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

(b)(6)

[redacted]

DATE: APR 2 9 2014 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on June 4, 2013, 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 martial arts. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

On appeal, the petitioner claims that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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 our decision to deny the petition, the court took issue with our 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 our 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 we 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 we concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 this matter, we will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. AREA OF EXPERTISE

Section 203(b)(1)(A)(ii) of the Act provides that the petitioner must seek to continue to work in her area of extraordinary ability. In Parts 5 and 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed her occupation and job title as a martial arts master. In addition, the petitioner

[1] Specifically, the court stated that we 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).

indicated in her cover letter that she had competed most recently in October 2011, almost one year before filing the petition. She continued:

> I also feel there is a great need for a genuine martial arts master's direction and instruction to fully showcase the true beauty of this sport in the United States. . . . I am compelled to teach anyone who sincerely and truly has the desire and ability receive such instructions. I would also be honored to teach self-defense classes to the general public, as any advantage a person carries within himself is profitable when confronted with a hostile adversary.

In the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the director indicated that the petitioner did not establish a prearranged commitment to work in her field of expertise as a martial arts master. In response to the director's request, the petitioner submitted a letter restating her intention to "teach self-defense classes to the general public." Furthermore, the petitioner submitted a job letter from [redacted] Chairman of [redacted] Inc., who stated that the petitioner would be employed by [redacted] as a "Tai Chi Instructor" and her duties would include scheduling and teaching Tai Chi classes, assisting in research and promotion of Tai Chi and Health Qigong, and organizing and managing the annual Tai Chi competition in New York City, New York.

In the director's decision denying the petition, the director determined that the petitioner intended to work in the United States as a martial arts instructor rather than as a martial arts competitor. On appeal, the petitioner claims that she intends to practice martial arts in many forms in the United States. Specifically, the petitioner claimed:

> [M]y prior statement was construed as that I have no intention to continue competing as a martial art master, which is not true. Competing in the martial arts sports events, has always been my love and lifelong passion. . . . If my permanent resident was approved, I have full intention to continue my career in this path, out of my life time passion and also out of necessity, because to maintain my martial art[s] master status, continued presence in the major competitions and winning the top awards in these competitions are essential and indispensable.

Furthermore, the petitioner's brief submitted on appeal "respectfully ask[s] that USCIS construe her area of expertise broadly as a Martial Arts Master, rather than solely a competitor who hopes to teach."

While a martial arts competitor and a martial arts instructor certainly share knowledge of martial arts, the two rely on very different sets of basic skills. Thus, competition and coaching are not the same area of expertise. A Federal Court has upheld this interpretation. In *Lee v. Ziglar*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not

> necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Consistent with section 203(b)(1)(A)(ii) of the Act, the regulation at 8 C.F.R. § 204.5(h)(5) requires the petitioner to "continue work in the area of expertise." The petitioner requests that her field of expertise include all aspects of martial arts, claiming that martial arts is distinct from other athletics in that the sport incorporates art and requires more than athletic ability to achieve the level of master. Even if the petitioner had established that martial arts constitute an art rather than a sport, and she has not, the arts also contain a similar distinction. For example, choreography is not within the area of expertise of every dancer.

The petitioner had not competed for almost one year when she filed the petition and the record reflects that her primary employment in the United States would be as an instructor. The petitioner has experience as a coach dating back more than 10 years. Thus, she has had considerable opportunity to accrue acclaim as a coach. As such, she cannot rely on her purely athletic accomplishments. That said, some of the petitioner's evidence, such as her experience as a referee and her articles, are not exclusively athletic achievements.

B. Translations

The regulation at 8 C.F.R. § 103.2(b)(3) requires the petitioner to submit a full English translation that the translator certifies as complete and accurate for any document containing a foreign language. While the director concluded that the petitioner had not submitted certified translations, the record of proceeding, including the evidence submitted on appeal, reveals that the translator has certified the translations. Thus, the translations in the record have probative value.

C. 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 director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." It is the petitioner's burden to establish that the evidence meets every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor, which, by definition, goes beyond the awarding entity.

A review of the record of proceeding reflects that the petitioner submitted award certificates for the following:

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[2] On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

1. Two first place finishes in the 42-Form Tai Chi Sword and Yang Style Tai Chi Quan at the in , in , China;

2. Two first place finishes in the 42-Form Yang Style Taijiquan and Yang Style Taijiquan at the in , in ;

3. Two first place finishes in the 42 Style Taiji Sword Competition Routine and Yang Style Taiji Quan Competition Routine at the China in , in China; and

4. Two first place finishes in the Yang Style Taiji Quan and Taiji Weapons at the in , in Hong Kong.

The petitioner also submitted letters from the and the verifying that the petitioner received the above-mentioned awards. The director concluded that the letters did not establish recognition of the awards beyond the issuing entities. On appeal, counsel asserts that the verification of the awards is rightly from the organizations that issued them and that the record contains additional evidence, the membership requirements and photographs, supporting the petitioner's eligibility under this criterion. Counsel concludes that the director went beyond the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) in determining that the petitioner did not submit sufficient evidence that the awards are nationally or internationally recognized.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), however, requires not merely evidence of the petitioner's receipt of awards in a competition with participants from a national or international pool, but evidence that the awards themselves are nationally or internationally recognized. The decision of what constitutes a qualifying award is part of the administrative process. *Cf. Rijal v. U.S. Citizenship & Immigration Services*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) *aff'd*, 683 F.3d 1030 (9th Cir. 2012). Thus, the director did not apply novel substantive or evidentiary requirements that do not appear in the regulation by considering whether the petitioner had established the awards' national or international recognition in the field.

Although the letters confirm that the petitioner received the awards and provide background information regarding the competitions such as the number of participants, the competition criteria, and the names of judges, the letters do not demonstrate that the awards are nationally or internationally recognized for excellence in the field beyond the entities that issued the awards. The number of competitors is not determinative of the field's recognition of the awards at the national or international level. While the membership criteria confirm that one or more award in a national or international level Wushu competition is required for membership, this requirement does not establish that the field nationally or internationally recognizes the particular awards the petitioner

won.[3] The director did not question the petitioner's receipt of awards. At issue is the separate requirement in the regulation at 8 C.F.R. § 204.5(h)(3)(i) that the awards be nationally or internationally recognized. The petitioner's membership in associations that require receipt of awards does not establish the awards' level of recognition. The petitioner did not submit any documentary evidence beyond the awarding entities to establish that any of the petitioner's awards are nationally or internationally recognized for excellence by the field of endeavor consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). For example, the petitioner did not submit evidence of media coverage of the competitions or similar independent evidence that might demonstrate recognition outside the awarding entity.

In addition, the petitioner submitted a photograph of a plaque reflecting that the she was awarded the at the in October 2011, in Washington, DC. Furthermore, the petitioner submitted a certificate recognizing the petitioner's "Outstanding Performance." However, the petitioner did not submit any documentary evidence demonstrating that the petitioner's award at the is a nationally or internationally recognized award for excellence in the field.

Moreover, the petitioner submitted a certificate for the and photographs of five first place medals at the in October 2011. Neither the certificate nor the medals contain the petitioner's name, and the petitioner did not submit any supporting evidence to establish that she received the and the medals. Furthermore, the petitioner did not submit any documentary evidence establishing that awards received at the are nationally or internationally recognized awards for excellence in the field pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Further, the petitioner submitted a photograph of two trophies with medals reflecting that she received two first runner-up finishes for Tai Chi Chuan and Tai Chi Weapon at the First Tai Chi Competition in . However, the petitioner did not submit any documentary evidence demonstrating that her runner-up finishes are nationally or internationally recognized awards for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's prizes or awards be nationally or internationally recognized for excellence in her field. In this case, the petitioner did not demonstrate that the awards she documented as receiving are nationally or internationally recognized prizes or awards for excellence as a martial arts competitor. Moreover, the petitioner neither claimed nor submitted any nationally or internationally recognized prizes or awards for excellence as a martial arts coach.

Accordingly, the petitioner did not establish that she meets this criterion.

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[3] While the director requested that the petitioner submit the relevant section of the associations' constitution or bylaws that discuss the membership criteria, the petitioner did not do so, and relies on letters.

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." In 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.

A review of the record of proceeding reflects that the petitioner claimed eligibility for this criterion based on her membership with the Chinese Wushu Association (CWA) and the In support of her claim, the petitioner submitted membership certificates and letters. a representative of the Department of Record at CWA, stated:

> The requirements for membership: receiving minimum three awards within top three places in a national or international wushu competition, recommended by a member and nominated by a director of the association; upon the review and approval of the admission committee of the association, the candidate becomes an official member of the [CWA].

Chairman of stated:

> The requirements for membership: receiving minimum one or more awards within top three places in a national or international Wushu competition, recommended by a member of the association; upon the review and approval of the admission committee of the association, the candidate becomes an official member of the

Primary evidence of the membership requirements includes a copy of the relevant section of the association's constitution or bylaws. The director requested this evidence in the December 17, 2012 request for evidence. The petitioner did not provide the requested information in response or document that such evidence is either not available or does not exist pursuant to 8 C.F.R. § 103.2(b)(2). Even accepting the letters as evidence of the official membership requirements, they do not demonstrate that CWA or requires outstanding achievements of its members.

Although CWA and limit membership to those who receive awards in national or international competitions and receive recommendations from members of their associations, the

membership criteria do not rise to the level of outstanding achievements consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). For instance, neither association restricts the awards to prestigious or respected national or international competitions that would be reflective of outstanding achievements. Furthermore, there is no indication that the admission committees are comprised of nationally or internationally recognized experts in their field as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's memberships be with associations that require outstanding achievements. In this case, the petitioner did not demonstrate that her memberships with associations require outstanding achievements, as judged by recognized national or international experts. Moreover, the petitioner neither claimed nor documented any memberships as a martial arts coach.

Accordingly, the petitioner did not establish that she meets this criterion.

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." A review of the record of proceeding, however, does not reflect that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). As such, the director's decision for this criterion will be withdrawn for the reasons outlined below.

The petitioner submitted documentary evidence reflecting her participation as a referee at two competitions. Specifically, the petitioner submitted a verification letter from the Physical Education Bureau indicating that the petitioner worked as a referee from May 18-21, 2008, in the ' Furthermore, the petitioner submitted a verification letter from the indicating that the petitioner worked as a referee from June 20-24, 2008, in the "' In addition, the petitioner submitted a certificate evidencing her "Level II Referee" status that was issued in December 2005.

There is no evidence demonstrating that martial arts or Tai Chi referees actually judge competitors, such as assigning points, assessing technique or skill, or determining winners, rather than merely enforcing the rules, assessing violations and maintaining a sense of fair play. The petitioner did not submit official competition rules for either competition showing that serving as a "referee" in this instance equates to participating as a "judge" of the work of others consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

For the reasons discussed above, the petitioner did not demonstrate that she served as a judge of the work of others in the same or an allied field of specification for which classification is sought as required pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner did not establish that she meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner claims eligibility for this criterion based on her submission of five recommendation letters. The letters primarily discuss the petitioner's training background and skills as a martial arts competitor. For example, a practitioner of Yang Style Tai Chi, indicated that the petitioner "was the most talented and extraordinary disciple I ever had" and the petitioner's "extraordinary skills as a martial art[s] athlete have been proven in China and internationally." Likewise, Chairwoman of the stated that the petitioner "was the most talented and extraordinary athlete I ever had." Moreover, Vice Chairman of the Wu Shu Association, stated that he was "deeply impressed about her talent, and superb martial arts skills." In addition, President of the indicated that the petitioner "demonstrated her in-depth knowledge and understanding of this unique martial art and her superbly Kung Fu abilities." Finally, President of stated that he was "very impressed by her super martial arts skills and her mastering of Yang Style Tai Chi per performance."

On appeal, the petitioner asserts that it is more difficult to demonstrate a qualifying contribution in the "arts" than in the sciences. The petitioner was an athlete and has a job offer as a coach rather than an artist or choreographer. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6, 8 (D.D.C. Dec. 16, 2013) (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

None of the letters indicated how the petitioner's skills are original contributions of major significance in the field. Having a diverse skill set is not a contribution of major significance in and of itself. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill

shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Assoc. Comm'r 1998).

Moreover, the letters summarized the petitioner's competitive awards that were already discussed under the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the awards criterion is not presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

In addition to praising the petitioner's athletic skill, the letters from and made brief references to the petitioner's coaching experience. For instance, stated that the petitioner "has served as the Chief Coach of for over 10-years, trained thousands of students, to promote the popularity and growth of this traditional Chinese sports." In addition, stated that the petitioner is "an exceptionally successful Wushu coach." Finally, stated that the petitioner "has been teaching martial arts for more than 10 years. . . . Her students are more than thousands." Although the letters referenced the petitioner's coaching experience, they did not identify any of the petitioner's original contributions that could be considered of major significance in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v). There is no evidence distinguishing the petitioner's contributions as a martial arts coach from those of other martial arts coaches. Moreover, the petitioner did not submit any evidence from her employer supporting her teaching and coaching experience at the or at any other martial arts centers or clubs. *See* 8 C.F.R. § 204.5(g)(1) (providing that evidence of experience shall be in the form of letter(s) from employer(s)). Without evidence demonstrating that her coaching or teaching has impacted the field in a significant way, the petitioner has not established that she has made original contributions of major significance in the field of martial arts coaching.

The petitioner further asserts that requiring corroboration of letters is "both arbitrary and capricious, going beyond the statutory requirement of burden of proof by a preponderance of the evidence." 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 of 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 references' 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 martial arts master who has made original contributions of major significance in the field. *See also Visinscaia*, --- F. Supp. 2d ----, 2013 WL 6571822, at *8 (concluding that USCIS'

decision to give little weight to uncorroborated assertions from professionals in the field was not arbitrary and capricious).

Although those familiar with the petitioner generally describe her as "extraordinary," there is insufficient documentary evidence demonstrating that the petitioner has made original contributions of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. Vague, solicited letters that repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field is insufficient to establish original contributions of major significance in the field. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d at 1115. In 2010, the *Kazarian* court reiterated that the USCIS' conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. In this matter, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. Repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Without supporting evidence, the petitioner has not met her burden of establishing her present contributions of major significance in the field.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, the petitioner has not established that she meets this criterion.

Accordingly, the petitioner has not established that she meets this criterion.

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

The director determined that the petitioner did not establish eligibility for this criterion. Specifically, the director questioned whether the petitioner's articles were scholarly and whether the publication in which they appeared was a professional or major trade publication or other major media. On appeal, the petitioner asserts that the petitioner submitted verification that her articles are "scholarly works written for those professional individuals and groups who study and develop Martial Arts." The petitioner further asserts that requiring scholarly articles to be peer-reviewed goes beyond the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner quotes *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008) as the quote appears in *Kazarian* as follows:

> If the agency intended to impose [peer citations] as a threshold requirement, we have little doubt that such records would have been included among the detailed substantive and evidentiary requirements set forth at 8 C.F.R. § 204.5[(h)(3)(i)-(x)].

596 F. 3d at 1121.

Unlike the situation in *Kazarian*, the director in this case did not go beyond the plain language by requiring the petitioner to demonstrate the impact of her articles through peer citation. Rather, the director considered whether the journal that published the petitioner's articles subjected those articles to peer review before publication. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." Thus, the director did not add any substantive or evidentiary requirement in considering the issue of peer-review as that issue is directly relevant, although not determinative, to whether the petitioner's articles are "scholarly," as required by the plain language of the regulation.

The petitioner did not provide a complete translation of her one-page articles. Thus, the petitioner did not demonstrate their scholarly nature through the content itself. The petitioner also did not provide the publication's official rules for authors to demonstrate the selection criteria for articles. Instead, the petitioner relies on a letter from Chief of Archive at While asserts that the petitioner's article on hand folding in Tai Chi "received high praise among Kung [F]u scholars," he asserts that her second article "serves a good purpose of educating the public about the right way to practice Tai Chi and help promote the practice of Tai Chi." Thus, according to at least one of the petitioner's articles was an instructional article for the general public rather than a scholarly article that either was aimed at scholars or gathered attention from scholars. As the petitioner has not established that she authored scholarly articles (plural), she has not met the plain language requirements of this regulation.

Accordingly, the petitioner has not established that she meets this criterion.

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

The director determined that the petitioner established eligibility for this criterion. As will be discussed, the documentary evidence submitted in support of this criterion is not sufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii). Therefore, as discussed below, the director's decision will be withdrawn.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner is a martial arts master. When she is competing, she participates in athletic competitions; when she performs martial arts at a demonstration, she performs athletic moves before an audience. While the petitioner has discussed the artistic nature of the martial arts, the record does not establish that these

demonstrations are artistic exhibitions or showcases. 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 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The interpretation that this criterion is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under this criterion).

The petitioner's competitions are directly relevant to the aforementioned awards criterion set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(i); they have already been discussed separately within the context of that criterion. As such, the director's determination for this criterion is withdrawn.

Accordingly, the petitioner has not established that she meets this criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While we conclude that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, we need not explain that conclusion in a final merits determination.[4] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

[4] The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.