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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

B2

[redacted]

DATE: JUN 21 2011 Office: TEXAS SERVICE CENTER 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,

Mary Johnson

Perry Rhew
Chief, Administrative Appeals Office

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

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

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

On appeal, counsel submits a brief. For the reasons discussed below, the director correctly determined that the petitioner has not established his eligibility for the classification sought.

**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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's 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.* 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 1119-20.

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* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381

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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).

F.3d 143, 145 (3d Cir. 2004); *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) (recognizing the AAO's *de novo* authority).

## II. Analysis

### *A. Previous Non-immigrant Visa*

On appeal, counsel asserts that the director failed to give sufficient weight to a previous approval of an O-1 nonimmigrant visa. While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Finally, USCIS approved the nonimmigrant visa petition in the petitioner's behalf four years before the petitioner filed the instant petition. Thus, the approval of the nonimmigrant visa petition is not evidence of his continued "sustained" acclaim as of the filing date of the instant petition, March 16, 2010.

***B. Evidentiary Criteria***[2]

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "prizes" and "awards" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.[3]

Prior counsel initially asserted that the petitioner's promotion to the Seventh Dahn Black Belt Senior Master Level in October 2005 serves as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i). The petitioner submitted a letter from [redacted] founder of [redacted] has certified only seven Seventh Dahn Black Belt Senior Masters in the world. Other materials confirm one 8th Dahn Executive Masters, two Ninth Dahn Black Belt Senior Executive Masters and one Tenth Dahn Master, [redacted]. The promotion requirements in the record address any Dahn levels Twp through Five. The materials continue:

> **Sixth Degree (Dahn) and higher Black Belt Testing**, will be at the discretion and invitation of Kuk Sa Nim and the WKSA. The period of testing and the number of tests shall be at the discretion of Kuk Sa Nim. Continued study of the Korean language is required.

(Emphasis in original.)

The petitioner resubmitted the letter from Grandmaster Suh in response to the director's notice of intent to deny.

The director concluded that promotion to higher Dahn levels does not result from competition and, thus, could not constitute qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i).

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

[3] *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

On appeal, counsel asserts that the director's "insistence" on an award resulting from competition is "misplaced." Counsel continues:

> The conferral of belts, or of various degrees within a belt, is well understood in martial arts to be a symbol and recognition of one's achievement and/or rank within a given discipline. Indeed, the very reason for awarding a seventh degree black belt in the WKSA is to recognize an individual's achievement in the mastery of Kuk Sool Won martial arts.

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).

A review of the materials about Black Belt promotions reveals that, at least for Second through Fifth Dahn, promotion is based on training time, number of tests, age, attendance [redacted] seminars and, starting at the Fifth Dahn, study of Korean. The record does not establish that belt promotion is an award for excellence rather than a ranking based on training.

While the petitioner previously tested at the Sixth Dahn level before being promoted to the Seventh Dahn, not every promotion is its own separate prize or award.

The petitioner also submitted the following:

1. A March 9, 2002 "Letter of Appreciation" from Grandmaster Suh;

2. A September 2000 "Acknowledgement" from Kuk Sool Won of Venezuela for the petitioner's "long path [sic] a valuable collaboration in the teaching of the martial discipline in Venezuela";

3. A December 20, 1997 "testimony to his excellent work" presented by the Kuk Sool Won School of Martial Arts;

4. A July 16, 1994 "Button to merit in its Sole Class" from the General Commandment of the Police, Bolivar State, Venezuela.

The first three honors are all internal to Kuk Sool Won. The record contains no evidence that these internal honors are nationally or internationally recognized in the field of martial arts as prizes or awards for excellence in the field. On appeal, counsel states that the Venezuelan Police Force "is a national entity, and the fact that it chose to confer a merit badge on a citizen, who is not a member of the force, because of his contributions to the country should easily meet the criteria for a lesser nationally recognized award for excellence in one's field." (Emphasis in original.)

As stated above, 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. The AAO will not presume the national or international recognition of a particular honor from the national scope of the entity that issued the honor. For example, the Presidential Physical Fitness Award, while national in scope, is not a nationally or internationally recognized prize or award for excellence as an athlete.[4] Moreover, the Bolivar State division of the national police issued the petitioner his merit button. Without additional evidence about this recognition, the petitioner cannot establish that it is a nationally or internationally recognized prize or award.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

> *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.*

Prior counsel asserted that the petitioner's membership in the WKSA is qualifying evidence under 8 C.F.R. § 204.5(h)(3)(ii). Prior counsel then noted that the petitioner is a certified Senior Master. In his notice of intent to deny, the director stated that the record lacked the membership requirements for WKSA. In response, the petitioner resubmitted two letters from Grandmaster Suh, neither of which addresses the general membership requirements for WKSA. Thus, the director reiterated that the record lacked the membership requirements for WKSA.

On appeal, counsel asserts that if the petitioner's Seventh Dahn level status is not an award it is a qualifying membership under 8 C.F.R. § 204.5(h)(3)(ii). Counsel further asserts that the director erred in considering the general membership requirements for WKSA because it is the petitioner's "membership in the rank of seventh degree blank belts, or 'senior masters' of the WKSA" that makes him extraordinary.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in an association that requires outstanding achievements of its members. A member's subsequent promotion through the skill levels in an association that is otherwise open to all practitioners does not meet the plain language requirements. While the petitioner did submit the organizational hierarchy for WKSA, the petitioner's position in that hierarchy is far more relevant to his leading or critical role for WKSA pursuant to 8 C.F.R. § 204.5(h)(3)(viii) than the criterion at issue here, which focuses on general membership requirements.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(ii).

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[4] *See* http://www.presidentschallenge.org/celebrate/physical-fitness.shtml.

*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.*

Initially, prior counsel listed print advertisements of the petitioner's school as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii). As stated by the director, the paid advertisements do not credit an author and are not "about" the petitioner. Thus, they are not qualifying published material. Counsel does not challenge this conclusion on appeal and the AAO affirms the director's analysis.

The petitioner also initially submitted four certified translations of articles but not the foreign language articles themselves. In response to the director's notice on intent to deny, the petitioner submitted three of the foreign language articles for which he had submitted translations and a fourth article for which he did not submit a translation. Nevertheless, the record of proceedings, which includes a previously filed petition, includes a certified translation for that article. The petitioner also submitted two new articles that postdate the filing of the petition. The petitioner must establish eligibility as of the date of filing. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). The new articles are not relevant to the petitioner's eligibility as of that date.

More specifically, the record contains the following evidence relevant to 8 C.F.R. § 204.5(h)(3)(iii):

1. A certified translation for an article entitled "Fire Department Personnel from Caroni received their 'yellow belts'" unaccompanied by the original foreign language document and lacking the date, publication or author;

2. An undated foreign language article in an unidentified publication and accompanying certified translation entitled "Real Korean Martial Arts Competition in Puerto Ordaz";

3. An undated foreign language article in an unidentified publication and accompanying certified translation entitled "Martial Arts Tournament to be held in Puerto Ordaz";

4. A 1982 foreign language article in the City of Guyana edition of *Correo del Caroni* and accompanying certified translation entitled "An impressive display was made by police trainees in 'Kuk Sool Won.'";

5. An undated foreign language article in an unidentified publication and accompanying certified translation entitled "[The petitioner] and [redacted] visited Meridiano";

6. A December 8, 2010 foreign language article in an unidentified publication and accompanying certified translation entitled "Helping elders with traditional martial arts"; and

7. A December 2010 article in the *Korean Phila Times* and accompanying certified translation entitled "Take the lead in propagation of Korean traditional martial arts in United States of America."

The director concluded he could not accept the translation for the fire department article without the accompanying foreign language document. The director further concluded that the petitioner was not subject of the remaining articles in Venezuelan publications, that the petitioner had failed to document the publication in which most of the articles had appeared and that the petitioner had not provided circulation data or other evidence to establish that the articles appeared in professional or major trade publications or other major media.

Counsel does not contest the director's findings on appeal. The plain language of 8 C.F.R. § 204.5(h)(3)(iii) requires not only published material about the petitioner but also the date of that material and evidence establishing that the material appeared in a professional or major trade publication or other major media. The director correctly determined that the petitioner did not submit qualifying evidence that meets the plain language requirements of 8 C.F.R. § 204.5(h)(3)(iii).

*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.*

Prior counsel did not claim that the petitioner was submitting qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iv). In a December 13, 2010 letter, [redacted] stated that the petitioner "is qualified to be part of our group of judges for our national and international championships and events as well as black belt examinations." He further states that the petitioner "serves as a judge in our various events." These statements are highly ambiguous, first stating only that the petitioner is qualified to serve as a judge and failing to identify specific events. [redacted] of Kuk Sool Won of Clear Lake, states that, as a "main arbitrator of several tournaments," he has worked with the petitioner who "has been effective in his role as supporter and judge in that he has proven valuable to our tournaments." Finally, the Dahn level promotion standards require service as a judge during a WKSA tournament at least once per year for promotion to even the Third Dahn level.

In his notice of intent to deny the petition, the director stated that the petitioner had not submitted evidence under this criterion. In response, the petitioner did not submit any additional evidence relating to this criterion. The director, however, acknowledged the initial evidence submitted and concluded that the petitioner had submitted sufficient qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iv).

A petitioner may only rely on secondary evidence after demonstrating that primary evidence is either unavailable or does not exist. 8 C.F.R. § 103.2(b)(2). A petitioner may only rely on affidavits after

demonstrating that both primary and secondary evidence is either unavailable or does not exist. *Id.* Primary evidence to meet this criterion should consist of an official program listing the petitioner as a judge, certificates verifying participation as a judge or confirmation of a specific instance of service as a judge from the organizing entity. [redacted] merely states that the petitioner is qualified to be a judge and while he subsequently suggests that the petitioner does provide these services, he identifies no specific events where the petitioner has participated as a judge. The implication that the petitioner must have served as a judge because he has been promoted past Second Dahn level is secondary evidence. [redacted] letter provides no specifics and does not even meet the requirements of an affidavit. As the petitioner has not demonstrated that primary evidence of his service as a judge is both unavailable or does not exist, he may not rely on secondary evidence or affidavits.

The petitioner has not submitted qualifying primary evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Nevertheless, the AAO will consider the above evidence in the final merits determination below.

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

Initially, prior counsel asserted that the petitioner's qualifications as a WKSA instructor will allow him to successfully teach students in the future. This discussion does not address how the petitioner had already made contributions of major significance to the field. The director concluded in his notice of intent to deny that the petitioner has not submitted any evidence under this criterion. In response, prior counsel stated that the petitioner was submitting letters addressing the petitioner's contributions "to the World of Martial Arts." The director concluded that the petitioner had not submitted evidence under this criterion. On appeal, counsel asserts that the petitioner's entry into the United States on a nonimmigrant O-1 visa and previous work disseminating the teachings of Kuk Sool Won serve as contributions of major significance "to the field of Kuk Sool Won martial arts."

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. The phrase "major significance" is not superfluous and, thus, has some meaning. To be considered a contribution of major significance in the field of athletics, it can be expected that the petitioner's work would have had a demonstrable impact on the sport.

Moreover, the regulation at 8 C.F.R. § 204.5(h)(3)(v) expressly states that the contributions must be to the field as a whole. [redacted] indicates that there are over 500 WKSA schools in over 40 countries and that WKSA sponsors 12 tournaments worldwide. The record contains no evidence as to how these numbers compare with other martial arts such as Tae Kwon Do, Kung Fu, Jiu Jitsu or Karate. The record is not persuasive that merely contributing to the success and growth of [redacted]A is a contribution of major significance to the field of martial arts. That said, any contributions to [redacted] are relevant to the petitioner's role for WKSA and this decision will address those contributions pursuant to the criterion at 8 C.F.R. § 204.5(h)(3)(viii).

The record contains several letters. Most of these letters provide only vague, general assertions that the petitioner is experienced and skilled. For example, [redacted] states that the petitioner has "strong work ethics" and is "diligent in his training martial arts." [redacted] states that the petitioner's skill "is remarkable." [redacted] a seventh Dahn in Germany, praises the petitioner's movements in traditional forms, self defense abilities and teaching skills.

Other letters provide conclusory statements that the petitioner has made contributions. For example, [redacted], President of Mu Do Won in Germany, praises the petitioner's ability as an instructor and perseverance. [redacted] concludes that the petitioner "has made a remarkable contribution in this field and has been a valuable example to us and especially the younger generation." USCIS need not accept primarily conclusory assertions.[5]

In other letters, the petitioner's students express their positive opinions of the petitioner. For example, [redacted] the petitioner's students in Delaware, confirm that they have successfully learned martial arts from the petitioner and [redacted] confirms competing successfully under the petitioner's tutelage. Successfully coaching athletes is not, in and of itself, a contribution of major significance to the field of martial arts.

The petitioner also submitted letters from his former students who are now instructors in their own right. [redacted] President of the Portuguese Kuk Sool Won Federation, asserts that he was one of the petitioner's students in Venezuela "more than 18 years ago." [redacted] affirms that he still learns from the petitioner and is "preparing a meeting with [the petitioner] to continue" practicing because there are few teachers in the world with the petitioner's ability and knowledge.

[redacted], an instructor in Chile, confirms that he was one of the petitioner's students for 26 years and continues to receive guidance from the petitioner. [redacted] states that he is able to "share and transfer" to his own students in Chile and Paraguay the petitioner's teachings. Similarly, [redacted] claims that he was formerly the petitioner's student and that the petitioner guided and motivated [redacted] to teach students in Chile, Argentina and Paraguay. Finally, [redacted] confirms that his own instructor was the petitioner's student and now supervises schools in Chile, Argentina and Paraguay.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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[5] *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.[6] The opinions of experts in the field 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 of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *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"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of talent and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field of martial arts. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[7] The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The above letters demonstrate that the petitioner is a competent instructor whose students are successful in competition and sometimes go on to teach Kuk Sool Won to their own students. While the petitioner may have helped spread the teaching of Kuk Sool Won, the record is not persuasive that such activities constitute a contribution of major significance to the field of martial arts as a whole.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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[6] *Kazarian v. USCIS,* 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

[7] *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

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

Prior counsel did not previously claim that the petitioner was submitting evidence under this criterion and the director concluded that the petitioner had not submitted such evidence. On appeal, counsel asserts that this determination was in error and that the record establishes that the petitioner has played a leading or critical role for WKSA.

[redacted], affirms that the petitioner was the main instructor for several schools in Venezuela and "is solely responsible in spreading Kuk Sool Won to the neighboring countries." The record also contains the organizational hierarchy for [redacted] reflecting founder [redacted] at the top, two Senior Executive Masters, one Executive Master and seven Senior Masters, of which the petitioner is one. This evidence demonstrates that the petitioner has performed a critical role for [redacted]

The remaining issue is whether [redacted] enjoys a distinguished reputation. Counsel asserts that this reputation "is evident from the tremendous following the organization has throughout the world." The AAO will not presume a distinguished reputation solely from the existence of schools in multiple countries.

Prior counsel asserted that [redacted] has 1,000 schools worldwide. As stated above, 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. In a letter dated December 6, 2010, [redacted] states only that WKSA maintains over 500 schools worldwide and organizes 12 tournaments annually.

It is the petitioner's burden to submit evidence establishing every factor of a given criterion. Thus, the petitioner must submit affirmative evidence establishing that [redacted] enjoys a distinguished reputation in the field of martial arts generally. As stated above, the record does not compare the above numbers with other martial art forms, such as Tae Kwon Do, Kung Fu, Jiu Jitsu and Karate. The record also lacks generally information of the reputation of [redacted]A in the field of martial arts, such as but not limited to evidence that major martial arts trade publications cover Kuk Sool Won.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements set forth at 8 C.F.R. § 204.5(h)(3)(viii).

*Summary*

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

### *B. Final Merits Determination*

In accordance with the *Kazarian* opinion, the next step is 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." 8 C.F.R. § 204.5(h)(3). *See Kazarian,* 596 F.3d at 1119-20.

The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's national or international acclaim. *See Kazarian*, 596 F.3d at 1122. As stated above, black belts at the third Dahn level must already demonstrate that they have judged a WKSA competition once a year. Thus, it does not appear that judging WKSA competitions is indicative of or uniquely consistent with national or international acclaim or status as one of that small percentage who have risen the very top of the field of martial arts.

The petitioner has taught successfully and his students have gone on to open their own schools. The petitioner has extensive experience in Kuk Sool Won and has been promoted to a high level within [redacted]. The founder of Kuk Sool Won credits the petitioner with facilitating the establishment of schools in this discipline in different countries in South America. While Kuk Sool Won is developing a following in multiple countries, the petitioner has not established that it compares with the most commonly taught forms of martial arts.

Moreover, the petitioner entered the United States four years before filing the instant petition. The record contains little evidence that the petitioner has sustained his acclaim after June 2006. Notably, all of the recognition and honors submitted, with the exception of the petitioner's promotion in 2005, are from 2002 or earlier. While the AAO will not consider the newspaper articles that postdate the filing of the petition for the reasons discussed above, they would not establish more recent acclaim as they appear in local newspapers.[8]

## III. Conclusion

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a martial arts instructor to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence

[8] The petitioner must establish his eligibility as of the date of filing; thus, the AAO will not consider evidence of accomplishments after that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

indicates that the petitioner shows talent as a martial arts instructor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.