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U.S. Citizenship
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Services

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FILE:

WAC 06 064 52918

Office: TEXAS SERVICE CENTER

Date:

JAN 28 2009

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and has submitted other comparable evidence of her extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien 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,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on December 21, 2005, seeks to classify the petitioner as an alien with extraordinary ability as an Isshinryu Karate instructor and athlete. Part 6 of the Form I-140 petition, "Basic information about the proposed employment," states that the petitioner "will continue to instruct students in the Isshinryu form of karate, as well as compete in tournaments." The record, however, does not include evidence showing that the petitioner, age 47 at the time of filing, has worked as a karate instructor since June 2005. A November 17, 2005 letter from [REDACTED] Santa Ana, California, states:

I met [the petitioner] in Summer 2005, when she came into my Dojo and introduced herself to me. . . . [The petitioner] told me that she would like to study and learn about Shito-Ryu Karate-Do [REDACTED] and if I could teach her. I accepted and since that time she is coming to class regularly.

I was impressed by [the petitioner's] ability to learn so quickly. I got to know her as an excellent, hardworking and fully concentrated student with an amazing willpower of gaining new knowledge. In this short period of time she was able to catch up with others in our style and attending one of our tournaments this months [sic] she could get a second place in kata.

I am very glad to count her to my students and she is more than welcome to study and practice more about Shito-Ryu Karate-Do [REDACTED] anytime she wants.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.¹

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

We withdraw the director's finding that the petitioner meets this regulatory criterion.

The petitioner submitted results from the 40th Annual Genbu-Kai Interdojo Championships (2005) reflecting that she placed 2nd out of two competitors in the "Adult Black Belt Women 40 years and up" category. The results for this competition reflect that the overwhelming majority of its entrants

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision

were from southern California. There is no evidence showing that this achievement reflects national or international recognition rather than local recognition.

The petitioner submitted results from the [REDACTED] (2005) reflecting that she placed 2nd out of two competitors in the [REDACTED] category and 3rd out of three competitors in the “[REDACTED]” category.

The petitioner submitted results from the [REDACTED] reflecting that she placed 1st out of two competitors in the [REDACTED] category.

The petitioner submitted an achievement certificate and results from the [REDACTED] reflecting that she placed 8th in the [REDACTED] category.²

There is no evidence showing that the petitioner received a prize or award for placing eighth. Further, while the documentation submitted by the petitioner from the organizers of this event identify it as a “World Tournament,” the results for the tournament reflect that the overwhelming majority of its entrants were from Okinawa, Japan.

The petitioner submitted a “Certificate of Participation” reflecting that she took part in the Isshinryu World Karate Association World Championship Tournament (2001). There is no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner’s participation in the tournament. The petitioner also submitted results from the tournament showing the top three finishers in each competitive category, but the petitioner’s name is not among those listed.³ On page 18 of her brief accompanying the petition, counsel states that the petitioner “placed fourth” at this tournament, but the record does not include evidence to support her assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nevertheless, there is no evidence showing that participants receive a prize or award for placing fourth.

With regard to awards won by the petitioner in age-group competitions involving only a small number of competitors in her category, we do not find that such awards indicate that she “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout her field, rather than limited to her approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁴

This tournament included Junior Female, Adult Female, and Senior Female age-group categories.

³ This tournament included multiple age group categories including age 18 & older, 18 – 35, and 36 & older.

⁴ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

Likewise, it does not follow that a karate competitor who has had success in age-restricted competition should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”⁵ Further, plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no evidence showing that the events in which the petitioner successfully competed resulted in her receipt of nationally or internationally recognized prizes or awards in the sport of karate.

The petitioner submitted a May 10, 2004 letter addressed to her from [REDACTED] IHOF, informing her that she was nominated as one of five finalists for the “Female Karate-Ka of the Year” award. The petitioner also submitted an August 6, 2004 recognition certificate reflecting her nomination, but there is no evidence showing that she was ultimately selected for the award. While it is certainly an honor to be nominated, the plain language of this regulatory criterion requires the petitioner’s receipt of nationally or internationally recognized “prizes or awards.” Further, there is no evidence showing that this award is nationally or internationally recognized in the sport of karate.

The petitioner submitted an engraved plaque from the Okinawan Karate-Do Union (OKU) of Cleveland, Tennessee reflecting that she received the organization’s Master Shimabuku Award in 1999. The petitioner also submitted information from the OKU’s internet site describing the yearly award:

The O.K.U.s [sic] Highest Honor. Presented to an individual with a minimum of twenty years of martial arts experience, who has demonstrated continual growth in knowledge and abilities within their chosen art. The recipient of this award has established a reputation of high morals and the highest of character, integrity, spirit, temperament and fortitude.

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

⁵ We note that the USA National Karate-Do Federation (USANKF) is “the national governing body for the sport of Karate in the United States” as recognized by the United States Olympic Committee. See http://www.usankf.org/index.php?option=com_content&task=view&id=27&Itemid=55, accessed on January 8, 2009. The petitioner has not established that the level of competition she faced was comparable to that of USANKF-sanctioned events such as the USA Open or USA National Championships.

We cannot conclude that demonstrating years of experience, “continual growth in knowledge and abilities,” and establishing “a reputation of high morals” and other favorable personality traits constitute “excellence in the field of endeavor.” Further, there is no evidence showing that this award is nationally or internationally recognized in the petitioner’s sport. For example, there is no evidence showing that annual recipients of the [REDACTED] were announced in national sports media or in some other manner consistent with national or international acclaim.

The petitioner also submitted the following:

1. Certificate issued by the [REDACTED] reflecting that the petitioner attained a third degree black belt ranking and is qualified to teach [REDACTED].
2. Letter of Appreciation from the Chancellor of [REDACTED] thanking the petitioner for her services (1992).
3. Her Certificate of Participation for the International Open of Italy (1998).
4. Certificate of Recognition and Honor and a letter from the president of the [REDACTED] inviting the petitioner and her students to train at the [REDACTED].
5. Certificate from the Islamic Republic of Iran Karate Federation reflecting that the petitioner attained her fifth degree black belt in 2001.
6. Letter of Appreciation from Iran & Middle East Han Mun Do for the petitioner’s attendance at the Iranian “state championship of personal defense and weapon” (2005).
7. Certificate of Recognition presented to the petitioner by the Isshin-Ryu Self-Defense Club at Minnesota State University (2005).
8. Letter of Appreciation from the Superintendent of the Shemiran Women’s Karate Council thanking the petitioner for her “efforts to promote championship sports . . . of Islamic Iran.”

There is no evidence showing that the preceding certificates and letters are tantamount to nationally or internationally recognized prizes or awards for excellence in the petitioner’s field. The petitioner has not submitted evidence demonstrating that the preceding honors commanded significant recognition in her sport beyond the presenting organizations.

The petitioner submitted a May 28, 1997 facsimile from the Physical Education Organization of the Islamic Republic of Iran to the Ambassador of Japan in Tehran requesting issuance of a travel visa for the petitioner. The facsimile states:

[The petitioner], Karate coach in the Shahid Beheshti University, intends to travel to Japan in order to promote and develop her knowledge in Karate field.

* * *

It is noteworthy to mention that she as a champion this field has Dan 4 [sic]. She believes that by using the latest karate techniques and tactics in Japan can promote her abilities in order to develop this sport in Iran.

[The petitioner] intendeds [sic] to visit Japan in August, 1997 for one month and she bears all personal expenses during her stay.

So, Please kindly take necessary arrangements for issuing her visa.

Meanwhile, I would like to mention that she will return to Iran after finishing her training courses.

The facsimile identifies the petitioner as a karate champion, but it does not specify the prizes and awards won by the petitioner in Iranian competition. The record does not include primary evidence of such awards or evidence that they are nationally recognized in her sport. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that she received awards as a “champion” of Iranian karate competition.

On page 19 of her brief accompanying the petition, counsel asserts that the preceding facsimile is evidence that the petitioner “was selected to represent Iran as the Coach of the Iranian National Team which competed in Okinawan Karate & Kobudo World Tournament in Okinawa, Japan” in 1997. Counsel further states that the petitioner was selected “by the Iranian Government to . . . coach the national team at this important event,” but the content of the facsimile does not support her assertions. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. The facsimile identifies the petitioner as the “Karate coach in the Shahid Beheshti University,” not the Coach of the Iranian National Team. Further, the document indicates that the primary purpose of the travel was for the petitioner to “develop her knowledge” and to attend “training courses” rather than to perform the duties of national team coach. The petitioner also submitted pages from the event program for the Okinawa Karate & Kobudo World Tournament (1997). This documentation includes a listing of the six Iranians in attendance. Identifier codes next to the petitioner’s name and three other of the Iranian participants identify them as both coaches and competitors. Thus, while this documentation shows that the petitioner coached at the event, we cannot ignore that more than half of the Iranian delegation attended as coaches. Even if the petitioner were to establish that the Iranian Government named her as head coach of the Isshinryu karate national team, her selection represents a job appointment rather than a nationally recognized prize or award.

With regard to the petitioner’s coaching achievements, nationally or internationally recognized prizes or awards won by athletes coached by the petitioner can be considered for this criterion.

The petitioner submitted results from the [REDACTED] reflecting that her students achieved the following:

- 1) [REDACTED] placed 3rd in the Kata [REDACTED] 1st and 2nd Dans category
- 2) [REDACTED] placed [REDACTED] in the Weapons 30-44 yrs. Female Black Belts [REDACTED] - 5th Dans category, [REDACTED] in the Kata 30-44 yrs. Female Black Belts [REDACTED] 1st Dans category, and [REDACTED] in the Kumite 30-44 yrs. Female Black Belts 3rd - 5th Dans category.

There is no evidence showing the number of entrants who competed in the preceding categories and that the awards received by [REDACTED] and [REDACTED] in this competition were nationally or internationally recognized in the sport of karate. With regard to awards won by the petitioner's karate students in age-group competition, we do not find that such evidence indicates that as a coach she "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). In this case, there is no evidence showing that competitors under the petitioner's direct tutelage have received nationally or internationally recognized awards at the very top level of the sport (such as at the USA National Championships) rather than awards limited to their approximate age group.

As there is no evidence showing that the awards received by the petitioner and her students were nationally or internationally recognized, we cannot conclude that she meets this criterion.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The director's decision stated:

The petitioner claims to have satisfied this criterion by virtue of her membership in at least three organizations: 1) the Isshinryu Hall of Fame 2) the Okinawan Karate-Do Union and 3) the Okinawa Isshinryu Karatedo Association. However, according to the evidence presented, none of the named *organizations* require outstanding achievements of their members, as judged by national or international experts in their disciplines or fields. The petitioner provided no membership criteria or bylaws for any of the three organizations. However, each of the associations has a web site. As an example, the Okinawan Karatedo Union states its purposes as "to learn, develop and grow in knowledge of the art of karate-do." The site goes on to state, "The Okinawan Karatedo Union also encourages the exchange of information, ideas, and techniques between other martial art unions, associations, and memberships." Nowhere on the site does the association indicate that proven outstanding achievement is required as a prerequisite for membership. Rather, according to their information, the Okinawan Karatedo Union is a professional association composed of practitioners of the martial art for purposes of expanding interest and educating people in the martial art form.

The Isshin-ryu Hall of Fame is not an organization or association. Rather, according to their own web site, “The Isshin-Ryu Hall of Fame (IHOF) is an international *event*, held annually to honor and recognize outstanding Isshin-Ryu practitioners from around the world for their contributions to the art of Isshin-Ryu Karate regardless of their various association affiliations or dojo memberships” (emphasis added). The site goes on to state, “In addition, it provides the opportunity for all Isshin-Ryu practitioners to come together in fellowship, exchange knowledge and ideas, begin new friendships and renew old ones, as well as participate in healthy unbiased competition.” Thus, even if the petitioner were a member of the Isshin-ryu Hall of Fame, such a form of recognition would constitute an award rather than member[ship] in an organization. Nevertheless, the evidence shows that the petitioner is not in the Isshin-ryu Hall of Fame. On their web site, the Isshin-ryu Hall of Fame identifies the inductees for each year of competition. The petitioner’s name appears nowhere in their records. Further, the evidence (a letter from [REDACTED] shows merely that the beneficiary was a “finalist for the Isshin-ryu Hall of Fame Female Karate-Ka of the year 2004” and for “Female Instructor of the year 2005.”

We concur with the director’s findings.

The petitioner also submitted her membership certificates for the European Isshinryu Karate-do Association and the Okinawa Isshin-Ryu Karate Kobudo Shinshinkan (Argentina). The record does not include evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts.

In light of the above, the petitioner has not established that she meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country’s population cannot comprehend. 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.⁶

⁶ 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.

The petitioner submitted a two-sentence posting about her in the September 4, 2005 issue of *Asr-e-Varzesh*, a September 10, 1992 article about her in *Tehran Times International Weekly*, a December 13, 1999 article about her in *Iran Daily*, and a July 21, 1994 article about her in *Kayhan International*. The petitioner also submitted an article about her play *Empty Hands* entitled "Iranian Feminists Reach Out," but the date of the article and the name of the publication were not provided as required by this regulatory criterion. The record includes additional articles about the petitioner's play in the January 27, 2001 issue of *Dispatch Online* and in an undated issue of *Tehran International Weekly Magazine* of Encino, California. The petitioner also submitted a brief profile of her in an unidentified Japanese newspaper that was not accompanied by an English language translation. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate and by the translator's certification that he or she is competent to translate from the foreign language into English. With regard to the preceding publications that discuss the petitioner and her work, there is no evidence (such as circulation statistics) showing that they qualify as professional or major trade publications or some other form of major media.

In addressing two DVDs submitted by the petitioner, the director's decision stated:

The petitioner claims to have satisfied this criterion by virtue of having been the subject of two documentary films As evidence of the [petitioner's] involvement in the two documentary films cited, the petitioner provided DVD copies of each of the films, in addition to a short advertisement for the film which was released in Japan. It must be noted that the petitioner did not identify the individual or company which actually produced or created the films. According to the evidence, "Empty Hands," the film which was released in Japan, was broadcast on NHK television.

In response to the director's request for evidence, the petitioner submitted information about NHK television from *Wikipedia*, an online encyclopedia. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁷ See *Lamilem Badasa v. Michael Mukasey*, No. 07-2276 (8th Cir. August 29, 2008). As such, we will

⁷ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 9, 2009, copy incorporated into the record of proceeding.

not assign weight to information for which *Wikipedia* is the only cited source. Without reliable evidence regarding NHK, we cannot conclude that it qualifies as a form of major media.

The director's decision further stated:

The [petitioner's] documentary appeared on Satellite BS-1. The petitioner provided no documentary evidence identifying the number of households which have access to this channel.

* * *

The petitioner provided a copy of the DVD entitled, "It's all in their hands." According to the evidence, this documentary focused on a group of female Iranian immigrants to Sweden and their lives in their new country. The documentary was supposed to have been broadcast in Swedish with both Persian and English text available. Such information gives an indication of the intended audience. However, the petitioner provided no documentary evidence demonstrating that the documentary was ever broadcast through any media outlet. Rather, the evidence simply shows that the 29-minute film was made.

We concur with the director's findings. There is no evidence showing that the articles and video documentaries submitted by the petitioner were printed or broadcast by major media. As such, the petitioner has not established that she meets this criterion.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for top athletes is of far greater probative value than judging a regional youth competition.

The petitioner submitted a photograph of what counsel describes as the petitioner "judging students" in Germany. A caption above this darkened photograph in which the petitioner's image is not clearly identifiable states: "Testing of German Blackbelts." The petitioner also submitted two award certificates from the Karaj Department of Physical Education bearing her signature and identifying her as "Superintendent." The first certificate was blank and the second certificate acknowledged a

participant's 3rd place ranking in the Green Blue belt /15-24 age group category of the "Clubs Competition." Neither certificate states that the petitioner participated as a judge.

The preceding documentation is not tantamount to evidence of the petitioner's participation, either individually or on a panel, as a judge of the work of others in her field. Further, we cannot conclude that an instructor's evaluation of students under her tutelage is indicative of achievement at the very top of the field. In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a martial arts instructor, teacher, manager, coach, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim. While a martial arts instructor does evaluate the work of her pupils, this evaluation process is inherent to the position. Regarding the documentation submitted by the petitioner for this regulatory criterion, there is no supporting evidence establishing the level of acclaim associated with her participation in these events and the means by which she was selected to participate. Without evidence showing, for example, that the petitioner's activities involved judging top athletes in national level competition or were otherwise consistent with sustained national or international acclaim at the very top level of her sport, we cannot conclude that she meets this criterion.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner submitted several letters of support. On appeal, counsel states that the director ignored the letter from [REDACTED] that commented on the petitioner's book. [REDACTED] states: "[The petitioner] has been recognized by various international organizations for her endeavors in the Art of Isshin-Ryu Karate. Her publication (and translation into English) of the *Physics of Karate* has been well-received and is being used by many Isshin-Ryu organizations and schools in America." [REDACTED] does not specifically identify the Isshin-Ryu organizations and schools using the petitioner's book. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In this instance, the record lacks supporting evidence showing that this book constitutes an original contribution of major significance in the field. Nevertheless, material written and published by the petitioner relates to the "authorship of scholarly articles" criterion at 8 C.F.R. § 204.5(h)(3)(vi). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. We will fully address the published work authored by the petitioner under the next criterion.

On appeal, counsel states:

[The petitioner] provided evidence of an original play she wrote and directed called "Empty Hands." This play told the story of a girl who was struggling to survive under the oppressive

regime in Iran, and how she found strength and solace in learning karate. This is not only a truly original contribution to the field [sic] of Isshinryu karate, but the play became well-known worldwide and dozens of articles were written chronicling [the petitioner's] own life story.

While the petitioner's play was original, there is no evidence showing that it qualifies as a contribution of major significance in the field. Nor is there evidence to support counsel's claims that the petitioner's play is "well-known worldwide" and that "dozens of articles" were written about her life story. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506.

Counsel cites a letter from [REDACTED], Tennessee as evidence that the petitioner meets this regulatory criterion. [REDACTED] states:

Through the Okinawan Karate Do Union I met [the petitioner] of [REDACTED] in Tehran, Iran.

After corresponding for two years we met at a tournament and banquet this past August in Gatlinburg, Tennessee.

I heard [the petitioner's] story and shared it with my own class. She quickly became a very admired person and an example of strength, hard work, and perseverance.

While [REDACTED] expresses her admiration for the petitioner, she does not specifically discuss the petitioner's *Empty Hands* play or book.

The remaining letters of recommendation do not specify exactly what the petitioner's original athletic contributions have been, nor do they provide an explanation indicating how any such contributions were of major significance in her field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the admiration of individuals affiliated with Isshinryu karate, there is nothing to demonstrate that her work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other karate instructors nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the recommendation letters submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of

those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted a 10-page document entitled "Principles of Karate" and an accompanying English language translation, but there is no evidence showing its actual publication.⁸ As discussed, [REDACTED] letter states that the petitioner's "publication (and translation into English) of the *Physics of Karate* has been well-received and is being used by many Isshin-Ryu organizations and schools in America." Further, a letter of support from [REDACTED] and representative of the International Isshin Ryu Karate do in Iran, states that the petitioner "rendered significant services to Karate in Iran by writing articles on the fundamentals and physique of Karate." [REDACTED]'s letter does not state that the petitioner's articles were published.

Rather than submitting primary evidence of her published book and articles, the petitioner instead submitted letters of support attesting to their existence. As stated previously, 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 158, 165 (citing *Matter of Treasure Craft of California*, 14 I&N at 190). Without primary evidence of the petitioner's authorship of published work, the petitioner has not met her burden of proof. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that her scholarly works were published. Further, the petitioner not established that her book is a major publication. For example, there is no evidence showing the number of copies of this book in print, that the book had substantial national or international readership, or that the book was otherwise circulated in a manner consistent with sustained national or international acclaim. With regard to the petitioner's articles, there is no evidence that they were printed in professional or major trade publications or some other form of major media.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

⁸ Item 28 of the Exhibit List identifies this document as "[the petitioner's] book, [REDACTED]"

On appeal, counsel states: “The absurdity of the Service’s decision continues here by asserting that [the petitioner] ‘was not displaying, as an individual, her particular style of karate’ when she competed and won . . . in Isshinryu karate tournaments throughout the world.” In support of the director’s observation, we note that the petitioner submitted material from the Order of Isshin-Ryu website indicating that Isshin-Ryu Karate was founded and developed by [REDACTED]. Therefore, it is not unreasonable to conclude that petitioner was performing a style of karate developed by [REDACTED]. Nevertheless, there is no evidence establishing that the petitioner meets this regulatory criterion. The plain language of this regulatory criterion indicates that it applies to the visual arts (such as sculpting and painting) rather than to competitive sports such as karate. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner’s participation and success in karate tournaments has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete “displays” his or her work in the sense of competing in front of an audience. The petitioner has not established that her participation in competitions compares to the exclusive showcases of an artist’s work that is contemplated by this regulation for visual artists.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In order to establish that she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel asserts that the petitioner performed in a leading or critical role as coach of the Iranian National Team at the 1997 and 2003 Okinawa Karate & Kobudo World Tournaments. The petitioner submitted a photograph from the 1997 tournament in which she posed with other coaches. As discussed, the petitioner also submitted pages from an event program for the 1997 tournament. This documentation includes a listing of the six Iranians in attendance. Identifier codes next to the petitioner’s name and three other of the Iranian participants identify them as both coaches (circle symbol) and competitors (square symbol). The 2003 Okinawa Karate & Kobudo World Tournament program has the same identifier codes and identifies the petitioner only as a competitor. While the preceding documentation shows that the petitioner coached at the 1997 event, we cannot ignore that more than half of the Iranian delegation attended as coaches that year. In this instance, the petitioner has not submitted evidence showing that her coaching role was leading or critical and that her team had a distinguished reputation.

The petitioner submitted three letters from the Superintendent of the Tehran Karate Council appointing the petitioner as “Organizer Instructor” for events held on September 12, 2003, September 19, 2003, and June 16, 2004. The petitioner also submitted a letter of appreciation from the Superintendent of Karaj Isshinryu Karate thanking her for organizing the “Tehran Championship

held in Karaj Esteghlal Club” on October 18, 2002. Counsel asserts that the preceding letters are evidence of the petitioner’s acceptance of leading roles in the field of Isshinryu karate. While the preceding letters indicate that the petitioner helped organize various events, the record lacks evidence showing that these events and the organizations for which she worked had distinguished reputations. Nor is there evidence demonstrating that the petitioner’s role for the Tehran Karate Council, the Karaj Isshinryu Karate, and the Karaj Esteghlal Club was leading or critical.

The petitioner submitted a certificate stating that she was “commissioned as an International Lead Representative for the Okinawa Karate and Kobudo World Tournament” (1997). The petitioner also submitted a January 22, 1995 letter from [REDACTED], stating that the petitioner was the “official representative” of the [REDACTED] for Iran. The preceding evidence submitted by the petitioner does not establish that her role for them was leading or critical. There is no evidence demonstrating how the petitioner’s role differentiated her from the other foreign representatives appointed by these organizations, let alone their domestic organizational staff and officers.

In light of the above, the petitioner has not established that she meets this criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

On appeal, counsel asserts that the petitioner meets this regulatory criterion by virtue of her coaching positions and worldly travel. Counsel states that the Iranian government has “paid her travel expenses and salary to compete around the world.” The only evidence in this regard is the May 28, 1997 facsimile from the Physical Education Organization of the Islamic Republic of Iran to the Ambassador of Japan in Tehran stating that the petitioner “bears all personal expenses during her stay” in Japan. Nevertheless, there is no evidence (such as payroll records or income tax forms) showing the petitioner’s earnings for any specific period of time. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Further, the plain language of this criterion requires the petitioner to submit evidence of a high salary “in relation to others in the field.” The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field.

In light of the above, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the following documents are comparable evidence of the petitioner’s extraordinary ability pursuant to C.F.R. § 204.5(h)(4):

1. Certificate issued by the Isshinryu Karate Do Iran International Federation reflecting that the petitioner attained a third degree black belt ranking and is qualified to teach Isshinryu karate (1992).
2. Letter of Appreciation from the [REDACTED] of Amir Kabir University thanking the petitioner for her services (1992).
3. Her Certificate of Participation for the International Open of Italy (1998).
4. Certificate of Recognition and Honor and a letter from the president of the OKU inviting the petitioner and her students to train at the OKU (1998).
5. Certificate from the Islamic Republic of Iran Karate Federation reflecting that the petitioner attained her fifth degree black belt in 2001.
6. Letter of Appreciation from Iran & Middle East Han Mun Do for the petitioner's attendance at the Iranian "state championship of personal defense and weapon" (2005).
7. Certificate of Recognition presented to the petitioner by the Isshin-Ryu Self-Defense Club at Minnesota State University (2005).
8. Results from the Isshinryu World Karate Association World Championship Tournament (2005) reflecting that the petitioner placed [REDACTED] out of two competitors in the "[REDACTED]" category.
9. Letter of Appreciation from the Superintendent of the Shemiran Women's Karate Council thanking the petitioner for her "efforts to promote championship sports . . . of Islamic Iran."

This evidence has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. Nevertheless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel has argued that petitioner meets nine of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The record does not include such evidence. On appeal, counsel states that results from the Isshinryu World Karate Association World Championship Tournament in June 2005 and a November 15, 2005 letter from [REDACTED] demonstrate

that the petitioner will continue to work in the field of Isshinryu karate in the United States.⁹ The tournament results and reference letter from [REDACTED] however, do not qualify as any of the forms of evidence specified in the regulation at 8 C.F.R. § 204.5(h)(5).

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Nor is there clear evidence showing that the petitioner will continue to work in her area of expertise in the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.

⁹ The letter from [REDACTED], a student of the petitioner who now resides in Germany, discusses her tutelage under the petitioner and their past activities, but it does not address the means through which the petitioner will continue to work in her area of expertise in the United States.