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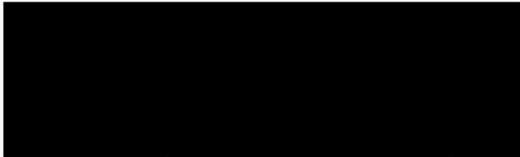
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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

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FILE:

SRC 08 242 53636

Office: TEXAS SERVICE CENTER

Date:

**APR 22 2010**

IN RE:

Petitioner:

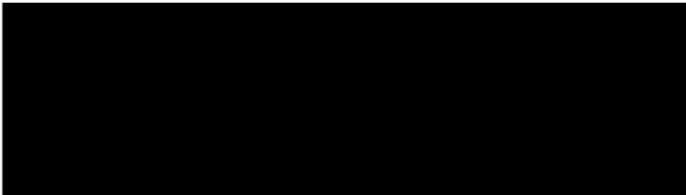
Beneficiary:



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:



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 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).

*Perry Rhew*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on June 10, 2009, and is now before the Administrative Appeals Office 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

On appeal, counsel argues:

The decision states “the petitioner has not demonstrated that he [sic] has a one time achievement (that is, a major, international recognized award) as a Taekwondo athlete, or an a Taekwondo instructor.” This is incredibly in error, and one wonder’s if the author of it looked at the awards this athlete has won, as were submitted with this petition. Perhaps it simply reflects an inability to appreciate that Asian athletic competitions are equal to, or even more competitive that most Western athletic events. One must rise from a far larger population than in the U.S. or western Europe to be at the top of your game in Asia.

Counsel further claims the petitioner’s receipt of the following awards as major, internationally recognized awards:

1. “High international recognition” at the 15<sup>th</sup> Asian Games in Doha, Qatar in 2006;
2. Silver medal at the 10<sup>th</sup> South Asian Federation Games in Colombo, Sri Lanka in 2006;
3. Silver medal at the Gorkha Hill Open in Darjeeling, India;
4. Gold medal at the 7<sup>th</sup> National Taekwondo Championships in 2005; and
5. Gold medal at the 8<sup>th</sup> National Taekwondo Championships in 2007.

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized award*. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize.

While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. However, the petitioner failed to submit any documentation establishing that any of her awards constitute major, internationally recognized awards. The awards will be further addressed below in our discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

In addition, we note here that in Part 5 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed her job title as "Tae Kwondo Instructor." However, the petitioner failed to complete Part 6 pertaining to her job title and description. The record reflects from the petitioner's job title that she is seeking classification as an alien of extraordinary ability as an instructor rather than as a competitor. Even though the petitioner submitted documentation, which will be discussed later in this decision, regarding her involvement in earlier tournaments as a competitor, the record reflects claims of an occupation as an instructor.

The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a taekwondo instructor and competitor share knowledge of the sport, the two rely on very different sets of basic skills. Thus, taekwondo instruction and taekwondo competition are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 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. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a taekwondo competitor or that she intends to compete here in the United States. In fact, according to Form G-325A, Biographic Information, which the petitioner signed on July 25, 2008, the petitioner claimed no present employment. The petitioner further claimed that her previous employer was the Nepal Sports Council as an assistant instructor.

While we acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a taekwondo instructor and taekwondo competitor, the alien, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See the regulation at 8 C.F.R. § 204.5(h)(5).

In response to the director's request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner stated:

So far I have not contacted any potential employers in the U.S. nor have I applied for any job. I have, however, explored several possibilities of how I can engage myself and how can I contribute to promote the sport in the USA. I see enormous possibilities of contributing to promote the state of Taekwondo. . . . On this backdrop, I have a good prospect of joining any sports clubs as a Taekwondo Instructor.

I have not drawn a full plan yet. However, I have tentative ideas and going to my own plan to start Taekwondo clubs at local level and expand them by opening networks in various parts. I will contact schools and business companies and offer them my service and also build a network of Taekwondo students. I aim to produce good competitors within a couple of year's time and represent my students in various national and international competitions. As an international medal winner, I will also continuously participate in championships and wish to represent the USA in international sports events.

On appeal, the petitioner submitted a letter from [REDACTED] who stated:

I know [the petitioner] for about six months. She is one of the bona fide athletes in her country Nepal and has National and International achievements. [The petitioner] had been working as a volunteer Taekwondo Instructor at my school. As a volunteer instructor at [REDACTED] she is doing an outstanding job. As soon as she stabilizes her residency in United States I will assist her in finding a Taekwondo Instructor job.

At the time of the filing of the original petition, the record reflects a claim as a taekwondo instructor but submitted evidence relating to her achievements as a taekwondo competitor. In response to the director's request for evidence, the record reflects a detailed claim as a taekwondo instructor but only briefly mentions the petitioner's claim as a competitor. On appeal, the record reflects a claim of a taekwondo instructor. While the record contains consistent claims of a taekwondo instructor, the record does not reflect a consistent claim of a taekwondo competitor. However, as all of the evidence submitted throughout this proceeding relates to the petitioner's accomplishments as a taekwondo competitor rather than a taekwondo instructor, the record does not reflect that the petitioner intends to continue to work in the area of taekwondo competition nor is there clear evidence of her intent to work as an instructor pursuant to the regulation at 8 C.F.R. § 204.5(h) which requires:

(5) No offer of employment required. Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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.

In this case, the record does not contain clear evidence of the petitioner's intention to continue work in the area of taekwondo competition. The petitioner's responses to the questions on Form I-140 and Form G-325A, as well as the letter from [REDACTED], demonstrate the petitioner's intent to continue work in the area of taekwondo instruction. While the petitioner did make a single claim of taekwondo competition in response to the director's request for evidence, this brief, one sentence claim is insufficient to satisfy the regulation at 8 C.F.R. § 204.5(h)(5) which requires "a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." When compared to the petitioner's claim as a taekwondo instructor in response to the director's request for evidence, we are not convinced that the petitioner's general statement qualifies as "detail[ed] plans" on her intention to continue to compete in the United States. Even on appeal, while counsel references her athletic accomplishments as evidence demonstrating her abilities as an instructor, counsel fails to indicate the petitioner's intention to continue in the area of competition. Rather, he focuses on the petitioner's "role as an instructor in the field." We note here that [REDACTED] is located in Ridgewood, New York, however, the record contains addresses for the petitioner in Florida and California. The record fails to reflect that the petitioner ever resided in New York. As such, the letter casts doubt on the veracity of [REDACTED] claims regarding the petitioner being a volunteer for his school. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). While the petitioner's athletic accomplishments as a taekwondo competitor are not completely irrelevant and will be given some consideration, ultimately she must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through her achievements as a taekwondo instructor.

## 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.

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, specifically 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.

(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*, 2010 WL 725317 (9th Cir. March 4, 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at \*6 (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 \*3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, 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 *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

## II. Analysis

### A. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

*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 documentation:

1. Certificate for a Course for completing the Taekwondo Technique Seminar at the World Taekwondo Culture Expo on June 27, 2007;
2. Certificate for participation in the Olympic Day Run of the International Olympic Committee on June 23, 2006;
3. Participant Certificate for the 2008 USA Taekwondo U.S. Open Championships in New Orleans, Louisiana from February 8 – 10, 2008;
4. Certificate for recognition and participation at the 15<sup>th</sup> Asian Games Doha 2006;
5. Certificate of Participation at the World Taekwondo Culture Expo on June 30, 2007;
6. Participation Certificate at the Third Korean Open International Taekwondo Championships;
7. Certificate of Participation at the 2007 Beijing WTF World Taekwondo Championships in Beijing, China from May 18 -22, 2007;
8. Certificate for participating at the 10<sup>th</sup> South Asian Games in Colombo, Sri Lanka from August 18 – 28, 2006;
9. Certificate for appreciation at the Seventh National Taekwondo Championships in Kathmandu, Nepal from September 25 – 27, 2005;
10. Certificate of Merit for Second Place in the Senior Female Fly at the Chuncheon Open International Taekwondo Championships 2007 in Chuncheon, Korea from June 29 – July 4, 2007;
11. Certificate for First Place in the Fly at the First Korean Ambassador's National Taekwondo Championships in Kathmandu, Nepal from December 14 – 15, 2003;
12. Certificate of Appreciation for Silver in Taekwondo at the 10<sup>th</sup> South Asian Games 2006 in Colombo, Sri Lanka;
13. Certificate for Best Player in the Female Fly Senior at the Second Mayor Invitation in Butwal, Nepal;

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

14. Certificate of Honor for Female Best Player at the First Koteshwor Invitation Mayor Cup Taekwondo Championships in Kathmandu, Nepal in 2004;
15. Diploma for Second Place at the 10<sup>th</sup> South Asian Games in Colombo, Sri Lanka from August 18 – 28, 2006;
16. Certificate for First Place at the Seventh National Taekwondo Championships in Kathmandu, Nepal from September 25 – 27, 2005;
17. Certificate for First Place in the Fly at the Eighth National Taekwondo Championships in Kaski, Nepal from December 26 – 28, 2007;
18. Certificate for First Place in the Female Fly at the Second Mayor Invitation National Taekwondo Championships in Butwal, Nepal;
19. Certificate for First Place at the Seventh District Level Taekwondo Championship;
20. Certificate for First Place at the First Mayor Invitation in Ratnanagar, Chitwan;
21. Certificate for First Place at the Second District Invitation Taekwondo Championship in Kumroj, Chitwan in 2002;
22. Certificate for First Place at the Sixth District Level Taekwondo Championships in Bhandara, Chitwan;
23. Certificate for Best Player at the Second District Invitation Taekwondo Championships in Kumroj, Chitwan in 2002;
24. Certificate for First Place at the First Koteshwor Invitation Mayor Cup Taekwondo Championships in Kathmandu, Nepal in 2004;
25. Certificate of Merit for Silver Medal in Female Fly at the Second D.G.H.C. International Invitational Taekwondo Festival at the Gymkhana Skating Hall from October 30 – 31, 2002; and
26. Certificate for First Place at the Gunaraj Pathak Memorial First National Invitation Taekwondo Championship in Chitwan, Nepal from November 8 – 10, 2002.

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* [emphasis added].” The documentation submitted by the petitioner reflects her receipt of awards and certificates of appreciation and participation at various tournaments as a taekwondo competitor. The petitioner failed to submit any documentation demonstrating her receipt of lesser nationally or internationally recognized prizes or awards for excellence as a taekwondo instructor.

Notwithstanding the above, even if the petitioner established her eligibility to continue to work in the United States as a competitor, the documentation submitted by the petitioner fails to establish eligibility for this criterion as a taekwondo competitor. Regarding items 1 – 9, the documentation submitted by the petitioner reflects certificates of appreciation and recognition for her participation at competitions and tournaments, as well as her course completion at a seminar. The regulation requires that the petitioner submit documentation establishing receipt of an award

or prize for *excellence*. Even if we acknowledge that her certificates for participation are tantamount to awards or prizes, which we do not, the petitioner failed to establish that these certificates were for excellence. We would be more persuaded by evidence demonstrating first, second, or third places finishes than evidence that merely acknowledges the petitioner's participation at events.

Regarding items 10 – 26, the regulation requires documentation of the petitioner's *receipt of lesser nationally or internationally recognized prizes or awards*. In response to the director's request for evidence, the petitioner submitted her own information regarding the 15<sup>th</sup> Asian Games and the 2006 South Asian Games. However, the petitioner failed to submit any documentary evidence supporting her assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In this case, the petitioner failed to submit any other documentation regarding any of her awards or prizes to establish that they are nationally or internationally recognized prizes or awards. While the record reflects numerous awards won by the petitioner in taekwondo competitions, the record, however, fails to reflect eligibility under the regulation at 8 C.F.R. § 204.5(h)(3)(i) requiring those awards to be lesser nationally or internationally recognized prizes or awards.

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

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

The petitioner submitted the following documentation:

1. Uncertified translation without a copy of the original of *Manita Bags Gold in Taekwondo*, Unidentified Date, Unidentified Author, Unidentified Source;
2. Uncertified translation without a copy of the original of *Taekwondo*, September/October 2006, Unidentified Author, Nepal Sports Forum;
3. Uncertified translation without a copy of the original of *Winner of Silver Medal in SAG*, Unidentified Date, Unidentified Author, Unidentified Source;
4. Uncertified translation of *Second Gold Medal to Rajendra in Athletics*, Unidentified Date, Unidentified Author, Unidentified Source;
5. Uncertified translation of *Success to Nepalese Taekwondo Team*, July 5 (Unidentified Year), by [REDACTED];
6. A partial title from *The Kathmandu Post* on December 4, 2006, by an unidentified author;

7. *Dabur Nepal, NTA Reward Medal Winning Stars*, April 25 (Unidentified Year), Unidentified Author, Himalayan News Service;
8. *Taekwondo Team Leaves for Korea*, April 29, 2007, Unidentified Author, The Himalayan Times;
9. *Taekwondo Players Leave for Korea for 17 Months Training*, April 29, 2007, Unidentified Author, NepalSport.com;
10. *Taekwondo Players Leave for Korea to Prepare for Asian Games 2006*, October 22, 2006, Unidentified Author, NepalSport.com; and
11. *Taekwondo Players Categorization by Nepal Taekwondo Association*, April 18, 2007, Unidentified Author, NepalSport.com.

Regarding items 1 – 5, the English translations fail to comply with 8 C.F.R. § 103.2(b)(3), which requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” In addition, regarding items 1 – 3, the petitioner failed to submit the original articles but instead only submitted the translations of the articles. Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.” However, items 1 – 11 fail to contain the title, date, and/or author of the articles. Because the petitioner failed to comply with 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Notwithstanding the above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner relating to her work in the field for which classification is sought. However, the articles submitted by the petitioner fail to reflect published material about the petitioner relating to her work as an instructor. In fact, none of the articles are primarily about the petitioner. Instead, the petitioner is mentioned one time in each of the articles as competing or winning medals in tournaments along with other competitors. Furthermore, the petitioner failed to submit any documentation establishing that any of the articles were published in professional or major trade publications or other major media.

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

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

The petitioner failed to claim eligibility for this criterion at any time during this proceeding. However, we note that the petitioner submitted a Certificate of Attendance from the First District Level Taekwondo Referee Seminar in Chitwan, Nepal indicating that the petitioner completed the seminar from December 14 – 16, 2001, under the auspices of the National Sports Council and Nepal Taekwondo Association.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) specifically requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” While the certificate submitted by the petitioner reflects that the petitioner completed a referee course, the record fails to reflect that the petitioner actually refereed a match. In addition, we note that if the petitioner acted as a referee and simply enforced the rules of a match and sportsmanlike competition, then her participation as a referee cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence such as that she awarded points or chose the ultimate winner, evidence regarding officiating at a competition is insufficient to meet this criterion.

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

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

In response to the director’s request for evidence, the petitioner claimed eligibility for this criterion by stating:

I received very attractive benefits as a National Instructor at Nepal National and International Player Association where I served from September 15, 2006 to September 14, 2007. Normally, Taekwondo Instructors serving under Nepal government receive around US \$150 gross a month. In Nepal National and International Players Association which is a privately run leading national institute of Nepal with an extensive national network, the pay is very high as is the level and quality of training. I had a gross earning \$1000 a month.

The petitioner also submitted an uncertified English language translation without the original article entitled, *Cash Prize to Medal Winners*, in The Samacharpatra on April 28, 2007. However, the uncertified English language translation fails to comply with the regulation at 8 C.F.R. § 103.2(b)(3). Notwithstanding, the article fails support the assertions made by the petitioner regarding her monthly salary. In fact, the article discusses the cash prizes distributed by the National Sports Council for the 10<sup>th</sup> South Asian Games (SAG). While the article indicated that “a sum of 1 million 10 thousands was granted to 28 instructors of 14 games,” the article failed to specify the amount earned by the petitioner.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence showing that she has commanded a high salary “in relation to others in the field.” The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in her field. Further, besides the assertions made by the petitioner, the petitioner failed to submit any evidence demonstrating her salary or even, in fact, that she was ever employed by the Nepal National and International Players Association Nepal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. There

is no evidence establishing that the petitioner has earned a level of compensation that places her among the highest paid taekwondo instructors in her field.

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

### ***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 WL 725317 at \*3. The petitioner failed to establish eligibility for any of the criteria under the regulation at 8 C.F.R. § 204.5(h)(3), let alone the regulatory requirement of three. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Regardless, we will highlight some of the petitioner’s claims of eligibility as they pertain to a final merits determination.

The petitioner who entered as a B-2 nonimmigrant in February of 2000 has purportedly been working as a “volunteer” instructor for an unknown period of time at a local school in New York. As previously noted, she also claimed to have worked as an “assist[ant] instructor” for the Nepal Sports Council, but provided no specific date of her claimed employment and no documentary evidence.

While the petitioner submitted evidence demonstrating moderate success in tournaments as a competitor, the petitioner failed to demonstrate any success as an instructor, and therefore, failed to demonstrate eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In addition, even though the petitioner failed to demonstrate eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(iii) by not providing certified English language translations, titles, date, and/or author of the materials, we also cannot ignore that the statute requires the petitioner to submit “extensive documentation” of sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provides that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even if the petitioner would have submitted certified English language translations as well as provided the titles, dates, and authors for all of the material, the articles submitted by the petitioner failed to discuss the petitioner relating to her work as an instructor consistent with the sustained national or international acclaim required for this highly restrictive classification.

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

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

### **III. Conclusion**

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.