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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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DATE: **MAR 21 2012** Office: CALIFORNIA SERVICE CENTER FILE:

IN RE: Petitioner:   
Beneficiary:

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:



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 \$630. 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

**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, an entertainment and management company, filed this nonimmigrant 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), 8 U.S.C. § 1101(a)(15)(O)(i), as an alien of extraordinary ability in the arts.<sup>1</sup> The beneficiary, a fashion designer, was initially granted O-1 status in March 2003 and has received four subsequent extensions of status. The petitioner now seeks to extend the beneficiary's status for two additional years so that she may provide services as a costume designer for four upcoming motion pictures.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary has a demonstrated record of extraordinary ability in the arts. 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)(iv)(A), or that she has met three of the six evidentiary criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

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, counsel asserts that the petitioner submitted evidence that the beneficiary has received awards equivalent to the American Emmy award, has played a critical and leading role for organizations of distinguished reputation; and has been featured in articles published in major publications. Counsel asserts that the evidence is therefore sufficient to establish that the beneficiary has achieved the requisite national and international acclaim in her field. Counsel submits a brief and additional evidence in support of the appeal.

## **I. The 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 regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

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<sup>1</sup> On the Form I-129, Petition for a Nonimmigrant Worker, the petitioner indicating that it was seeking classification of the beneficiary as an alien of extraordinary ability in sciences, education, business or athletics. In a request for evidence issued on March 16, 2010, the director requested that the petitioner clarify whether it intended to request O-1A classification as opposed to the O-1B classification for aliens of extraordinary ability in the arts or extraordinary achievement in the motion picture or television industry. In response to the RFE, the petitioner submitted an amended Form I-129. Counsel stated in a letter dated April 15, 2010 that the beneficiary is an alien of extraordinary ability in the arts and that the petitioner marked the O-1A classification in error. The director applied the regulations pertaining to aliens of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv) in adjudicating the petition.

*Arts* includes any field of creative activity or endeavor such as, but not limited to, fine arts, visual arts, culinary arts, and performing arts . . . .

*Extraordinary ability in the field of arts* means distinction. Distinction means a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

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

*Evidentiary criteria for an O-1 alien of extraordinary ability in the arts.* To qualify as an alien of extraordinary ability in the field of arts, the alien must be recognized as being prominent in his or her field of endeavor as demonstrated 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 a consultation from an appropriate labor 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. 41818, 41820 (August 15, 1994).

Therefore, in determining the beneficiary's eligibility under these criteria, the AAO will follow a two-step approach wherein we will first look to see whether the petitioner has submitted evidence to satisfy the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A) or, in the alternative, evidence to satisfy at least three of the six regulatory criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). If the petitioner submits evidence to satisfy the plain language of the requisite number of criteria, then the AAO will determine whether the quantity and quality of the evidence is consistent with the statutory requirement of "extensive documentation," and the regulatory definition of "extraordinary ability in the arts."

## **II. Extraordinary Ability in the Arts**

The sole issue addressed by the director is whether the petitioner established that the beneficiary qualifies as an alien of extraordinary ability in the arts through submission of evidence to satisfy the regulatory requirements at 8 C.F.R. § 214.2(o)(3)(iv)(A) or (B).

In denying the petition, the director found that the petitioner had failed to satisfy any of the eligibility requirements set forth at 8 C.F.R. §§ 214.2(o)(3)(v)(A) or (B). The director noted that while the evidence submitted related to at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B), the quality of the evidence submitted was insufficient to establish that the beneficiary's achievements and recognition in the arts have risen to the level where she is recognized as renowned, leading or well-known in the field as a fashion designer.

Upon review, and for the reasons discussed herein, the AAO concurs with the director's determination. The petitioner has not established that the beneficiary meets the eligibility requirements as an alien with extraordinary ability in the arts pursuant to the regulatory definition and evidentiary criteria applicable to the O-1 visa classification.

*Evidence that the alien has been nominated for, or has been the recipient of, significant national or international awards or prizes in the particular field such as an Academy Award, an Emmy, a Grammy or a Director's Guild Award.*

If the petitioner establishes through the submission of 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)(iv)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification.

The petitioner submitted evidence of the beneficiary's awards at the time of filing, but did so without reference to the eligibility criteria and without attempting to establish the significance of the awards. The awards were in the form of "diploma" certificates the beneficiary received from organizations in Russia, Armenia and Uzbekistan prior to her relocation to the United States in 2003. In response to the director's request for additional evidence (RFE) issued on March 16, 2010, the petitioner submitted a letter dated September 10, 2007, claiming that three of the beneficiary's awards satisfy the regulation at 8 C.F.R. § 214.2(o)(3)(v)(A). Specifically, the petitioner stated:

International Trade Exhibition & Fashion Show "Crystal Dress" – This is a National Acclaimed Award given by Television Broadcasting Companies and a chain of Jewelry Organizations honoring highest achievement for dress design to be displayed in the Media. It is the equivalent of an American Emmy Award for costuming and design.

\* \* \*

Philanthropic Fund "Russian Silhouette" – This Award was given to [the beneficiary] for Collection of Design exhibited by National Advertising agencies to honor her extraordinary

accomplishment in Costume Concept Design. This would be the equivalent to the American Cleo Awards for high achievement in the Advertising field.

New Russia – Era of Renaissance (Atex Fashion Center) – This Award honors [the beneficiary's] contribution to Philanthropic Events which raise money for charitable causes and is the US equivalent of the Costume Designers Guild Award.

The petitioner's response to the RFE also included a letter from counsel dated April 15, 2010. In this letter, counsel identified these same awards as evidence of the beneficiary's receipt of "lesser nationally or internationally recognized prizes or awards." Counsel made no claim that the beneficiary's awards rise to the level of, for example, an Emmy Award or Academy Award.

The director determined that the petitioner did not submit evidence to establish that the beneficiary meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A). In reaching this conclusion, the director noted that the petitioner had specifically identified the beneficiary's awards as "lesser awards." Moreover, the director noted that the record lacks information regarding the significance of the beneficiary's awards received overseas, such as the number of contestants, the criteria for entry and placement, or indicia of claimed comparability to American Emmy awards, such as evidence of stipends, privileges, ceremonies or publicity accompanying the awards.

On appeal, counsel for the petitioner asserts that the beneficiary's awards from the International Trade Exhibition & Fashion Show "Crystal Dress" are equivalent to American Emmy Awards and that the beneficiary's award from the Philanthropic Fund "Russian Silhouette" is equivalent to an American Cleo Award for high achievement in the advertising field. Counsel emphasizes that "each country has its own awards which are equivalent to the US Oscar, Emmy and Grammy. Each country presents the awards differently not all are done the same as we are familiar with in the United States."

In support of the appeal, the petitioner resubmits the above-referenced award diplomas. The International Trade Exhibition & Fashion Show "Crystal Dress" was held in Tashkent, Uzbekistan. The award diplomas recognize the beneficiary as the fashion show participant with "the best collection" and for the "grand prize" for her "Behind the Clouds" collection. The diplomas are signed by the Chairman of the Academy of Arts of Uzbekistan and bear the names and logos of the Association Guild of Jewelers of Russia, the TV & Broadcasting Company of Uzbekistan, the Confederation of Jewelers of CIS Countries, and "Jewelers" Non-Government Organization. There are no dates on the award certificates.

The third award emphasized on appeal is a Diploma awarded by "Philanthropic Fond 'Russian Silhouette.'" The award states that the beneficiary "is rewarded for participation in the International Competition" for her collection "Behind the Sky." The award indicates a date of September 2000-September 2001, and indicates a semi-final held in the city of Yerevan. It is signed by the President of the awarding organization and indicates that the competition was supported by Advertising Agency LBL Media.

The petitioner submits a partially translated brochure for the 2002 International Trade Exhibition & Fashion Show "Crystal Dress" which indicates that the beneficiary served as Armenia's representative at the event. The other countries represented included Uzbekistan, Kazakhstan, Ukraine, Georgia, Russia, and Azerbaijan.

Upon review, the AAO concurs with the director that the evidence of record fails to establish that the beneficiary has been nominated for or received significant national or international awards or prizes in her field comparable to an Academy Award, an Emmy, a Grammy or a Director's Guild Award.

The evidence submitted on appeal confirms that the International Trade Exhibition & Fashion Show "Crystal Dress" was an international event, but the record does not establish that winning an award at this event is comparable in stature to an Emmy award, as claimed by the petitioner. The record does not identify the selection process for participation in the event, or include any publicity or media coverage surrounding the event. The petitioner has not provided evidence that the beneficiary received recognition for her achievement beyond receiving the diploma certificates from the awarding organization. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). Without evidence of the stature of the award within the beneficiary's industry, the AAO cannot find support for a conclusion that the beneficiary's awards are equivalent to an American Emmy award.

Moreover, the AAO cannot overlook counsel's identification of these awards as "lesser nationally or internationally recognized awards," in his letter accompanying the petitioner's RFE response. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

As the petitioner has not established 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)(iv)(B).

*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 determining whether the petitioner submitted evidence to meet the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1), the director acknowledged that the beneficiary had participated as a designer in "notable productions" such as [REDACTED]. However, the director noted that the petitioner failed to submit evidence that the beneficiary performed services as a lead or starring participant in such productions. In addition, the director acknowledged the beneficiary's upcoming participation as a designer in the films [REDACTED]. The director observed that the petitioner failed to provide evidence to establish that the beneficiary will perform services as a lead or starring participant in these productions, and failed to submit requested copies of the beneficiary's contracts for these productions.

On appeal, counsel does not address this criterion or the director's findings with respect to this criterion, and the AAO will consider the issue conceded. Counsel and the petitioner have consistently indicated that the beneficiary designed tattoo patterns and contributed to costume designs for a number of notable motion pictures and television shows, including those listed above as well as [REDACTED]

However, the record contains little independent evidence of the beneficiary's participation in these projects, much less evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts or endorsements establishing that she was a lead or starring participant in such productions.

The record does contain multiple letters from [REDACTED] indicates that he has worked with the beneficiary on different projects in which she has played a "key leading role as a Lead Designer/Pattern Maker." He states that she "contributed to" the films *Catwoman*, *Memoirs of a Geisha*, *Flags of Our Fathers*, *No Country for Old Men*, *I Am Legend* and *Babylon A.D.* This letter falls significantly short of providing the required documentary evidence of the beneficiary's work on these productions.

The petitioner also submitted letters from Emmy-winning makeup and effects artist [REDACTED] and Oscar-winning [REDACTED] indicates that the beneficiary provided him with "costume consultation" for the films [REDACTED]

[REDACTED] states that he has relied on the beneficiary's assistance in creating and designing "fat suits and special fabrics" for the film *Van Helsing*, and notes that she has worked on "some of the industry's most prestigious film projects." However, neither of these letters establishes the beneficiary's lead or starring participation as a fashion or costume designer for the named films. Further, the plain language of the regulation specifically requires submission of documentary evidence in the form of critical reviews, advertisements, publicity releases, publications, contracts, or endorsements. The petitioner cannot rely on testimonial evidence to satisfy this criterion.

In addition, as noted by the director, the only evidence submitted with respect to the beneficiary's upcoming projects is her contract with the petitioning entertainment and management company. The contract indicates that the beneficiary's services as a costume designer have been retained for four upcoming motion pictures, including *Big Momma's House 3* and *Ninja Turtles 3*. However, the petitioner declined to submit the requested contracts between the beneficiary and/or petitioner and the filmmakers. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)). 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).

Based on the foregoing, the petitioner has not established that the beneficiary has performed and will perform services as a lead or starring participant in productions or events which have a distinguished reputation.

*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 plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2) requires the petitioner to demonstrate that the beneficiary has achieved national or international recognition for achievements through submission of critical reviews or other published materials *by or about the individual* in major newspapers, trade journals, magazines, or other publications. In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in major newspapers, magazines or other major publications. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as *The New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>2</sup>

In response to the director's request for evidence the petitioner indicated that "major US publications, including *People Magazine*, and *FHM* have in the United Kingdom featured [the beneficiary's] work. Because of these articles, Tattoo clothing, is virtually exclusively the product of [the beneficiary's] work, they are, in effect, articles about [the beneficiary]." The petitioner provided evidence that the Sleeves "tattoo clothing" line, a division of [REDACTED], has been featured or mentioned in the magazines *People*, *L'uomo Vogue*, *Esquire*, and *FHM* (American and United Kingdom editions). Counsel emphasized that the tattooed shirts featured in the articles, including a shirt worn by actor [REDACTED] were the product of the beneficiary's own designs.

While the record includes letters from [REDACTED] indicating that the beneficiary provided major input into his company's launch of the "Sleeves" apparel line, the previously submitted published evidence does not satisfy the plain language of the regulation. The petitioner may submit published materials "by or about the individual." 8 C.F.R. § 214.2(o)(3)(iv)(B)(2). The director noted that none of the articles submitted were "by or about" the beneficiary. One of the articles is about [REDACTED] two of the articles credit [REDACTED] as the designer of the apparel pictured, and none of the articles mention the beneficiary's name. Counsel's assertion that such articles are "in effect" articles about the beneficiary is unpersuasive.

The AAO notes that the petitioner's response to the RFE included one foreign language newspaper article that appears to be written in Russian. Because the petitioner failed to submit a certified translation of the document, the AAO cannot determine whether the evidence supports the petitioner's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

On appeal, the petitioner submits excerpts from the November-December 2001 and August-September 2002 issues of the Russian magazine *Caravan*, which counsel describes as a top international fashion magazine. These issues feature photo layouts with costumes credited to the beneficiary. The petitioner also provides a copy of an interview with the beneficiary published in *Natalie*, a Ukrainian entertainment and lifestyle magazine, in 2003. The article refers to the beneficiary as an artist and designer who is recognized "as a professional and a true master of her work."

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<sup>2</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

Upon review, the AAO finds that the interview with the beneficiary published in *Natalie* magazine satisfies the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(2).

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

The director noted that although the petitioner indicated that the beneficiary has worked on distinguished productions by distinguished employers or organizations, the evidence of record does not establish that the beneficiary has performed and will perform in lead, starring or critical roles for these organizations. The director noted that the evidence was lacking for the same reasons the evidence was found deficient to satisfy the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(1).

On appeal, counsel states that the beneficiary has performed in a leading and critical role for [REDACTED] and that "due to her leading role and outstanding performance it lead [sic] to the success and launching of apparel which has received international acclaim and orders." Counsel submits that the letter from [REDACTED] and other "new evidence" is sufficient to satisfy this criterion. Counsel does not refer to any previously submitted evidence or the director's finding that the evidence submitted prior to adjudication was insufficient to establish eligibility under this criterion.

In a letter dated May 27, 2010, [REDACTED] indicates that he is the president and owner of [REDACTED] formerly a division of [REDACTED]. He indicates that he has been nominated for an Academy Award and an Emmy award, and that he won a Technical Achievement Academy Award in 2008 for his work in the creation of transfer techniques for creating and applying 2D and 3D makeup. With respect to the beneficiary, he states:

I have had the privilege of working with [the beneficiary] on different projects. [The beneficiary] has played a key leading role as a Lead Designer/Pattern Maker. It was due to her outstanding and inventive cutting-edge design contribution which resulted and produced our line of tattoo clothing. Due to the input and efforts of [the beneficiary], I launched an apparel line which has received international acclaim and orders.

As noted above, [REDACTED] also mentioned the beneficiary's contribution to *Catwoman*, *Memoirs of a Geisha*, *Flags of Our Fathers*, *No Country for Old Men*, *I Am Legend* and *Babylon A.D.* He states that he "continue[s] to appreciate [the beneficiary's] crucial role in her position as designer, which leads to the creative results of our company."

Upon review, [REDACTED] letter provides insufficient information regarding the nature and scope of the beneficiary's services for his company to establish that she has held a lead or critical role with the organization. While the beneficiary's stated title of "lead designer" suggests a full-time position with the company, USCIS records reflect that the petitioner has been the beneficiary's only O-1 employer and the circumstances of her

employment with [REDACTED] have not been explained. Further, as noted above, the submitted published articles about the [REDACTED] product credit [REDACTED] as the product's designer.

In addition, the plain language of this regulatory criterion requires that the petitioner submit evidence that the alien *will perform* in a lead, starring, or critical role for organizations and establishments that have a distinguished reputation. The petitioner has submitted a copy of its contract with the beneficiary, which indicates that she has been retained to provide services as a costume/suit designer for four motion pictures, including three movies being developed by major studios such as [REDACTED] and [REDACTED]. The record does not contain contracts between the beneficiary and these studios or otherwise provide evidence of the nature of the beneficiary's design role for these movies, such as evidence that the beneficiary has been retained as the lead costume designer. The AAO cannot conclude based on the limited evidence submitted that the beneficiary will perform in a lead, starring or critical role for organizations and establishments that have a distinguished reputation. Again, 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. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm'r 1972)).

*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*

The director noted that the petitioner did not submit evidence relevant to the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(4), and the AAO agrees with this finding. The petitioner has not addressed this criterion on appeal.

*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 acknowledged the petitioner's submission of letters from experts in the field, including [REDACTED]. However, the director found that the letter "appears to be a general endorsement" and "does not indicate that the beneficiary has significant recognition for any specific achievements."

On appeal, the petitioner submits two letters from the [REDACTED] both dated May 27, 2010. One letter serves mainly to confirm the beneficiary's membership in the union, while the other describes the beneficiary's achievements, and specifically mentions her first place and grand prize awards in the international competitions "Russian Silhouette" and "Crystal Dress." The AAO finds that the beneficiary's awards in international competitions, taken together with this endorsement from the [REDACTED] in the beneficiary's home country, provide sufficient evidence to meet the plain language of the regulatory criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(5).

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

The director determined that the evidence submitted was insufficient to substantiate the weekly salary figures provided on her contract with the petitioner, and insufficient to establish that the stated salaries are high in relation to others in the field. On appeal, counsel states that "documentation pertaining to a high salary for the beneficiary's work has not been submitted" and that "this is not a critical requirement to establish sustained national or international acclaim."

Based on the foregoing, the petitioner has submitted evidence that satisfies the plain language of only two of the six regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B). The petitioner has not established that the beneficiary has achieved distinction as a fashion or costume designer to the extent that she enjoys recognition substantially above that ordinarily encountered in her field, or that she is prominent in the field to the extent that she is considered renowned, leading, or well-known.

If the petitioner submits evidence to satisfy the plain language of the requisite number of criteria, then the AAO will determine whether the quantity and quality of the evidence is consistent with the statutory requirement of "extensive documentation," and the regulatory definition of "extraordinary ability in the arts." Here, the submitted evidence did not satisfy the plain language of at least three of the six applicable criteria.

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)(iv)(B). The majority of the documentary evidence in the record relates to the beneficiary's work as a fashion designer in her native Armenia between 2000 and 2003, and establishes that she received a degree of national recognition in her field during that time. While the petitioner and counsel claim that the beneficiary has since worked on a number of noteworthy motion pictures in the United States, the beneficiary's more recent career achievements are largely uncorroborated by evidence. The evidence of the beneficiary's recent career achievements consists primarily of unsupported assertions. The minimal evidence submitted does not significantly distinguish the beneficiary from other working costume designers and is insufficient to establish that she is recognized as leading or well-known in the field.

The AAO emphasizes that four out of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(v)(B) require the petitioner to submit various types of published materials to establish the beneficiary's recognition, such as critical reviews, advertisements, publicity releases, newspaper, magazine or trade journal articles. Therefore, it is significant that the petitioner has submitted little published evidence regarding the beneficiary with the exception of one published magazine interview from 2003. Absent evidence that the regulatory criteria are not applicable to the beneficiary's occupation, pursuant to 8 C.F.R. § 214.2(o)(3)(v)(C), the petitioner must submit some published materials "about" the beneficiary in order to establish her eligibility for this classification. It is not reasonable to include the beneficiary among the group of fashion or costume designers recognized in the field as leading, renowned or well-known if the petitioner does not establish that she has received significant independent recognition based on her reputation or achievements.

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 evidence does not distinguish the beneficiary as a designer who has a high level of achievement in the arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered. Accordingly, the appeal will be dismissed.

### **III. Contract Requirements**

A remaining issue in this matter is whether the petitioner, which appears to have filed the petition as a company in business as an agent pursuant to 8 C.F.R. § 214.2(o)(2)(iv)(E)(2), complied with the requirement that it submit copies of contracts between the beneficiary and her actual employers.

An O-1 petition "may only be filed by a United States employer, a United States agent, or a foreign employer through a United States agent." 8 C.F.R. § 214.2(o)(2)(i). The regulation at 8 C.F.R. § 214.2(o)(2)(iv)(E) imposes the following requirements on petitions filed by United States agents:

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

- (1) An agent performing the function of an employer must provide the contractual agreement between the agent and the beneficiary which specifies the wage offered and the other terms and conditions of employment of the beneficiary.
- (2) A person or company in business as an agent may file the petition involving multiple employers as the representative of both the employers and the beneficiary if the supporting documentation includes a complete itinerary of the event or events. The itinerary must specify the dates of each service or engagement, the names and addresses of the actual employers, and the names and addresses of the establishments, venues or locations where the services will be performed. A contract between the employers and the beneficiary is required. The burden is on the agent to explain the terms and conditions of the employment and to provide any required documentation.
- (3) A foreign employer who, through a United States agent, files a petition for an O nonimmigrant alien is responsible for complying with all of the employer sanctions provisions of section 274A of the act and 8 CFR part 274a.

The petitioner is self-described as an "entertainment and management company" with five employees. There is nothing in the record to suggest that the petitioner directly employs the beneficiary as a designer. Rather, the

evidence suggests that it secures work for her with her ultimate employers. The exclusive contract the petitioner submitted indicates that the beneficiary has been retained to provide services for four feature films through January 2011, with a different guaranteed salary for each project.

In the request for evidence issued on March 16, 2010, the director requested a complete itinerary for all events, the exact periods of each service, and copies of contracts for each individual motion picture to establish the beneficiary's role in the respective productions. In response, the petitioner re-submitted its contract with the beneficiary and stated that "the agreement clearly states the project, duties, start and end date for each project."

Upon review, the petitioner has not satisfied the requirements applicable to agents at 8 C.F.R. § 214.2(o)(2)(iv)(E)(2). The record does not establish that the petitioner is the beneficiary's employer or that it is an agent functioning as her employer. Therefore, the petitioner is required to submit an itinerary which specifies the dates of each service or engagement, the names and addresses of the actual employers, and copies of contracts between the employers and the beneficiary. The petitioner bears the burden to explain the terms and conditions of the employment and to provide any required documentation.

Here, the director requested the evidence required by 8 C.F.R. § 214.2(o)(2)(iv)(E)(2), and the petitioner declined to submit it. The exclusive contract between the petitioner and beneficiary satisfies the petition's evidentiary burden with respect to 8 C.F.R. § 214.2(o)(2)(ii)(B), but not the additional evidentiary requirements applicable to agents. 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). For this additional reason, the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)(noting that the AAO reviews appeals on a *de novo* basis).

### III. Conclusion

We acknowledge that USCIS previously approved several petitions for O-1 status filed on behalf of the beneficiary by the petitioning employer. The AAO notes that prior approvals do not preclude USCIS from denying an extension of the original visa based on reassessment of the petitioner's or beneficiary's qualifications. *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004). The mere fact that USCIS, by mistake or oversight, approved a visa petition on one occasion does not create an automatic entitlement to the approval of a subsequent petition for renewal of that visa. *Royal Siam Corp. v. Chertoff*, 484 F.3d 139, 148 (1st Cir 2007); *see also Matter of Church Scientology Int'l.*, 19 I&N Dec. 593, 597 (Comm'r. 1988).

Each nonimmigrant petition filing is a separate proceeding with a separate record of proceeding and a separate burden of proof. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). In the present matter, the director reviewed the record of proceeding and concluded that the petitioner was ineligible for an

extension of the nonimmigrant visa petition's validity based on the petitioner's failure to submit evidence that satisfies the regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iv). In both the request for evidence and the final denial, the director clearly articulated the objective statutory and regulatory requirements and applied them to the case at hand. Despite any number of previously approved petitions, USCIS does not have any authority to confer an immigration benefit when the petitioner fails to meet its burden of proof in a subsequent petition. *See* section 291 of the Act.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director approves the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Based on the lack of required evidence of eligibility in the current record, the AAO finds that the director was justified in departing from the previous petition approvals by denying the instant petition.

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. When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. at 1043, *aff'd*. 345 F.3d 683 (9th Cir. 2003).

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.