



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

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

MATTER OF BCMHV-, LLC

DATE: MAY 26, 2016

APPEAL OF VERMONT SERVICE CENTER DECISION.

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

The Petitioner, a Brazilian jiu-jitsu gym, seeks to classify the Beneficiary as a foreign national of extraordinary ability in athletics. 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 Petitioner requests that the Beneficiary be granted O-1 classification so that he may work as a jiu-jitsu coach. The Director, Vermont Service Center, denied the petition, concluding that the exhibits did not satisfy the evidentiary requirements applicable to foreign nationals of extraordinary ability in athletics, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A) (a major, internationally recognized award) or (B) (at least three of eight possible forms of documentation).

The matter is now before us on appeal. In its appeal, the Petitioner provides a brief as well as copies of documents previously submitted. The Petitioner contends that the Director's analysis went beyond the evidentiary requirements of the applicable statute and regulations, and that she overlooked evidence in the record.

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 alien 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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. See 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). The regulation at 8 C.F.R. § 214.2(o)(3)(ii) states, in pertinent part: "*Extraordinary ability in the field of science, education, business, or athletics* means 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)(iii) states, in pertinent part:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
  - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
  - (2) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized or international experts in their disciplines or fields;
  - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
  - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
  - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;
  - (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
  - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;

- (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

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.

## II. FACTUAL AND PROCEDURAL HISTORY

The Petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, and supporting documentation on December 23, 2014. The Director issued a request for additional evidence (RFE) on January 14, 2015, to which the Petitioner replied. We have considered the record in its entirety in reaching this decision.

The Petitioner indicated that it intends for the Beneficiary to be its head jiu-jitsu coach for 36 months beginning on December 24, 2014, at a salary of \$2,800 per month. The Petitioner's evidence included the required advisory opinion, letters from Brazilian jiu-jitsu athletes and coaches, and information about the Beneficiary's certifications, awards, memberships, and coaching experience.

## III. ANALYSIS

### A. Evidentiary Criteria

The Petitioner did not indicate, and the record does not establish, that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A). Therefore, the Petitioner must establish the Beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). After careful review of the record and for the reasons discussed



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1972)). In addition, we note that the listed awards relate to the Beneficiary's accomplishments as an athlete, rather than as a coach.

The Petitioner contends that the achievements of the Beneficiary's students should be considered under this criterion as comparable evidence of the Beneficiary's extraordinary ability as a coach, pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(C). The burden is on the Petitioner to show that the evidence submitted as comparable is actually comparable to the evidence the criterion describes.

The Petitioner submitted letters from two of the Beneficiary's students, [REDACTED] and [REDACTED]. [REDACTED] indicated that she is ranked [REDACTED] in the world for women in the [REDACTED] and [REDACTED] stated that he is a mixed martial arts fighter with an "undefeated record of [REDACTED]." The Petitioner submitted copies of two photographs of [REDACTED] with her medals, but the text on the medals is not legible. The statistics submitted for [REDACTED] which are from his website, show his amateur record in mixed martial arts. However, the record does not include information regarding the competitions in which [REDACTED] or [REDACTED] participated, such as documentation of the number of competitors or the prestige of the events.

The Petitioner also listed competitions won by several additional former students of the Beneficiary. Supporting evidence included an article from the website of [REDACTED] called [REDACTED] in [REDACTED] 2013." The article listed [REDACTED] members who won medals at an event in [REDACTED] Brazil, including individuals that the Petitioner had identified as the Beneficiary's students. It did not, however, provide details about the competition, nor did it mention the Beneficiary as the athletes' coach. Likewise, the Petitioner provided information about the Beneficiary's students' ranking results from various competitions, but the record does not include sufficient contextual information to demonstrate the significance of the rankings.

In sum, the Petitioner has not established that the Beneficiary has received nationally or internationally recognized awards for excellence in coaching or that he has coached athletes who have received such awards while primarily under his tutelage. Upon review, the submitted evidence does not satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields*

The Petitioner initially indicated that the Beneficiary qualifies for this criterion based on his memberships in [REDACTED] and [REDACTED]. The Director found the evidence insufficient to demonstrate that these organizations require outstanding achievements for membership as judged by recognized experts in the field. On appeal, the Petitioner contends that "[the Beneficiary's] rank as a Black Belt gives him a high position in these organizations and that the attainment of this rank is determined through evaluation by nationally and internationally recognized/higher ranked experts." The Petitioner states that the Director failed to consider the

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explanation and evidence regarding the Beneficiary's black belt that was provided in response to the RFE, and that this documentation satisfies the evidentiary criterion.

The record includes a certificate from the [redacted] of [redacted] with a certified translation, identifying the Beneficiary as a [redacted]. The Petitioner provided a reference letter from [redacted] identified as a [redacted] black belt and champion of [redacted] 2013 [redacted] stated that, in order to reach the rank of black belt, the Beneficiary's successes and awards had to be evaluated by his "[redacted] Black Belt and world-renowned athlete)." The Petitioner also provided an excerpt from the [redacted] listing the following requirements for obtaining a black belt:

- Must be affiliated to [sic] [redacted] in the current year.
- Must provide First Aid or CPR course certificate
- Must attend an [redacted] within a 12 month period before the date the athlete requests the new degree
- Must attend at least one of the two requirements below:

1. [redacted]

2. [redacted]

(Emphasis in original). The above excerpt provides some information about who is authorized to apply for the rank of black belt, but does not discuss the level of achievement required for approval. [redacted] indicated that a recognized expert made the determination to grant the rank of black belt to the Beneficiary, but without further information about the requirements for obtaining this rank, we cannot determine that it is only given to individuals with outstanding achievements in the field. For the reasons discussed above, we find the record insufficient to establish the Beneficiary's membership in associations that require outstanding achievements of their members as judged by recognized national or international experts. Accordingly, the Petitioner has not established that the Beneficiary satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

*Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation*

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In general, in order for published material to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), it must be “about” the Beneficiary and, as stated in the regulations, be printed in professional or major trade publications or major media. To qualify as major media, the publication should have significant national or international distribution.

As evidence under this criterion, the Petitioner submitted a printout of an article, [REDACTED] from the website of [REDACTED]. The article consists of five instructional videos, including one with the heading ‘ [REDACTED] ’. In a reference letter, [REDACTED] stated that the Beneficiary’s “appearance in a [REDACTED] training tutorial demonstrates his distinguished reputation,” and that the magazine is “the oldest and most prestigious [REDACTED].” However, the Petitioner did not submit evidence pertaining to the audience, circulation, and distribution of [REDACTED]. Further, we note that while the Beneficiary may have been in a demonstration video on a magazine’s website, this video is not “about” the Beneficiary as required by the plain language of the regulations, but is an instructional tutorial. Based on the forgoing, the Petitioner has not submitted evidence that satisfies the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

*Evidence of the alien’s participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought*

The Director found that the Petitioner had not satisfied this criterion. Upon review of the record, we will withdraw the Director’s finding on this issue. The record includes documentary evidence of the Beneficiary’s certification as a jiu-jitsu referee, as well as photographs of him acting as a referee at competitions. We find this evidence sufficient to satisfy the plain language requirements set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

*Evidence of the alien’s original scientific, scholarly, or business-related contributions of major significance in the field*

The Petitioner contends that the Beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5) “through his tutorial videos, guest seminars, police and military training sessions, and his elevation of the competition overall.” As documentation under this criterion, the Petitioner provided evidence of three tutorial videos on [REDACTED] in which the Beneficiary demonstrated Brazilian jiu-jitsu techniques, and reference letters attesting to his contributions to the field.<sup>2</sup>

In one reference letter, [REDACTED] identified as a [REDACTED] stated that the Beneficiary’s instructional videos “have made a significant impact in the field.” He indicated that the Beneficiary is an effective instructor in the videos, and that “[a]s the sport grows and spreads, this type of Internet-based instruction has proven helpful in expanding the sport on a global scale and raising the overall level of competition.” [REDACTED] one of the founders of [REDACTED] said that

<sup>2</sup> While we discuss only a sampling of these letters, we have reviewed and considered each one.

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the Beneficiary has helped elevate the level of competition within the sport “by constantly improving himself and training his students to reach their potential,” and has also “worked with [redacted] to develop new techniques and strategies which he has taught to many of the athletes on our team through seminars and guest-teaching.” In addition, [redacted] a police officer, stated that he has been coached by the Beneficiary and that it “has made a huge impact on my abilities to perform my duties.” In its RFE response, the Petitioner maintained that the Beneficiary has voluntarily trained “other police officers who bring their [Brazilian jiu-jitsu] training into their work with them.”

According to the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5), a foreign national’s contributions must be not only original but of major significance. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3<sup>rd</sup> Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003). Although several letters attest that the Beneficiary has raised the “level of competition” in his field, we find the submitted evidence insufficient to corroborate those statements or to demonstrate the extent of the Beneficiary’s influence on others in his field. *See Matter of Soffici*, 22 I&N Dec. at 165. The plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *Cf. Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013) (upholding a finding that a ballroom dancer had not demonstrated contributions of major significance because she did not demonstrate her impact in the field as a whole). Based on the foregoing, the Petitioner has not established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(5).

*Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation*

In order to meet the seventh criterion, the Petitioner must submit evidence that the Beneficiary has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). The Director determined that the evidence submitted was sufficient to satisfy this requirement. Based on the information contained in the submitted reference letters and supporting documentation, we agree with the Director’s finding that the Petitioner has satisfied this criterion.

**B. Summary**

Based on the foregoing, the Petitioner has not shown either that the Beneficiary meets the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iii)(A) or at least three of the eight criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). The appeal will be dismissed on this basis. Even if the Petitioner had submitted the necessary initial evidence, however, an evaluation of the totality of the record does not show that the Beneficiary is one of the small percentage who has risen to the very top of the field of endeavor. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

#### IV. CONCLUSION

The Beneficiary has not received a major, internationally recognized award, and the record does not satisfy at least three criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B). Consequently, the Petitioner has not produced the initial evidence necessary to establish the Beneficiary's eligibility for classification as a foreign national with extraordinary ability in athletics.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the Petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of BCMHV-, LLC*, ID# 16546 (AAO May 26, 2016)