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

(b)(6)

[redacted]

DATE: JUN 19 2014 Office: CALIFORNIA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Petition for a Nonimmigrant Worker Pursuant to 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:

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INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner, a dance studio, filed this petition seeking to classify the beneficiary as an O-1B 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. The petitioner seeks to employ the beneficiary in the position of "ballroom dance professional" for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary qualifies for classification as an alien of extraordinary ability in the arts.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, the petitioner asserts that the beneficiary is eligible for the classification sought. The petitioner submits a brief and additional evidence in support of the appeal.

For the reasons discussed below, the AAO will dismiss the appeal.

I. The Law

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of 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 . . . and whose achievements have been recognized in the field through extensive documentation, and 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:

> *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 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; or

(C) If the criteria in paragraph (o)(3)(iv) 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.

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; *cf. Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination).

II. The Alien's Area of Extraordinary Ability

Although not addressed by the director, we note as a preliminary matter that the petitioner claims the beneficiary is an alien of extraordinary ability in the arts at 8 C.F.R. § 214.2(o)(3)(iv).[1] In response to the director's RFE requesting clarification on the area of the beneficiary's field of extraordinary ability, the petitioner explained:

> To clarify, the term "Dancesport" denotes competitive ballroom dancing, as contrasted to social or exhibition dancing. Competitive dance or dancesport events are sanctioned and regulated by organizations at the national and international level, such as the World Dance Council and the World DanceSport Federation.
>
> The name was created primarily to reflect the competitive nature of this area of dance, as "sport" implies or infers a game or competition element, and not really to make it an athletic sporting event. Although the physical demands of dancesport have been the subject of scientific research, which paralleled the rigors of preparation and participation as well as the endurance, stamina and physical fitness required for competitive dancing to that required for many track and field events, tennis, etc., these comparisons are strictly to emphasis [*sic*] the intensive effort required of this artistic performing dance discipline, and to gain respect for the discipline. There are few "competitions" of this nature in other dance disciplines, e.g., ballet, jazz, modern, and yet, the training required for competitive dancing is intensive and extensive.

[1] The AAO reviews each appeal on a *de novo* basis. *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

> The name was also invented to raise the profile of and general attitude towards competitive dance; to differentiate competitive dance from social dancing; and indeed to help competitive ballroom dancing gain Olympic recognition. The desire and goal of acceptance into the Olympics is much in order to give competitive dancing and its participants the recognition, credibility and respect it deserves.

We disagree that the beneficiary's field of competitive ballroom dancing, otherwise known as Dancesport, can be appropriately classified as in the arts.

While dancers in stage, film, and television productions are considered performing artists for the purposes of the O-1 classification, we find that dancers in the field of competitive ballroom dancing are more appropriately classified as athletes in the field of athletics. The petitioner has neither claimed nor submitted evidence that the beneficiary will be performing as a dancer in any other capacity than that of a competitive ballroom dancer and instructor.

There are numerous references in the record to "Dancesport" as a sport, and Dancesport dancers as "athletes." For instance, the evidence reflects, and the petitioner acknowledges, that the International Olympic Committee (IOC) has formally recognized DanceSport as a sport under consideration for inclusion in the Olympic Games, although it is not yet a medal sport in the Olympic Games. The recognition of DanceSport by the IOC is a clear indication that DanceSport has evolved into an acknowledged form of athletic competition. The rules and regulations of the World DanceSport Federation (WDSF) (formerly known as the International Dancesport Federation (IDSF)) and USA Dance Inc., which are some of the international and national governing bodies of Dancesport, refer to Dancesport dancers as "athletes."

The petitioner asserts that, despite its name, Dancesport is "not really" an athletic sport. The petitioner asserts the term "Dancesport" was invented to reflect the competitive nature of this area of dance in contrast to social or exhibition dancing, to emphasize the "intensive effort required of this artistic performing dance discipline," to gain overall attention and respect for the discipline, and to help it gain Olympic recognition. The petitioner's assertions are unpersuasive. The petitioner has not explained why Dancesport should not be considered a sport despite its name, competitive nature, IOC recognition, and the intensive physical training and fitness requirements that the petitioner acknowledges is equal to other athletes. We acknowledge that Dancesport involves a degree of artistry and creativity, however, the same can also be said for many other competitive sports. In addition, the petitioner claims that Dancesport athletes are eligible for the "Master of Sports" title, which is one of the highest ranks for athletes given by the Government of the Ukraine. The petitioner's claim that Dancesport athletes are eligible to receive the "Master of Sports" title appears contrary to its assertion that Dancesport is not an athletic sport.

There may be instances in which a competitive ballroom dancer seeks to enter the United States to provide services as an entertainer or performing artist, rather than as a competitive dancer-athlete. The nature of the intended events or activities in the United States is critical in determining whether the beneficiary is entering the United States to provide services in the field of athletics or in the field of the arts.

Based on the nature of the beneficiary's intended employment in the United States, we cannot conclude that the beneficiary will be providing services in the field of the arts. As the beneficiary is coming to the United States to train others for and participate in competitive athletic events, the petitioner should have requested review of the petition according to the extraordinary ability standard and criteria applicable to the field of athletics pursuant to 8 C.F.R. § 214.2(o)(3)(iii). Therefore, the petitioner's request to classify the beneficiary as an alien of extraordinary ability in the arts is improper.

The regulations clearly prescribe different evidentiary criteria and standards of review for aliens of extraordinary ability in the arts as opposed to aliens of extraordinary ability in athletics. The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, 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 extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts).

In a policy memorandum, the legacy Immigration and Naturalization Service (INS) emphasized:

> It must be remembered that the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession. The O-1 classification is substantially higher than the old H-1B prominent standard. Officers involved in the adjudication of these petitions should not "water down" the classification by approving O-1 petitions for prominent aliens.

Memorandum, Lawrence Weinig, Acting Asst. Comm'r., INS, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

A petitioner sponsoring an O-1 athlete cannot seek consideration of the petition under the lower standard of "distinction" by mischaracterizing the beneficiary's field as arts, whether by mistake or intention. The petitioner has not sought the correct O-1 visa classification for the beneficiary, nor has it claimed or submitted evidence to establish that the beneficiary meets the criteria and standards for individuals of extraordinary ability in athletics as set forth in the regulations at 8 C.F.R. § 214.2(o)(iii)(A) or (B). Accordingly, the petition will be denied for this additional reason.

III. Consideration of Evidentiary Criteria and Extraordinary Ability in the Arts

The director appropriately reviewed the petition according to the classification requested on the Form I-129. USCIS will only consider the visa classifications that the petitioner annotates on the petition. The Ninth Circuit has determined that once USCIS concludes that an alien is not eligible for the specifically requested classification, the agency is not required to consider, *sua sponte*, whether the alien is eligible for an alternate classification. *Brazil Quality Stones, Inc., v. Chertoff*, Slip Copy, 2008 WL 2743927 (9th Cir. July 10, 2008).

As the director did not raise the foregoing issues in her decision, the AAO will nevertheless review the petitioner's claim that it satisfied the evidentiary requirements and lower standard of "distinction" applicable to aliens of extraordinary ability in the arts.

To establish that the beneficiary has extraordinary ability in the arts, the petitioner must establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B).

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(A), if the petitioner establishes through the submission of documentary evidence that the beneficiary has been nominated for or has been the recipient of, significant national or international awards or prizes in the particular field pursuant to, then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The regulation lists an Academy Award, an Emmy, a Grammy, or a Director's Guild award as examples of qualifying significant awards or prizes.

The director found that the petitioner failed to submit sufficient probative evidence to establish that the beneficiary's prizes, placements, and awards are equivalent to those listed at 8 C.F.R. § 214.2(o)(3)(iv)(A). On appeal, the petitioner does not contest or address the director's finding with respect to 8 C.F.R. § 214.2(o)(3)(iv)(A). Therefore, the petitioner has abandoned this particular claim.[2]

Accordingly, 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).[3]

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[2] *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (finding the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

[3] Although we will review the evidence under the criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) pursuant to the petitioner's claims, we note the difficulties of evaluating the submitted evidence given that the beneficiary's achievements in Dancesport are more appropriately considered in the field of athletics rather than the field of performing arts. This difficulty is further compounded by the petitioner's failure to consistently identify and articulate under which criteria at 8 C.F.R. § 214.2(o)(3)(iv)(B) it is claiming eligibility. For example, in the petitioner's initial letter in support of the petition, the petitioner categorized the submitted evidence under the criteria found at 8 C.F.R. § 214.2(o)(3)(iii)(B), relating to aliens of extraordinary ability in the fields of science, education, business, or athletics. Specifically, the petitioner submitted evidence under 8 C.F.R. §

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*

The director found that the petitioner failed to establish eligibility for the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*1*). On appeal, the petitioner does not contest or address the director's finding with respect to this criterion. Therefore, the petitioner has abandoned this particular claim.[4]

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*

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*), the petitioner submitted the article published by While this article is about the beneficiary, the petitioner failed to establish that it was published by a *major* newspaper, as required by the plain language of the regulation. The petitioner submitted no information about the circulation or distribution of this particular newspaper to establish that it can be considered a "major" newspaper.

The petitioner asserts that the beneficiary was selected for and appeared on the television dance show in 2008. As evidence, the petitioner submitted YouTube screenshots of the beneficiary's performance on this show, as well as letters from which broadcast the show.[5] The letters from Ms. state that the beneficiary "was one of [the show's] cast of professional dancers during [the] 2008 season." However, letters from the show's producer do not constitute "critical reviews or other published materials by or about the individual in major newspapers, trade journals, magazines, or other publications" as required by the plain language of the criterion.

The petitioner submitted background information about ' describing how aspiring dancers can audition for the show and, if selected, compete against other contenders before a jury and viewers. This information is about the show, rather than about the beneficiary. *See Negro-Plumpe v. Okin,* 2008 WL 2354694 (D. Nev.) (upholding a finding that articles about a show are not "about" the actor).

Overall, it cannot be concluded that the petitioner established eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*2*).

214.2(o)(3)(iii)(B)(*1*) (receipt of nationally or internationally recognized prizes or awards for excellence), 8 C.F.R. § 214.2(o)(3)(iii)(B)(*2*) (memberships in associations in the field which require outstanding achievements of their members), and 8 C.F.R. § 214.2(o)(3)(iii)(B)(*6*) (contributions of major significance in the field).

[4] *See Sepulveda*, 401 F.3d at 1228; *Hristov*, No. 09–CV–27312011, 2011 WL 4711885 at *9.

[5] The petitioner provided a link to the YouTube site, but the link was not accessible.

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.*

Under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*), the petitioner asserts that the beneficiary will perform in a lead, starring, or critical role for its studio. The petitioner submitted letters explaining its desire to have the beneficiary "take the leading role in the expansion of [its] young dancer program," modeled after the successful club/school models for children in and other European countries. The petitioner explained that the beneficiary's experience with dancesport clubs in the will be "crucial to our development of our program." The petitioner also asserted that the beneficiary would represent the company in the competitive dancesport arena pursuant to his full time employment. The petitioner stated that "[the beneficiary's] continued presence and performances on the professional competition dancefloor are part and parcel of his exceptional abilities and value to us, our organization, and the United States dance industry."

Furthermore, on appeal the petitioner states that the beneficiary has been a "contributing and important member of several organizations with distinguished reputations, including the . The petitioner also highlights that the beneficiary is the recipient of the has been the champion or finalist of four events, has qualified to participate in many events, and is a member of the

Upon review, the petitioner failed to establish the beneficiary's eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*)

The petitioner asserts that the beneficiary will play a "leading" role for its studio by "leading" the expansion of its young dancer program, which in turn will be "crucial" to the company's development of the program. However, the petitioner failed to establish that the beneficiary's role will, in fact, be leading or critical for its studio. While the petitioner has repeatedly characterized the beneficiary's role as "leading" and "crucial," the petitioner has not described with any specificity what the beneficiary's actual role will be with respect to developing the studio's young dancer program. Moreover, the petitioner failed to explain the role of the young dancer program with respect to its overall company. Conclusory assertions regarding the beneficiary's employment capacity are not sufficient. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

Notably, the petitioner's proposed employment contract states only that the beneficiary will be a dance instructor; it does not mention any duties related to developing a young dancer program. The petitioner submitted no objective evidence to corroborate its assertions regarding the beneficiary's purported "leading" or "crucial" role for the petitioner.

We are not persuaded by the petitioner's broad claim that the beneficiary will play a leading or critical role merely by representing the studio or the industry as a whole. Applying this logic, it can be said that almost any

Dancesport professional is playing a "leading" or "critical" role by representing their studio or the industry at large. To allow the broad application of the terms "leading" or "critical" to include almost any Dancesport professional would render the term meaningless.

With respect to the beneficiary's memberships, the petitioner failed to explain how membership alone constitutes performing a "lead, starring, or critical role" for the respective organizations. The petitioner has not asserted that the beneficiary plays any particular role(s) in the above organizations other than being a member. Similarly, the petitioner has not explained how the beneficiary's awards and participation in various Dancesport championships and events constitute performing a "lead, starring, or critical role" for organizations and establishments, within the ordinary meaning of that term.

Accordingly, the petitioner has not established that the beneficiary satisfies the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*3*).

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

The director found that the petitioner failed to establish eligibility for the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*4*). On appeal, the petitioner does not contest or address the director's finding with respect to this criterion. Therefore, the petitioner has abandoned this particular claim.[6]

> 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.*

The director determined that the evidence submitted meets the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). After careful review of the record, we agree with the director that the petitioner established eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). The petitioner submitted copies of various awards the beneficiary received in Dancesport competitions, including first place finishes in several competitions. These first place finishes constitute "significant recognition for achievements" from organizations in the field, pursuant to the plain language of the criterion.[7]

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[6] *See Sepulveda*, 401 F.3d at 1228; *Hristov*, No. 09–CV–27312011, 2011 WL 4711885 at *9.

[7] The petitioner claims that the beneficiary was awarded the title [redacted] However, the submitted evidence is insufficient to establish the beneficiary's actual receipt of this title. Specifically, the petitioner did not submit primary evidence of the award, i.e., a copy of the actual award/badge. The petitioner did not explain why it did not submit a copy of the award/badge, or why such evidence was not available.

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*

In the denial, the director discussed inconsistencies regarding the beneficiary's proposed salary under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). Specifically, the director observed that, according to the Form I-129, the petitioner will pay the beneficiary an annual salary of $55,000 per year. However, according to the petitioner's proposed employment contract, the beneficiary will be paid "$45 per hour based on lessons taught plus appropriate commissions," which the director found equates to approximately $93,000 per year. The director concluded that these inconsistencies prevented USCIS from determining the beneficiary's salary and whether it is considered high in relation to others in the field. The director also noted the lack of evidence establishing what the top percentage of dancers earned in the field.

On appeal, the petitioner does not offer an explanation for the inconsistencies regarding the beneficiary's proposed salary. The petitioner states only that the beneficiary "would command and would be paid a salary equal to or above the highest level, which has been accepted by the Service as sufficient evidence of this in numerous cases we are aware from our industry colleagues and own studio experience." The petitioner then lists seven names and receipt numbers, without any other information or corroborating evidence. The petitioner also submits wage information for dancers in support of the appeal.

Upon review, we cannot conclude that the petitioner established the beneficiary's eligibility under 8 C.F.R. § 214.2(o)(3)(iv)(B)(*5*). Foremost, the petitioner has not addressed nor submitted any documentary evidence to resolve the noted discrepancies regarding the beneficiary's salary. Without such clarification, we are precluded from making an accurate assessment of the beneficiary's eligibility under this criterion. 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). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*

Assuming that the beneficiary's salary will be $55,000 per year as stated on the Form I-129, we find that this salary is not considered high in relation to others in the field. On appeal, the petitioner submits a document from the Bureau of Labor Statistics indicating that the top 90th percentile hourly wage rate for dancers in the United States is $33.49. This is approximately equal to an annual salary of $69,659 per year. We note that the petitioner previously submitted an O*Net printout from the Department of Labor, Office of Foreign Labor Certification, reflecting that the Level 4 prevailing wage for dancers in the petitioner's area is $50,128 per year. While the beneficiary's salary exceeds the Level 4 prevailing wage for the petitioner's area, the prevailing wage only reflects the *average* wage paid to all similarly employed workers in the same occupation in the same area. 20 C.F.R. § 655.10. The prevailing wage, alone, is insufficient establish whether a salary is high in relation to others in the field, as required by the plain language of the regulation.

We note the petitioner's claim that USCIS has approved cases with similar salaries. However, the petitioner's claim is not persuasive or supported by documentary evidence. While the petitioner provided a

list of seven names and receipt numbers, the petitioner did not provide any documentary evidence to establish that USCIS did, in fact, find eligibility under this criterion and approve the petitions based upon the same set of facts present here. In making a determination of the beneficiary's eligibility, USCIS is limited to the information contained in the instant record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii).

Based on the above, we conclude that the petitioner failed to establish the beneficiary's eligibility under the criterion at 8 C.F.R. § 214.2(o)(3)(iv)(B)(*6*).

In summary, the petitioner has failed to establish eligibility under at least three of the six criteria found under the regulation at 8 C.F.R. § 214.2(o)(3)(iv)(B). Therefore, the proper conclusion is that petitioner has failed to satisfy the regulatory requirement of three types of evidence.

IV. Intent to Continue to Work in the Area of Extraordinary Ability in the United States

Finally, beyond the decision of the director, the petitioner failed to establish that the beneficiary is coming to the United States to continue work in the area of extraordinary ability. Section 101(a)(15)(O); 8 C.F.R. § 214.2(o)(1)(ii)(A).

In the instant matter, the petitioner claims that the beneficiary is coming to the United States to perform both as a professional dance instructor and a professional dancer.[8] According to the petitioner's letter submitted with the initial petition, the petitioner described the beneficiary's proposed employment as "to teach and coach all levels of professionals and students including beginners, intermediate, advanced students as well as coach dance teachers." In addition, the petitioner stated that the beneficiary "will represent [its] organization as Dancesport professional at national and international championships and events." The petitioner submitted a list of "proposed competitions" and stated: "We would anticipate [the beneficiary's] as a dancesport professional in many, if not all, of these events [*sic*]." Since the petitioner claims that the beneficiary will be employed as both a dance instructor as well as a competitive ballroom dancer, the petitioner must establish that the beneficiary has extraordinary ability in both areas.

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[8] The petitioner has provided inconsistent evidence regarding the beneficiary's proposed employment capacity in the United States. For instance, the petitioner's proposed employment agreement with the beneficiary specifically states that the beneficiary will be working as a dance instructor, eight hours a day, Monday through Friday, with additional Saturday instruction. The employment agreement also states vaguely that the beneficiary would be performing unspecified "services on certain weekends that may involve competitions and special events." Concurrently, the petitioner indicates that the beneficiary will be predominantly employed as a competitive ballroom dancer. The petitioner submitted a list of "proposed competitions" consisting of *all* calendar events from the , and stated that it expects the beneficiary will participate as a dancesport professional "in many, if not all, of the [listed] competitions." Considering that competitions are held every couple of days, or even on the same days, in various locations throughout the United States, it would be impossible for the beneficiary to compete in "many, if not all" of the listed competitions as a dancer, while concurrently working as a full-time dance instructor for the petitioning studio. This ambiguity raises some doubt regarding the actual nature of the beneficiary's proposed employment capacity in the United States.

While a professional dancer and a dance instructor certainly share knowledge of dance, the two rely on very different sets of basic skills. Thus, dance performance and dance instruction are not the same area of expertise. This interpretation, as applied to competitive athletes and athletic coaches, has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

This office has recognized that there exists a nexus between performing as a competitive athlete and teaching as an athletic coach. To assume that every athlete's area of expertise includes teaching or instruction, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved distinction as an athlete and has sustained that acclaim in the field of instruction, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the beneficiary's area of expertise.

Here, however, the petitioner has only discussed and submitted evidence pertaining to the beneficiary's ability as a professional dancer. The petitioner has not mentioned nor submitted any evidence pertaining to the beneficiary's ability as a dance instructor. The petitioner has therefore failed to establish that the beneficiary's area of extraordinary ability includes dance instruction. Consequently, the petitioner failed to establish that the beneficiary will be coming to the United States to *continue* work in his area of extraordinary ability. Section 101(a)(15)(O); 8 C.F.R. § 214.2(o)(1)(ii)(A). For this additional reason, the petition must be denied.

V. Conclusion

The evidence of record indicates that the beneficiary's area of extraordinary ability, competitive ballroom dance otherwise known as Dancesport, falls within the field of athletics rather than the arts. The beneficiary's occupation does not fall within the O-1 classification requested on the petition. In addition, the petitioner failed to establish that the beneficiary meets the evidentiary criterion at 8 C.F.R. 214.2(o)(3)(iv)(A), or at least three of the six criteria set forth at 8 C.F.R. § 214.2(o)(3)(iv)(B). Lastly, the petitioner failed to establish that the beneficiary is coming to the United States to continue work in the area of extraordinary ability, as the petitioner submitted no evidence to establish that the beneficiary's area of extraordinary ability includes dance instruction.

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; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.