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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B₂

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: MAY 27 2009
LIN 07 209 51686

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an 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. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director erred by concluding that the petitioner was not coming to the United States to continue to work in his area of expertise.

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant

criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on June 20, 2007, seeks to classify the petitioner as an alien with extraordinary ability in karate. Regarding his plans to continue to work in the United States, the petitioner submitted a "Personal statement" indicating that he plans to open a karate school and to promote his sport as "an athlete, coach and referee." The record includes evidence showing that the petitioner has participated in martial arts training, seminars, symposiums, and athletic competitions while in the United States. For example, the petitioner submitted an April 7, 2007 letter from the USA National Karate-do Federation stating that he competed at "the 2007 USA Open Karate Championships." As the petitioner continues to compete in his sport in the United States, we will consider his achievements as a karate athlete in addition to his achievements as an instructor, a coach, and a referee. The petitioner's continuation of his work in the United States will be further addressed below in our discussion of the evidence pertaining to the regulation at 8 C.F.R. § 204.5(h)(5).

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.¹

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 athletic awards:

1. First Place in the Open category at the 1st Indo-Nepal Karate & Kickboxing Championship (2006).
2. First Place in the 75 kilogram category at the 6th National Karate Championship (2006).
3. First Place in the 60-65 kilogram category at the 8th All Nepal Karate Championship (1995).
4. First Place in the 60 kilogram category at the 2nd National Karate Championships (1994).
5. First Place in the 55-60 kilogram category at 2nd South Asian Karate Championship (1992).

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

6. Third place in the 55-60 kilogram category at the 7th All Nepal Open Karate Competition (1992).
7. Third Place in the under 60 kilogram category at the 6th Asian SKF's Shikhar Karate Championships (1991).
8. First Place in the 55-60 kilogram category at the 1st National Karate Championships (1991).

The petitioner also submitted two letters dated January 1, 2007 from the presidents of the Nepal Karate Federation and the Nepal Shito Ryu Karate Association certifying that the petitioner received the preceding awards.

In addressing the preceding evidence, the director stated that the petitioner's "awards do not demonstrate acclaim as a karate competitor as there is no evidence to establish their significance and prestige." We concur with the director's observation. The record does not include supporting evidence demonstrating the significance and magnitude of the competitive events won by the petitioner.² For example, the record lacks information regarding the number of entrants who competed in the petitioner's weight category and their skill level. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence showing that petitioner's awards commanded a significant level of recognition beyond the competitive events where they were presented.

Aside from the preceding competitive awards, the petitioner submitted the following honors:

1. Letter of Honor from the Peace Development Campaign of Nepal commemorating [the petitioner's] achievements in the field of Karate in Nepal, and highlighting his participation as "a member of the national selection committee for the 8th SAF Game."
2. Letter of Appreciation from the "National Sports Council Nepal Shito-ryu Karate Association" recognizing the petitioner's contribution to "the Ninth SAF Karate Game held in Pakistan."
3. Letter of Appreciation from the "World Karate Confederation [WKC] Nepal Kwanmukan Karate Do Association" congratulating the petitioner for receiving his WKC Referee License "after having participated and stood excellent in the 1st Open WKC South-East Asian & Oceania Championships and Technical Seminar" in March 2003.
4. Letter of Appreciation from the Central Sports Department of the Democratic National Youths Association recognizing the petitioner for having "obtained permission to perform the role of referee in a world-wide sport of *Kata* and *Kumi* of Karate organized by the World Karate Confederation."

² National competitions typically issue event programs listing the names of the participating contestants and the order of events. At a competition's conclusion, results are usually provided indicating how each participant performed in relation to the other competitors. The petitioner, however, has provided no evidence of the official comprehensive results for the competitive categories in which he received awards.

5. Letter of Appreciation from the “United States of America Kwanmukan” recognizing the petitioner for his “dedicated service to World Karate-Do and International Kwanmukan, and for outstanding contribution to the development of Karate Do as a world sport.”

There is no evidence showing that the preceding letters are nationally or internationally recognized prizes or awards for excellence in the field, rather than simply an acknowledgment of the petitioner’s participation in sporting events and training seminars. The petitioner has not established that his Letter of Honor and Letters of Appreciation had a significant level of recognition beyond the presenting organizations.

Nationally or internationally recognized prizes or awards won by karate competitors coached primarily by the petitioner can also be considered for this criterion. In this case, there is no evidence showing that athletes coached primarily by the petitioner have won nationally or internationally recognized prizes or awards in the sport of karate.

In response to the director’s request for evidence, counsel argues that the petitioner’s qualifications as an “International Referee Instructor” of the Nepal Karate Federation and as an International World Karate Confederation Referee meet this criterion. The petitioner’s response to the director’s request for evidence included letters from the Acting General Secretary of the Nepal Karate Federation and the Founding President of the World Karate Confederation confirming the petitioner’s international qualifications. Both letters state that the petitioner successfully passed the required examination at the 1st South East Asian and Oceania Championships and Technical Referee Seminar and received his International World Karate Confederation Referee license. In addressing this evidence, the director concluded that the petitioner’s refereeing license was “not an actual prize or award let alone a lesser nationally or internationally recognized prize or award for excellence in the field of endeavor. Rather, it appears that the petitioner’s license is a professional credential that was obtained upon successfully passing an examination.” We concur with the director’s findings.

On appeal, counsel states: “[The petitioner] received his WKC referee license at the culmination of written and practical examinations. More than sixty referees from Nepal competed for this honor and [the petitioner] was one of the three chosen from Nepal, receiving the highest score.” The preceding referee license is a career qualification rather than a prize or award. We cannot conclude that the petitioner’s successful mastery of written and practical examination material is tantamount to his receipt of a nationally or internationally recognized prize or award for excellence in the field.

In light of the 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 the following:

1. Certificate from the World Association of Kickboxing Organizations stating that the petitioner attained a 1st Degree Blackbelt in "full-light and semi-contact kickboxing" (2001).
2. Referee license for the petitioner from the World Karate Confederation for the styles of "Shobu Sanbon" and "Shito Ryu" (2003).
3. Identification credential from Shorei-kan Europe (1999) showing the petitioner's progress toward rank.
4. Three Examination Sheets from Shorei-Kan International reflecting the petitioner's test results (2001).
5. His referee identification card from the World Karate Confederation for the World Karate Championship.
6. His competitor identification card for the "2007 USA Open Golden League Junior Olympics 35+ Male Intermediate/Advanced Kumite."

With regard to item 1, we cannot conclude that meeting the minimum knowledge and skill requirements necessary to attain a black belt constitutes outstanding achievements. While the petitioner has met the requirements to attain his belt ranking, there is no evidence demonstrating that the World Association of Kickboxing Organizations requires a black belt to become a member.³ Nor is there evidence identifying the specific requirements that must be satisfied to attain a black belt. In regard to items 1 through 6, while these documents indicate that the petitioner attained his black belt, earned a referee license, trained and tested at a karate club sanctioned by Shorei-kan Europe and Shorei-Kan International, and participated in events of the World Karate Confederation and the USA National Karate-do Federation, they do not equate to evidence of his "membership" in these organizations. Further, there is no evidence (such as membership bylaws or official admission requirements) showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts.

We cannot ignore that item 6 reflects that the petitioner competed in the 35+ "Golden League" at the USA Open Junior Olympics. Such age-restricted competition is not consistent with sustained national or international acclaim or a level of expertise indicating that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than limited to individuals within his particular age group. USCIS has long held that even athletes performing at the major league level do not automatically meet the

³ For example, there is no evidence showing that lower belt rankings are excluded from membership.

“extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁴ Likewise, it does not follow that a martial arts competitor who competes in a league restricted to athletes age 35 and over 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.”

The petitioner submitted several training course completion certificates issued to him by the Nepal Karate Federation, the USA Karate Federation, the Nepal Shito-Ryu Karate-Do Association, the All India Shito-Ryu Karate Association, the Asia Pacific Shito-Ryu Karatedo Federation, the World Karate Confederation, and the Nepal Olympic Committee. The petitioner’s initial submission also included his participation certificates for the World Karate Federation’s 1st South East Asian and Oceania Championships (2003), the 4th World Karate Confederation Championships (2003), and the 4th Asian Union of Karate-Do Organization Championship and Congress (1999). The petitioner’s successful completion of training courses and participation in various competitive events as an athlete or referee are not tantamount to evidence of his “membership in associations.” Participation and course attendance does not equate to membership. Further, there is no evidence showing that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the martial arts.

In response to the director’s request for evidence, the petitioner submitted a March 8, 2008 letter from the Acting General Secretary of the Nepal Karate Federation stating that the petitioner was appointed as a member of its Technical Committee in 2003. The letter further states:

All memberships will be granted in accordance with the rules and regulations of Nepal Karate Federation.

Qualifications of the member as follows:

1. Age must be at least 25 years.
2. Must be a National Referee license holder, who served at least 10 years to the karate field. (For technical memberships)

⁴ 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.

3. Must be a Nepalese citizen excluding the honorable memberships.
4. Must obey to the rules and regulations of the federation.
5. Must have good mental condition.
6. Must not be convicted.

The letter also states that a technical member of the Nepal Karate Federation is “the expert of technical as well as Referee matters.” The Acting General Secretary’s letter mentions “the rules and regulations of Nepal Karate Federation,” but his letter was not accompanied an official copy of them.

The director concluded that the preceding membership qualifications discussed in the Acting General Secretary’s letter were not tantamount to outstanding achievements. We concur with the director’s finding.

On appeal, counsel argues that the petitioner’s membership appointment is based on “his excellence as a referee.” We cannot conclude, however, that holding a national referee license, serving ten years in the karate field, and being an expert in technical and referee matters constitute outstanding achievements. 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. An alien would not earn acclaim at the national level from a local publication. 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.⁵

The petitioner submitted a four-sentence piece entitled “3 Nepalis get Int’l license” in the March 19, 2003 issue of *The Himalayan Times*. The author of this brief piece was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted an incomplete English language translation of an article in the October/November 2003 issue of *Sadhana* entitled “Karate: Sports that enhance Proud of Nepal.” Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate

⁵ 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.

from the foreign language into English. The English language translation accompanying this article was not a full translation as required by the regulation. Without a full translation, the petitioner has not established that this article is about him. Further, the author of this article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted an incomplete English language translation of an article in the April 10, 1998 issue of *Kantipur* entitled “Black Belt Instructor Committee in the Capital.” The English language translation accompanying this article was not a full translation as required by the regulation at 8 C.F.R. § 103.2(b)(3). Without a full translation, the petitioner has not established that this article is about him. Further, the author of this article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted December 25, 2004 and December 5, 1999 articles in *Nepal Samacharpatra* entitled “Organizing Committee formed under President Rai” and “Nepal didn’t take part in the Fourth UKO Championship.” These articles only mention the petitioner’s name in passing. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.” Further, the author of the articles was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a three-sentence piece entitled “Referees return” in the June 3, 2004 issue of *The Himalayan Times*. The author of this brief piece was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a four-sentence piece entitled “Kwanmukan karatekas disappoint” in the “Newslines” section of an unidentified publication dated June 26, 2004. This brief piece only mentions the petitioner’s name in passing. Further, the author was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a two-sentence piece entitled “Karate seminar ends” in the March 16, 2004 issue of *The Himalayan Times*. The author of this brief piece was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted an August 5, 2004 article in *The Himalayan Times* entitled “Int’l karate in Jan.” This article only mentions the petitioner’s name in passing. Further, the author of this article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a March 30, 2003 article in *The Himalayan Times* entitled “Member secretary felicitates international referees.” The author of this article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a five-sentence piece in the March 30, 2003 issue of *The Sunday Post* entitled “WKC gives license to three Nepali officials.” This brief piece only mentions the petitioner’s name in passing. Further, the author was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a six-sentence piece in an undated issue of *The Kathmandu Post* entitled “Karate team left for Italy.” This brief piece only mentions the petitioner’s name in passing. Further, the author was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a May 17, 2005 article about him in the *Annapurna Post*, an interview of him appearing in the January 12, 2007 issue of *Road Map*, and an article about him in the February 2004 issue of *Sanchar*, but he has not established that these publications qualify as professional or major trade publications or some other form of major media.

We acknowledge the petitioner’s submission of a March 22, 2005 certification from the Press Council Nepal identifying *Kantipur*, *Nepal Samacharpatra*, *The Kathmandu Post*, *The Himalayan Times*, and *Annapurna Post* as “National Daily Newspapers.” This document, however, does not specify the circulation of these publications. The petitioner also submitted circulation information from the internet sites of Kantipur Publications Pvt. Ltd. and *The Himalayan Times*, but the self-serving nature of their website material is not sufficient to demonstrate that their publications qualify as forms of major media. The petitioner’s initial submission also included a May 1, 2002 unsigned letter from the Asia Pacific Media Network to counsel’s law firm providing “General Information on India & Nepali Publications.” The letter states:

First, our university libraries do not have any information on India and Nepal publications, so there was no easy way to quickly look up data. Hence our research was confined to the Internet. Second, because our research was confined to the Internet, we spent a massive amount of time and energy repeatedly looking for publications that in all probability do not exist online. However, even with the slightest probability we continued our search for publications but found precious little additional information. Third, we repeatedly requested information . . . from the parent company of the publication as well as the editors of the publications themselves, but . . . we received only one response (from *Janadharana Weekly*).

We cannot ignore the Asia Pacific Media Network’s comments that its “research was confined to the Internet” and yielded “precious little additional information.” The outdated and limited internet search results compiled by the Asia Pacific Media Network in 2002 are not contemporaneous to the majority of the petitioner’s articles. Further, with regard to the articles about the petitioner in the *Annapurna Post*, *Road Map*, and *Sanchar*, we note that none of these publications were discussed in the Asia Pacific Media Network’s findings.

On appeal, the petitioner submits the “Library of Congress Catalogue Record” for *The Kathmandu Post*. However, a publication’s availability at the Library of Congress does not establish that the publication qualifies as a form of major media. Further, as discussed, the published material in *The Kathmandu Post* only mentioned the petitioner’s name in passing and its author was not identified.

In this case, aside from the deficiencies specific to the petitioner’s individual articles, the record lacks evidence (such as objective circulation information from an independent source) showing the distribution of the preceding publications relative to other national media to demonstrate that the

submitted articles were published in professional or major trade publications or some other form of major media. Accordingly, 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 reflecting his service as an instructor for karate seminars and referee courses. The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” We cannot conclude that teaching training courses is tantamount to judging the work of others in the field. While an instructor does evaluate the work of his or her pupils, this evaluation is inherent in the process of teaching. The petitioner’s status as an instructor demonstrates his knowledge and competency in karate, but he has not established that such a position meets the plain language of this regulatory criterion or that it is indicative of sustained national or international acclaim at the very top of his field.

The petitioner submitted evidence of his referee credentials and multiple certificates reflecting his participation as a referee or jury member at various karate competitions such as the “Fifth National Karate Competition” (2004) and the World Karate Confederation’s 4th World Championships (2003).⁶ The petitioner also submitted “Rules of Tournament” from the World Karate Confederation reflecting that referees award points in determining the outcome of a match. The record, however, does not include evidence showing the names of the athletes evaluated by the petitioner, their level of karate expertise, documentation of his assessments, or the level of acclaim associated with the competitive events for which the petitioner refereed or juried. Without evidence showing, for example, that the petitioner’s activities involved judging top competitors in his sport or were otherwise consistent with sustained national or international acclaim at the very top level of his field, we cannot conclude 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.

On appeal, counsel argues that the petitioner’s work as “an editor, compiler, and author” for the National Institute of Sports Karate Course syllabus meets this regulatory criterion. The petitioner submits a copy of this syllabus that was co-prepared by [REDACTED] Head Coach; [REDACTED] Senior Instructor; and [REDACTED] Senior Instructor. According to the syllabus, [REDACTED] was the originator of “Shito” style karate. Further, we note that the page numbers

⁶ According to the International Olympic Committee’s internet site, the “World Karate Federation” rather than the “World Karate Confederation” is the recognized international sports federation for the sport of karate. See “Recognized International Sports Federations” at http://www.olympic.org/uk/organisation/if/fi_uk.asp?id_federation=46, accessed on May 18, 2009, copy incorporated into the record of proceeding. As there are numerous karate organizations in multiple countries, it is the petitioner’s burden to demonstrate the significance of the World Karate Confederation events in which he participated.

throughout this syllabus were handwritten, non-existent, crossed-out, or inconsistent. In addition, the typeface throughout the document is not consistent. 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.

The petitioner's appellate submission includes a March 17, 2008 letter from [REDACTED], Director, National Institute of Sport, stating:

One of the most significant contributions to the sport has been the construction of a syllabus for the National Sports Council of Nepal, National Institute of Sport, Karate. It was an original initiative and a major contribution to the field of Karate by [the petitioner].

The syllabus created on 15th November 2003 by [the petitioner] was official and approved by the National Sports Council of Nepal. There are already 150 new government instructors who follow this syllabus, as mandated by the National Institute of Sports. All this was possible under the leadership of [the petitioner]. Though certain excerpts from the syllabus have been influenced by Dynamic Karate book written by Masatoshi Nakayama, Chief instructor Japan Karate Association, most of the work on his own. Such an enthusiastic and original contribution is unprecedented in the history of this Council. His work is one of the most significant and original contributions in the Karate field

While the petitioner and three others contributed to the development of this syllabus, the record lacks supporting evidence showing that it is an original contribution of major significance in karate. For example, there is no indication that the petitioner's original work was recognized in the same manner as the original work of Masatoshi Nakayama or Kenwa Mabuni. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner may have edited, compiled, or authored portions of the preceding syllabus, there is no evidence showing that his original contributions to this document were tantamount to contributions of major significance in his field.

The petitioner submitted letters of recommendation from the Nepal Shito Ryu Karate Association and the Nepal Karate Federation. These letters discuss his competitive accomplishments, karate expertise, and refereeing credentials. Talent and activity in one's field, however, are not necessarily indicative of original athletic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field. With regard to the petitioner's instructional achievements, there is nothing in the recommendation letters to suggest that he has developed original karate techniques, as opposed to methodologies passed down from his own tutelage in the sport. Further, even if the techniques

taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in his sport.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a martial arts athlete or a karate instructor who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, 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 listing he prepared for the November-December issue of *Sport Forum* entitled "Karate: Practical Rules," but there is no evidence showing that this listing constitutes a "scholarly" article in his field. Further, there is no evidence showing that *Sport Forum* is a professional or major trade publication or some other form of major media. Accordingly, the petitioner has not established that he meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

In response to the director's request for evidence, the petitioner submitted a March 7, 2008 letter from the president of the Nepal Shito Ryu Karate Association stating:

[The petitioner] a Member Joint Secretary of the Referee Council of the Shito-Ryo Karate Association of Nepal. In a capacity of the Joint Secretary of the Council he is responsible to formulate policy, to conduct meeting and to coordinate various functions. Further he has to advice and to lead other members of the council in various organizational and technical

matters. He is elected in the position of the Joint Secretary of the Council amongst the panel of judges and referees, based on his contribution to the development of karate sports in Nepal as well as considering his achievement and reputation in international arena. As the position of the Joint Secretary is different with other positions of the Council and is not considered as an employee, he has been serving without any personal benefit. It was his dedication in the field of sports and contribution to the country as a whole.

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

First, the record contains no objective documentary evidence which demonstrates the nature and standing of the Shito Ryo Karate Association of Nepal. As such, the Service is unable to conclude, nor does the record establish, that this organization enjoys a distinguished reputation. Second, while the evidence appears to indicate that the petitioner serves as Joint Secretary of the Referee Council, the petitioner has not adequately demonstrated his position in relation to other officers and key employees in the overall Shito-Ryo Karate Association of Nepal. Further, while the petitioner may provide valuable services in his position as Joint Secretary, it is quite evident that he does not serve in the top position in the Referee Council as he is preceded by the President, Vice President, and Secretary. In essence, the petitioner has not established that . . . he was or is responsible for the success and standing of this organization to a degree consistent with the meaning of leading or critical. In the context of an organization's administrative hierarchy, every position can be considered inherently important but not necessarily qualifying in scope or impact to meet this criterion.

Upon review, we find the director properly considered the evidence submitted, thoroughly addressed counsel's arguments and appropriately addressed the evidence and arguments in his decision. On appeal, the petitioner does not contest the director's analysis. Accordingly, we concur with the director's finding that the petitioner does not meet this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Counsel previously argued that the recommendation letters are comparable evidence of the petitioner's extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4). The content of the recommendation letters has already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iv), (v), and (viii). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. Nevertheless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The

regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel has argued that the petitioner meets six of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The director also found that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States."

The documentation accompanying the petition included a personal statement indicating that the petitioner plans to open a karate school and to promote his sport as an athlete, a coach, and a referee. On January 31, 2008 the director requested further evidence demonstrating that the petitioner is "coming to the United States to continue work in the area of expertise." In response, the petitioner submitted an updated personal statement dated February 19, 2008, a September 30, 2007 letter from the Universal Martial Arts Association Hall of Fame in North Carolina stating that the petitioner participated in its seminars and karate tournament, a November 20, 2007 inviting the petitioner to attend the 2008 Kwanamukan International Master Martial Arts Symposium and his course completion certification, and an April 7, 2007 letter from the USA National Karate-do Federation stating that the petitioner competed at "the 2007 USA Open Karate Championships."

The director concluded that the preceding evidence was "insufficient to establish that the petitioner is coming to the United States to continue work in the area of expertise." We withdraw the director's finding regarding this issue. The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). **We find that the petitioner's statement detailing his plans, and the other documentation submitted in support of his statement, are sufficient to satisfy the regulation at 8 C.F.R. § 204.5(h)(5). Accordingly, the petitioner has overcome the stated grounds for denial and established his eligibility pursuant to Section 203(b)(1)(A)(ii) of the Act.**

Nevertheless, 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 or 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)(i) 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.