

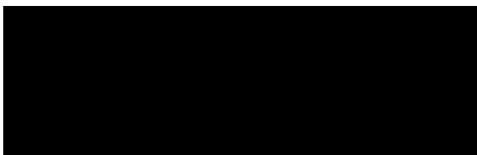
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **AUG 04 2010**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER: SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary achievement in the motion picture or television industry. The petitioner operates a California-based film and television production business. The petitioner seeks to employ the beneficiary as a film producer in the United States from December 1, 2009 until January 15, 2010.<sup>1</sup>

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture and television industry. In denying the petition, the director determined that the petitioner failed to establish that the beneficiary has been nominated for or has been the recipient of a significant national or international award, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), or that he has met three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B). The director further found that the petitioner failed to provide the required consultation from a labor union pursuant to 8 C.F.R. § 214.2(o)(5)(iii).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, the petitioner asserts that it is submitting additional evidence in support of its claim that the beneficiary is an "established producer" in India and the United Kingdom. The petitioner does not specifically address the applicable evidentiary criteria for this visa classification.

### **I. The Law**

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides classification to a qualified alien 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 extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991).

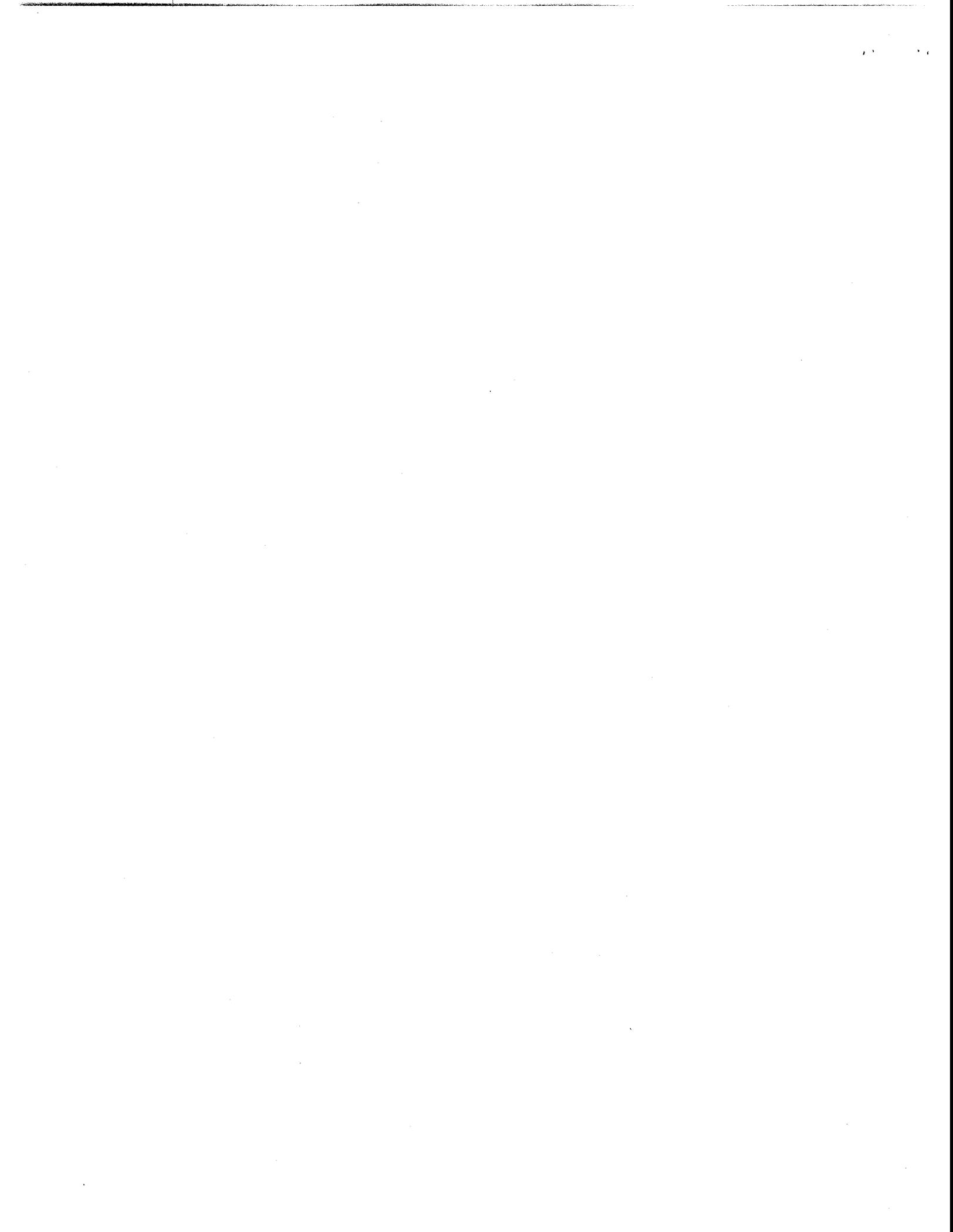
The regulation at 8 C.F.R. § 214.2(o)(3)(ii) provides the following pertinent definition:

*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 regulation at 8 C.F.R. § 214.2(o)(3)(v) states, in pertinent part:

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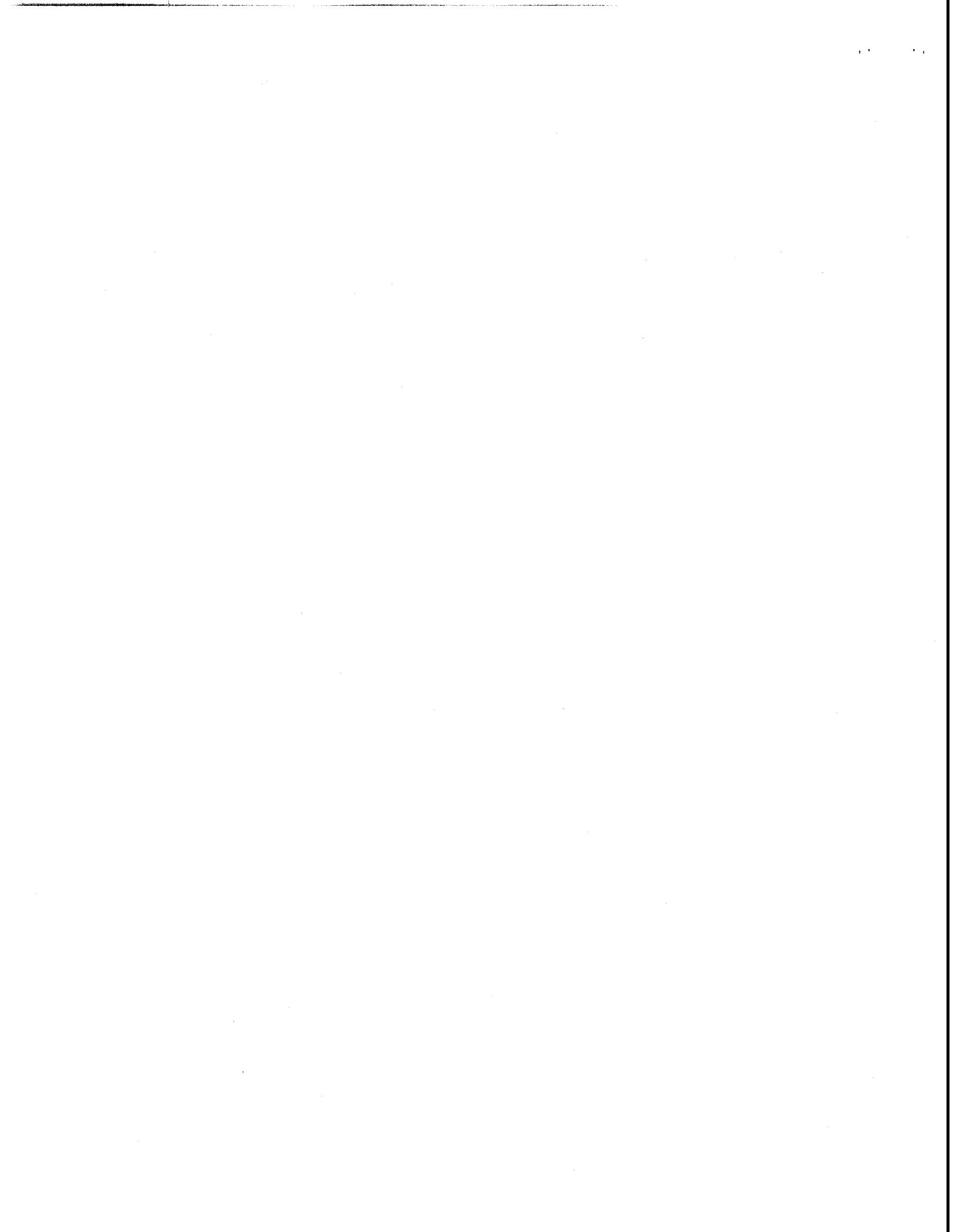
<sup>1</sup> The petitioner initially stated on Form I-129, Petitioner for a Nonimmigrant Worker, that the beneficiary's job title will be "line producer" with responsibility to "arrange and expedite production." The petitioner later submitted an amended Form I-129 and clarified that the petitioner is a line producer while the beneficiary is a film producer.



*Evidentiary criteria for an O-1 alien of extraordinary achievement in the motion picture or television industry.* To qualify as an alien of extraordinary achievement in the motion picture or television industry, the alien must be recognized as having a demonstrated record of extraordinary achievement as evidenced by the following:

- (A) 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; or
- (B) At least three of the following forms of documentation:
  - (1) 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;
  - (2) 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;
  - (3) 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;
  - (4) Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications;
  - (5) 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; or
  - (6) Evidence that the alien has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence.

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.

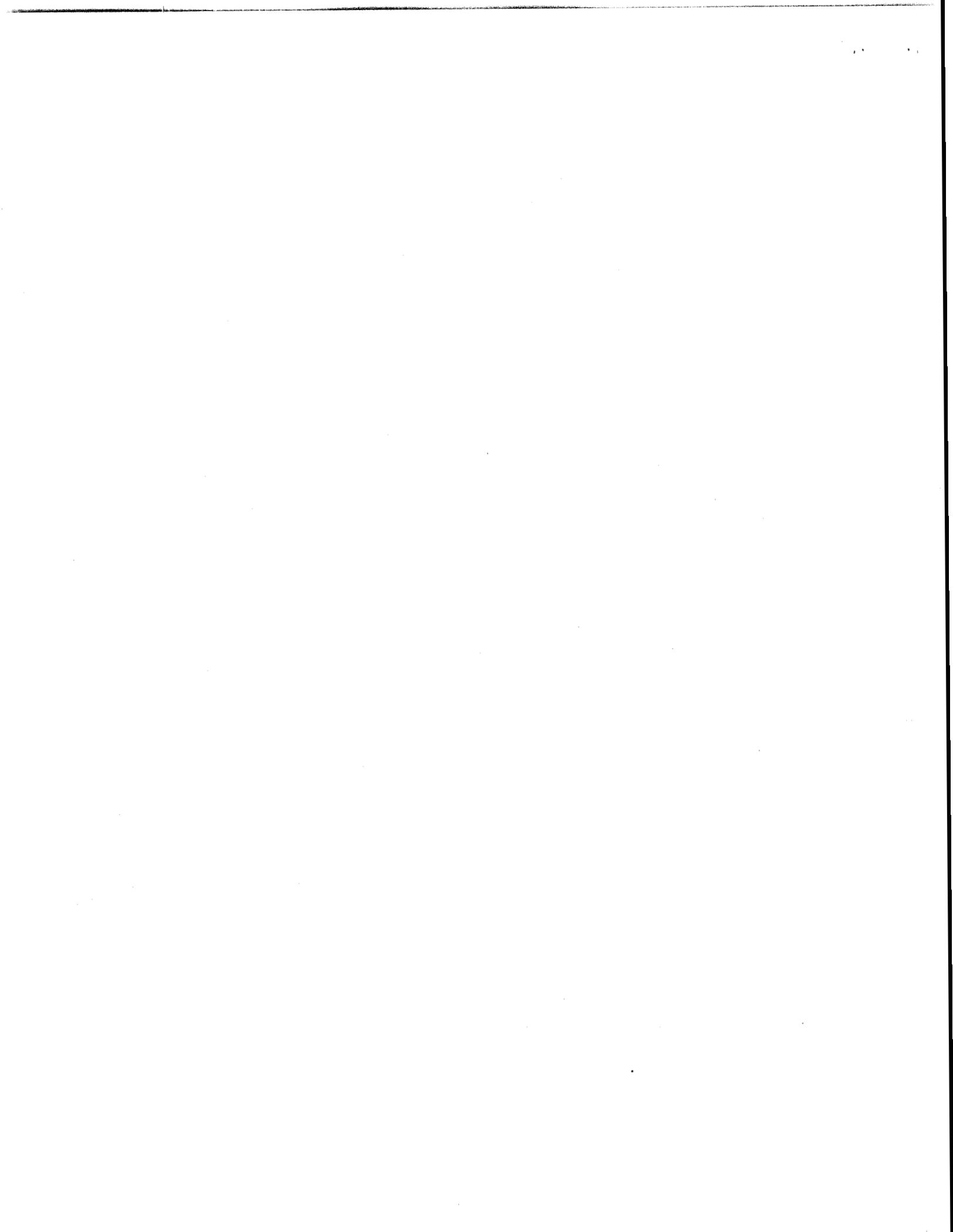
In addition, the regulation at 8 C.F.R. § 214.2(o)(2)(ii) requires the petitioner to submit copies of any written contracts between the petitioner and the beneficiary; an explanation of the nature of the events or activities, along with an itinerary; and two consultations, one from an appropriate union and one from an appropriate management organization.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach recently set forth in a decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 WL 725317 (9<sup>th</sup> Cir. March 4, 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Specifically, the *Kazarian* court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at \*6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).



Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary achievement" as "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 AAO finds the *Kazarian* court's two part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability and extraordinary achievement at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

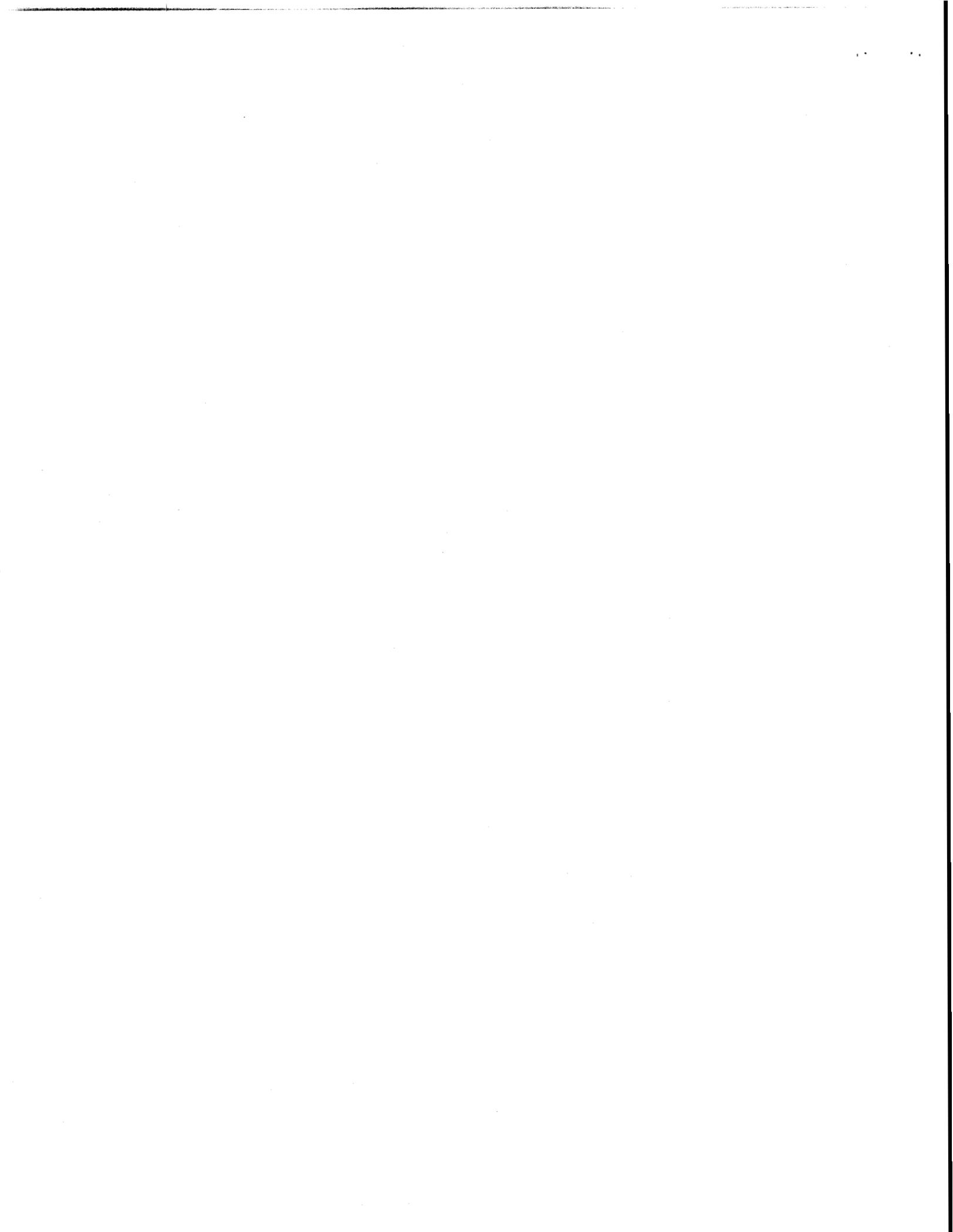
In the present matter, the petitioner has not established that the beneficiary has a demonstrated record of extraordinary achievement to the extent that his accomplishments are recognized as outstanding, notable, or leading in the motion picture or television field. 8 C.F.R. §§ 214.2(o)(3)(ii) and (v).

## II. The Beneficiary's Eligibility under the Evidentiary Criteria

The beneficiary in this matter is a native and citizen of India. The beneficiary is a producer and director by profession and indicates on his resume that he has produced, or is in the process of producing and directing, two films, [REDACTED] and [REDACTED]. The beneficiary's resume also lists directing credits for two films, and assistant directing credits for five films. The AAO notes that the majority of the limited documentary evidence in the record pertains to the beneficiary's film [REDACTED] while the petitioner indicates that the beneficiary will be filming a portion of the upcoming [REDACTED] in California upon approval of the petition. The petitioner seeks to classify the beneficiary as an alien with extraordinary achievement in the motion picture and television industry as a producer.

The petitioner initially submitted the beneficiary's résumé, a copy of a letter requesting a consultation from the Alliance of Motion Picture & Television Producers (AMPTP), an agreement between the beneficiary and the petitioner, copies of the beneficiary's membership cards in industry associations, a synopsis of the plot of the film [REDACTED] and four articles from Indian trade publications which briefly mention the beneficiary's past and prospective films.

The director issued a request for additional evidence ("RFE") on November 17, 2009, in which she advised the petitioner that the initial evidence did not establish that the beneficiary qualifies as an alien of extraordinary achievement in the motion picture or television industry. The director referred to the evidentiary criteria at 8 C.F.R. §214.2(o)(3)(v)(B), and requested evidence to establish that the beneficiary meets at least three of the six criteria listed therein. The director also requested a consultation from the national office of an appropriate labor union, and a consultation from the national office of an appropriate management organization. The petitioner's



response to this request consisted of an amended Form I-129 in which the beneficiary's job title was changed from "line producer" to "producer," a letter from the petitioner explaining the error on the initial Form I-129, and a letter from the Alliance of Motion Picture & Television Producers (AMPTP) indicating that the organization has "no objection" to the granting of an O-1 visa.

On December 8, 2009, the director denied the petition, finding that the beneficiary meets none of the six regulatory criteria for establishing a demonstrated record of extraordinary achievement in the industry pursuant to 8 C.F.R. § 214.2(o)(3)(v)(B). On appeal, the petitioner contends that the beneficiary is "an established producer in India [and] the [United Kingdom]." The petitioner submits additional documentary evidence in support of the appeal.

After careful review of the record, it must be concluded that the petitioner has failed to overcome the grounds for denial. In order to establish eligibility as an alien of extraordinary achievement, the statute and regulations require evidence 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 established that the beneficiary or his achievements have been so recognized.

If the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has received a significant national or international award or prize in his or her field pursuant to 8 C.F.R. § 214.2(o)(3)(v)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. Here, the petitioner has not submitted evidence that the beneficiary has been nominated for or received a significant national or international award or prize comparable to an Academy, Emmy or Grammy Award.

As there is no evidence that the beneficiary has been nominated for or received a significant national or international award or prize, the petitioner must establish the beneficiary's eligibility under at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B).

- 1. 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*

In order to meet criterion number one, the petitioner must submit evidence that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(v)(B)(1).

The beneficiary lists a total of nine film credits in his resume. However, the record is devoid of any documentary evidence pertaining to the two films on which the beneficiary worked as a director, and with respect to the five films on which he indicates that he served as assistant director. Therefore, the AAO will focus its attention to the beneficiary's films [REDACTED] and [REDACTED]



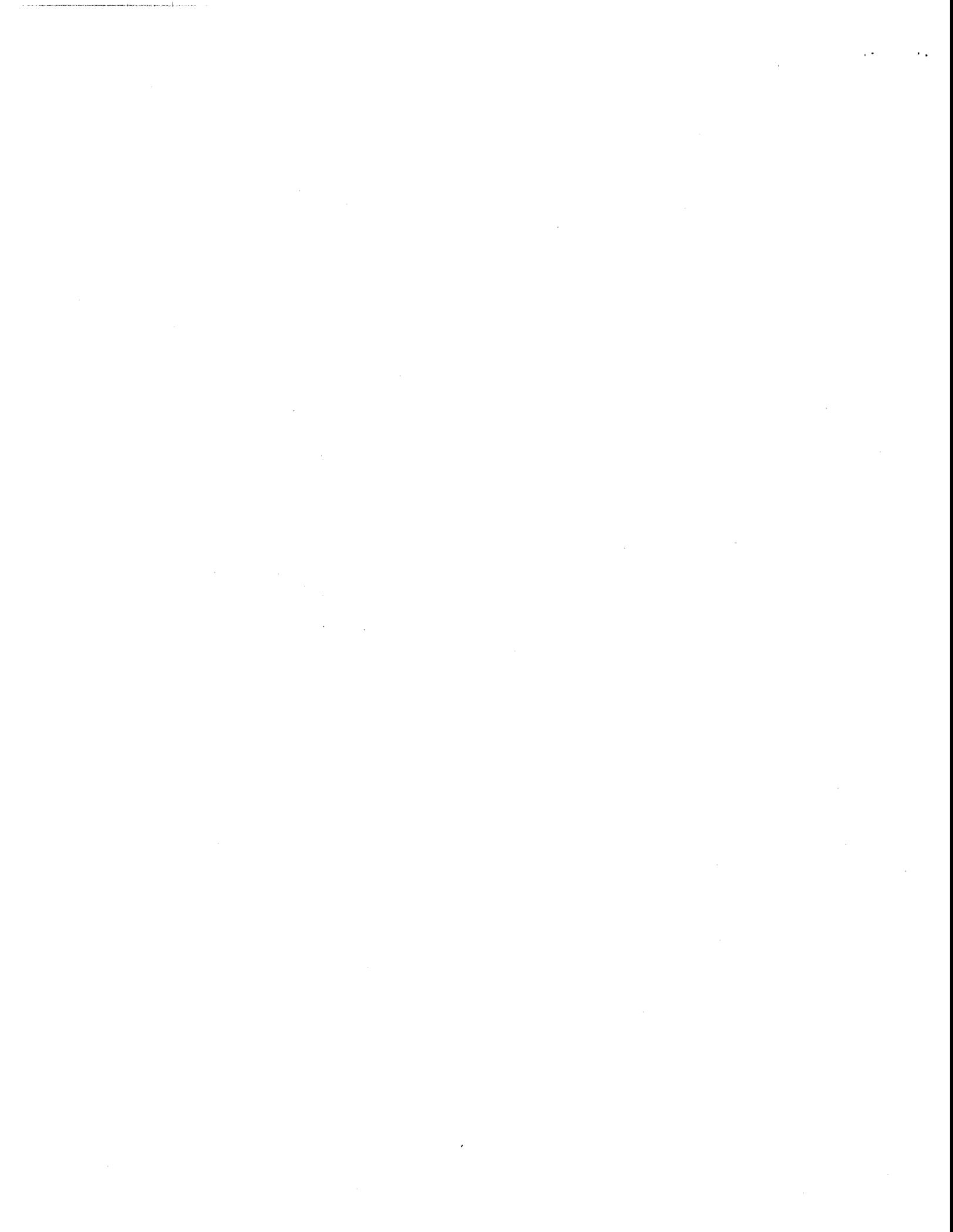
The beneficiary's role as producer and director of the feature film [REDACTED] can be categorized as providing services as a lead participant. However, the petitioner must also establish through submission of critical reviews, advertisements, publicity releases, contracts or endorsements that the film itself has a distinguished reputation. The petitioner's initial evidence pertaining to this criterion included a brief article published in the [REDACTED] section of the February 28, 2004 issue of the Indian publication [REDACTED] indicating that the film [REDACTED] "The Dark Side of the System is ready in five reels." The article lists the names of the cast, writer and music credits, and identifies the beneficiary as director. The petitioner submitted a similar short article from the [REDACTED] page of the February 28, 2004 issue of the Indian publication [REDACTED]

With respect to the beneficiary's current project, [REDACTED] the film on which he would work while in the United States, the petitioner submitted an article titled [REDACTED]. The article consists of three sentences published in the August 18, 2007 issue of the Indian publication [REDACTED]. The article lists [REDACTED] as one of three films the beneficiary is producing and directing. Finally, the petitioner submitted an announcement titled [REDACTED] which appears to have been published in the [REDACTED] section of an issue of [REDACTED]. This article is also three sentences in length, and provides essentially the same information as the aforementioned article.

In the RFE issued on November 17, 2009, the director advised the petitioner that the initial evidence did not meet this criterion, and requested that the petitioner submit additional evidence to establish that the beneficiary has performed and will perform as a lead participant in productions or events that have a distinguished reputation, including evidence in the form of written reviews from critics, advertisements, publicity releases, publication contracts or endorsements. Although the petitioner submitted a response to the RFE, it did not include any additional evidence related to this evidentiary criterion, and the director concluded that the criterion had not been met.

The petitioner submits additional published articles on appeal, primarily related to the beneficiary's work on the film [REDACTED]. However, the petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. The AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Regardless, the AAO notes that the petitioner's new evidence does not include critical reviews, advertisements, publicity releases, testimonials or other documentary evidence establishing the distinguished reputation of the beneficiary's past or present films. Almost all of the new evidence pertains to the release of a promotional audio cassette of the film [REDACTED] on August 31, 2003. While this musical release appears to have been well-publicized in Indian trade publications, there is no documentary evidence relating to the film release itself. In fact, based on a letter dated December 19, 2009 from [REDACTED] it is unclear whether the film [REDACTED] has been released. [REDACTED] indicated that it provided production services in the United Kingdom in November 2005 for the film "tentatively titled [REDACTED]." It is unclear why the title of the film would remain "tentative" in 2009 if it had already been released.



In addition, the petitioner must establish that the beneficiary will be providing services as a lead or starring participant in productions or events with a distinguished reputation. The petitioner has provided no additional evidence to document the distinguished reputation of the film [REDACTED]. The limited documentary evidence submitted merely confirms that the beneficiary is producing and directing the film. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the foregoing, the petitioner has not established that the beneficiary has performed and will perform as a lead or starring participant in productions or events which have a distinguished reputation. Therefore, the criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(1) has not been met.

2. *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*

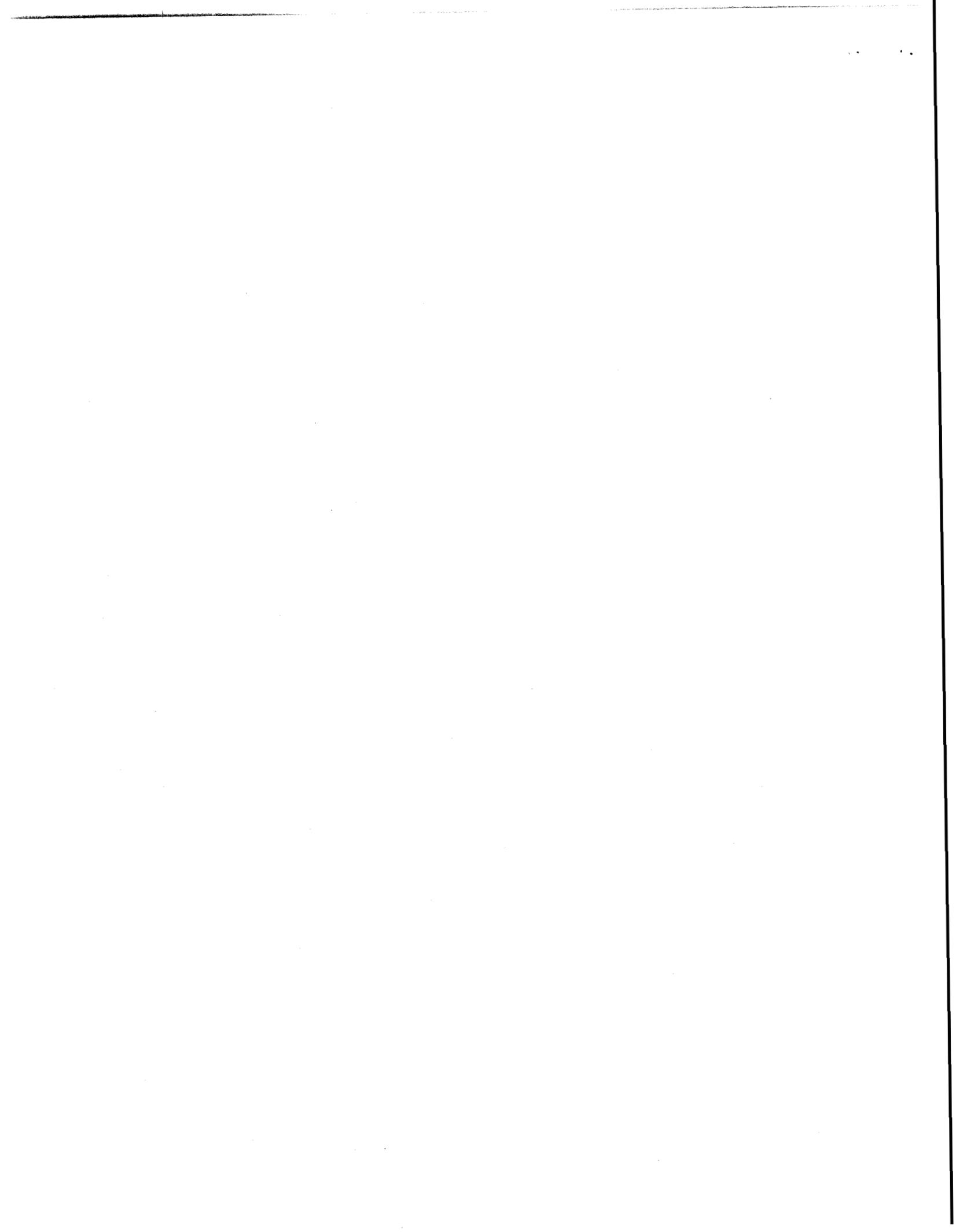
In order to establish that the beneficiary meets the second criterion, the petitioner must submit evidence that the alien has achieved national or international recognition for achievements evidenced by critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications. 8 C.F.R. § 214.2(o)(3)(v)(B)(2).

Upon review, the only published materials in the record of proceeding include brief notes regarding the beneficiary's film projects in Indian trade publications, as discussed above. The minimal evidence submitted to establish this criterion does not demonstrate that the beneficiary has received national or international media recognition for his *achievements* in the motion picture and television industry. The articles, while technically "about the beneficiary" do little more than confirm the titles of the films on which he has worked or is working as producer. The petitioner has not submitted any critical reviews or other post-release newspaper, articles or journal articles discussing the beneficiary's work. Brief acknowledgements from trade publications regarding the beneficiary's upcoming work in the forms of announcements or production notes cannot be considered an "achievement" in and of itself. The petitioner has not established that the beneficiary meets this criterion.

3. *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 beneficiary presently appears to be self-employed by [REDACTED]. The petitioner has provided no information regarding any organizations or establishments that have employed the beneficiary in the past. The record contains no documentary evidence in the form of articles in newspapers, trade journals, publications or testimonials to demonstrate that [REDACTED] has a distinguished reputation.

The petitioner also submitted photocopies of membership cards indicating that the beneficiary is a member of the Indian Motion Picture Producers' Association, a Life Member of the Indian Film & Television Directors' Association, and a Life Member of the Western India Film Producers' Association. The petitioner has provided no additional explanation or documentation regarding the significance of or requirements for these



memberships such that it could be determined that a "life membership" can be considered a "critical role" in these organizations.

Therefore, the petitioner has not submitted evidence to meet the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(v)(B)(3).

4. *Evidence that the alien has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications*

To establish that the beneficiary meets the fourth criterion, the petitioner must establish that the beneficiary has a record of major commercial or critically acclaimed successes as evidenced by such indicators as title, rating, standing in the field, box office receipts, motion picture or television ratings, and other occupational achievements reported in trade journals, major newspapers, or other publications. 8 C.F.R. § 214.2(o)(3)(v)(B)(4).

This criterion requires the petitioner to submit evidence that there is a published record of the beneficiary's critical or commercial success, such that his achievement is acknowledged in the industry at-large. As discussed above, the petitioner has submitted minimal evidence regarding the beneficiary's completed work from published sources, and no evidence that any of his prior films have been critical or commercial successes. The petitioner has not demonstrated that the beneficiary meets this criterion.

5. *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*

In order to meet the fifth regulatory criterion, the petitioner may submit evidence that the beneficiary 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. 8 C.F.R. § 214.2(o)(3)(v)(B)(5).

Further, the regulation at 8 C.F.R. § 214.2(o)(2)(iii)(D) provides that affidavits written by present or former employers or recognized experts certifying to the recognition and extraordinary ability shall specifically describe the 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.

Although the petitioner does not specifically address this criterion, the petitioner does state that the beneficiary is "an established producer" in India and the United Kingdom. The petitioner submits a certificate from the Western India Film Producers' Association affirming that the beneficiary's company, [REDACTED] is a "Life Member" of the association. As noted above, the petitioner provides no additional explanation as to the requirements for becoming a "Life Member" of this association; therefore, the AAO



cannot determine that this membership alone rises to the level of "significant recognition for achievements" in the motion picture industry. Furthermore, the certificate is not in a form which sets forth the beneficiary's recognition and achievements in factual terms and thus does not meet the requirements for testimonial evidence set forth at 8 C.F.R. § 214.2(o)(5)(B)(5).

The petitioner also submits on appeal the above-referenced letter from [REDACTED] regarding the beneficiary's use of [REDACTED] services in London in November 2005 while filming a portion of the motion picture [REDACTED]. While this letter is presumably intended to support the petitioner's assertion that the beneficiary is an "established producer" in the United Kingdom, it does not provide evidence that the beneficiary has received significant recognition for achievements. The letter from [REDACTED] does not certify to the beneficiary's recognition and extraordinary achievement, nor does it specifically describe the alien's recognition and ability or achievement in factual terms or set forth the expertise of the author. The letter merely confirms that the beneficiary worked with the U.K.-based production house while filming [REDACTED] in the United Kingdom for two weeks in November 2005.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

The sixth and final criterion requires the petitioner to submit evidence that the beneficiary has either commanded a high salary or will command a high salary or other substantial remuneration for services in relation to others in the field, as evidenced by contracts or other reliable evidence. 8 C.F.R. § 214.2(o)(3)(v)(B)(6). The evidence of record does not indicate the amount of any salary or remuneration the beneficiary would receive while in the United States and contains no evidence regarding the beneficiary's remuneration for previous film projects. Accordingly, the petitioner has not established that the beneficiary meets this criterion.

### **III. Final Merits Determination**

*Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. However, as discussed above, the petitioner established eligibility for none of the six criteria, of which three are required under the regulation at 8 C.F.R. § 214.2(o)(3)(v)(B).

Notwithstanding the above, a final merits determination considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has achieved 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 he is recognized as outstanding, notable, or leading in the motion picture or television field, pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary is recognized as having a demonstrated record of extraordinary achievement, pursuant to 8 C.F.R. § 214.2(o)(3)(v). *See Kazarian*, 2010 WL 725317 at \*3.



Upon review, the AAO finds that the petitioner has not established that the beneficiary has a demonstrated record of extraordinary achievement in the motion picture industry or that he is recognized in the field as outstanding, notable or leading.

The specific deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(v)(B). The petitioner submitted some documentation relating to the beneficiary's work experience. Although the evidence establishes that the beneficiary is a working film producer in India, there is no evidence that the beneficiary is recognized in India or internationally as having a demonstrated record of extraordinary achievement in motion picture production, or that he is leading or notable within the industry. The minimal evidence submitted does not distinguish the beneficiary from any other film producer and is insufficient to establish that he is recognized as leading or outstanding in the field.

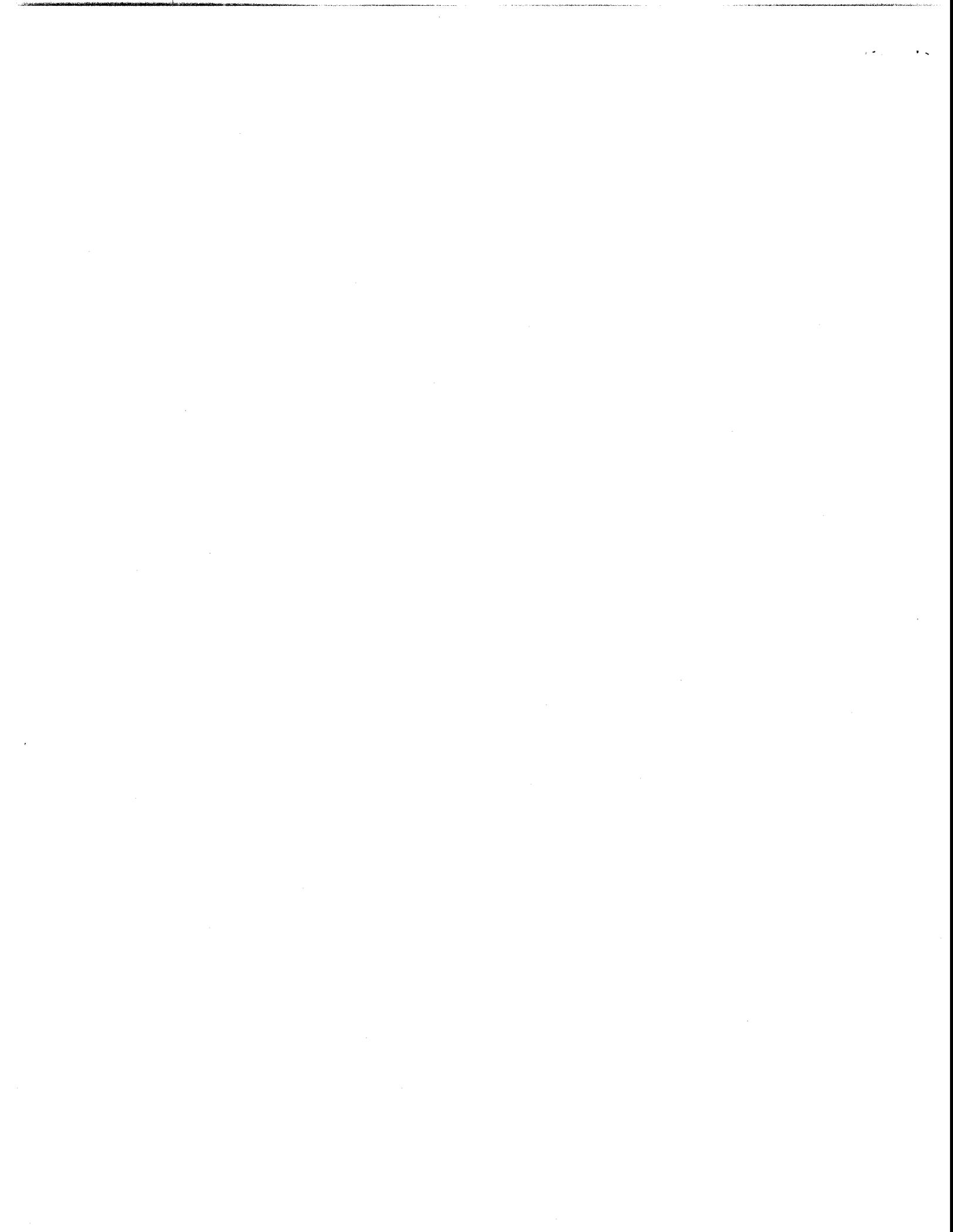
The beneficiary has worked as a producer on only two films, one of which is in the pre-production phase and one of which may or may not have been completed and released. While two other future projects have been named, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

Therefore, the conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the minimal evidence does not distinguish the beneficiary as one with a demonstrated record of achievement in the industry. The documentation submitted in support of a claim of extraordinary achievement must clearly demonstrate that the beneficiary has achieved a very high level of accomplishment in the motion picture industry. While the beneficiary appears to be a working film producer, he does not have a demonstrated record of extraordinary achievement nor have his achievements been recognized in the field through extensive documentation. Accordingly, the appeal will be dismissed.

#### **IV. Written Consultation Requirements**

The second issue addressed by the director is whether the petitioner satisfied the written consultation requirements pursuant to 8 C.F.R. § 214.2(o)(2)(ii)(D), and 8 C.F.R. § 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 on November 10, 2009, the petitioner indicated that it had requested a consultation from the AMPTP. In the request for evidence dated November 17, 2009, the director instructed to submit the required labor organization and management organization consultations. The director referred the petitioner to AMPTP to obtain the management organization consultation, and referred the petitioner to obtain a consultation from the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (I.A.T.S.E.).

On November 17, 2009, the petitioner submitted a letter from AMPTP indicating that the organization has no objection to the granting of the O-1 visa for the beneficiary to serve in the role of executive producer for the motion picture [REDACTED]. The petitioner also submitted an amended Form I-129 indicating that the beneficiary's proposed position will be as a producer, rather than a line producer.

In denying the petition, the director determined that the petitioner failed to provide a written consultation from an appropriate labor organization. The director notes that, although the petitioner was asked to obtain a consultation from I.A.T.S.E., the appropriate consulting organization would in fact be the Producers Guild of America (PGA). The director noted that her request for the I.A.T.S.E. was based upon the petitioner's initial indication on Form I-129 that the beneficiary will be employed as a line producer. On appeal, the petitioner notes that it provided timely clarification regarding the beneficiary's actual job title and obtained the AMPTP consultation prior to its receipt of the RFE. The petitioner resubmits the AMPTP consultation in support of the appeal.

Upon review, the petitioner has not satisfied the written consultation requirement set forth at 8 C.F.R. § 214.2(o)(5)(iii). The AAO notes that the AMPTP consultation satisfies the requirement for a consultation from a management organization with expertise in the beneficiary's field, and the director did not take issue with this consultation. However, the petitioner still has not addressed its requirement to also submit a consultation with the appropriate labor organization, i.e., the appropriate union representing the beneficiary's occupational peers. As noted by the director, an appropriate union would be the Producers Guild of America.

Accordingly, the petitioner has not submitted evidence on appeal to overcome the director's finding, and the appeal will be dismissed for this additional reason. The petition will be denied and the appeal dismissed for the above stated reasons, with each considered as an independent and alternative basis for the decision.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

