



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

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

In Re: 21169180

Date: SEP. 08, 2022

Appeal of Vermont Service Center Decision

Form I-129, Petition for Nonimmigrant Worker (Extraordinary Ability – O)

The Petitioner, a skydiving center, seeks to temporarily employ the Beneficiary as a skydiving instructor, coach, and videographer. To do so, the Petitioner seeks to classify the Beneficiary as an O-1 nonimmigrant of extraordinary ability in athletics. This classification is available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. *See* Immigration and Nationality Act (the Act) section 101(a)(15)(O)(i), 8 U.S.C. § 1101(a)(15)(O)(i).

The Director of the Vermont Service Center denied the petition, concluding that the record did not contain evidence of the Beneficiary's receipt of a major, internationally recognized award, at least three of eight listed categories of documents, or comparable evidence of his eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(C).

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

As relevant here, section 101(a)(15)(O)(i) of the Act establishes O-1 classification for an individual who has extraordinary ability in the sciences, arts, education, business, or athletics that 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. Department of Homeland Security (DHS) regulations define "extraordinary ability in the field of science, education, business, or athletics" as "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." 8 C.F.R. § 214.2(o)(3)(ii).

Next, DHS regulations set forth alternative evidentiary criteria for establishing a beneficiary's sustained acclaim and the recognition of achievements. A petitioner must submit evidence either of "a major, internationally recognized award, such as a Nobel Prize," or of at least three of eight listed categories of documents. 8 C.F.R. § 214.2(o)(3)(iii)(A)-(B). If the petitioner demonstrates that the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, it may

submit comparable evidence in order to establish the individual's eligibility. 8 C.F.R. § 214.2(o)(3)(iii)(C).

The submission of documents satisfying the initial evidentiary criteria does not, in and of itself, establish eligibility for O-1 classification. *See* 59 Fed. Reg. 41818, 41820 (Aug. 15, 1994) (“The evidence submitted by the petitioner is not the standard for the classification, but merely the mechanism to establish whether the standard has been met.”). Accordingly, where a petitioner provides qualifying evidence satisfying the initial evidentiary criteria, we will determine whether the totality of the record and the quality of the evidence shows sustained national or international acclaim such that the individual is among the small percentage at the very top of the field of endeavor. *See* section 101(a)(15)(o)(i) of the Act and 8 C.F.R. § 214.2(o)(3)(ii), (iii).¹

II. ANALYSIS

The Beneficiary indicates current employment as a skydiving instructor in Chile since 2019 and previous experience competing in the sport in [REDACTED] since 2016. The Petitioner seeks to employ the Beneficiary as a skydiving instructor, coach, and videographer for a period of approximately 43 months.² The Petitioner's Working Agenda for 2021 to 2024 indicates the Beneficiary's duties will include coaching its skydiving students in multiple disciplines and competing in several national tournaments.

A. Eligibility Claims

Because the Petitioner did not establish that the Beneficiary has received a major, internationally recognized award, it must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1)-(8). Within its initial submission, the Petitioner claimed that the Beneficiary met four of the eight regulatory criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B): awards at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), memberships at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), published material at 8 C.F.R. § 214.2(o)(3)(iii)(B)(3), and employment in a critical or essential capacity at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7). In response to the Director's request for further evidence (RFE), the Petitioner requested that the Director consider comparable evidence for one additional criterion, judging at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The Director subsequently denied the petition, determining that the Petitioner established that the Beneficiary satisfied only one of the initial evidentiary criteria, awards under 8 C.F.R. § 214.2(o)(3)(iii)(B)(1). The record indicates that the Beneficiary placed third in the [REDACTED] category at the 2019 [REDACTED] National Parachuting Championships. Accordingly, the Petitioner demonstrated that the Beneficiary satisfies this criterion, and we agree with the Director's findings for this criterion.

¹ *See also Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010), in which we held that, “truth is to be determined not by the quantity of evidence alone but by its quality.”

² Pursuant to the regulations at 8 C.F.R. 214.2(o)(6)(iii), an approved petition for a noncitizen classified under section 101(a)(15)(O)(i) of the Act shall be valid for a period of time determined by the Director to be necessary to accomplish the event or activity, not to exceed 3 years.

On appeal, the Petitioner maintains the Beneficiary's eligibility for four additional criteria. In addition, for the first time the Petitioner contends that the Beneficiary meets two further criteria, scholarly articles at 8 C.F.R. § 214.2(o)(3)(iii)(B)(6) and high salary at 8 C.F.R. § 214.2(o)(3)(iii)(B)(8); however, as the Petitioner did not make these claims before the Director, either at the time it filed the petition or in response to the Director's RFE, we will not consider these claims in our adjudication of this appeal. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (providing that if "the petitioner was put on notice of the required evidence and given a reasonable opportunity to provide it for the record before the denial, we will not consider evidence submitted on appeal for any purpose" and that "we will adjudicate the appeal based on the record of proceedings" before the Chief); *see also Matter of Obaigbena*, 19 I&N Dec 533 (BIA 1988).

For the reasons discussed below, the Petitioner did not establish that the Beneficiary meets the requirements of at least three criteria.

B. Evidentiary Criteria

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

The Petitioner claimed that the Beneficiary satisfies this criterion based upon his membership in the [] Parachute Association [] and the [] Parachute Federation [] his skydiving qualifications, and his selection to participate in a Panam Sports Organization (PSO) High Performance Coaches Certificate 1 training course.

First, regarding the Beneficiary's memberships, the Petitioner provided the Beneficiary's [] membership card. In addition, it submitted several letters containing information relevant to this criterion. For instance, a "no objection" letter dated January 2021 from [] of the [] in satisfaction of the consultation requirement at 8 C.F.R. § 214.2(o)(5)(ii)(A), also provides that the Beneficiary is a member of the []. An additional letter from [] provided two [] websites which he asserts contain "criteria for membership and ratings," but his letter does not mention the requirements for membership in the organization, nor did the Petitioner provide screenshots of the websites supporting a claim that the [] requires outstanding achievements of its members, as judged by recognized national or international experts in the Beneficiary's field or an allied one.

Further, letters from [] and [], representatives of the [] confirm the Beneficiary's membership in that organization and include some of his competitive achievements in the sport. A letter from [] of [] the Beneficiary's employer, mentions the Beneficiary's "international experience in Championships and different skydive associations or federations," but does not specify in which associations or federations the Beneficiary has membership. An additional letter from [] provides that the Beneficiary is also a board member of [] but it does not assert that [] requires outstanding achievements, as judged by recognized national or international experts, to be appointed to its board.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2) requires “[d]ocumentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” Thus, the burden remains with the Petitioner to not only establish the Beneficiary’s membership but to also demonstrate that those memberships require outstanding achievements, as judged by recognized national or international experts in the field. Here, although the evidence presented confirms the Beneficiary’s membership in [] and [] and board membership in [] the Petitioner did not point out which, if any, evidence displays the membership requirements and explain how membership in those organizations requires outstanding achievements and reflects that judging is comprised of recognized national or international experts.

Next, pertaining to the Beneficiary’s skydiving qualifications, the Petitioner provided documentation regarding his certifications, ratings, and endorsements, including 2017 [] Coach Rating Course completion certificate; 2019 [] Skydiving Association parachutist Instructor D and AFF and TA Endorsements; 2021 [] License D and coach certifications and AFF 1 and TAN 1 ratings; 2021 [] instructor rating certificate; and International Parachutist Certificate for Certificate D and Packer B. However, he has not explained how achieving those certifications, ratings, and endorsements conveyed membership in an association, as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

Moreover, the Petitioner asserted that the Beneficiary’s selection to participate in a PSO High Performance Coaches Certificate 1 training course satisfies this criterion. It provided a letter dated March 2021 from [] of the Chilean Skydiving Federation and member of the Chilean National Olympic Committee, who confirms the Beneficiary’s anticipated participation in the training course, designed for “coaches, technicians and fitness trainers who work in high-performance” who are “chosen by [the] National Olympic Committee of each country.” It also provided promotional material from PSO showing the training course was scheduled for March to November 2021.³ However, the Petitioner cannot rely on those materials to establish the Beneficiary’s eligibility at the time of filing this petition in April 2021. A petitioner must establish that all eligibility requirements for the immigration benefit have been satisfied from the time of the filing and continuing through adjudication. 8 C.F.R. § 103.2(b)(1); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm’r 1971). Regardless, the Petitioner has not explained how the Beneficiary’s participation in the training course conveys membership in an association, as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2).

The documentation submitted further included general skydiving information, such as an excerpt from the 2019 [] Parachute Federation Industry Standard Training Operations Manual (TOM) pertaining to suggested training for [] candidates; the table of contents of the 2021 FAI Sporting Code, Section 5 – Skydiving; an article from <https://www.perrisblog.onehat.io> entitled “How to Become a Skydiving Instructor;” a piece from www.skydivecarolina.com entitled “How Much Experience Do Tandem Skydive Instructors Have;” and an item from www.skydivecarolina.com

³ The Petitioner also submitted screenshots from www.panamsports.org for a July 2020 course entitled “Sports Psychology for High Performance Coaches,” taught by sports psychologist Jose Maria Buceta, but the record does not indicate whether the Beneficiary attended this course.

entitled “What Can I Do With Each Skydiving License,” listing the four skydiving licenses, A,B,C,D, and the minimum number of skydives required for each, being 25, 50, 200, and 500, respectively. However, this evidence does not demonstrate the membership requirements of any associations.

On appeal, the Petitioner provides letters from skydiving instructor [redacted] with The Parachute School of [redacted] skydiving instructor [redacted] with [redacted] [redacted] skydiver [redacted] skydive jump pilot [redacted] additional letters from [redacted] [redacted] of [redacted] and [redacted] and additional materials from the websites of the [redacted] and [redacted]. As the Petitioner did not present these documents to the Director in its initial filing or in response to the Director’s RFE, we will not consider them in our adjudication of this appeal. *Soriano*, 19 I&N Dec. at 766; see also *Obaigbena*, 19 I&N Dec. at 533.

Finally, with respect to the Beneficiary’s third-place finish at the 2019 [redacted] National Parachuting Championships, the Petitioner emphasizes that in her letters, the [redacted] [redacted] stated the Beneficiary’s results were scored “by six [redacted]-rated judges.” However, the Petitioner has not explained how the Beneficiary achieving third place in a national skydiving championship conveyed membership in an association, as required by the plain language of the regulation at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2). The Petitioner submitted the same evidence in support of the awards criterion, which was appropriate given the nature of the [redacted] National Parachuting Championships as a competition in the Beneficiary’s field rather than an association in his field.

For the reasons outlined above, the record does not reflect that the Petitioner submitted documentation sufficient to demonstrate that the Beneficiary meets this criterion.

Published material in professional or major trade publications or major media about the alien, relating to the alien’s work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3).

The Director determined that the record does not reflect that the Petitioner submitted sufficient documentary evidence demonstrating that the Beneficiary meets this criterion.⁴

The Petitioner submitted articles dated between 2016 to 2021 pertaining to the Beneficiary from the print editions of the magazines [redacted] *Skydiver Magazine* and *Parachutist*. We find that the appearance of the Beneficiary’s name and photograph in the 2019 issue of [redacted] *Skydiver Magazine* does not rise to the level of an article about the Beneficiary. The magazine reported the individual and team results at the 2019 [redacted] National Parachuting Championships. While the article supports the

⁴ The Director determined that the Petitioner did not satisfy this criterion, in part, because the articles submitted did not “identify the beneficiary as a person who has risen to the very top of the field of skydiving.” However, this consideration does not relate to whether the Petitioner has met the plain language of this criterion. If the Petitioner had satisfied at least three criteria, which it did not, then we would have analyzed the published materials as part of the totality of the evidence to determine if the Beneficiary’s successes are sufficient to establish that he has extraordinary ability in the field of endeavor. Although we need not conduct such an analysis in this case, we briefly note that we do not find the record (including the evidence under this criterion) to be indicative of the sustained acclaim and recognition for achievements required for this highly restrictive classification.

Petitioner's claim of the Beneficiary's bronze medal at this national event, the Beneficiary was not identified by name in a caption to the photograph, and the photograph appears to be one of many photographs of the competition's individual and team winners. In addition, we note that while the Beneficiary's receipt of tandem coach, AFF, and tandem-instructor ratings, and A, C, and D licenses have been reported in the above-referenced magazines, mere mentions of the Beneficiary's name in a list of rating, licensing, or tournament results cannot be considered articles about the Beneficiary. Articles that are not about a noncitizen do not fulfill this regulatory criterion. *Cf. Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles regarding a show are not about the actor).

The Petitioner also provided a screenshot dated September 2020 from the Facebook page of The Rating Center with a photograph of the Beneficiary at [REDACTED] his employer, and the caption "Congratulations to United States Parachute Association – [REDACTED] Instructor [the Beneficiary]!" Another screenshot from the Facebook page of the [REDACTED] Parachute Federation dated 2016 contains the Beneficiary's name and a photograph of him at [REDACTED]. The Petitioner, however, did not provide supporting evidence indicating that those Facebook pages or the print editions of [REDACTED] Skydiver Magazine or Parachutist qualify as major trade publications or major media. Although the Petitioner submitted an email from the editor-publisher of [REDACTED] Skydiver Magazine, [REDACTED] stating that the final print edition of the magazine in 2020 had an average circulation of 3000, the record does not contain evidence showing the circulation of [REDACTED] Skydiver Magazine relative to other [REDACTED] media or trade magazines, to demonstrate the publication constitutes a major trade publication or major medium. In addition, we note that none of the above-mentioned articles identify the author.

Moreover, the Petitioner submitted a YouTube screenshot of a video posted by [REDACTED] an organization that provides skydiving experiences to cancer patients and survivors. The video reflected a two-minute interview of the Beneficiary in 2020. Although the Petitioner provided a transcription of the video, it did not demonstrate published material about the Beneficiary relating to his work. Rather, transcription indicates that the Beneficiary was interviewed about skydive landings. The Petitioner also did not establish the YouTube channel represents a major medium.

For the above reasons, the Petitioner has not established that the Beneficiary satisfies this criterion.

Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought. 8 C.F.R. § 214.2(o)(3)(iii)(B)(4).

The Petitioner did not initially claim eligibility for this criterion. Within its response to the Director's RFE, the Petitioner argued that we should consider comparable evidence for this criterion. As mentioned above, the regulation at 8 C.F.R. 214.2(o)(3)(iii)(C) provides that "[i]f the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility."⁵ Thus, a petitioner

⁵ Petitioners should submit evidence outlined in the evidentiary criteria if the criteria readily apply to the beneficiary's occupation. However, if the petitioner establishes that a particular criterion is not readily applicable to the beneficiary's

must demonstrate why the regulatory criterion does not pertain to a beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 214.2(o)(3)(iii).

Within its RFE response, the Petitioner contended that the Beneficiary worked as a judge "with other world-renowned skydiving judges" in October 2016 when he "was invited to judge other skydiving athletes, alongside [redacted], [redacted] and [redacted] at the [redacted] State Skydiving Championships." The Petitioner submitted an email dated October 2016 that appears to be from [redacted] addressed to the Beneficiary and others, referencing "the upcoming Championships" and "accommodation for the five of us . . . for the Saturday night (12th November)," and stating as follows:

. . . I believe registrations have been received for for 4 way, CF (not sure whether 2 or 4 way) and accuracy. Will confirm the events during the week before the event.

We'll be using InTime so can you please bring a Windows based computer . . .

Look forward to seeing you at [redacted]

The Petitioner also provided several pages from the 2008 [redacted] Parachute Federation [redacted] Judges' Handbook, screenshots from the website www.fai.org, and a screenshot that it claims is from the website [redacted] asserting that these materials show the judging criteria, and that [redacted] and [redacted] are skydiving judges who are "exceptional in their fields."

As noted by the Director, in order to meet this criterion, the Petitioner must show that the Beneficiary has not only been invited to judge the work of others, but also that he actually participated in the judging of the work of others in the same or allied field of specialization. Here, the Petitioner has not presented corroborating documentation showing that the Beneficiary actually participated in judging skydiving athletes, and the events at which the Beneficiary judged, to show that he actually participated as a judge for the 2016 [redacted] State Skydiving Championships, as claimed.

In addition, the Petitioner has not asserted or established that Skydive coaches or instructors are unable to participate on a panel, or individually, as a judge of the work of others in the same or in an allied field. The fact that the Beneficiary did not participate in judging is not evidence that the criterion does not apply to his occupation. Further, the Petitioner did not demonstrate that the statements in the letter of support from [redacted] or the screenshots of [redacted] judging criteria are equivalent to participation on a panel, or individually, as a judge of the work of others in the same or in an allied field. Accordingly, the Petitioner has not established that this criterion does not apply to the Beneficiary's occupation, nor has it shown that the documentation submitted reflects the same caliber of experience as participating on a panel, or individually, as a judge of the work of others in the Beneficiary's field.

occupation, the petitioner may then use the comparable evidence provision to submit additional evidence that is not specifically described in that criterion but is comparable to that criterion. *See 2 USCIS Policy Manual M.4(C)*, <https://www.uscis.gov/policy-manual>.

III. CONCLUSION

The Petitioner has not submitted evidence that the Beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A). Further, although the Petitioner established that the Beneficiary met the awards criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(1), it did not establish that he meets the criteria relating to memberships in associations, published materials, and judging. Although the Petitioner maintains the Beneficiary's eligibility for an additional criterion on appeal, relating to having been employed in a critical or essential capacity for distinguished organizations and establishments at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), we need not reach this additional ground. As the Petitioner cannot fulfill the initial evidentiary requirement of three criteria under 8 C.F.R. § 214.2(o)(3)(iii)(B), we reserve this issue.⁶ Consequently, the Petitioner has not established the Beneficiary's eligibility for the O-1 visa classification as an individual of extraordinary ability in athletics. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.

⁶ See *INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); see also *Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).