U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

B2

DATE: APR 13 2011 Office: [redacted] FILE: [redacted]

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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics.[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, the 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, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on July 7, 2008 as a B-2 nonimmigrant visitor for pleasure.

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

USCIS and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

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

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

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

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

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

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

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

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

> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

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

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[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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 6, 2009, seeks to classify the petitioner as an alien with extraordinary ability in karate. The petitioner submitted a July 1, 2009 affidavit accompanying the petition stating: "I am one of top athlete/karate player, renowned karate coach/instructor and well known karate experts in [redacted]" The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).[3]

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

The petitioner submitted the following:

1. Fill-in-the-blank certificate stating: "[The petitioner] has been awarded this certificate for securing first position in fifth Regional Karate Competition held from 2058/01/29 and organized by [redacted] at [redacted] in [redacted] under [redacted]
2. Fill-in-the-blank certificate stating: "On the auspicious occasion of Happy New Year 2057 BS. [the petitioner] representing from [redacted] is awarded this certificate for being successful in securing the 1st position in [redacted] organized by [redacted]
3. Fill-in-the-blank certificate stating: "On the auspicious occasion of Happy New Year 2054 BS. [the petitioner] representing from [redacted] is awarded this certificate for being successful in securing the 1st position in [redacted] organized by [redacted]
4. Fill-in-the-blank "Certificate of Merit/Participation" stating: "This is to certify that [the petitioner] ... Secured 1st Position in the [redacted] during the First District – [redacted] ..."
5. Fill-in-the-blank certificate stating: "[The petitioner] of [redacted] is awarded this certificate for securing third place in [redacted] during the [redacted] for [redacted] Dated 2055/11/30."
6. Fill-in-the-blank "Certificate of Merit/Participation" stating: "This is to certify that [the petitioner] of [redacted] secured 2nd place in the [redacted] during the [redacted] organized by [redacted]
7. Certificate of Participation certifying that the petitioner "participated in the 8th [redacted] 20th August – 27th August 2007."

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

8. Certificate "in recognition of and appreciation for [the petitioner's] contribution to the success of the [redacted]
9. Fill-in-the-blank [redacted] certifying that the petitioner "participated in the 4rd [sic] [redacted] in June 2003.
10. Fill-in-the-blank [redacted] certifying that the petitioner "participated in the [redacted] in March 2003.
11. "Certificate of Participation" presented to the petitioner "for participating in the [redacted] in November 1997.
12. Fill-in-the-blank certificate presented to the petitioner "for standing 1st Position in the 1st Position the [redacted]
13. Fill-in-the-blank certificate stating that the petitioner "participated and secured 1st Position in [redacted] weight category" at the "1st [redacted] tournament organized by [redacted]
14. Fill-in-the-blank certificate stating that the petitioner "secured 1st Place in the [redacted] weight category [redacted] in the [redacted] championship held at [redacted]
15. Fill-in-the-blank certificate stating that the petitioner "secured 2nd position in the [redacted] Weight Category during the [redacted]
16. Fill-in-the-blank certificate indicating that the petitioner participated "in the [redacted] weight catagory [sic] during the [redacted] held in [redacted]
17. November 28, 2009 letter from [redacted] stating that the petitioner was recognized as Male "Outstanding Player" in 2003 and 2005, and "Outstanding Instructor" in 2007.
18. Certificate from the [redacted] and the [redacted] stating that the petitioner received a "Best Referee – 2007" award.
19. Certificate from the [redacted] stating that the petitioner received a [redacted] – 2007."

Regarding items 1, 4, 5, the terms "Regional" and "District" imply that the fill-in-the-blank certificates submitted by the petitioner are regional awards rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Further, the petitioner's July 1, 2009 affidavit accompanying the petition specifically identified items 12 – 15 as "Local and Regional Level Awards." With regard to items 1 – 6 and 12 – 15, the record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by the petitioner. For instance, there is no evidence of the official comprehensive results from the preceding competitions indicating the total number of entrants in the petitioner's competitive category or weight division. 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 fill-in-the-blank award certificates. The submitted documentation does not establish that the petitioner's awards were recognized beyond the context of the events where they were presented and therefore commensurate with "nationally or internationally recognized" prizes or awards for excellence in the field.

In regard to items 7 – 11 and 16, there is no evidence showing that these certificates are nationally or internationally recognized prizes or awards for excellence in the field, rather than simply acknowledgments of the petitioner's participation in the competitions. Regarding item 17, we note that the November 28, 2009 letter from the Chairman of the [redacted] does not include a full address, a telephone number including area code, or any other information through which its author can be contacted. Further, unlike many of the other letters submitted with the petition, the Chairman's letter was not submitted on organizational letterhead. Rather than submitting primary evidence of his [redacted] awards from 2003, 2005 and 2007, the petitioner instead submitted an unreliable letter issued years later attesting to their existence. 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The November 28, 2009 letter from the Chairman of the [redacted] does not comply with the preceding regulatory requirements.

Finally, regarding items 1 – 19, the petitioner did not submit evidence of the national or international *recognition* of his particular awards. The plain language of the regulation 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 documentary evidence demonstrating that the petitioner's awards are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

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

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

In order to demonstrate that membership in an association meets this criterion, 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.

The petitioner submitted a membership card and qualification certificate (2003) indicating that he earned the 2nd Dan (Second Degree) Black Belt designation from the [redacted] The petitioner's qualification certificate states: "The above named person is awarded the stated qualification by the rules of this association for having completed the study and *satisfactory* demonstration of the necessary standards." [Emphasis added.] The petitioner also submitted a membership card and proficiency diploma (1998) indicating that he earned the 1st Dan Black Belt designation from the [redacted] The petitioner's proficiency diploma states: "This is to certify that [the petitioner] has shown *Proficiency* in [redacted] & Attained the Rank of Black Belt 1st Dan (Sho-Dan) as granted by the Board of Examiner." [Emphasis added.] We cannot conclude that completion of one's studies, "satisfactory" demonstration of standards, and showing skills "proficiency" constitute outstanding achievements.

On appeal, the petitioner submits a December 7, 2009 letter from [redacted] President, [redacted] stating:

> It takes four years of regular training to earn the Black Belt, and one has to passed [sic] each test respectively. For the Black Belt test can be provided [sic] by [redacted] Black Belt Committee. The test includes Basic (Kihon Basic), Fighting Stance (Kumute), Jukumute, Ipon Kumute (High Technique), Kata. [The petitioner] attended the exam of Black Belt exam on November 28, 1998 and he performed excellently in the exam. After completion of this course and continuous significant contribution in his field with more specialization in the field of karate, [the petitioner] has passed his second Dan Black Belt test with highest performance.

Once again, we cannot conclude that demonstrating the required skills and training to achieve the next proficiency level equates to outstanding achievements. The submitted evidence does not establish that the [redacted] and the [redacted] require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. Accordingly, the petitioner has not established that he meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[4]

The petitioner submitted a three-sentence article in [redacted] entitled [redacted] and dated June 17, 2008, but the author of the material was not identified as required by the plain language of this regulatory criterion. The article lists the petitioner's name among eight members and officers of the [redacted] Association. The article does not include any further information about petitioner and is primarily about the [redacted] Association in general. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien."[5] In response to the director's request for evidence, the petitioner submitted an undated letter from the Managing Editor of [redacted] stating: "The [redacted] is 109 years old broadsheet news paper [sic] owned by the [redacted] The daily has the highest circulation in the country." The self-serving circulation claim provided in the letter from the Managing Editor of [redacted] is not sufficient to demonstrate that his newspaper is a form of major media. USCIS need not rely on self-serving assertions.[6]

The petitioner also submitted two articles allegedly published in [redacted] and [redacted] on June 17, 2008 and entitled [redacted] but the certified English language translations accompanying these articles do not specify the names of the preceding publications. Further, the authors of the two articles were not identified as required by the plain language of regulation at 8 C.F.R. § 204.5(h)(3)(iii). The June 17, 2008 article in [redacted] (comprised of three sentences) lists the petitioner's name among five members and officers of the [redacted] Association. On appeal, the petitioner submits a September 3, 2009 letter from the "Asst. Senior Sub-Editor" of [redacted] stating: "The [redacted] is reputed Vernacular national daily newspaper which is being published since 1989 A.D. It is publishing in different cities, [redacted] together." The self-serving circulation claim provided in the letter from the "Asst. Senior Sub-Editor" of [redacted] is not sufficient to demonstrate that his newspaper is a form of major media. With regard to the June 17, 2008 article in [redacted] (comprised of four sentences), we note that the article lists the petitioner's name among nineteen members and officers of the [redacted] Association. The preceding articles do not include any further information about the petitioner

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[4] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

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

[6] *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

and are primarily about the [redacted] Association in general. Moreover, there is no evidence (such as objective circulation information from an independent source) showing the distribution of [redacted] and [redacted] relative to other [redacted] media to demonstrate that the submitted articles were published in professional or major trade publications or other major media.

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

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

The petitioner submitted certificates indicating that he completed a [redacted] Karate Federation Referee Refresher Course" (2007), a Masters Training Course for Referees & Coaches organized by the [redacted] Karate Do Association and the [redacted] Karate Federation (2005), an "Educational Course in Traditional Martial Arts" (2005), a referee course offered by the [redacted] Karate Federation [redacted] in which he demonstrated "understanding of the rules and their proper applications to the noted level" (2005), a World Karate Confederation Masters Training Course for Referees & Coaches (2003), and a "Referee Course held under the authority of the [redacted] Referee Council" (2002). The petitioner's completion of various training courses indicates that he met the educational requirements for becoming a referee or a coach, but it does not constitute evidence of his participation, either individually or on a panel, as a judge of the work of others in his field. Certificates indicating that the petitioner had training as a "referee" or "coach" do not establish that he actually participated as a "judge."

The petitioner also submitted the following:

1. Fill-in-the-blank "Certificate of Appreciation" presented to the petitioner for his "contribution as being a jury to make [sic] the [redacted] 2007 organized by the [redacted] held at [redacted] on September 7th – 8th 2007."
2. Fill-in-the-blank "Certificate of Merit/Participation" identifying the petitioner as being on the jury "during the [redacted] 2063" organized by branch [redacted]
3. Fill-in-the-blank certificate identifying the petitioner as a referee "during the [redacted] organized by branch [redacted]
4. Fill-in-the-blank certificate identifying the petitioner as a referee "during the [redacted] organized by branch [redacted]
5. Fill-in-the-blank "Certificate of Appreciation" identifying the petitioner as a referee during the [redacted] 2005 . . . held in

[redacted] jointly organized by [redacted] and [redacted] from 5th – 10th January 2005."[7]

6. Fill-in-the-blank certificate identifying the petitioner as a judge "during the [redacted] held in [redacted] from 19-20 March 2005."
7. Fill-in-the-blank "Certificate of Merit/Participation" identifying the petitioner as being on the jury "during the period of [redacted]
8. Fill-in-the-blank "Certificate of Merit" identifying the petitioner as a judge who "participated in [redacted] . . from 11th to 12th Apr. 2003."
9. Fill-in-the-blank certificate identifying the petitioner as a referee at the [redacted]
10. Fill-in-the-blank certificate from [redacted] identifying the petitioner as a judge "during [redacted]
11. Fill-in-the-blank certificate stating that the petitioner participated as a referee at the [redacted]-2001."
12. Fill-in-the-blank "Certificate of Participate/Official/Merit" identifying the petitioner as a referee "during the [redacted] 2001 organised by [redacted]

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[7] We note that the [redacted] is ***not*** the national governing body for the sport of karate in the United States as recognized by the United States Olympic Committee. Rather, the [redacted] holds this designation. The [redacted] website states:

> On April 14th, 1996, the United States Olympic Committee (USOC) Board of Directors upon the recommendation submitted by the USOC Membership and Credentials Committee voted to sanction the newly formed [redacted] as a member. This membership met with unanimous approval. As the National Governing Body for the sport of Karate in the United States, the [redacted] responsibilities include: The development and fielding of Junior and Adult Karate Athletes to international events and competitions representing the United States, Serving all membership classes represented on the Board of Directors, Representing the United States within the designated International Federation (I.F.) under the auspices of the International Olympic Committee (I.O.C.), [and] National Championships. As the largest Karate Organization in the United States in "nature, quality, scope and strength" as determined by the Amateur Sports Act and the USOC, the [redacted] remains a nonprofit 501c3 organization open to all martial arts practitioners. It is an organization dedicated to the growth and promulgation of all types of Karate in our country. Some of the competitive opportunities through the [redacted] include: The World Championships, The Pan American Games, The Pan American Championships, The World Cup, The World Games, The University Games, The Police Games, The Jr. Cadet International Championships, The Jr. World Championships, The Jr. Olympics . . . .

See [redacted] accessed on March 31, 2011, copy incorporated into the record of proceeding.

With regard to item 2, the heading on the certificate misspells "National Sports Council" as "National Sports Councial." Regarding item 5, an additional signature other than that belonging to [redacted] appears on the certificate in the signature line above Grandmaster [redacted] President, [redacted] In regard to item 10, the certificate misspells "Mayor" as "Mayar." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Items 1, 2, and 7 identify the petitioner as a juror; items 3 – 5, 9, 11 and 12 identify him as a referee; and items 6, 8 and 10 identify him as a judge. The record lacks official competition rules for the preceding championships indicating the specific responsibilities for a juror, judge, and referee. For instance, the submitted documentation does not establish that serving as a "referee" in the above instances equates to participating as a "judge" of the work of others. There is no evidence demonstrating that the petitioner actually judged the work of competitors, such as assigning points or determining winners, rather than merely enforcing the rules and maintaining a sense of fair play. Further, the petitioner failed to submit documentary evidence specifying the nature of his participation in the championships, the names of the individuals whose work he judged, and the competitive divisions or categories to which he was assigned. Merely submitting fill-in-the-blank certificates stating that the petitioner served as a juror, referee, or judge without evidence demonstrating who he actually judged is insufficient to establish eligibility for this criterion.

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

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

The petitioner submitted letters of support from his personal contacts discussing his achievements as a karate competitor and instructor and his activities in the sport. Success and dedication to 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.

In his initial letter dated January 12, 2009, [redacted] 6th Degree Black Belt and President of the [redacted] Association, states:

> It is my great pleasure to write a recommendation letter for one of the most talented Karate players of [redacted] [the petitioner]. The petitioner has earned the Black Belt (Second Dan) in [redacted] Association on June 20, 2003 and worked jury, judge, referee and expert panel in many tournaments in [redacted] and abroad. Also [the petitioner] has won many national and international gold medals in tournaments.

> Regarding my knowledge is concerned [the petitioner] has big future potentiality in the field of karate any country in the world.

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.

[redacted] Minister, [redacted] states:

> I am very pleased to write a recommendation letter for renowned Karate athletes [sic] of [redacted] [the petitioner]. Regarding my knowledge is concerned [sic] he is one the best Karate athletes of [redacted]
>
> I hail from the same district where [the petitioner] was born. I have known him since his childhood. [The petitioner] was also played [sic] the significant role to develop the sports tourism concept in [redacted] He is generous, honest, hard working person. I personally attested he is a person with high moral characters.

[redacted] does not provide specific examples of how the petitioner's original work has impacted the field. There is no evidence demonstrating that the petitioner's sports tourism work constitutes original contributions of major significance in the field.

[redacted] State Minister, [redacted] states:

> I am very delegated [sic] to write a support recommendation letter to [the petitioner] resident of [redacted] district of [redacted] He is a bonafied [sic] [redacted] Karate player of [redacted] He played the significant role to develop the Karate and Kick Boxing in [redacted] I would like to strongly recommend that [the petitioner] is one of the Key-Karate athletic [sic] in [redacted]

[redacted] does not explain how the petitioner's contributions to karate and kick boxing were original, nor does his letter contain examples of how the petitioner's athletic contributions have impacted his sport.

In his initial letter dated February 5, 2007, [redacted] identified himself as Acting Member Secretary, [redacted] He states.

> I am very delegated [sic] to write a strong support recommendation letter to [the petitioner], permanent resident of [redacted] district of [redacted] He is a bonafied [sic] [redacted] player of [redacted] He has participated in various regional and national Karate and Kick Boxing tournaments. He played the significant role to develop the Karate and Kick Boxing in [redacted] [The petitioner] worked as a Karate Instructor of [redacted] since 2003.

competitive awards. We note that the petitioner's karate awards 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.

In response to the director's request for evidence, the petitioner submitted an August 20, 2009 letter from [redacted] First Secretary, Embassy of [redacted] Washington, D.C., but the letter did not include an address, telephone number, or any other information through which the author can be contacted. [redacted] states:

> [The petitioner] has been associated with [redacted] Karate Federation under the [redacted] of [redacted] [The petitioner] took part in many national and international level competitions including World Championships held in [redacted] [The petitioner] is the two times Gold Medal Winner in [redacted] in [redacted]
>
> [The petitioner's] performances have been highlighted by various widely circulated News Papers [sic] in [redacted] such as [redacted] etc.
>
> He is a truly dedicated and a bona fide Karate Player and Instructor and his contribution to athletic is exemplary.

[redacted] does not specifically identify the two national competitions in which the petitioner purportedly received gold medals. Nevertheless, the petitioner's karate awards have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Further, contrary to [redacted] claim, the published material submitted by the petitioner does not highlight his performances. Rather, it simply lists his name among multiple members and officers of the [redacted] Association. Moreover, the record does not include documentary evidence of published material about the petitioner in the [redacted] As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner's appellate submission includes an additional letter from [redacted] dated December 2, 2009 stating:

> [The petitioner] currently serves as a senior instructor of [redacted] karate. There are only three instructors of his hierarchy registered under [redacted]

[The petitioner] has trained several karate players and many among them have received awards in several internationally acclaimed competitions. Below listed are few of the achievements received by players who obtained training from [the petitioner]:

[redacted] – 2006

[redacted]

Gold karate
Silver karate
Silver karate
Silver karate

[redacted]

Gold karate
Gold karate
Silver karate
Silver karate
Silver karate
Silver karate

The reputation of the preceding competitions is undocumented and there is no primary evidence either that the petitioner has coached any of these individuals or of the awards purportedly won by them. Further, there is no evidence of the official comprehensive results from the competitions indicating the total number of entrants in the petitioner's athletes' competitive categories or weight divisions. While the petitioner may have instructed students, competed in tournaments, and participated in karate training, these activities do not equate to "original" athletic contributions of major significance in the field. Rather, the petitioner was competing in, learning, and teaching a well established martial arts style. 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. The submitted evidence does not establish that the petitioner's specific contributions in the field were original, such as a new method of instruction or modified karate techniques. Further, there is no evidence demonstrating that any of his contributions were of major significance in the field, such as through the widespread adoption of his specific methods of instruction. Mastering and subsequently teaching an existing martial art form is not demonstrative of an original contribution to the field. While the letters of support indicate that the petitioner is knowledgeable and skilled in karate, there is no evidence showing that his impact on the sport is commensurate with original athletic contributions of major significance in the field.

The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission reference letters supporting the

petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the 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.

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

The petitioner submitted a July 4, 2008 article by him entitled [redacted] allegedly published in [redacted] but the certified English language translation accompanying the article does not specify the name of the publication. Further, there is no evidence showing that [redacted] is a professional or major trade publication or some other form of major media. The petitioner also submitted a June 8, 2008 article by him entitled [redacted] allegedly published in [redacted] Once again, the certified English language translation accompanying the article does not specify the name of the publication. In response to the director's request for evidence, the petitioner submitted an undated letter from the Managing Editor of [redacted] stating: "The [redacted] is 109 years old broadsheet news paper [sic] owned by the Government of [redacted] The daily has the highest circulation in the country." As previously discussed, the self-serving circulation claim provided in the letter from the Managing Editor of [redacted] is not sufficient to demonstrate that his newspaper is a form of major media. USCIS need not rely on self-serving assertions.[8] There is no evidence (such as objective circulation information from an independent source) showing the distribution of [redacted] and [redacted] relative to other [redacted] publications to demonstrate that the submitted articles were published in professional or major trade publications or other major media. Moreover, 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." [Emphasis added.] Generally, 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 record lacks evidence demonstrating that the petitioner's works were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly." Accordingly, the petitioner has not established that he meets the plain language requirements of this criterion.

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

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[8] *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

In response to the director's request for evidence, the petitioner submitted an August 26, 2009 letter from [redacted] stating that the petitioner "holds the position of Vice-President and is one of the senior and multidynamic members" of the [redacted] However, the left sides of [redacted] January 12, 2009 and August 26, 2009 letters specifically identify [redacted] as the "Vice President" of the [redacted] Association. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal, the petitioner submits a December 5, 2009 letter from [redacted] stating:

> This is to verify that [the petitioner] is the 2nd Dan Black Belt and Vice-President of [redacted] Association, which is affiliated to [redacted] sports Council, [redacted] Olympic Committee, Ministry of Sports of [redacted] World karate Federation, and American Karate Federation. There are more than thirty thousand players registered in [redacted] and 330 players have achieved black belt.
>
> Currently, [the petitioner] is the senior instructor of our organization. With his outstanding service and knowledge, he has acclaimed several international awards and established himself as an internationally renowned referee. He has also received Masters in Arts from [redacted] Attracted by his talents in different fields, trainings and referee skills, many [redacted] karate players want to receive training from him. In fact, his trainees have been able to secure several domestic and international awards. It is not an overstatement that [the petitioner] is the best instructor of [redacted] karate in Nepal and a marvelous official as the vice-chairman of this organization dedicated to the development of the sport in [redacted]

The petitioner also submits a December 5, 2009 letter from [redacted] Member Secretary, National Sports Council, [redacted], stating:

> I am very pleased to inform that [the petitioner] is one of the key karate athletes of [redacted] [The petitioner] had been *nominated* as the Vice President of [redacted] Association and elected as the Vice President of [redacted] Association. His duties and responsibilities in the organizations are to organize the National level of tournaments, referee clinic, seminars, co-ordination with other national and international organizations, special training to coaches, work in jury and expert panel of those organizations.

[Emphasis added.]

The December 5, 2009 letter from [redacted] states that the petitioner was "nominated" as Vice President Vice President of [redacted] Association, but there is no documentary evidence showing that he had performed in a leading or critical role for the association as of the petition's July 6, 2009 filing date. Further, while the preceding December 5, 2009 letters from [redacted] and [redacted] state that the petitioner is the Vice-President of [redacted] Association, there is no evidence demonstrating that the petitioner occupied that position at the time of filing the petition.[9] 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. 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. Even if the petitioner were to establish that he had served as Vice President of both the [redacted] Association and the [redacted] Association as of the petition's filing date, which he has not, there is no documentary evidence showing that these associations have a distinguished reputation. The letters of support provide general information about the [redacted] Association, but there is no supporting evidence showing that the preceding associations have distinguished themselves from other martial arts organizations. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

In light of the above, the petitioner has not established that he 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.*

The petitioner submitted a July 4, 2008 letter from [redacted] Advocate, Contemporary Legal Service (P) Ltd., [redacted] stating:

> In this regard this letter is being written about [the petitioner's] income and financial positions in his profession.
>
> According to the auditing report and his contract/appointment letters, I found that he is earning [redacted] (In words twenty hundred thousand only) [redacted] currency (equivalent to US Dollar $ 29,133.28) annually. In addition he is a nice tax payer and has a good credit. His income is considered as a best earning in comparison with other fellow Karate and Kick-boxers.

[redacted] letter was unaccompanied by "the auditing report" and "tax payer" documentation. Further, there is no documentary evidence of the earnings comparison [redacted] relied upon to conclude that the petitioner's income was among the "best" in his occupation. As previously discussed, going on record without supporting documentary evidence

[9] The left side of [redacted] December 5, 2009 letter submitted on appeal now identifies the petitioner as Vice President.

is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The petitioner also submitted an October 18, 2005 letter from [redacted] stating:

> I would like to inform you that [the petitioner] has worked as Karate Instructor of [redacted] Karate Federation [redacted] from March 10th, 2001 to June 20th, 2005. We paid the A/C pay check of [redacted] to [the petitioner] as a monthly salary (annually [redacted] which is equivalent to US $ 820.

The petitioner's initial evidence also included a July 3, 2008 letter from [redacted] stating:

> This is to certify that [the petitioner] has been working as a Karate Instructor in [redacted] from 1st Dec. 1998 to till date.
>
> * * *
>
> For his fine work, we paid the A/C cheque of [redacted] to [the petitioner] as a monthly salary, annually [redacted] which is equivalent US$ 2580.64.

The petitioner also submitted a June 23, 2008 letter from [redacted] President, [redacted] stating: "This is to certify that [the petitioner] has been working as a Karate Instructor in the morning shift in [redacted] Campus from 17th March 2002 to till date. . . . He got [redacted] . . . as a monthly salary."

In response to the director's request for evidence, the petitioner submitted a May 28, 2008 letter from [redacted] Chartered Accountant [redacted] stating:

> According to our review of [the petitioner's] annual income, his income form different sources for the year 2007 from [redacted] . . which is equivalent to US Dollar $29,000. His income is considered as a highest earning in comparison with other fellow Karate in [redacted]

There is no documentary evidence of the earnings comparison [redacted] relied upon to conclude that the petitioner's income was among the "highest" in his occupation. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no occupational earnings data as basis for comparison showing that his compensation was significantly high in relation to others in his field.

On appeal, the petitioner submits a December 11, 2009 letter from [redacted] Treasurer of the [redacted] Olympic Committee, stating: "According to the official record, these five sports listed below provide the most competent salaries for their instructors:" [redacted] letter does not indicate what is meant by the term "most competent salaries" or identify the year in which the data was compiled. The letter includes a chart listing salaries for karate, taekwondo, football, boxing, and cricket, but it does not specify the whether salary data represents mean or median wage data, or which percentile of athletes for each sport earn the salary amounts listed. Nevertheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Salary information for those performing work in a different occupation with different responsibilities is not a proper basis for comparison. Rather, the petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner also submits a December 3, 2009 letter from [redacted] Treasurer, [redacted] Karate Federation, listing the petitioner's salary as number one among the organization's "highest ranked instructors." [redacted] letter does not identify the year in which the salary data was compiled. Further, the record does not include supporting financial documentation (such as payroll records or income tax forms) establishing the petitioner's actual earnings for any given period of time. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Without reliable evidence of the petitioner's salary and a proper basis for comparison, 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).

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we will 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 categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (vi), (viii) and (ix).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(i), there is no evidence showing that the petitioner faced top national or international karate competitors in general rather than limited to those competing in his particular karate style. Without evidence showing that the petitioner faced a significant pool of top karate competitors in [redacted] the United States, or internationally, we cannot conclude that the submitted awards demonstrate his 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 [redacted] website do not establish that he "is one of that small percentage who have risen to the very top of the field of endeavor."[10] *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.[11] Likewise, it does not follow that an athlete who has received awards in age-restricted competition, obscure tournaments, or event categories and divisions with only 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, there is no evidence showing that the petitioner has received any prizes or awards in his sport subsequent to 2007. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

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[10] As previously discussed, the [redacted] is sanctioned by the U.S. Olympic Committee and is "the National Governing Body for the sport of karate in the United States." The [redacted] website identifies karate competitions such as the USA Open, the Champions Cup, the World Championships, the Pan American Games, the World Cup, and the World Games. *See* [redacted] accessed on March 31, 2011, copy incorporated into the record of proceeding.

[11] 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.

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv), there is no evidence demonstrating the reputation, significance, and magnitude of the competitions, or the level of expertise of those who the petitioner evaluated as a referee, juror, or judge. Participation as a judge in local championships, age-restricted competitions, obscure tournaments, or events with only a small pool of entrants is not indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." *Cf., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). Further, there is no evidence showing that the petitioner has participated as a judge of the work of others subsequent to 2007. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

In this case, the evidence of record falls short of demonstrating petitioner's sustained national or international acclaim as a karate competitor and instructor. The conclusion we reach by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate 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). The submitted evidence does not establish that the petitioner's achievements at the time of filing were commensurate with sustained national or international acclaim in karate, or being among that small percentage at the very top of his field.

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.