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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date **APR 29 2010**
LIN 08 187 52130

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:

SELF-REPRESENTED

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).

U. Deadrick
Perry Rhew
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 business and/or athletics. The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the beneficiary 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, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the basic eligibility requirements.

On appeal, the petitioner argues that he meets the one-time achievement, or in the alternative, 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* 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 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, international recognized award). Barring the alien’s receipt of such an award, the regulation outlines the following 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.

- (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 procedure for evaluating 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.*

The court stated that the AAO's approach 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).

II. Analysis

A. Evidentiary Criteria

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

This petition, filed on June 16, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a karate professional. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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, international recognized award).

On appeal, the petitioner claims that he has satisfied this criterion by winning a world karate title in 1993. The petitioner provided a certificate indicating that he won the Wado International World Championship in Athens in 1993. In addition, the petitioner submitted reference letters, a photograph of the medal and newspaper articles, which all confirm his claim to such title.

The director's decision did not address whether the petitioner had received a one-time achievement award because the petitioner did not allege that he satisfied this criterion until after he appealed the decision.

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. Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). 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). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). 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.

In this instance, the petitioner has failed to establish that the Wado International World Championship can be considered a major, internationally recognized award, at the level of other such awards like the Nobel Prize. This award, however, will be further addressed as a lesser award under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

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 meet the basic eligibility requirements.

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

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 evidence:

1. A letter from [REDACTED] confirming the petitioner's placements in various competitions, without a certified translation; (On appeal, his letter was in English and signed by him)
2. A certificate that indicated the petitioner was "World Champion" at the Wado International World Championship in Athens in 1993;
3. A declaration from [REDACTED] confirming various achievements by the petitioner, without a certified translation;
4. A picture of a medal with an Italian caption that the petitioner claims is a 1st Place Award at an Italian tournament in Rome in 1988, without a translation;
5. A picture of a medal that the petitioner claims is a 1st Place Award at the Italian Cup in 1988, without a translation for the inscription;
6. A picture of a medal indicating in hand writing that it is for the International 1st Place Team Award at the European Cup in 1990, without a translation of the inscription;
7. A picture of a medal with an Italian inscription, which the petitioner indicates is for a 1st Place Award at an Italian Championship in 1991, without a translation;
8. A picture of a medal, which the petitioner claims is for a 1st Place Award at Rinascita Tournament in 1991, without a translation;
9. A picture of a medal with no inscriptions and no explanation (handwriting appears to be cut off at the bottom of the page), which may be for a 1st Place Medal Award at the World Championship in Athens in 1993, as per the petitioner's brief;
10. A picture of a trophy and a plaque with no explanation;
11. A picture of a medal for the 1st Place Team Award at an Italian tournament in 1993, without a translation;
12. A picture of a trophy for an International 1st Place Award at the European Cup in 1994, without a translation for the inscription;
13. A picture of a medal for an International 1st Place Individual Award at the Karete-Cip in 1994, without a translation;
14. A picture of a medal for 1st Place Award at the "100 years of Sport" Tournament in 1995, without a translation;
15. A picture of a medal for the 1st Place Individual Award at the Italian Championship in 1995, without a translation;
16. A picture of a medal for the 1st Place Team Award at an Italian Championship in 1995, without a translation for the inscription;
17. A picture of a medal for a 1st Place Team Award at an Italian Championship in 1995, without a translation for the inscription;
18. A picture of a medal for an International 1st Place Team Award in Sardinia in 1995, without a translation for the inscription;
19. A picture of a medal for an International 1st Place Team Award in Torino in 1995, without a translation for the inscription;

20. A picture of a trophy for a 1st Place Award at the International Award at the International Costa Paradiso Cup in 1995, without a translation;
21. A photograph of a medal for 1st Place Award at the International Malatesti Cup in Pistola in 1996, without a translation;
22. A trophy for 1st Place Award at the International Open in Milan in 1996, without a translation;
23. A photograph of a medal for Most Accomplished Athlete from the A.S. Federation, without a translation;
24. A photograph of a medal for 1st Place Award at the Armed Forces Tournament in 1997, without a translation;
25. A photo of a medal for 1st Place Award at Karate Day in 2000 (no translation needed but medal does not indicate first place);
26. A 1st Place Award at the International Tournament in 2000, without a translation;
27. A 1st Place Award at an Italian Tournament in Florence in 2002, without a translation;
28. A photograph of a plaque for 1st Place Award at the Italian Team Competition in 2004, without a translation;
29. A photograph of a plaque of an Honors Award from the New Karate Club, without a translation;
30. A photograph of a plaque for 2nd Place Award at "Gran Gala" National Armed Forces Competition in 2005, without a translation, and a picture of the petitioner near a big trophy without an explanation;
31. A picture of a medal for "Best Athlete" National Achievement Honors Award issued by the City of Rome to the petitioner in 2006, without a translation;
32. A picture of a trophy for an Acknowledgement of the petitioner's karate career, without a translation; and
33. A picture of a coin for "Most Accomplished Athlete" Award issued by the "Fiamme Oro" at the 50th Anniversary of the Club in 2006, without a translation.

In response to the director's Request For Evidence (RFE), dated March 23, 2009, the petitioner provided a letter from [REDACTED]

[REDACTED] His letter confirmed that the petitioner won first place at the 1993 Wado World Championship and that he won first place at the 1994 European Championships in his 80+ kilogram category, and that there were over 1000 participants at each of these competitions. In addition, [REDACTED] confirmed that these placements signified that the petitioner was internationally considered the top 80+ kilogram Wado expert in the world in 1993 and in Europe in 1994. No new evidence was provided on appeal.

In his July 7, 2009 decision, the director concluded that the petitioner met this criterion. While we concur with this determination, we note that the evidence provided by the petitioner for this criterion was often times problematic. Many of the photographs the petitioner submitted were blurry and difficult to read. In addition, the appropriate translations for all of his medals and trophies, as required by 8 C.F.R. § 103.2(b)(3), were not provided.

Nonetheless, we find that the petitioner has 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.

The petitioner submitted a reference letter from [REDACTED] and [REDACTED], confirming that the petitioner has been a member of the sports group since 1989 as both an athlete and a coach. In his letter, [REDACTED] also mentioned that the petitioner was captain of [REDACTED] from 1989 to 2002. His letter also confirmed the petitioner's participation and placements in various karate competitions. A declaration from the Italian government, confirming that the petitioner was an Assistant Chief State Police and was in the police force from 1989 through 2008, was submitted. The petitioner also provided pictures of himself standing in front of the police flag and logo. Lastly, photographs of the medals that were presented to the petitioner by the National Police Athletes Association were also submitted. However, they were not translated as required by 8 C.F.R. § 103.2(b)(3).

In response to the RFE, the petitioner provided another letter from [REDACTED] Mr. [REDACTED] explained that thousands of people apply to be part of Fiamme Oro, and that only a "select few" become members. His letter further informs that "an applicant must be nationally acclaimed for their expertise in Karate," and that this "acclaim can be in the form of top placement at national and international Karate competitions." On appeal, no new evidence was provided. However, the petitioner claimed that, in addition to being a member of [REDACTED], he was also a member of The Japan Karate-Do Organization, and a member of a "major Italian Association, the Karate Pera." The petitioner had previously submitted two reference letters from [REDACTED] [REDACTED] of Japan Karate-Do Organization and one from [REDACTED] of the Karate-Cup International Competition, for other criterion.

In order to demonstrate that membership in an association meets this criteria, the 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 submits that he was a member and captain for [REDACTED]. The record does not include evidence (such as membership bylaws or official admission requirements) showing that the preceding organization requires outstanding achievements of its members. Although [REDACTED] stated that "an applicant must be nationally acclaimed for their expertise in Karate" and that this "acclaim can be in the form of top placement at national and international Karate competitions," it is unclear whether other lesser qualifications could also be sufficient to become a member of [REDACTED]. With regard to the petitioner's membership in The Japan Karate-Do Organization and Karate Pera, none of the evidence provided confirmed his membership in these

organizations. In addition, the reference letters from members of these groups do not provide any details regarding membership, including official membership requirements. Moreover, the petitioner failed to provide any evidence to demonstrate that membership in any of these organizations is judged by recognized national or international experts of karate.

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.³

The petitioner provided the following evidence:

1. An article from the *Speciale Karate*, dated October 5, 1993, with an uncertified translation;
2. An article in *Il Messaggero*, dated October 10, 1993, with an uncertified translation;
3. An article in *Metropolit*, dated October 19, 1993 (according to the petitioner, as the date not indicated in translation or article), with an uncertified translation; and
4. An article in *Il Messaggero*, dated September 29, 1993, with an uncertified translation.

In response to the RFE, the petitioner provided a printout from *Wikipedia* regarding *Il Messaggero*. No evidence was provided on appeal.

In his decision, the Director found that the petitioner failed to meet this criterion. We concur with this decision. The record contains no reliable evidence to demonstrate that any of the publications can be considered professional or major trade publications or other major media. Although the petitioner provided a printout from *Wikipedia* in an attempt to demonstrate that *Il Messaggero* is a major publication, there are no assurances about the reliability of the content from this open, user-edited internet site. See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source.

Moreover, none of the articles provided were accompanied by the appropriate translation as required by 8 C.F.R. § 103.2(b)(3). This regulation requires that any document containing foreign language

³ 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.

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 from the foreign language into English. The petitioner instead provided uncertified translations for all the articles without the requisite certifications. This is insufficient to meet the requirements of the regulations. As such, this information cannot be given any weight.

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

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

The petitioner initially submitted the following letters in support of this criterion:

1. A reference letter from [REDACTED] for Mogul Productions, who stated that he is a potential employer for the petitioner;
2. A reference letter from [REDACTED] of Japan Karate-Do Organization;
3. A reference letter from [REDACTED] written in Italian and with an uncertified translation;
4. A reference letter from [REDACTED] of the National Personal Training Institute;
5. A reference letter from [REDACTED], who interviewed the petitioner and who stated that he may employ him as a trainer for an actress in his film;
6. A reference letter from [REDACTED] who has agreed to endorse the petitioner in his competitions in the United States;
7. A reference letter from [REDACTED] accompanied by a flyer for Extreme Boot Camp; and
8. A list of athletes in [REDACTED] and their placements, that the petitioner claimed to have trained.

In response to the RFE, the petitioner provided an additional reference letter from [REDACTED]. On appeal, an additional list of athletes' titles, that the petitioner claims to have trained, was provided.

In his first letter (item 2), [REDACTED] of the Japan Karate-Do Organization confirms various competitions in which the petitioner placed. In addition, [REDACTED] stated:

Since 2002 [REDACTED] [has] been dedicated to his career in the State Police and has served as a coach and team trainer, a position that has enabled him to inspire many younger athletes. I have come to know [REDACTED] as an individual of fine character with a strong work ethic, persistence, and integrity. I recommend [REDACTED] with great confidence. I believe that he would make a worthwhile contribution to our society.

In [REDACTED] second letter, he further explains that:

It is well established that the United States has one of the weaker Karate teams in international competition. Our organization seeks to change that fact. We believe that [REDACTED] will be instrumental in achieving that goal. Our intention is to feature [REDACTED] both as a competitor and as the representative face for our organization. [REDACTED] world renowned abilities will serve to anchor our U.S. Karate team and to provide us with the expertise necessary to prevail in international competition.

[REDACTED] of the National Personal Training Institute, states:

[REDACTED] has displayed a high degree of integrity, responsibility, and ambition. He is definitely a leader rather than a follower. In addition to his excellent scholastic accomplishments, he has proven his leadership ability by organizing an effective eight week program design project for a client in the class. What this has proven is his ability to be an outstanding asset as a fitness instructor in this country.

Similarly, [REDACTED], states the petitioner:

Is very uniquely qualified and there is no one in Los Angeles with [his] particular abilities. With his athletic expertise and knowledge, [REDACTED] would help us to establish a stronger presence in the karate arena, and to further karate education within the community.

[REDACTED], states:

From what I know of [REDACTED], he could be a very valuable asset for my business and I would highly consider hiring him should he be granted the opportunity to reside and work in the United States.

An alien must have demonstrably impacted his field in order to meet this regulatory criterion. 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.

In this case, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner and his talents, they fail to establish that he has made contributions of major significance in his field. In evaluating the reference letters, they do not specifically identify how his contributions have influenced the field; rather, the letters discuss the possible implications that his work may lead to in the future. We will not consider evidence reflecting claims of future speculation. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

In this case, the recommendation letters are not sufficient to meet this regulatory criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. 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). Further, USCIS may, in its discretion, use as advisory opinion statements 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 personal 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 any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

In addition, with regard to the list of athletes that the petitioner claims to have trained, he failed to provide any documentary evidence which demonstrates that he trained these individuals. 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'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

As such, the petitioner has failed to establish that he has satisfied this criterion.

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

The petitioner initially submitted various photographs of himself during and after competitions, as well as of his Italian State Police Force Karate team. No new evidence was submitted in response to the RFE or on appeal.

The plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for an athlete such as the petitioner. It is inherent for an athlete to compete. Therefore, not every competition is a showcase or exhibition of the work of every athlete. Without evidence that the petitioner's performances were comparable to the exclusive artistic showcases that might serve to meet this criterion for a visual artist, we cannot conclude that the petitioner meets this criterion.

In light of the above, 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.

The petitioner did not claim this criteria initially or response to the RFE. However, on appeal, the petitioner argued that he played a leading role in the Italian Police Force as a trainer and mentor. The petitioner states in his appeal brief that the “transition from being an athlete to a trainer and mentor of other athletes signifies the epitome of leadership for the organization and the apex of achievement in the field of Karate.”

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The petitioner failed to provide any evidence to support that his position in the Italian Police Force was commensurate with a leading or critical role. For example, the petitioner has not submitted an organizational chart or other similar evidence showing where the petitioner’s position fell within the hierarchy of the organization. Similarly, there was no evidence provided that discussed the petitioner’s actual responsibilities as a trainer or mentor.

Accordingly, the petitioner has not established that he 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.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 2010 WL 725317 at *3.

In this case, the specific 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). The petitioner, who last entered the U.S. as an F-1 nonimmigrant student to attend a language training school, submitted documentation relating to his achievements as a coach and karate professional. The submitted evidence, however, is not indicative of the petitioner’s sustained national or international acclaim and there is no indication that his individual achievements have been recognized in the field.

With regard to the evidence submitted for the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i), the director concluded that the petitioner met the plain language of this criterion and we concurred. However, we note that the awards were received by the petitioner in 1993 and 1994 respectively. The plain language of statute and of the controlling regulation requires the petitioner to demonstrate that his national or international acclaim has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The submitted evidence is not consistent with sustained national or international acclaim in karate as of the date of filing of this petition. Similarly, regarding the evidence submitted for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), we cannot ignore that all the articles that were provided regarding the petitioner were from 1993. As previously noted, the statute and regulations require the petitioner to demonstrate that his national or international acclaim has been sustained. *See* section 203(b)(1)(A)(i) of the Act,

8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iii) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further qualifying evidence under this criterion or the other criteria documenting the petitioner's sustained national or international acclaim in karate in the years immediately preceding the filing date.

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).

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim 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 his 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.