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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**

YING SONG
138-16 77TH AVENUE, APT. 61F
FLUSHING, NY 11367

FILE: A87 341 784 Office: TEXAS SERVICE CENTER Date:
SRC 08 248 51980 SEP 27 2010

IN RE: Petitioner: YING SONG
Beneficiary: YING SONG

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:

FRANK R. LIU, ESQ.
FRANK R. LIU & ASSOCIATES, LLC
401 BROADWAY, SUITE 505
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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, Texas Service Center, on May 6, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability as a martial artist, coach, and stand-in artist. The director determined that the petitioner had not established the requisite extraordinary ability and had failed to submit extensive documentation of her 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 "sustained national or international acclaim" and present "extensive documentation" of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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 claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

**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

(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 the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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.[1] 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.

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).

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[1] 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).

**II. Translations**

While not addressed by the director in his decision, the record of proceeding reflects that the petitioner submitted numerous non-certified English language translations and foreign language documents without any English language translations. The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

> (3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which 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.

Although at the time of the original filing of the petition the petitioner submitted a single certified translation, it is unclear which documents, if any, to which the certification pertains. The submission of a single translation certification that does not identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Furthermore, in response to the director's request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), while the petitioner submitted some certified translations, the petitioner also submitted non-certified translations.

In addition, the record of proceeding reflects that the petitioner submitted several documents without any English language translations, let alone fully certified translations. Because the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(3), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

**III. Primary Evidence**

While also not addressed by the director, the record of proceeding reflects that the petitioner failed to submit primary evidence of his eligibility for some of the criteria. The regulation at 8 C.F.R. § 103.2(b)(2) provides in pertinent part:

> (i) The non-existence or other unavailability or required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the fact at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

> (ii) Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where USCIS finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

As indicated above, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. 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. In this case, while the petitioner submitted secondary evidence, such as photographs with typed captions claiming a particular event, the petitioner failed to submit any documentary evidence demonstrating that primary evidence does not exist or cannot be obtained. As such, the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(2), and the AAO will not consider the petitioner's secondary evidence. Moreover, without independent, objective evidence, the petitioner failed to establish that her assertions in the captions accompanying the photographs are in fact true. 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)). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

**III. Eligibility at Time of Filing**

The petition was filed on August 13, 2008. However, in response to the director's request for evidence and on appeal, the petitioner submitted documentary evidence reflecting events occurring after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider these items as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

**IV. Analysis**

***A. Evidentiary Criteria***

The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3). [2]

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

At the time of the original filing of the petition, the petitioner submitted sufficient documentary evidence establishing the following awards or prizes:

1. Gold Medal in Advanced Women's Xing Yi at the Tenth Annual International Chinese Martial Arts Championship (ICMAC) in Orlando, Florida from May 23 – 25, 2008;
2. Gold Medal in Advanced Women's Northern Other Style Hand Form at the Tenth ICMAC;
3. Silver Medal in Advanced Women's Chen Style Taiji at the Tenth ICMAC;
4. Silver Medal in Advanced Women's Traditional Northern Sword at the Tenth ICMAC; and
5. Silver Medal in Advanced Women's Traditional Northern Staff at the Tenth ICMAC.

However, the petitioner also submitted copies and photographs of certificates with uncertified translations claiming the following:

A. First Award in Female Self Select Fist Style at the Youth Wushu Show Contest (YWSC) in Baoji City, China on May 5, 1987;
B. First Award in Female Traditional Fist Style at the YWSC;
C. First Award in Female Self Select Weapon Style at the YWSC;
D. First Award in the Female Traditional Weapon Style at the YWSC;
E. First Award in the Combined Exercise at the YWSC;
F. First Award in the Weapons Show at the First Taiji Fist Competition (FTFC) in Baoji City, China in 1987; and
G. Second Award in Taiji Fist at the Anli Cup First National Teen and Youth Wushu Championship (ACFNTYW) in Tianjin, China.

In response to the director's request for evidence, the petitioner submitted the following documentation:

i. Photographs of a trophy with a typed caption claiming that the petitioner won the Gold Cup in Traditional Form at the 2008 U.S. Martial Arts Tournament (USMAT) in Washington, DC on August 10, 2008;

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

ii. A copy of a certificate stating that the petitioner "received an exceptional score and achieved a placement in the category described at the Hall of Fame Open in Canton Ohio";
iii. A copy of a photograph of an unidentified object reflecting "World Gold Cup Award of Appreciation" to the petitioner;
iv. An uncertified translation of a certificate stating that the petitioner "was awarded as the excellent coach in the promotion of nationwide fitness program of Huhehaote City" in April 2003;
v. An uncertified translation of a certificate stating that the petitioner "was awarded as the excellent coach in martial art by Hongkou District" in November 2004; and
vi. An uncertified translation of a certificate stating that the petitioner "was awarded as the excellent coach in Youth Athletic Sports Center of Shenyang Province" in December 2006.

In the director's decision, he concluded, in part, that the petitioner failed to submit "objective evidence regarding the significance of the awards, such as national media coverage of the announcement of the awardees." On appeal, counsel argues:

> The petitioner submitted voluminous documents and exhibits in support of her I-140 Immigrant Petition for Alien Worker. Most of the documents submitted by [the petitioner] clearly suggest that the Chinese Kungfu indeed represents the highest level of competition in the field of arts or athlete.
>
> * * *
>
> On April 25, 2008, the petitioner performed for hundreds of dignitaries and celebrities in front of the United Nations in New York City. A faculty member at Gao's Kung Fu Academy in the State of New York, the petitioner has trained hundreds of martial artists who went on to become experts in the field. As submissions in the record show, the United Nations has made its selection of performers based on very high standards and criteria and from a wide range of selections all over the world. The petitioner's selection again highlights her extraordinary abilities in the field.
>
> As the record clearly show[s], the petitioner's exposure in the national media is profound and her reputation in the field of martial arts both in China and the rest of the world is renowned.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate her receipt of awards and prizes, she must also demonstrate that those awards and prizes are nationally or internationally

recognized for excellence. In other words, the petitioner must establish that her awards and prizes are recognized nationally or internationally beyond the awarding entities.

Regarding items 1 – 5, as indicated previously, the petitioner submitted sufficient documentary evidence establishing that she received two gold medals and three silver medals at the Tenth ICMAC. However, the petitioner failed to establish that her awards are recognized nationally or internationally for excellence in the field. While the petitioner submitted screenshots about the 11th ICMAC from www.kungfuchampionship.com, which is the website of ICMAC, a brochure from the Tenth ICMAC, the official rules for the Tenth ICMAC, photographs from the Tenth ICMAC, and screenshots from www.kungfutody.com regarding Nick Scrima, the organizer of the Tenth ICMAC, we are not persuaded that the evidence is indicative of nationally or internationally recognized awards. Again, while we do not dispute that the petitioner received awards from the Tenth ICMAC, the petitioner failed to submit any independent documentary evidence outside of evidence from ICMAC. Even the documentation from ICMAC, which only provides background information and rules for the tournament, fails to reflect that the awards are recognized nationally or internationally beyond the awarding entity.

Regarding items A – G, the petitioner submitted uncertified translations of the certificates. Moreover, the petitioner failed to submit any documentary evidence regarding YWSC, FTFC, and ACFNTYW so as to establish that they are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Merely submitting uncertified translations of certificates are insufficient to establish eligibility for this criterion without credible documentary evidence demonstrating the national or international recognition of the prizes or awards.

Regarding item i, the petitioner failed to submit primary evidence of her award at the USMAT. In fact, besides the self-typed caption, the photographs of the trophy fail to indicate that it was actually awarded to the petitioner. Simply submitting photographs of a trophy without primary evidence of the petitioner's receipt of the claimed award is insufficient to demonstrate eligibility for this criterion. Furthermore, the petitioner failed to submit any documentary evidence establishing that winning the Gold Cup at the USMAT is a lesser nationally or internationally recognized prize or award.

Regarding item ii, while the certificate states that the petitioner "received an exceptional score and achieved a placement in the category described above," the certificate fails to indicate the score, placement, or category. As the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the prizes or awards to be "for excellence," the submission of a certificate that merely reflects the petitioner's participation at the Hall of Fame Open will not suffice. Moreover, the petitioner failed to submit any documentary evidence demonstrating that any awards or prizes received at the Hall of Fame Open are considered to be nationally or internationally recognized for excellence. Similarly, regarding item iii, we are not persuaded by a certificate that reflects an "Award of Appreciation" is tantamount to nationally or internationally recognized prizes or awards for excellence.

Regarding items iv – vi, the petitioner submitted uncertified translations of the documents. In addition, the petitioner failed to submit any documentation regarding these coaching awards so

as to demonstrate that they are nationally or internationally recognized for excellence in the field. Moreover, the awards appear to be local awards rather than nationally or internationally recognized awards.

For the reasons discussed above, we concur with the decision of the director for this criterion. Regarding counsel's argument about the petitioner's performance before the United Nations, counsel failed to establish how the petitioner's performance is relevant to the awards criterion. The record of proceeding contains no documentation reflecting any nationally or internationally recognized prizes or awards based on her United Nations performance. While the media coverage of the petitioner's performance, for example, may be relevant for other criteria, the regulatory criteria under 8 C.F.R. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

Finally, we note that on appeal the petitioner submitted documentary evidence reflecting that she won the Gold Award in the Female First Division at the 2009 International Chinese Traditional Martial Arts Competition on October 4, 2009. However, this event occurred after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114.

As discussed, the plain language of this regulatory criterion specifically requires that the awards be nationally or internationally *recognized* in the field of endeavor, and it is the petitioner's burden to establish every element of this criterion. In this case, there is no evidence demonstrating that the awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

Accordingly, the petitioner failed to establish that she meets this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion by stating:

> For my excellent and outstanding performance in my field, I was elected as a special member to the Chinese Wushu Association [CWA], and received the Appointment Letter of Judge for Wushu Dan Certificate in 2005. In 2000, I was elected to be research member in Taiji Research Center in Shaanxi Province.

In addition, the petitioner submitted the following documentation:

1. An uncertified translation of a certificate, dated July 8, 2005, from the Chinese Wushu Association stating that it "invited [the petitioner] to be the judge of Wushu Dan" for the Wushu Faculty of Xi'an Athlete Institute;
2. A screenshot from www.chinaculture.org regarding the CWA; and
3. An uncertified translation of a Certificate of Membership from the Taiji Research Center (TRC) in Baoji City, China reflecting that the petitioner has been a member since October 2000.

In response to the director's request for evidence, the petitioner reiterated her eligibility based on her claim as a "judge of Wushu Duan Certificate since 2005." In addition, the petitioner submitted screenshots from www.wushu.com. A review of the director's decision fails to reflect that he addressed any of the petitioner's documentary evidence regarding this criterion. On appeal, counsel also did not address this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." In other words, not only must the petitioner demonstrate her memberships with associations in the field, she must also demonstrate that those associations require outstanding achievements of their members, as judged by recognized national or international experts. Moreover, 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, 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.

Regarding CWA, besides the fact that the petitioner submitted an uncertified translation of a certificate, we are not persuaded that the document demonstrates membership with CWA. The submission of an uncertified certificate claiming that the petitioner was invited to be a judge does not necessarily demonstrate that she is also a member of CWA. The documentary evidence submitted by the petitioner fails to establish she is, in fact, a member of CWA. Furthermore, a review of the screenshot from www.chinaculture.org reflects a general overview of the tasks of CWA and fails to reflect any membership requirements so as to establish that membership with CWA requires outstanding achievements of its members as judged by national or international experts. A review of the screenshots from www.wushu.com submitted by the petitioner reflect that they refer to the "Training Course of the Chinese Wushu Duan System for Overseas Practitioners (Regulations)." According to the petitioner's Form G-325A, Biographic Information, which the petitioner signed on July 14, 2008, the petitioner indicated that she

resided at 139-1-17 Qinghe Village, Qingjiang Road, Weibing Borough, Baoji, Shaanxi, China from May 2003 to February 2007. The certificate claims that the petitioner was invited to be a judge in July 2005. The petitioner failed to establish how the training course for overseas practitioners is applicable to her when the record reflects the petitioner's residence in China in July 2005.

Notwithstanding the above, the screenshots from www.wushu.com reflect that the requirements for the applicants are for "[t]hose overseas Chinese and overseas practitioners who love Chinese Wushu and have practiced Wushu for over two years can apply for the training course." It is clear that the screenshots are for a training course for overseas practitioners and not for membership with CWA. The petitioner failed to submit sufficient documentary evidence establishing that membership with CWA requires outstanding achievements of its members as required by national or international experts in the field.

Regarding TRC, besides the fact that the petitioner failed to submit a certified translation of the certificate, the petitioner failed to submit any documentary evidence regarding the membership requirements. Merely submitting documentation of membership with an association is insufficient to make a favorable finding for this criterion without documentary evidence demonstrating that outstanding achievements are essential conditions for membership.

Accordingly, the petitioner failed to establish 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.*

At the time of the original filing of the petition, the petitioner submitted six articles without any English language translations, let alone certified translations. In response to the director's request for evidence, the petitioner submitted the following documentation:

1. An uncertified translation of an article entitled, "Hundred of Artists Did Wonderful Performance, United Nation[s] New Spring Culture Festival Hot Starts," April 26, 2008, Yu Yi Peng, *World Journal*;
2. An uncertified translation of an article entitled, "United Nation[s] New Spring Cultural Festival Starts Today," April 25, 2008, unidentified author, *World Journal*;
3. An uncertified translation of an announcement entitled, "The Gao's Kung Fu Academy Performance in United Nations in April 25," unidentified date, unidentified author, unidentified source; and
4. An uncertified translation of an article entitled, "Fairly Tale Kingdom Burst Forth Going Fu Wizard," May 12, 2007, unidentified author, *American Asia Times*.

In the director's decision, he failed to discuss the above-mentioned documentation. Instead, the director addressed the petitioner's authorship of two articles. On appeal, counsel argues the petitioner's eligibility based on three self-authored articles.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." In other words, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about" the petitioner relating to her work. As such, articles authored by the petitioner are not articles about the petitioner relating to her work. We note that the regulation at 8 C.F.R. § 204.5(h)(3)(vi) specifically relates to the authorship of scholarly articles in professional or major trade publications or other major media. Therefore, we will address the petitioner's self-authored articles as they relate to the scholarly articles criterion later in our decision.

Regarding items 1 and 2, besides that the fact that the petitioner failed to submit certified translations, the articles are about the United Nations New Spring Cultural Festival and not about the petitioner relating to her work. In fact, the petitioner is never mentioned in the articles. While the petitioner may have performed at this festival along with other performers, we are not persuaded that articles that provide a general overview of the festival without any coverage regarding the petitioner and her work demonstrate eligibility for this criterion.

Regarding items 3 and 4, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) states that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." While the petitioner failed to submit certified translations, the petitioner also failed to include the date and author of the article for item 3 and failed to include the author of the article for item 4. Nonetheless, similar to items 1 and 2, the articles are not about the petitioner relating to her work. Regarding item 3, the article is about the United Nations New Spring Cultural Festival and Gao Xian's role in the movie *Fighter*. The petitioner is never mentioned in the article. Regarding item 4, the article is about Gao Xian's involvement in various Kung Fu movies as the action instructor. The petitioner is mentioned one time as a professional stunt artist. As such, we are not persuaded that an article that is primarily about Gao Xian is published material about the petitioner relating to her work.

Notwithstanding the above, the petitioner failed to submit any documentary evidence establishing that the *World Journal* or *American Asian Times* are professional or major trade publications or other major media. In fact, regarding item 3, the petitioner failed to identify the publisher of the article. In general, 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.[3]

[3] 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.

On appeal, the petitioner submitted the following documentation:

1. A certified translation of an article entitled, "Gaoxian Wushu School Performed Remarkably in International Martial Arts Championship," April 6, 2009, unidentified author, *World Journal*;
2. A certified translation of a transcript of an interview, along with a copy of the interview, between the petitioner and New Tang Dynasty Television on May 29, 2010;
3. A certified translation of an article entitled, "The Second Session of International Chinese Martial Arts Competition," October 9, 2009, unidentified author, *The Epoch Times: New Epoch Weekly*;
4. A certified translation of an article entitled, "4 Gold Award Winners in International Chinese Traditional Martial Arts Competition," October 5, 2009, Zusi Xu, *The Epoch Times*;
5. Screenshots of an article entitled, "Martial Arts Competition Jury Comment on Wonderful Tradition of Martial Arts Competition," October 5, 2009, Jane Body, www.epochtimes.com;
6. Screenshots of an article entitled, "Competition Gold Medal Winner to Share the New Martial Arts Experience to Leave School," October 6, 2009, unidentified author, www.ntdtv.com;
7. A document entitled, "Martial Arts Competition Gold Silver Award Winner Reflections Collection," October 5, 2009, unidentified author, unidentified source;
8. An uncertified translation from *Google Translate* of an article entitled, "Women's Boxing Martial Arts Competition Gold Medal Winner of Today's One Day Difference in Other," October 5, 2009, unidentified author, www.aboluowang.com; and
9. An uncertified translation from *Google Translate* on an article entitled, "Women's Boxing Gold Medalist: From Martial Arts Learn Tolerance," October 5, 2009, unidentified author, www.epochtimes.com.

As the petition was filed on August 13, 2008, items 1 – 9 reflect material occurring after the filing of the petition. Eligibility must be established 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; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114. We note that a review of these items fail to reflect published material about the petitioner relating to her work. The petitioner failed to submit any documentary evidence establishing that *World Journal*, *The Epoch Times: New Epoch Weekly*, www.ephochtimes.com, www.ntdtv.com, and www.aboluowang.com are professional or major trade publications or other major media. Moreover, regarding items 2 and 7, the petitioner failed to include where the material was published. Furthermore, while some of the material was posted on Internet websites, many newspapers or media organizations, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, we are

not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media." The petitioner has not demonstrated that www.ephochtimes.com, www.ntdtv.com, and www.aboluowang.com are considered as major media. Also, the petitioner failed to include the authors for items 1, 3, and 6 – 9. In addition, regarding item 2, the transcript of a television interview fails to meet the plain language of the material as there is no evidence that it was ever published. Finally, regarding items 8 and 9, we note that the translations from *Google* fail to comply with the regulation at 8 C.F.R. § 103.2(b)(3) as they do not reflect 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." Further, we are not persuaded that *Google Translate* is credible or reliable since a review of the website reflects that it "can make intelligent guesses as to what an appropriate translation should be" and "not all translation[s] will be perfect."[4]

For the reasons discussed above, the petitioner failed to submit sufficient documentary evidence demonstrating published material about the petitioner and her work in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish 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.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion by submitting the following documentation:

1. An uncertified translation of a certificate, dated July 8, 2005, from the Chinese Wushu Association stating that it "*invited* [the petitioner] to be the judge of Wushu Dan [emphasis added]" for the Wushu Faculty of Xi'an Athlete Institute;
2. An uncertified translation of a Certificate of Judgment, dated November 13, 1987, from the Sports and Athletes Committee of the People's

[4] See http://translate.google.com/about/intl/en_ALL/. Accessed on September 21, 2010, and incorporated into the record of proceeding is subject to the following general disclaimer:

> When Google Translate generates a translation, it looks for patterns in hundreds of millions of documents to help decide on the best translation for you. By detecting patterns in documents that have already been translated by human translators, Google Translate can make intelligent guesses as to what an appropriate translation should be. This process of seeking patterns in large amounts of text is called "statistical machine translation". Since the translations are generated by machines, not all translation will be perfect. The more human-translated documents that Google Translate can analyse [*sic*] in a specific language, the better the translation quality will be. This is why translation accuracy will sometimes vary across languages.

Republic of China stating that the petitioner was awarded "*to be* the Judge of Wushu Second Level [emphasis added]"; and

3. A photograph of a medal claiming in the typed caption that it is a "[p]hoto of Medal of Judgment of P.R. China."

In response to the director's request for evidence, the petitioner claimed:

> I have been the judge of Wushu Duan Certificate since 2005. In the worldwide, there [are] only less [than] 100 martial artists [that] are the 9th Dan – the highest level in Wushu field. In 1994, the first circulation of 9th Dan just had 11 masters. Master Bin Wu – the coach of Jet Li was one of the 9th Dan holders. I was *invited* to be the judge for Wushu level by Xi' An Physical Education University. "Xi'an Physical Education University was established in 1954. The university is founded under the cooperation of the State General Administration of Sport and the Sports Bureau of Shaanxi Province, which is the only academic university for Physical education in northwestern China as well. The university adheres to the policy of focusing on teaching. "Golden Plan for Olympics" and "Plan for All," stick to reform, open-up, and exchange and cooperate with foreign countries and different regions." (http://www.xaipe.edu.cn/xwfb/english/english .htm) I have been *invited* as a judge since July of 2005, and have complete authority as a judge over the outcome of the results [emphasis added].

In addition, the petitioner submitted the same certificate as item 1 above but submitted a different uncertified translation claiming that "[the petitioner] has been employed by [Xi'an Athlete University] as the judge of Wushu Duan Certificate."

In the director's decision, he found that the petitioner's documentary evidence failed to reflect sustained national or international acclaim. On appeal, counsel did not specifically address the decision of the director for this criterion. We note that in counsel's brief under the awards criterion, counsel mentioned:

> [The petitioner] was appointed a judging referee by China's prestigious Xian Sports Academy in 2005. The appointment is considered a high honor and a direct acknowledgment of the petitioner's outstanding performance in the field of martial arts.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." Pursuant to *Kazarian*, 596 F.3d at 1121-22, we will only address the petitioner's eligibility for this criterion based on the plain language of the regulation. The director's finding of the petitioner's lack of sustained national or international acclaim will be addressed in our final merits decision discussed at the end of our decision.

In this case, the petitioner based her eligibility on uncertified translations and a photograph. In fact, as indicated above, the petitioner submitted two different uncertified translations for the same document. Because the petitioner failed to submit certified translations pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), we will not accord any weight to this evidence. In addition, the petiitoner failed to submit primary evidence of the claimed "Medal of Judgment." Therefore, the petitioner failed to demonstrate that she has participated as the judge of the work of others.

Even if we would accept the uncertified translations, which we do not, we are not persuaded that the petitioner has participated as a judge of the work of others. Regarding item 1, the uncertified translation reflects that the petitioner was invited to be a judge. Regarding item 2, the uncertified translation reflects that the petitioner was awarded to be the judge. Moreover, the second uncertified translation for item 1 reflect that the petitioner was appointed a judging referee. As the plain language of this regulatory criterion specifically requires "the alien's participation . . . as the judge of the work of others," evidence merely reflecting that the petitioner was invited or awarded to be a judge, or even appointed as a judging referee, without evidence of actually judging or reviewing the work of others is insufficient to meet the plain language of the regulation. The record of proceeding contains no evidence establishing that the petitioner has judged a single event or person.

In addition, we note that if the petitioner acted as a referee and simply enforced the rules of a match and sportsmanlike competition, then her participation as a referee cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence reflecting her exact responsibilities with the Wushu Faculty of Xi'an Athlete Institute and the Sports and Athletes Committee of the People's Republic of China, such as evidence that she awarded points or judged individuals for Dan levels, such broad and general evidence regarding judging is insufficient to meet this criterion.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

At the time of the original filing of the petition, the petitioner claimed her eligibility for this criterion by stating that "I came to the United States on March 1, 2007. I have since contributed to the U.S. and U.S. people via my skills." In addition, the petitioner submitted three recommendation letters from the following individuals:

Nick J. Gracenin stated:

> It is my belief that [the petitioner] is an extremely valuable asset to our art and sport. American athletes, coaches and judges need strong support from excellent experts such as [the petitioner] if we are to compete globally. Please consider the petitioner before you on behalf of the American Wushu Community.

Natasha Arthy stated:

> This year, I invited [the petitioner] as the stand-in actress for the heroine of the film – Fighter. [The petitioner] is a famous martial artist. She has been the stand-in actress for Ms. Michelle Yeoh in the film – Crouching Tiger, Hidden Dragon. She has performed as the stand-in actress not only in Crouching Tiger, Hidden Dragon, but also in other famous film in China. She has very solid foundation in her area including Martial Arts and Stand-in performer. [The petitioner] is a self-motive artist. In Fighter, she had used her professional skill to perform the heroine's outstanding characters in the area of Martial Arts. For her supports, the movie has performed very well in the thought of Martial Arts.

Xian Gao stated:

> [The petitioner] is an outstanding talent in the field of Martial Arts and the performance of Martial Arts. [The petitioner] has very solid skills in the Fan-zi Fist, Tobbei First, Taiji Fist. Since [the petitioner] was eight years old, [the petitioner] jointed in the professional school for study of the Martial Arts. From 1985, [the petitioner] started to attend province level and state level competitions and championships. Due to [the petitioner's] outstanding skill and solid foundation, [the petitioner] has been invited as the stand-in actress for lots of films. In 1999, [the petitioner] was also invited to be the stand-in actress of movie – "Crouching Tiger, Hidden Dragon." In 2006, [the petitioner] attended the movie – "Fighter" as the stand-in actress for the first actress. During the term, [the petitioner] has insisted [on] practicing her skills in the Martial Arts. After [the petitioner] came to the U.S., [the petitioner] has continuously worked hard in her field. [The petitioner] has worked as a volunteer for teaching the Martial Arts Amateurs. In May and August of this year, [the petitioner] will attend the U.S. National largest championships which will hold in Florida and in Las Vegas. I trust [the petitioner] will get good scores via her efforts. Now [the petitioner] starts her step to the movie and the TV shows. Also I trust [the petitioner] will also perform more shows in U.S., and her shows will benefit the U.S. and the worldwide audiences.

In response to the director's request for evidence, the petitioner claimed:

> Currently, I have promoted Chinese Kungfu in the U.S. depends on my outstanding skills and talents. At the same time, for better benefits the U.S. people and society, I have created a series of body mechanics, which will be fit to the people from teen age to the elder. The set of exercises are combined with my experience and the advantage of Chinese Kungfu. As an outstanding martial artist, I hope my efforts and my contribution to the U.S. and the U.S. people immediately. I trust the U.S. society and the U.S. people need my skills and my talents. And I hope I can get approval of my application.

In addition, the petitioner submitted photographs with captions indicating that they represented the petitioner instructing her students along with several DVDs. The petitioner also submitted seven additional recommendation letters. We cite representative examples from the following individuals:

Manny Halkas stated:

> [The petitioner] is an incredible Martial Artist whose master of the skill is only surpassed by her affection for the art and teaching it. [The petitioner's] knowledge of the art form is held only by the true masters of Kung Fu, and [the petitioner] should be held as an example and role model of how the values of martial arts should be held and taught. Anyone taught by [the petitioner] should consider themselves fortunate and humbled to have learned from such an incredible individual.

Joseph Ahdoot stated:

> [The petitioner] has also helped improve my understanding of the world and grow into a better person. I believe that [the petitioner] is a unique human being and dare I say the perfect instructor. I hope [the petitioner] may stay in the United States so we may still have the honor of learning from her.

Jason Kong stated:

> What [the petitioner] has brought to the class was her world class martial art skill, experience in stage fight as [the petitioner] has participated in movie productions at national as well as international setting. In addition, [the petitioner] has been a great teacher to the students in the academy. I have learned so much from her demonstration, seminars.

The Zhang Family stated:

> While teaching us, [the petitioner] knows how to target different levels of students. For example, [the petitioner] is very patient with young students like my kids who are only seven and nine. [The petitioner] would explain and correct their moves one by one, and at the mean time, [the petitioner] makes her teaching fun so that the kids don't lost interest.

A review of the director's decision for this criterion reflects errors and inconsistencies. While the director cited the language for the regulation at 8 C.F.R. § 204.5(h)(3)(v), he discussed the petitioner's eligibility as it pertained to the artistic exhibitions criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii). A further review of the decision reflects that he duplicated the citation of the regulatory language for the original contributions criterion but cited the regulation under 8

C.F.R. § 204.5(h)(3)(viii), which is the leading or critical role criterion. Moreover, the director first indicated that "[t]he record contains evidence that her work has made a significant contribution to the world of artistic entrepreneur."[5] Then, the director indicated that "the record contains no evidence that the petitioner's work has made a significant contribution to the world of artistic entrepreneurship outside her immediate circle of collaborators, and colleagues." While the director ultimately concluded that the evidence does not clearly establish that the petitioner has documented original contributions that have made a significant impact on her field, we will evaluate the petitioner's documentary evidence and arguments in order to make a final determination of the petitioner's eligibility for this criterion.

On appeal, counsel refers to the above-mentioned recommendation letters and argues:

> Nothing is further from the truth. If the Director has carefully read all the submissions he would have made a different conclusion. The petitioner's contributions in her field are widely acknowledged and accepted and appreciated by both her peers in the field and the Kungfu fans who highly regard the petitioner and consider her a master of martial arts and a role model.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of "original artistic or athletic-related contributions of major significance in the field."

While the recommendation letters praise the petitioner for her talents, both as a competitor, instructor, and artist stand-in, they fail to indicate any original contributions of major significance to the field. Instead, the recommendation letters describe personal contributions made by the petitioner to her students and the limited projects in which she has worked. The letters do not provide any specific information to establish how the petitioner has made original contributions of major significance. For example, although Nick J. Gracenin stated that the United States needs experts like the petitioner to compete globally, he failed to identify any original contributions of major significance made by the petitioner. In addition, while Natasha Arthy described her roles in two movies as a stand-in actress, she failed to indicate any of the petitioner's original contributions that have significantly impacted the field as a whole and not limited to her performances in two movies. Furthermore, Xian Gao merely summarizes the petitioner's experience as a stand-in actress and competitor without offering any examples of original contributions that have influenced the field. Finally, while the recommendation letters from her students all credit the petitioner with developing their skills in the martial arts and highlight the petitioner's talents as an instructor, the petitioner's contributions have been

[5] The record reflects that the petitioner is claiming eligibility as a martial artist, coach, and stand-in artist and not as an artistic entrepreneur as claimed by the director. We further note that the director also erred in his decision by stating that "[t]he petitioner is a top female dancer in [her] profession."

reserved to her students and not to the field as a whole. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[6] The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance. Furthermore, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108.

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. Without extensive documentation showing that the petitioner has been unusually influential or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

Accordingly, the petitioner failed to establish 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.*

At the time of the original filing of the petition, the petitioner failed to claim eligibility for this criterion. In response to the director's request for evidence, the petitioner claimed eligibility and stated:

> I recently wrote two scholarly articles in Martial Arts, which *will be* published in "Kungfu Magazine," which is the leading magazine in English on the web, with exclusive free access content published only on the web, updated every two weeks with new, fresh articles [emphasis added]. It *will be* distributed to many countries [emphasis added]. Established in 1993, it has over 15 years [of] history.
>
> * * *

[6] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

> In past, I also published the scholarly articles in "Wulin," "Wuhun," which had been the largest publication Kungfu magazine in China, and also in the world. In 1990, "Wulin," had publication of over 5 millions [*sic*].

In addition, the petitioner submitted the following documentation:

1. A certified translation of a document entitled, "Brief Introduction of the Cooperation of Movement and Stillness of TaiChi Boxing";
2. A certified translation of a document entitled, "Development of Modern Times Tong Bei Quan and the Characteristics of its Practice"; and
3. A certified translation of a document entitled, "Discussion of Difference and Similarity of Ancient Martial Arts and Ancient Military Techniques."

As indicated previously, the director addressed the petitioner's articles under the published material criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(iii). On appeal, counsel argues:

> All these articles have been published in highly-regarded and national trade magazines. The first two were published on www.kugnfumagazines.com [*sic*] and the third one was on "Wu Lin," a preeminent martial arts magazine in China, with a national circulation and distribution. The petitioner's mastery of the martial arts theories and her rich experience in practice make her one of the best in the field.
>
> If one reads these articles he or she would be well informed and acquainted with in-depth knowledge of China's cream, the martial arts and related forms.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Regarding times 1 and 2, while counsel claimed on appeal that they were published on www.kungfumagazine.com, the petitioner claimed in response to the director's request for evidence that they *will be* published and *will be* distributed. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114. Moreover, the record of proceeding contains no evidence reflecting that they were published on www.kungfumagazine.com, *Kungfu Magazine*, or any other publication. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Regarding item 3, the petitioner failed to submit any documentary evidence demonstrating that the document was published in *Wulin* or *Wuhun*, as claimed by the petitioner. 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)). Furthermore, counsel failed to submit any documentary establishing that it was published in *Wu Lin.* The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Notwithstanding any of the above, in general, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the petitioner's documents do not contain the characteristics of scholarly articles and appear to be more for entertainment than scholarly purposes. As there is no evidence demonstrating that the petitioner's documents were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly," the petitioner's authorship of three documents is insufficient to meet this criterion. Furthermore, even if the petitioner established that these documents were ever published, which she did not, the petitioner failed to submit any documentation supporting her claims that *Kungfu Magazine* "is the leading magazine in English on the web" or *Wulin* or *Wuhun* was "the largest publication Kungfu magazine in China, and also in the world." *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190. Moreover, counsel failed to submit any documentary evidence supporting his assertion that *Wu Lin* is "a preeminent martial arts magazine in China, with a national circulation and distribution." *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Merely submitting documentation claiming authorship is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) without documentary evidence establishing the authorship of scholarly articles in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

At the time of the original filing of the petition and in response to the director's request for evidence, the petitioner failed to claim eligibility for this criterion. As indicated previously, while the director cited the regulatory language for the original contributions criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi), he discussed the petitioner's eligibility as it pertained to the artistic exhibitions criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Specifically, the director stated that "[t]he petitioner has not shown that his [sic] exhibitions enjoy a national reputation or that participation in these exhibitions was a privilege extended only to top artists in the field."

On appeal, counsel argues:

> As adequately illustrated in the submissions by the petitioner, [the petitioner] has indeed exhibited extraordinary abilities in her field of endeavor, martial arts or Kungfu, by winning top prizes in international martial arts competitions in the United States, by wining [*sic*] top prizes in various competitions in China, by being appointed judgeships at prestigious institutions in China, by performing for international dignitaries and celebrities, by teaching hundreds of martial arts students both in China and abroad, by participating in shooting dozens of Kungfu-themed movies in China and abroad, by being exposed in international and national media, by having her professional articles published in publications of national circulation and distribution, and by positively influencing the marital [*sic*] arts-loving people of the world.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." In accordance with *Kazarian* 596 F.3d at 1122, the national recognition of the exhibitions indicated by the director is not relevant to meeting the plain language of the regulation. Instead, the petitioner must submit evidence establishing that her work has been displayed at artistic exhibitions or showcases. While we do not agree with the basis of the director's decision in requiring national recognition, we ultimately concur with the decision of the director but for a different reason.

While counsel refers to the petitioner's claims of awards, published material, judging, original contributions, and scholarly articles, we have already discussed the petitioner's eligibility and documentation as they pertained to the appropriate criteria. The regulatory criteria under 8 C.F.R. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

Moreover, while the record of proceeding contains evidence of the petitioner's martial arts performances at private and public entities, as well as in movies, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) indicates that it is intended for visual artists rather than for martial artists and stand-in artists such as the petitioner. It is inherent to the work of a performing artist to perform before an audience. We find that the petitioner's performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be discussed under that criterion.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

At the time of the original filing of the petition, the petitioner failed to claim eligibility for this criterion. However, in response to the director's request for evidence, the petitioner claimed:

> The compensation I received for my performance in Movies based on my extraordinary ability in the 1980s was about 4000 Yuan/month, which was 20 – 80 times of the average salary in China, which was about 50 – 200 Yuan/month. During the term of attending Movie – Fighter, I had the high remuneration for my performance as the one of the important roles in the movie. I had lived in the 5 stars [*sic*] hotel, high level profit and got the high salary – EUR6000.00 per month. At the same time, the director purchased the high insurance for me. The following performance shows my engagement history in the field of my Kungfu skills.
>
> 1987 TV show – Robbing 200,000;
> 1988 Movie – Yellow River Chivalry – Sword Man;
> 1990 TV Show – Generals of Yang Family;
> 1991 TV Show – King of Qing: Shimin Li;
> 1993 Movie – Legend of Emperor Yan;
> 1994 Movie – Female Emperor: Zetian Wu;
> 1998 Movie – Flying Dart: Santai Huang;
> 2006 Movie – Fighter (which was published in New York Tribeca Film Festival)

The director determined that the petitioner failed to submit evidence demonstrating that she commanded a high salary or other significantly high remuneration for services. On appeal, counsel argues that the petitioner's "salary offered in China in the 1980s was many times of the average salary in that country."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added]." The petitioner failed to submit any documentary evidence of her salary or remuneration for services supporting her claims in various television and movie roles. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that she commanded a high salary or other significantly high remuneration for services in relation to others in the field. The petitioner's and counsel's assertions that she received "20 – 80 times of the average salary in China," "lived in 5 stars [*sic*] hotel," and "EUR6000.00 per month" are unsupported by any documentary evidence. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190; *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Simply alleging a high salary or other significantly high remuneration for services is insufficient to demonstrate eligibility for this criterion without evidence reflecting that the petitioner's salary or other remuneration for services is significantly high when compared to others in her field.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

The petitioner did not indicate eligibility for this criterion at the time of the original filing of the petition or in response to the director's request for evidence. As such, the director did not address this criterion in his decision. On appeal, counsel argues

> But to offer evidence of her commercial success in the United States while her immigration status is still uncertain is being unreasonable since her abilities to be commercially successful a [*sic*] the present time is hindered by her abilities to travel out of the United States to be actively involved in the movie business which would normally render her very valuable commercially. Her past experiences are strong harbingers of her future success, if her current appeal prevails and her immigration status is obtained.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." In other words, the petitioner is required to submit evidence reflecting that she had commercial successes. We are not persuaded by counsel's claim that the petitioner is prevented from demonstrating commercial successes because she is unable to travel outside of the United States. In the discussion of the previous criterion, the petitioner has indicated her involvement with various movie and television shows in China, as well as more recent involvement in the movies *Crouching Tiger, Hidden Dragon* and *Fighter*. The fact that the petitioner is currently unable to travel outside of the United States is irrelevant in order to establish eligibility for this criterion.

Notwithstanding the above, the record of proceeding reflects claims that the petitioner has performed at various events such as the Adult Day Health Care, United Nations Spring Festival Program, and Farewell Party for Biwei Liu, General Ambassador for China. However, this regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in performances or was involved in a movie or television program cannot meet the plain language of this criterion. The petitioner failed to submit any documentary evidence in form of "box office receipts or record, cassette, compact disk, or video sales" to demonstrate her commercial successes.

Accordingly, the petitioner failed to establish that she meets this criterion.

***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." *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). *See also Kazarian,* 596 F.3d at 1115. The petitioner failed to establish eligibility for any of the criteria, of which at least three are required

under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, 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).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner claimed some success at winning awards in martial arts, instructed amateurs in various age groups, and participated as a stand-in artist in some movies. However, the accomplishments of the petitioner fall far short of establishing that she "is one of that small percentage who have risen to the very top of the field of endeavor" and that she "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), 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).

While the petitioner failed to establish eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), we note that the petitioner based her eligibility, in part, on amateur and youth level awards. Awards won by the petitioner in competitions that were limited by her age or awards received from coaching amateur and student athletes do not indicate that she "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout her field, rather than mostly limited to a few individuals restricted by age or other similarly limited competition. 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.[7] Likewise, it does not follow that a martial arts competitor like the petitioner who has had success in a competition restricted by age, 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."

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[7] 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.

Similarly, even though the petitioner failed to establish eligibility under the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the record of proceeding contains no evidence reflecting the caliber of the individuals allegedly judged. Judging local, amateur, or student competitions is not indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." See, e.g., *Matter of Price*, 20 I&N at 954. Evaluating the work of the highest level of Dan as a member on a national panel of experts is of far greater probative value than evaluating the work of amateur and student martial artists.

Moreover, the regulation at 8 C.F.R. § 204.5(h)(3) provides that a "petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's published material about the petitioner relating to her work must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iii), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Although the petitioner failed to establish eligibility for this criterion, the petitioner only submitted four articles, in which three of the articles never mention the petitioner. We are not persuaded that this amount of coverage of the petitioner is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

In addition, while the petitioner failed to establish eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), besides photographs and DVDs of the petitioner instructing her students, the petitioner relied on recommendation letters to demonstrate her eligibility. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795.

Finally, we cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the petitioner's sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). In this case, the record of proceeding reflects uncertified translations and foreign language documents without any English translations. The petitioner claimed eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii) without

submitting sufficient documentation of her membership in CWA and failed to submit any documentation regarding the membership requirements for TRC. Furthermore, the petitioner failed to comply with the basic regulatory requirements such as providing the date and/or author of the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the petitioner submitted documents claiming that she qualified under the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi) but failed to submit any documentation reflecting where it was published. In addition, the petitioner claimed eligibility for the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix) without offering any documentary evidence of her salary or comparison of her salary with the salaries of others in her field. Also, the petitioner and counsel made various assertions without any supporting evidence. Finally, the petitioner relies heavily on secondary evidence without evidence demonstrating that primary evidence does not exist or cannot be obtained. We are not persuaded that an individual with sustained national or international acclaim could not submit primary evidence of her accomplishments.

The petitioner failed to submit evidence demonstrating that she "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated her "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

When compared to the accomplishments of Nick J. Gracenin who claims to have "produced over twenty members of U.S. teams including several national champions," it appears that the highest level of the petitioner's field is far above the level she has attained.[8] In addition, Mr. Gracenin claims to hold "the record for medals won at world championships by a member of the International Wushu Federation," named "one of the top '100 Influential Martial Artists of the Century'," and was voted "Man of the Year" by *Inside Kungfu*. When comparing the achievements of the petitioner, who failed to even claim that her students have achieved any level of recognition, the petitioner falls far short in establishing that she is within that "small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

The conclusion we reach by considering the evidence to meet each criterion 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. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

## V. Conclusion

[8] See http://nickgracenin.com/?page_id=2 that was submitted by the petitioner in support of the recommendation letter.

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 and 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. 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). While we find that the director's decision contained several errors, we find those errors to be harmless and based on our review on a *de novo* basis, the record of proceeding fails to demonstrate the petitioner's eligibility for this classification.

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.