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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

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[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: OCT 04 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:

[REDACTED]

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 \$585. 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, Nebraska Service Center, and 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.

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.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director’s decision.

I. 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

¹ According to information on the Form I-140 petition, the petitioner was last admitted to the United States in 2007 as a B-1 nonimmigrant visitor.

(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* 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. *See 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.*

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 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).

II. Analysis

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).

A. Evidentiary Criteria

This petition, filed on June 29, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a karate competitor and instructor. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).³

(i) 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 of his receipt of first place in the Kata – team division, first place in the Kumite – individual division, second place in the Kumite – team division, and second place in the Kata – individual division at the [REDACTED] first place in the individual kata and kumite events at the [REDACTED] first place in the kata and third place in the kumite divisions at the [REDACTED] second place in the Kata events at the [REDACTED]; and second place in the Senior Kumite division at the [REDACTED]. The petitioner also submitted his certificates of participation for the 2005 FSKA Annual World Karate Championships, the 2007 U.S.A. Shotokan Karate Federation International Masters Training Camp and Kata Bunkai Seminar, and the 2008 International Martial Arts Association (IMAA) Conference, but there is no evidence showing that these three certificates equate to nationally or internationally recognized prizes or awards for excellence in karate, rather than simply acknowledging the petitioner's participation in the preceding events. We further note that the 2008 IMAA Conference occurred after this petition was filed and thus cannot be considered. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katighak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The petitioner also submitted Letters of Appreciation from the "Sherpa Society Service Sindhupalchok, Kathmandu" and Nepal Shotokan Karate Association (NSKA), and a photocopy of a May 20, 2006 "Best Player of the Year 2005" award plaque from the Nepal Karate Federation (NKF) and the National Sports Council. These Letters of Appreciation and award plaque were presented to the petitioner in honor of his aforementioned first place in the kata and third place in the kumite divisions at the [REDACTED].

The AAO noted from the submitted photocopy that the petitioner's [REDACTED] award plaque misspelled "Council" as "Counail." On November 17, 2009, the AAO requested the original award plaque and information "identifying specifically all award recipients who received the 'Best Player of the Year 2005' designation." The petitioner responded by submitting the original award plaque and a December 16, 2009 letter from the President of the NKF providing some information

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

⁴ The petitioner submitted a letter from the Nepal Karate Federation, "the national governing body for the sport of Karate in Nepal," stating: "There are currently six different national Karate associations. They are Nepal Shotokan Karate Association, Nepal Shito-Ryu Karate Association, Nepal Goju-Ryu Karate Association, Nepal Wado-Ryu Karate Association, Nepal Reinbu-Kai Karate Association and Nepal Kwanmukan Karate Association." The petitioner is affiliated with the Nepal Shotokan Karate Association.

about the award, but the response did not specifically identify all "Best Player of the Year 2005" award recipients as requested by the AAO. The petitioner's failure to submit requested evidence that precludes a material line of inquiry constitutes grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Although documentation of the preceding awards appears in the record, information about the significance and national or international recognition of the petitioner's awards is notably absent. The petitioner submitted excerpts from the "Funakoshi Shotokan Karate Association VIII World Championships 19th Annual Program Booklet and Yearbook" which includes a photograph from the preceding year's event showing the petitioner, but this material does not establish that his awards from the event are nationally or internationally recognized. The petitioner's awards are accompanied by no information about his contests, including how the contests were nationally or internationally recognized in the field of karate or in the general area of martial arts. The petitioner did not submit evidence such as the number of participants in his competitive categories, the standing or recognition of the other participants in his categories, or any other indication that winning his awards conferred national or international recognition for excellence in karate or the martial arts. The 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 his burden to establish every element of this criterion. In this case, there is no evidence establishing that the petitioner's awards had a significant level of recognition beyond the context of the events where they were presented. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards. Furthermore, with regard to awards won by the petitioner in obscure karate competitions not demonstrated to have a significant pool of competitors, we cannot conclude that such awards demonstrate qualifying forms of national or international recognition.

The petitioner submitted additional certificates for his successful completion of training courses and attainment of various belt rankings, but these certificates do not equate to nationally or internationally recognized prizes or awards for excellence in the field. The first and second degree black belt certificates reflect that the petitioner earned a promotion in rank based on his successful completion of a karate skills test. Such promotions are inherent to the martial arts and they represent standardized progression to the next skill level.

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

(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.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum

education or experience, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. 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 petitioner submitted evidence of his membership in the Karatenomichi World Federation (KWF) and the FSKA of Milpitas, California. In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] stating:

FSKA is a worldwide organization that offers benefits to enhance your personal as well as karate development.

* * *

Should you desire to become a member, please send your cashier[']s check or money order in U.S. Dollars to FSKA (\$150.00) and include a passport sized photo of yourself as soon as possible to assure that you will be included in this year's FSKA International Yearbook.

The preceding information indicates that membership in the FSKA is contingent upon payment of a fee rather than outstanding achievements in karate. On appeal, the petitioner submits a May 4, 2008 letter from [REDACTED] stating that the petitioner was invited to join FSKA and KWF "because of his outstanding skill as a Karate athlete," but the preceding comment in [REDACTED] letter does not establish that the FSKA requires outstanding achievements of its members. With regard to the petitioner's KWF membership, the record does not include evidence from the KWF (such as bylaws or rules of admission) showing that it requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted a December 17, 2003 [REDACTED] stating that the petitioner was selected as a member of the Referee Council. That letter contained no indication as to how the petitioner was chosen to be a member or what criteria were used in evaluating his application or nomination. In response to the director's request for evidence, the petitioner submitted a February 3, 2008 letter from [REDACTED] indicating that the only prerequisite for membership is qualification as a referee. [REDACTED] letter states:

The Referee Council is a technical committee under the NKF which develops rules and regulations for Karate, as per the WKF guidelines. It also conducts various karate activities and it is the sole arbitrator that recommends the National Karate Federation, as an organization, to sanction referee permits to players of different karate associations. It also collaborates with existing national karate associations to provide referees for any national and international level tournaments organized by them.

The Referee Council is composed of qualified referees belonging to different style national Karate associations. There are currently six different national Karate associations. They are Nepal Shotokan Karate Association, Nepal Shito-Ryu Karate Association, Nepal Goju-Ryu Karate Association, Nepal Wado-Ryu Karate Association, Nepal Reinbu-Kai Karate Association and Nepal Kwanmukan Karate Association. Each of these six Associations send at least two members, who have referee permits, to be on the Referee Council. These are usually outstanding karate players at a national level and who are instructors in their respective Associations.

states that the NKF's Referee Council is composed of "qualified referees" that "are usually outstanding karate players at a national level" [emphasis added], but he does not indicate that outstanding achievements are a prerequisite for acceptance to membership. Further, there is no evidence showing that prospective members are judged by recognized national or international experts in the petitioner's field.

The petitioner's response to the director's request for evidence included a February 1, 2008 letter from stating:

This letter is to confirm that [the petitioner] has been an instructor of Nepal Shotokan Karate Association since 1999. To qualify as an instructor for NSKA, the player must possess a level above black belt, receive various instructor courses and must be someone who has demonstrated mastery in Karate by winning various championships and tournaments.

letter does not specify the level of expertise of the competitions or the geographic scope of the "championships and tournaments" in which a prospective NSKA instructor must demonstrate mastery in karate. For instance, his statements do not preclude the winner of a local student tournament from qualifying. Nevertheless, comments are unsupported by copies of the regulations, bylaws, or official rules of admission for the NSKA. 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)). Further, there is no evidence showing that prospective NSKA instructors are judged by recognized national or international experts in the petitioner's field.

The petitioner's response also included certificates from the IMAA appointing him as an authorized instructor on January 26, 2008 and "as an official member" from January 1, 2008 until December 31, 2008. The petitioner's admission to membership in the IMAA post-dates the petition's June 29, 2007 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.

On appeal, the petitioner submits his membership card for the USA National Karate Do Federation (USA-NKF) with an expiration date of December 31, 2008. The petitioner also submits information from the USA-NKF website stating that it is "the largest Karate Organization in the United States" and that anyone interested in the organization should "acquaint yourself with our Organizational

structure and then please join us as a member.”⁵ The information submitted from the USA-NKF website does not establish that the organization requires outstanding achievements of its members. Nevertheless, there is no evidence showing that the petitioner was a member of the USA-NKF at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

None of the evidence submitted by the petitioner demonstrates that any of the preceding associations require outstanding achievements of their members, as judged by recognized national or international experts in his field. Accordingly, the petitioner has not established that he meets this criterion.

(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.

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. 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

The petitioner submitted photographs of him appearing in the FSKA VIII World Championships 19th Annual Program Booklet and Yearbook, the NSKA Bulletin for the 2005 International Invitational Shotokan Karate Championship, and the NSKA Shotokan Karate “Souvenir – 2062” program book. The plain language of this regulatory criterion requires the submission of “[p]ublished material about the alien in professional or major trade publications or other major media” including “the title, date, and author of the material.” The preceding photographs of the petitioner do not meet these requirements.

The petitioner initially submitted the following articles:

1. [REDACTED] published in the [REDACTED]
2. [REDACTED] published in the [REDACTED]
3. [REDACTED] published in the [REDACTED]
4. [REDACTED] published in the [REDACTED]
5. [REDACTED]
6. [REDACTED] published in the [REDACTED]; and [REDACTED]
6. [REDACTED], published in the [REDACTED]

⁵ The USA-NKF’s website states that the organization is sanctioned by the U.S. Olympic Committee and is “the National Governing Body for the Sport of Karate in the United States.”

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.

With regard to articles 1 – 6, their authors were not specifically identified as required by the plain language of this regulatory criterion. Moreover, article 1 contained only four sentences discussing the petitioner; article 2 contained only a single sentence mentioning him; articles 4 and 6 contained only two sentences discussing him; and article 5 contained only three sentences discussing him. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about the alien.” The majority of the preceding articles are not about the petitioner; instead, they are about a tournament as a whole or about his team as a whole with his competitive results only being briefly mentioned. Regarding article 3, there is no evidence (such as circulation information from an independent source) showing that [REDACTED] qualifies as professional or major trade publication or some other form of major media. In response to the director’s request for evidence, the petitioner submitted a letter from “Press Council Nepal” which provides circulation numbers by region for [REDACTED] but the letter includes no comparison between these publications and other publications in Nepal showing that they qualify as professional or major trade publications or other major media.

The petitioner’s response also included an online article from Martialartnews.com about him, dated [REDACTED]. The petitioner submitted general information about Martialartnews.com from its website, but there is no evidence (such as readership statistics) showing that it qualifies as a professional or major trade publication or some other form of “major” media.

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

(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 specification for which classification is sought.

The petitioner submitted a December 2003 certificate from the NKF stating that he “completed the National Referee Course” conducted by the NKF. The petitioner also submitted an “Identity Card” reflecting his participation in the NKF’s “3rd National Referee Seminar & Examination” in November 2005. Neither of these documents constitutes evidence of the petitioner’s actual participation as a judge. Rather, the evidence is reflective of his training and certification to become a referee. The petitioner’s initial evidence also included his “Referee” credential from the [REDACTED]. The record does not include information regarding the individuals he refereed or the specific competitive categories to which he was assigned in the [REDACTED] tournament. Moreover, there is no evidence demonstrating that karate referees actually judge competitors, such as assigning points or determining winners, rather than merely enforcing the rules and maintaining a sense of fair play. The record lacks official competition rules for the tournament showing that serving as a “referee” in this instance equates to participating as a “judge” of the work of others. Accordingly, the petitioner has not established that he meets this criterion.

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

In the original submission, counsel claims that the petitioner is eligible under this criterion by virtue of his participation at the FSKA VII Annual World Karate Championship in 2005, the 2007 USA Shotokan Karate Federation Masters Training Camp, and the 2007 Ozawa Cup International Karate Tournament. Counsel does not explain how such participation was “original” in the sport of karate. There is no evidence demonstrating that the petitioner’s participation in these events equates to original athletic contributions of major significance in the field. We further note that the petitioner’s competitive awards (such as those from the [REDACTED]) have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards 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 petitioner submitted letters of support from his personal contacts discussing his achievements as a karate competitor and his qualifications as an instructor. Success and qualifications in one’s sport, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted his field.

[REDACTED], states:

[The petitioner] is an internationally well known expert in Traditional Japanese Karate and frequently participates in World Level Karate events. I have known him personally for over 10 years and I can strongly vouch for his outstanding character and professionalism as a sportsman and human being. [The petitioner] is an internationally licensed instructor and World level competitor.

The letter from [REDACTED] does not specify exactly what the petitioner’s original contributions in the sport of karate have been, nor is there an explanation indicating how any such contributions were of major significance in his field. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion.

In response to the director’s request for evidence, the petitioner submitted a February 1, 2008 letter from Shanta Thokar stating:

[The petitioner] is the first Nepali to master the Kata and Kumite forms of Shotokan Karate in Nepal and has made significant contributions the NSKA [sic]. He opened the door for Nepal to enter international level of competition in this field. These are combination of techniques in fighting and demonstration, which are specialized forms. An instructor can conduct training in these specialized forms of karate only after having received numerous

championships and acquiring outstanding record. [The petitioner] is one of the few instructors teaching these forms of Karate to NSKA members. As an instructor, he has made significant contribution to our Association in promoting Shotokan Karate.

In addressing the evidence submitted for this criterion, the director's decision stated:

While the petitioner is claiming this criterion, the record lacks evidence that he has made . . . original athletic contributions to the field. Specifically, while the original record indicates that the petitioner has participated in athletic competitions and trained students in the field, neither is indicative of an original contribution to the field. Rather, the petitioner was competing and teaching a well established martial art. There is nothing to demonstrate that the petitioner made specific original contributions to the field, such as a new method of instruction or modified karate moves. There is also nothing to suggest that any contributions made by the petitioner have had major significance in the field, such as through the widespread adoption of a method of instruction.

Therefore, the petitioner was requested to submit objective documentation establishing his specific original contributions to the field, and to submit documentation demonstrating the importance of such contributions to the field. The petitioner was advised that claims made in witness letters should be supported by documentary evidence.

In response, the petitioner relied solely on a statement from the NSKA. While not without merit, the opinions of others, including experts in the field, cannot form the cornerstone of a successful claim. Evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition.

Further, the statement suggests that the petitioner has made a significant contribution due to his mastery of the Kata and Kumite forms of karate. The letter indicates that these are specialized forms, and that the petitioner's mastery and subsequent teaching of the forms significantly impacted the NSKA and their abilities to compete internationally. However, it does not appear that this represents an original contribution to the field. The Kata and Kumite forms existed prior to the petitioner's training and experience, and there is nothing to suggest that he significantly modified the forms or otherwise made an original contribution. Mastering and subsequently teaching an existing martial art form is not demonstrative of an original contribution to the field. While this suggests that the petitioner is skilled in the field, it has not been demonstrated that the petitioner has made any original athletic contributions of major significance.

The petitioner's appellate submission does not challenge any of the director's findings for this regulatory criterion. Upon review, we find the director properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in the April 11, 2008 decision.

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 his references, there is no evidence demonstrating that his impact on the sport is commensurate with an original athletic contribution of major significance in the field.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. 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). However, 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. 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 that one would expect of a karate competitor or instructor who has made original contributions of major significance. Without extensive documentation showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

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

In the original submission, counsel claims that photographs of the petitioner competing in various karate tournaments meet this criterion. The petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it applies to artists rather than to karate competitors. 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 competitions have already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his work in the sense of competing in front of an audience. The petitioner has not established that his participation in competitions compares to the artistic showcases contemplated by this regulation for artists. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner claims eligibility under this criterion by virtue of his participation with the NSKA as a competitor, team coach, and instructor. The information submitted about the NSKA was generated by that organization. It states that the NSKA "is a national karate organization in Nepal" and "is the only legal Shotokan style karate organization that is officially recognized by the National Sports Council of Nepal for the promotion of Karate." This self-serving material does not contain any information about the NSKA's reputation and thus does not indicate that the NSKA enjoys a distinguished reputation in the sport of karate. Further, the documentation submitted by the petitioner does not establish that his role for the NSKA was leading or critical. The February 1, 2008 letter from [REDACTED] states:

[The petitioner] has instructed more than thousand [sic] students over the years. Though we have around 50 instructors, [the petitioner] is particularly [sic] distinguishable instructor because he has mastered the Kata and Kumite forms of Karate. . . . As an instructor, he has made significant contribution [sic] to our Association in promoting Shotokan Karate.

The left side of [redacted] letter identifies multiple positions in the NSKA such [redacted] and Members.⁷ The letter from [redacted] does not explain how the petitioner's ability to teach the Kata and Kumite karate forms specifically contributes to the overall mission of the NSKA, how this training distinguishes the petitioner from the organization's executive officers or other instructors who presumably may also have specialties, or otherwise constitutes a leading or critical role. The submitted evidence does not establish that that the petitioner has been responsible for the success or standing of the NSKA to a degree consistent with the meaning of "leading or critical role." Finally, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the submission of evidence of a leading or critical role for more than one distinguished organization or establishment. Therefore, even if we found the petitioner's role with the NSKA to be qualifying, which we do not, a leading or critical role in a single distinguished organization does not meet the plain language of the regulation.

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

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he 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 1119-1120. 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), (ii), (iii), (iv), (v), (vii), and (viii).

⁷ The petitioner's name is not listed among the executive officers or the seven Members of the NSKA identified on the association's letterhead.

Regarding the awards submitted by the petitioner for 8 C.F.R. §§ 204.5(h)(3)(i), there is no evidence showing that he faced top national or international karate competitors in general rather than limited to those competing in the Shotokan karate style. As previously noted, the petitioner submitted a letter from the Nepal Karate Federation identifying six different national Karate associations in his native country including the Nepal Shotokan Karate Association, Nepal Shito-Ryu Karate Association, Nepal Goju-Ryu Karate Association, Nepal Wado-Ryu Karate Association, Nepal Reinbu-Kai Karate Association, and Nepal Kwanmukan Karate Association. Without evidence showing that he faced a significant pool of top karate competitors in Nepal, the United States, or internationally, we cannot conclude that his awards demonstrate sustained national or international acclaim. Awards won by the petitioner in age-restricted tournaments, in competitive divisions with only a limited pool of entrants, or in competitions not shown to have a level of stature and scope comparable to those identified on the submitted USA-NKF website page do not establish that he “is one of that small percentage who have risen to the very top of the field of endeavor.”⁸ See 8 C.F.R. § 204.5(h)(2). 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 60899.⁹ Likewise, it does not follow that an athlete who has had success in karate competitions limited to a particular age group or in tournament events with a small pool of entrants 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.” Further, regarding the petitioner’s “Best Player of the Year 2005” award, there is no evidence indicating that this award is commensurate with sustained national or international acclaim at the very top of the field. Despite the name of the award “Best Player” implying a single winner, it appears that multiple awards were given.

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner submitted no evidence demonstrating the reputation, significance, or magnitude of the January 2005 “First All Karate Open International Championships” or the level of expertise of those purportedly “refereed” by him. Moreover, we note that the petitioner has submitted evidence of his

⁸ The USA-NKF website page submitted by the petitioner identifies karate competitions such as the USA National Championship, the World Championships, The Pan American Games, the World Cup, and the World Games.

⁹ 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:

[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.

participation as a “referee” for only one competition. The statute and regulations, however, require “extensive documentation” and the petitioner to demonstrate his national or international acclaim in the sport of karate 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 extensive or consistent with *sustained* national or international acclaim. On appeal, counsel asserts that it is difficult to qualify as a referee as evidenced by the February 1, 2008 letter from [REDACTED] indicating that only seven of fifty NSKA instructors have qualified. [REDACTED] states: “To get a license as referee, the player must be an instructor; must attend referee courses organized by the person’s affiliated association and Referee Council; attend training from Nepal Karate Federation and take both practical and written exams administered by the Referee Council.” These qualifications do not support counsel’s argument that sustained acclaim or significant achievements in karate are a prerequisite for becoming a referee, nor was information provided as to why the 43 non-referees have not acquired the referee certificate (for example, they may have chosen not to be a referee and have not taken the requisite courses).

While the petitioner has earned the respect and admiration of his references, the evidence of record falls short of demonstrating his sustained national or international acclaim as a karate competitor or instructor. The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. 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.