contained in the appellate brief and exhibits. The Petitioner was permitted a period of 30 days in which to provide a supplemental brief. The Petitioner submits a supplemental brief and maintains 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, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified beneficiary who has, with regard to motion picture and television productions, a demonstrated record of extraordinary achievement, 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) clarifies, in pertinent part: "*Extraordinary achievement* with respect to motion picture and television productions, as commonly defined in the industry, means a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the

extent that the person is recognized as outstanding, notable, or leading in the motion picture or television field.”

The implementing regulation at 8 C.F.R. § 214.2(o)(3)(v) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary’s recognition in the field through the beneficiary’s nomination for, or the receipt 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)(v)(A). If the petitioner does not offer this information, then that petitioner must submit sufficient qualifying exhibits that satisfies at least three of the six categories of evidence listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6).

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.*

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;

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- (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. 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 Producer, Director, and Photographer for a period of five years.¹ The record shows that the Beneficiary attended the [REDACTED] where she majored in cinematography and film/video production. The Petitioner's submission, including additional evidence on appeal, provides the Beneficiary's profile from the Internet Movie Database (IMDB), indicating that the Beneficiary has directing, producing, screenwriting and cinematographer credits for two short films in [REDACTED]. The record contains the scripts for those two films, and a third work written by the Beneficiary, [REDACTED].

The Director denied the petition, finding that the submissions did not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three of the six categories listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6). In denying the petition, the Director determined that the evidence does not satisfy any of these criteria. 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 first address whether the Petitioner showed that the Petitioner's filings satisfy the above requirements. This decision will then discuss the sufficiency of the summary of the oral agreement between the parties and whether the Petitioner satisfied the written consultation requirements. After careful review, the record does not confirm that the Beneficiary is eligible for classification as an individual with extraordinary achievement in the motion picture or television industry.

B. Signatures

While not raised by the Director, we note several letters in the record are unsigned, including one that does not appear on letterhead. These unsigned letters have limited probative value.

¹ Pursuant to 8 C.F.R. § 214.2(o)(6)(iii)(A), an approved petition for a foreign classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

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C. The Beneficiary's Eligibility under the Evidentiary Criteria

The sole issue addressed by the Director is whether the Petitioner offered evidence to establish that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three of the six categories listed at 8 C.F.R. § 214.2(o)(3)(v)(B)(1)-(6). In denying the petition, the Director determined that the submissions do not satisfy any of these criteria. After careful review, the Petitioner has not overcome the grounds for denial.

In order to establish eligibility as an individual of extraordinary achievement, the statute and regulations require confirmation of a very high level of accomplishment in the motion picture or television industry evidenced by a degree of skill and recognition significantly above that ordinarily encountered to the extent that the person is recognized as outstanding, notable, or leading in the field, and whose achievements have been recognized in the field through extensive documentation. The Petitioner has not shown that the Beneficiary or her achievements have been so recognized.

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 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)(v)(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. For the first time on appeal, the Petitioner states that the Beneficiary meets this criterion because "[i]n [redacted] one of her films [redacted] was an official selection of the [redacted]

The Petitioner urges that this selection demonstrates that the Beneficiary has "been recognized at the National and International level." The record contains the acceptance letter from the festival, press releases, and photographs showing that the Beneficiary's film was screened at the festival on [redacted]. While the Petitioner provided sufficient evidence of the screening of her film at the [redacted] in [redacted] she has not confirmed that this selection constitutes a significant national or international award or prize comparable to an Academy Award, the example in the regulations. For example, none of the letters address the significance of the invitation to screen her film there.

The Petitioner has not included relevant exhibits, such as the official rules and regulations or selection process, or evidence that those whose films are selected to have their films screened receive significant media attention as a result. For example, the Academy Award nominations are widely publicized within the movie industry and mainstream media and the awards ceremony is televised on a major network. The Petitioner has not provided documentation that those whose films

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are selected for screening at the [REDACTED] receive similar recognition. The Petitioner's statements regarding the importance and significance of the selection, without support of the claim, are insufficient to meet its burden of proof. Unsupported affirmations 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)).

Finally, on appeal the Petitioner argues that because the Beneficiary is an [REDACTED] female, this criterion places "an impossible prerequisite for [the Beneficiary] to meet" because "women are still locked out of big [REDACTED] productions." The Petitioner provides additional documentation, including several research articles analyzing why there are relatively few female filmmakers, and compiled lists indicating the small number of female and [REDACTED] nominees and winners. While we acknowledge the Petitioner's concerns, the issue for this regulatory criterion is whether the Petitioner has shown that the Beneficiary has been nominated for or received a significant national or international award or prize in the field. In light of the above, the Petitioner has not established 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)(v)(A).

As there is no documentation that the Beneficiary has been nominated for or received a significant national or international award or prize, the Petitioner must satisfy at least three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B) either through the exhibits described in those criteria or through comparable evidence. We will address these criteria below.²

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

The Director determined that the record does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1). The Petitioner maintains that the Beneficiary satisfies this criterion based upon her past work as the director/writer of the short film [REDACTED]. In support of this criterion, the Petitioner submitted evidence to establish that the Beneficiary's short film [REDACTED] was screened at [REDACTED] including publicity releases and photographs of the Beneficiary at the event. The Petitioner also provided the IMDB profile for the film, corroborating the Beneficiary's credits as the film's director and writer.

The Beneficiary's role as director of this production may be categorized as serving as a lead participant. However, the Petitioner must also establish through the submission of critical reviews, advertisements, publicity releases, contracts, or endorsements that the film itself has a distinguished reputation. The Petitioner offered a short description of the film in a press release for the festival. This evidence does not demonstrate the distinguished reputation of the film. The Petitioner did not

² We will address those criteria the Petitioner has raised either expressly or through the submission of relevant evidence.

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document the reach of the media publishing the press release, such that a promotion in their publication is indicative of the distinguished reputation of the festival. Again, the Petitioner must provide corroboration of her affirmations. *Soffici*, 22 I&N Dec. at 165.

In addition, the Petitioner must establish that the Beneficiary will be performing services as a lead or starring participant in productions or events with a distinguished reputation. In the initial letter, the Petitioner stated that the Beneficiary will be working on various film projects while in the United States. On appeal, the Petitioner has supplied a script for a film, [REDACTED] on which the Beneficiary is working. The Petitioner has provided no additional evidence to document the distinguished reputation of that film. The limited submissions merely confirm that the Beneficiary will be working on film projects, including [REDACTED] while in the United States. Without corroboration of the reputation of these projects, the Petitioner has not met her burden. *Soffici*, 22 I&N Dec. at 165. 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)(v)(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 Petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2). In general, in order for published material to meet this criterion, it must be about a beneficiary and, as stated in the regulations, appear in major newspapers, magazines or other major publications. To qualify as major media, the publication should have significant national or international distribution. In support of this criterion, the Petitioner urges that "the Beneficiary's work has been publicized through on-line reviews, social media posts, and website publicity."

The Petitioner has provided several publicity releases pertaining to the [REDACTED] that mention the Beneficiary by name, several of which include photographs of the Beneficiary, in describing films screened at festival. The Petitioner also submitted the IMDB profile page for the Beneficiary's film [REDACTED] a listing of films posted by the Beneficiary on [REDACTED] and a [REDACTED] reviewing the Beneficiary's work as one of several photographers at a film screening. The press releases about the film festival are not about the Beneficiary. Rather, they only briefly mention the Beneficiary. The plain language of this regulatory criterion requires that the published material be "about the individual." In addition, while the press releases confirm that the Beneficiary's film was screened at the festival, and the review of her photography at a film screening praises her photographic style, they are not critical reviews or other journalistic coverage recognizing the Beneficiary's individual achievements in the motion picture industry as a filmmaker. In light of the above, the Petitioner has not established that the evidence satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(2).

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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 satisfy the evidentiary requirements of this criterion. In support of this criterion the Petitioner has submitted the Beneficiary's IMDB profile, indicating that the Beneficiary has directing, producing, screenwriting, and cinematographer credits for two short films in [REDACTED] and [REDACTED]. The Petitioner provided the scripts for those two films, and a third work written by the Beneficiary, [REDACTED]. The exhibits included photographs of the Beneficiary at the [REDACTED] and working on a film location in New York.

The Petitioner's initial letter indicated that the Beneficiary previously worked with the Petitioner while she was a student at the [REDACTED]. The recommendation letters in the record are from companies for whom the Beneficiary worked as a videographer/photographer. The record further contains the Beneficiary's identification cards from the [REDACTED] and [REDACTED] reflecting she previously did work for those companies.

A leading role should be apparent by its position in the overall organizational hierarchy and should be accompanied by the role's matching duties. A critical role should be evident from the Beneficiary's impact on the organization or the establishment's activities. The Beneficiary's performance in this role should demonstrate whether the role was critical for an organization or establishment as a whole. While the record shows that the Beneficiary previously performed as a producer, director, screenwriter, videographer, and photographer, the submissions do not describe the duties the Beneficiary performed for any organization in her various roles, and does not establish how her position fit within the overall hierarchy of the organizations. The record also does not contain the required documentary evidence in the form of articles in newspapers, trade journals, publications, or testimonials pertaining to the reputation of those companies.

We may, in our discretion, use as advisory opinion statements offered 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 position fell in the overall hierarchy of their companies or her impact on the organizations. Further, even accepting that the Petitioner's experience as a producer, director, and screenwriter for various films constitute leading roles for an organization, the Petitioner did not corroborate that those companies enjoy a distinguished reputation. 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.

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In addition, the Petitioner must establish that the Beneficiary will provide services as a lead or starring participant for organizations or establishments that have a distinguished reputation. The record contains a summary of the terms of the oral agreement between the parties, indicating that the Beneficiary will work for the Petitioner as a television and film producer/director/writer and as a photographer/videographer. We conclude that the Petitioner has not demonstrated how the Beneficiary's employment with the company rises to the level of a lead, or critical role for the organization. The Petitioner has offered no elucidation regarding where the Beneficiary's past and proposed position falls in the overall hierarchy of the company or her proposed impact on the company. Further, while the Petitioner has received recognition from the [REDACTED] the Petitioner also did not submit the requisite form of evidence to corroborate that it enjoys a distinguished reputation, articles in newspapers, trade journals, publications, or testimonials. In light of the above, the Petitioner has not satisfied the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(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 Petitioner's evidence does not satisfy the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(5). In support of this criterion, the Petitioner has submitted letters of recommendation from four individuals for whom the Beneficiary previously provided services as a videographer and photographer: [REDACTED] in California, [REDACTED] of [REDACTED] of [REDACTED] and [REDACTED]. The letters praised the Beneficiary's "keen filmmaker's eye," talent, and professionalism.

Upon review of the letters, we concur with the Director's determination that the Petitioner has not established that the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. The letters do not attest to the Beneficiary's level of recognition beyond the confines of their own companies, nor do they explain in factual terms the Beneficiary's achievements in the field. In addition, the record contains no clarification or evidence of the authors' specific credentials as recognized experts in the field.

The Petitioner also provided two letters from [REDACTED] of the [REDACTED] confirming the Beneficiary's participation in a program in 2007 as a [REDACTED] working with vulnerable children in Brazil. These letters do not relate the Beneficiary's experience to the motion picture or television field. Further, as mentioned above, the letters from two authors, [REDACTED] and [REDACTED] are unsigned, and [REDACTED] letter does not appear on letterhead. These unsigned letters, therefore, have limited probative value.

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The Petitioner's evidence also comprised of IMDb profile pages for individuals in the field who worked on the Beneficiary's film [REDACTED] including the Petitioner's president, [REDACTED]. The Petitioner also submitted pictures of the Beneficiary posing with a movie camera. The Petitioner has not explained how these items constitute "significant recognition for achievements."

The Petitioner further provided published materials from www.whitehouse.gov/blog, the U.S. Department of State, and *Newsweek*, encouraging women to assume leadership positions. As stated previously, while we recognize the importance of these principles, the issue for this regulatory criterion is whether the Beneficiary has received significant recognition for achievements from organizations, critics, government agencies, or other recognized experts in the field. The record lacks documentary evidence showing that the Beneficiary has received such recognition.

Finally, as discussed above, the Petitioner has provided confirmation that the Beneficiary's film [REDACTED] was an official selection for the [REDACTED]. However, the Petitioner did not include any supporting explanation or documentation with respect to the significance of this selection and the context in which films are chosen. As such, we have no basis on which to conclude that such selection constitutes "significant recognition for achievements." Based on the foregoing, the Petitioner has not submitted evidence that satisfies the criterion at 8 C.F.R. 214.2(o)(3)(v)(B)(5).

In summary, the Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as an individual with extraordinary achievement in the motion picture or television industry, and the appeal will be dismissed on this basis.

D. Contract Requirements and Description of Events

Although not addressed in the decision, the Petitioner has not provided the contractual agreement that specifies the wage and the other terms and conditions of the Beneficiary's employment, or a summary of the terms of the oral agreement between the parties. The Form I-129 indicated that the Petitioner would employ the Beneficiary in the position of "Producer/Director/Camera/Photography," described as less than a full-time position. In the Form I-129 the Petitioner stated that the Beneficiary would not receive weekly wages, but would receive other compensation as follows: "[The Beneficiary] is also a talented Videographer and Photographer. Her talents in these fields will certainly be called upon when needed." In its initial letter dated October 28, 2014, the Petitioner offered a general description of the Beneficiary's duties in the proposed position as including working on various film projects with the Petitioner, using the Beneficiary's "directing and filmmaking talents." The Petitioner's letter advised that it had reached an oral agreement with the Beneficiary "on the compensation she will receive while under [the Petitioner's] employ. [The Beneficiary's] Photography and Videography skills alone will generate income."

In the RFE, the Director instructed the Petitioner to submit either a written contract or, if there is none, a summary of the terms of the oral agreement under which the Beneficiary will be employed,

which must specify the wage offered and explain the terms and conditions of the Beneficiary's employment. An oral contract, as corroborated by the summation of the elements of the oral agreement, is enforceable and USCIS will accept the summation as evidence of an oral agreement. *See generally* 8 C.F.R. § 214.2(o)(2)(ii)(B) (stating that a summary of the terms of the oral agreement under which the foreign national will be employed must be provided when there is no written contract between the parties). Here, the Petitioner has not fulfilled this requirement.

In response to the RFE, the Petitioner did not submit a copy of its contract with the Beneficiary. Rather, the Petitioner affirmed that its initial letter included a summary of the terms of an oral contract. The Petitioner offered a December 9, 2014, email intended to "follow up and outline" the agreement between the parties. The correspondence listed the above-mentioned proposed duties and the "payment structure" applicable to specific duties. For the Beneficiary's duties as a photographer/videographer, the Petitioner will pay the Beneficiary wages; for her work in film/TV production, direction, and writing, the Beneficiary will receive an initial payment plus a percentage to be determined later of the revenue from the proceeds of the production.

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 or an agreed upon fee structure. The contract summary does not specify the wage offered in an exact dollar amount or a specific percentage of the revenue the Beneficiary will retain from projects, or otherwise indicate how the Beneficiary will be paid. The Petitioner also 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 appeal will be dismissed on these additional bases.

E. Consultation

An additional issue not addressed in the decision is whether the Petitioner satisfied the written consultation requirements pursuant to section 214(c)(3)(A) of the Act and the regulations at 8 C.F.R. §§ 214.2(o)(2)(ii)(D), and 214.2(o)(5)(iii) which provides:

Consultation requirements for an O-1 alien of extraordinary achievement. In the case of an alien of extraordinary achievement who will be working on a motion picture or television production, consultation shall be made with the appropriate union representing the alien's occupational peers and a management organization in the area of the alien's ability. . . . If the advisory opinion is favorable to the Petitioner, the written advisory opinion from the labor and management organizations should describe the alien's achievements in the motion picture or television field and state whether the position requires the services of an alien of extraordinary achievement. If a consulting organization has no objection to the approval of the petition, the organization may submit a letter of no objection in lieu of the above.

At the time of filing the petition, the Petitioner indicated in the O and P Classification Supplement to Form I-129 that an appropriate labor organization did not exist for the petition, but provided no

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explanation as requested. In response to the question whether the required consultation or written advisory opinion was being supplied with the petition, the Petitioner indicated, "N/A." In the RFE, the Director instructed the Petitioner to submit the required labor organization and management organization consultations. The Petitioner has still not offered the required consultations, and the Petitioner has not established that an appropriate U.S. peer group does not exist pursuant to the regulation at 8 C.F.R. § 214.2(o)(5)(i)(G). We note that an appropriate management organization would be the [REDACTED] and an appropriate union would be the [REDACTED]. Upon review, the Petitioner has not satisfied the written consultation requirements as set forth at 8 C.F.R. § 214.2(o)(5)(iii). The appeal will be dismissed on this additional basis.

III. CONCLUSION

The Petitioner has not submitted qualifying evidence under 8 C.F.R. § 214.2(o)(3)(v)(A) or at least three criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). The Petitioner has also not provided a summary of the terms of the oral agreement under which the Beneficiary will be employed as required at 8 C.F.R. § 214.2(o)(2)(ii)(B), an explanation of the nature of the Beneficiary's proposed activities as required at 8 C.F.R. § 214.2(o)(2)(ii)(C), or the written consultations required pursuant to section 214(c)(3)(A) of the Act and the regulations at 8 C.F.R. §§ 214.2(o)(2)(ii)(D) and 214.2(o)(5)(iii). Consequently, the Petitioner has not established that the Beneficiary is eligible for classification as an alien with extraordinary achievement in the motion picture or television industry.

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 V-M-D-, Inc.*, ID# 15267 (AAO May 16, 2016)