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

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: DEC 17 2010

IN RE: Petitioner: [redacted]
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:

SELF-REPRESENTED

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center. The petitioner filed a motion to reopen, which the director dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).[1] The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. The director also determined that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The director's March 15, 2010 decision denying the petition stated:

> The statute and regulations require that the self-petitioner seeks to continue work in her area of expertise in the Unites States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from p[ros]pective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how she intends to continue her work in the United States. The self-petitioner did not submit any evidence (personal statement, letters from p[ros]pective employers, contracts, or any other information) to show that she seeks to continue work in her area of expertise upon her arrival in the United States and that her entry will substantially benefit prospectively the Unites States. Additionally, on the Form I-140, the self-petitioner failed to provide any information in Part 6, "Basic Information about the proposed employment." In response to the RFE [Request for Evidence], the self-petitioner submitted a letter, dated April 8, 2007, in which she details the order of the evidence submitted (tabs, section, highlighted areas) and a summary of the materials included (letters, newspaper articles, photographs.) Therefore, given her failure to provide any details about her future prospects, opportunities, plans or intent, and the lack of evidence of sustained national or international acclaim, it has not been established that the self-petitioner will continue work in the United States in her field of endeavor.

[1] According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States in October 2002 as an F-1 nonimmigrant student.

> Section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), requires [sic] that the petitioner demonstrate that his or her personal acclaim has been sustained. The evidence initially and subsequently submitted detail her synchronized swimming career beginning in 1989 and ending in 2003 at age 27. The record lacks documentation showing that the self-petitioner has sustained national or international acclaim in her field of endeavor subsequent to 2003. Additionally, Service records reveal that the self-petitioner first entered the United States in August 2004 as an F-1 Student pursuing a degree in Marketing at DePaul University in Illinois. Upon degree completion in 2006, the self-petitioner began employment as an HR Communication employee for Chevron Corporation in San Ramon, California; the self-petitioner has had ample time to establish a national reputation as a synchronized swimmer in this country. The record, however, includes no evidence of any competitive achievements in recent years: beginning on August 2004 when she first entered into the United States, to the petition's filing date on October 2006 until April 2007 when the RFE response was submitted. In addition to the preceding deficiencies, there is no evidence showing that the self-petitioner has competed for a distinguished organization since 2003, let alone performing a leading or critical role in a manner reflective of sustained national or international acclaim.

On motion and again on appeal, the petitioner states:

> The decision in my matter is incorrect. I continue to be an alien of extraordinary ability. I continue to participate with United States Synchronized Swimming. Since I have been in the United States I have participated with U.S. Synchronized swimming and contributed to the development of the United States National team. While I cannot be a member, I have taught and give [sic] continuous feedback to members of the U.S. Synchronized teams. I also serve as a referee in the Technical merit portion of competitions, see attached.
>
> My knowledge and skills are being freely give [sic] and helping the U.S. Synchroniced [sic] teams. My abilities are helping to biuld [sic] better teams. I will seek and provide addition [sic] evidence to support how I continue to provide extraordinary assistance to U.S. Synchronized swimming.

There is no documentary evidence to support the petitioner's assertion that she has "contributed to the development of the United States National team." 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)).

The petitioner's appeal includes a May 24, 2010 letter from [redacted] stating:

> In my capacity as President of the United States Synchronized Swimming Association, I hereby certify that [the petitioner] is registered with our association and has been providing her services to the U.S. synchro family for the past four years. She has used her experience

as an elite swimmer from the Venezuelan national team and has shared that valuable knowledge outside her country. [The petitioner] is a certified level 2 judge, has completed judge training seminars to keep herself up to date in the sport, and has judged at a number of events; most recently at the following competitions this year:

- Pacific Association and Central California Association Junior and Senior Championships – February, 2010.
- Pacific Association and Central California Association Intermediate Championships and Sacramento Novice/Age Group Invitational – April 2010.
- Central California Association Age Group, Pacific Association Age Group and Region B Age Group Championships – May 2010.

At these events [the petitioner] has carried out responsibilities as a judge for figures for all age categories, artistic and technical merit judge for routines in different age groups, controller and assistant referee, alongside internationally recognized judges. Her 17 years of experience as an athlete give her the knowledge and appreciation for the sport that are critical for her role as a judge; a role she has practiced both in her native country and here in the United States.

I would say that one of [the petitioner's] greatest assets to our sport is her total impartiality – something that is difficult to find in our sport. Given that synchronized swimming is not the most mainstream discipline, and seeing the acute shortage of judges, it is not rare to see swimmers' relatives and coaches carrying out the role of judge; which in some instances may compromise fair results. As [the petitioner] is not affiliated to a specific club, she can more easily score what she sees, without unconscientiously favoring some swimmers over others.

[redacted]ovides examples of the petitioner's participation as a regional age group judge in 2010, but he does not state that she has "contributed to the development of the United States National team." The petitioner's appeal and motion include event results from the 2010 Sacramento Novice/Age Group Invitational; the 2010 Central California Association Age Group, Pacific Association Age Group, and Region B Age Group Championships; and the 2010 Pacific Association and Central California Association Junior and Senior Championships reflecting her participation as a judge of swimmers age 19 and younger.

The petitioner's 2010 participation as a synchronized swimming judge in the preceding regional championships post-dates the petition's October 26, 2006 filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). All of the case law on the issue of when eligibility must be established focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49; *see also Matter of Izummi,* 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Ultimately, in order to be meritorious in fact, a petition must meet the

statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

For the reasons discussed below, we uphold the director's ultimate conclusion that the petitioner has not established her eligibility for the exclusive classification sought.

I. Intent to Continue to Work in the Area of Expertise in the United States

Part 5 of the Form I-140, Immigrant Petition for Alien Worker, identifies the petitioner's occupation as "Swimmer." Further, the documentation accompanying the petition focused on the petitioner's accomplishments as a synchronized swimmer in Venezuela from the late 1980s to 2003. This documentation included the petitioner's awards as a competitive synchronized swimmer, her membership on the Venezuelan Synchronized Swimming National Team, and published material mentioning her athletic successes as a synchronized swimmer. As stated by the director, the statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). In Part 6 of the Form I-140, the petitioner failed to provide any information under "Basic information about the proposed employment." Further, the Form G-325A, Biographic Information, submitted in conjunction with the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, indicates that the petitioner has been employed by Chevron Corporation in the occupation of "HR Communication" since September 2006. 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." In this case, the petitioner has not submitted letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement detailing plans on how she intends to continue working in the United States as a synchronized swimmer.

On motion and again on appeal, the petitioner asserts that she has "taught and give [sic] continuous feedback to members of the U.S. Synchronized teams" and "served as a referee in the Technical merit portion of competitions." The petitioner's response to the director's request for evidence included a March 17, 2007 letter from [redacted] and a [redacted] focusing mostly on the petitioner's athletic accomplishments as a synchronized swimmer in Venezuela. Ms. Crow's letter briefly mentions the petitioner's activities in the United States stating:

> [The petitioner] . . . still gives back to the sport through the Walnut Creek Aquanauts Synchronized Swimming in Walnut Creek, CA. She is a very knowledgeable and perceptive coach.

* * *

> She is currently certifying herself as a judge with the Pacific Association of Synchronized Swimming and has contributed to training sessions for the Walnut Creek Aquanauts.

The petitioner's response also included a March 23, 2007 certificate from the Pacific Association of Synchronized Swimming Judges Association stating: "You have PASSED Level 1 and Level 2 comprehensive Written Tests. Upon completion of practice judging you will be granted the privilege of a LEVEL 2 JUDGE." The petitioner received this judging credential subsequent to the petition's filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding.

The May 24, 2010 letter from [redacted] and the March 17, 2007 letter from [redacted] do not discuss the petitioner's prospective employment with their organizations or clearly explain how she will continue to work in her area of expertise in the United States in the future. Further, the documentation submitted by the petitioner in support of her appeal and motion does not include a statement detailing her plans on how she intends to continue to work in the United States in the future. Given her employment with Chevron Corporation and the absence of detailed statement regarding her future plans for work in the sport of synchronized swimming, we affirm the director's finding that the petitioner has not submitted "clear evidence" that she will continue to work in her area of expertise in the United States. 8 C.F.R. § 204.5(h)(5).

Even if the petitioner had submitted clear evidence that she will continue to work in the sport of synchronized swimming, which she has not, there is no indication that being a coach, judge, or referee (rather than a competitive synchronized swimmer) constitutes her area of extraordinary ability. While a competitive synchronized swimmer and a coach, judge, or referee may share knowledge of the sport, they rely on very different sets of basic skills. Thus, competitive athletics and coaching, judging, or refereeing are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (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.

Id. at 918. The court noted a consistent history in this area. While the petitioner earned a level of acclaim in Venezuela as a competitive synchronized swimmer from the 1980s until 2003, the petitioner has not established that coaching, judging, or refereeing in the sport constitute her areas of extraordinary ability. Further, we note the petitioner's recent statements on appeal and motion that she has "taught and give [sic] continuous feedback to members of the U.S. Synchronized teams" and "served as a referee in the Technical merit portion of competitions." The petitioner's request on motion and at the appellate stage that she now be considered for extraordinary ability classification based on her work as a coach or referee in the United States constitutes a material change in the petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform

to U.S. Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. at 176. If the petitioner now seeks entry to the United States based on her extraordinary ability as a coach or referee (rather than as a competitive synchronized swimmer), then she should file a new petition requesting such classification.

In light of the above, the petitioner has not submitted "clear evidence" that she will continue to work in her area of expertise in the United States. 8 C.F.R. § 204.5(h)(5). The remaining issue to be determined in this matter is whether the petitioner has established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

II. Law

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.

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) 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;

(iv) 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 specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[2] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner

[2] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

III. Analysis

A. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).[3]

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

The petitioner submitted evidence showing that, *inter alia*, she [redacted] received [redacted] and was recognized as [redacted] Accordingly, the petitioner has established that she meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i) based on the multiple qualifying awards she received from the 1990s to April 2004. However, certain deficiencies pertaining to this evidence will

[3] The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim at the time of filing the petition.

> *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.*

The petitioner submitted correspondence from the [redacted] and the [redacted] informing her of her selection for the [redacted] but there is no evidence (such as membership bylaws or rules of admission) showing that these federations require outstanding achievements of their members.

The submitted evidence shows that the petitioner was a member of the [redacted] While an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete can earn a place on a national or an Olympic team through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that she meets every element of a given criterion, including that she is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. Without evidence showing, for instance, the specific selection requirements for the [redacted] we cannot conclude that the petitioner meets the elements of this regulatory criterion. Moreover, even if the petitioner were to establish that her national team membership meets the elements of this criterion, which she has not, consistent with the statutory requirement for "extensive documentation" at section 203(b)(1)(A)(i) of the Act, the regulation at 8 C.F.R. § 204.5(h)(3)(ii) expressly requires qualifying membership in "associations" in the plural. A single qualifying association membership does not meet the plain language requirements of this regulatory criterion. An additional deficiency pertaining to the preceding evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim at the time of filing the petition.

As previously discussed, the petitioner's response to the director's request for evidence included a [redacted] stating: "You have PASSED Level 1 and Level 2 comprehensive Written Tests. Upon completion of practice judging you will be granted the privilege of a LEVEL 2 JUDGE." The petitioner received this judge's training credential subsequent to the petition's filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, there is no evidence demonstrating that passing Level 1 and Level 2 tests equates to outstanding achievements or that completion of such training constitutes an association membership.

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. 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.[4]

The petitioner submitted Spanish language articles from ElUniversal.com, *Complot Magazine*, *Record*, *El Universal*, *El Carabobeño*, and *El Nacional*, but the English language translations accompanying these articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Pursuant to the regulation at 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. The only article that devotes more than three sentences to the petitioner is the [redacted], but its author was not identified as required by this criterion. With regard to the remaining articles, the plain language of this regulatory criterion requires "[p]ublished material about the alien." Articles that are primarily about a swimming competition in general and only mention the petitioner in passing do not meet the plain language requirements of this regulatory criterion.[5] Moreover, there is no evidence (such as circulation information) showing that the preceding publications qualify as a professional or major trade publications or other "major" media.

In light of the above, 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 petitioner submitted a [redacted] stating: "During that period I can . . . certify that

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[4] 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.

[5] *See, e.g., Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

[the petitioner] completed basic courses for Judges offered by the Venezuelan Swimming Federation, carrying out the role as judge at first level national championships, satisfactorily evaluating a total of 150 girls."

In response to the director's request for evidence, the petitioner submitted a [redacted] stating:

> [The petitioner] . . . served as a judge for a number of internal club meets and national meets for the younger age categories. Her evaluations were always fair and objective, and other competitors in my age group used to feel comfortable knowing that she was on the panel as they knew she would score them justly.

The plain language of this regulatory criterion requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others." Rather than submitting evidence from the competition organizers confirming the petitioner's participation as a judge in the Venezuelan club and national meets, or from the Venezuelan Swimming Federation indicating the basic judging courses she completed, the petitioner instead submitted brief comments from [redacted] attesting to her involvement. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this instance, the brief comments from [redacted] lack specificity and details, and they are unsupported by any corroborative evidence demonstrating the petitioner's participation as a judge of the work of others. For example, their comments do not specify the dates of the synchronized swimming meets or the judging courses the petitioner completed, the names of the competitors she evaluated, and the event categories. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that evidence of her participation as a judge at competitions in Venezuela does not exist or cannot be obtained. Further, the letters from [redacted] do not equate to secondary evidence or affidavits. Thus, the petitioner has not established that she had participated as a judge of the work of others at the time of filing the petition.

As previously discussed, the petitioner's response to the director's request for evidence included a [redacted] Association stating: "You have PASSED Level 1 and Level 2 comprehensive Written Tests. Upon completion of practice judging you will be granted the privilege of a LEVEL 2 JUDGE." On appeal, the petitioner submits the [redacted] dentifying regional age group

competitions judged by the petitioner in 2010. The petitioner's motion and appeal include event results from the 2010 Sacramento Novice/Age Group Invitational; the 2010 Central California Association Age Group, Pacific Association Age Group, and Region B Age Group Championships; and the 2010 Pacific Association and Central California Association Junior and Senior Championships reflecting her participation as a judge of swimmers age 19 and younger. The petitioner's participation as a synchronized swimming judge in the preceding regional championships and her receipt of the Level 1 and Level 2 judge's training credential from the Pacific Association of Synchronized Swimming Judging Association post-date the petition's October 26, 2006 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding evidence in this proceeding.

In light of the above, the petitioner has not established 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 initially submitted various letters of support from her coaches and teammates.

[redacted] states:

> [I] first coached [the petitioner] for the 1996 South American Games in Brazil, competition where the team won the silver medal after an outstanding performance. After four more years working with [the petitioner] and the rest of her teammates, this result was improved when in 2000 (in Argentina) the Venezuelan team beat Brazil; winning the gold medal in the team event for the first time ever. This was the most significant result for the country in the team event.

[redacted] states: "[The petitioner] was a key part in the only Venezuelan team (to date) to win the gold medal at the South American Games, surpassing the eternal rival of Brazil."

[redacted] states:

> I met [the petitioner] . . . when we trained together for our first international championship; the Central American and Caribbean Games that were held in Caracas, Venezuela in 1989. We were members of the 12- and under team. That was the first of many experiences that we shared as National Team teammates.
>
> From there on we were on the National Teams that competed at Cuba (1993), U.S.A (1997, 1998), Venezuela (1998), Canada (1999), Australia (2000). Argentina (2000 – where for the first time the Venezuelan team won the gold medal, beating Brazil), Egypt (2000), Brazil (2002), Switzerland (2002), Spain (2003) and Dominican Republic (2003). During those years, and from the point of view of other girls on the team, [the petitioner] was seen as an

important member of the team who knew how to take control of things when there were tensions within the team.

In response to the director's request for evidence, the petitioner submitted an April 7, 2007 letter from [redacted] stating:

> [The petitioner] belonged to a generation of synchronized swimmers in Venezuela that distinguished itself from many others. The 2000 Senior National Team was the first in history to this date to win the gold medal in the team event at the South American Games, overcoming the eternal rival – Brazil – out of a field of ten countries in total. During the years that [the petitioner] represented Venezuela at international events, technical results improved, confidence and trust in the discipline increased and the team was given more exposure – competing more frequently at the international level. This team in a sense paved the way and opened doors for upcoming generations of synchronized swimmers in the country.
>
> [redacted] was undoubtedly a contribution of major significance in the field, [the petitioner's] consistency and ability to be a member of the national team [redacted] was something that helped the team from an experience perspective. In part, her know-how was valuable in the attainment of 7 international medals.... [redacted] and an individual who was able to support the younger team members who were new to the National Team and international arena. Her value to the squad was priceless and something sorely missed upon her departure.
>
> * * *
>
> Aside from [the petitioner's] contributions to the sport at the National Team level, it is clear that she was a synchronized swimmer to reckon with at national competitions. She won 37 medals at competitions throughout the years, with the field of competitors in her age group usually surpassing 70 swimmers . . . .
>
> * * *
>
> This clearly demonstrates [the petitioner's] versatility and ability to excel in the different specialties of the sport; having the talent necessary to excel both at the individual and team level. Some swimmers focus on only one specialty – [the petitioner] went beyond that and performed in all when possible. In great part it was the consistent results obtained at these competitions that explain how she earned so many recognitions throughout the years.

[redacted] does not provide specific examples indicating how the petitioner's [redacted] "paved the way and opened doors for upcoming generations of synchronized swimmers in the country." There is no supporting documentary evidence showing the impact of this achievement on Venezuela's later athletes. Further, the petitioner's competitive achievements [redacted] have

already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion we find the petitioner has met. Moreover, with regard to the petitioner's role for the Venezuelan Synchronized Swimming National Team, we note that the regulations include a separate criterion for performing in a leading or critical role for distinguished organizations at 8 C.F.R. § 204.5(h)(3)(viii). If the regulations are to be interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from performing in a leading or critical role. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards, performing in a leading or critical role, and original contributions of major significance in the field, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The letters of support submitted by the petitioner describe her as a successful competitor and team member, but they do not specify exactly what her "original" contributions in the sport of synchronized swimming have been, nor is there any supporting documentary 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 her teammates and coaches, there is no evidence demonstrating that she has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other synchronized swimmers beyond those on her team, nor does it show the field has specifically changed as a result of her work.

The preceding reference letters are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the experts' 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 that one would expect of an athlete who has made original contributions of "major significance." Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in her field, 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.

[redacted]

> While [the petitioner] was still swimming and representing the country, she single-handedly [redacted] This was done upon request of the [redacted]

[redacted] formerly a FINA Technical Synchronized Swimming Committee Member and Judge, states: [redacted] – initially for the benefit of her own country, but ultimately [redacted]

The plain language of this regulatory criterion requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Translating a single training manual does not equate to *authorship of scholarly articles*. Further, rather than submitting evidence of the actual training manual or an excerpt from it confirming the petitioner's translation, the petitioner instead submitted letters from [redacted] attesting to her work. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. 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). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that evidence of the training manual does not exist or cannot be obtained. Further, the letters from [redacted] do not equate to secondary evidence or affidavits. Thus, the petitioner has not submitted evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media.

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.*

The petitioner submitted a [redacted] offering encouragement to the petitioner in advance of her participation in the 1996 Junior National Sports Games of Trujillo, Venezuela. The petitioner has not submitted evidence establishing that her participation in this "Junior" sporting event equates to a leading or critical role for [redacted] or that this region's team has a distinguished reputation in synchronized swimming.

The petitioner submitted letters from the [redacted] her coaches, and teammates demonstrating that she performed in a leading or critical role as [redacted] of the [redacted] Aside from her role for

this team, the record does not include evidence documenting the petitioner's leading or critical role for any other organizations or establishments with a distinguished reputation. Section 203(b)(1)(A)(i) of the Act, however, requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) expressly requires evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural. Therefore, documenting a leading or critical role for only a single distinguished organization does not meet the plain language of the regulation. Accordingly, the petitioner has not established that she meets this criterion.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) – (vi), and (viii).

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), there is no evidence showing that the petitioner has received any nationally or internationally recognized prizes or awards for excellence in synchronized swimming subsequent to April 2004. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as an athlete has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

Regarding the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner submitted evidence showing that she was a member of the [redacted] There is no documentary evidence indicating that the petitioner competed as a member of the national team since [redacted] The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for

8 C.F.R. § 204.5(h)(3)(ii) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii), there is no evidence showing that the petitioner has had qualifying material published about her since 2003. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as an athlete has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iii) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the petitioner has not established that judging "younger age categories" and "first level" competitors in Venezuela [redacted] demonstrates a level of expertise indicating that she is among that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). For comparison, in describing her own qualifications, [redacted] states that she has the "[h]ighest international rating as a synchronized swimming judge" and "officiated at more than 70 international events, including 5 Olympic Games and 10 World Championships." There is no indication that the petitioner has judged elite national or international athletes in the same manner as [redacted] Further, there is no documentary evidence showing that the petitioner judged any synchronized swimming competitions from 2004 until the petition's October 26, 2006 filing date. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition. With regard to the petitioner's participation as a synchronized swimming judge [redacted] regional championships and her receipt of the Level 1 and Level 2 judge's training credential from the Pacific Association of Synchronized Swimming Judging Association [redacted] as previously discussed, this evidence post-dates the petition's October 26, 2006 filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding evidence from 2007 and later in this proceeding. Nevertheless, the petitioner has not established that judging *regional* competitions limited to synchronized swimmers age 19 and younger demonstrates "national or international" acclaim or a level of expertise indicating that she is among that small percentage who have risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. §§ 204.5(h)(2) and (3).

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner submitted evidence showing that she served as [redacted] There is no documentary evidence indicating that the petitioner has performed in a leading or critical role for a distinguished organization subsequent to 2003. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(viii) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

While the petitioner has earned the respect and admiration of her references, the evidence of record falls short of demonstrating her sustained national or international acclaim as a synchronized swimmer during the thirty months immediately preceding the petition's October 26, 2006 filing date. The record does not include evidence of her nationally or internationally acclaimed achievements and recognition in synchronized swimming subsequent to 2004. Accordingly, the petitioner has not demonstrated that her national or international acclaim has been *sustained* as of the filing date of the petition. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

IV. Conclusion

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. Further, the petitioner has not submitted clear evidence demonstrating that she 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.

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

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.