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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:



Office: NEBRASKA SERVICE CENTER

Date: **DEC 14 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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center on August 17, 2009. On October 6, 2010, the Administrative Appeals Office issued a notice of intent to find fraud and material misrepresentation. The matter is now before the AAO on appeal. The appeal will be dismissed with a finding of fraud and material misrepresentation.

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 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 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.

On appeal, the petitioner argues that he meets the requirements at 8 C.F.R. § 204.5(h)(3) for sustained national or international acclaim through evidence of a one-time achievement. For the reasons discussed below, we uphold the director's decision.

I. Law

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 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.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 evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119 - 1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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).

II. Derogatory findings pertaining to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i)

On October 6, 2010, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), this office issued a notice advising the petitioner of derogatory information indicating that he submitted a fraudulent letter purportedly written by [REDACTED] on July 17, 2009. As the derogatory findings relate to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), they are material to this proceeding. The AAO's notice of derogatory information stated:

On appeal, you submitted an unsigned July 17, 2009 letter of support on International Bodyboarding Association ("IBA") letterhead purportedly from [REDACTED] Women's World Tour Director. This letter was previously submitted in response to the director's request for evidence (RFE) dated June 10, 2009. In his July 17, 2009 letter, Mr. [REDACTED] purportedly states that you have:

Judged and directed events at the highest levels of competition as the world's most senior judge. Due to [your] experience in the administration of the sport and [] knowledge of skills in national and world competitions, [you were] nominated IBA 2004 to 2006 world tour Head Judge and Technical Director.

Following we cite some of the [petitioner's] accomplishments:

Brazilian best judge 1089 [sic], 1990 and 1995.
Brazilian tour best Head Judge 1996, 1998, 1999 and 2003.
World bodyboarding international judge 1995 and 1996.
World bodyboarding international Head Judge 2004 to 2006.
Award as the best head judge for the 2007 Pipeline Bodyboarding World Contest in Hawaii, the sport's most prestigious event [as] recognized by IBA.

In addition[,] he has appeared on magazines, newspapers and various articles concerning the sport of bodyboarding, without mentioning all [of] the judging courses to form an[d] train judges for international level competitions around the world.

* * *

His skills and determination have made him one of the elite Head Judges in this field being [sic] considered one of the top four best since 1995.

On appeal, you assert that you received an award as the "best head judge at the Pipeline World Competition in 2007." You argue that the Pipeline World Competition is an

event for the best bodyboarding competitors in the world and that only a “few judges and head judges are present.” There is no primary, documentary evidence in the record of proceeding indicating that you received this award.

The AAO contacted Mr. [REDACTED] on July 22, 2010 regarding this letter and his e-mail response to the AAO’s inquiry stated that he did not write the letter dated July 17, 2009.

By submitting this document containing these false claims, it appears you have sought to obtain a visa by fraud and willful misrepresentation of a material fact. With regard to the above findings, 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. Because you have submitted fraudulent documentation, we cannot accord any of your other claims any weight.

In response to the AAO’s notice, the petitioner submitted a September 25, 2010 letter from [REDACTED] International Association Head Judge, IBA Latin America Executive Director, International Surfing Association Head Judge, Pan American Surfing Association Head Judge. In his letter, Mr. [REDACTED] states that the petitioner’s credentials and awards include “World Head Judge 2004 – 2006, Best Head Judge for the 2008 Pipeline Bodyboarding World Contest in Hawaii; and Honorary Member of dedicated service to the IBA and to the Brazilian Bodyboarding Conferderation.” Mr. [REDACTED] also states:

It is my strong opinion that Mr. [REDACTED] did not remember or confirm this July 17, 2009 letter on [the petitioner’s] behalf for two reasons: 1) It was quickly written (as there was a[n] approaching deadline), with much of the supporting evidence transferred by myself to Mr. [REDACTED] office; and 2) the original date for “Best Head Judge” was inadvertently typed as “2007” (by [the petitioner]) when, in fact, it should have been for the year 2008.

It can be well[-]documented that [the petitioner] entered the United States in 2008 and such mistake, albeit important, was unintentional. For these two reasons, I can confidentially [sic] assure you that Mr. [REDACTED] can currently confirm that he himself sent this original letter dated July 17, 2009.

Although Mr. [REDACTED] letter addresses the two issues in the AAO’s October 6, 2010 notice, there is no evidence in the record of proceeding indicating that Mr. [REDACTED] is an attorney or accredited representative authorized to represent the petitioner or speak for Mr. [REDACTED] in this matter. Mr. [REDACTED] states that it his “strong opinion” that Mr. [REDACTED] forgot that he wrote the letter and provides his assurance that Mr. [REDACTED] will currently confirm that he wrote the July 17, 2009 letter.

The petitioner did not submit evidence from Mr. [REDACTED] contradicting his prior statement to the AAO. Also, Mr. [REDACTED] statements regarding the best head judge award are not sufficient to meet the petitioner's burden. As stated in the notice the regulation at 8 C.F.R. § 103.2(b)(5) provides that USCIS may, at any time, request the submission of an original document for review. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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 addition, failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner failed to directly respond to our notice himself to challenge our allegation of fraudulent submission of evidence and to submit primary documentary evidence of the claimed award.

The regulation at 8 C.F.R. § 102.2(a)(2) provides that “[b]y signing the application or petition, the applicant or petitioner...certifies under penalty of perjury that the application or petition, *and all evidence submitted with, either at the time of filing or thereafter*, is true and correct.” (Emphasis added). The actual signature portion of the Form I-140 at part 8 requires the petitioner to make the following affirmation: “I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct.” On that basis alone, the petitioner must be held responsible for any material misrepresentations contained within the record of proceeding.

As immigration officers USCIS Citizenship and Immigration Appeals Officers and Center Adjudications Officers possess the full scope of authority accorded to officers by the relevant statutes, regulations, and the Secretary of Homeland Security's delegation of authority. *See* sections 101(a)(18), 103(a), and 287(b) of the Act; 8 C.F.R. §§ 103.1(b), 287.5(a); DHS Delegation Number 0150.1 (effective March 1, 2003).

With regard to immigration fraud or material misrepresentation, the Act provides immigration officers with the authority to administer oaths, consider evidence, and further provides that any person who knowingly or willfully gives false evidence or swears to any false statement shall be guilty of perjury. Section 287(b) of the Act, 8 U.S.C. § 1357(b). Additionally, the Secretary of Homeland Security has delegated to USCIS the authority to investigate alleged civil and criminal violations of the immigration laws, including application fraud, make recommendations for prosecution, and take other “appropriate action.” DHS Delegation Number 0150.1 at para. (2)(I).

In the course of performing their duties under the immigration laws and the Administrative Procedure Act (APA), immigration officers are charged with reviewing evidence and making factual determinations or “findings” related to the adjudication of immigration benefits. Under section 557 of the APA, immigration officers are obligated to ensure that all decisions are a part of the administrative record and that the decisions include “a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record” 5 U.S.C. § 557(c)(3).

As an issue of fact that is material to an alien's eligibility for the requested immigration benefit or that alien's subsequent admissibility to the United States, the administrative findings in an immigration proceeding must include specific findings of fraud or material misrepresentation. Within the adjudication of the visa petition, a finding of fraud or material misrepresentation will undermine the probative value of the evidence and lead to a reevaluation of the reliability and sufficiency of the remaining evidence. *Matter of Ho*, 19 I&N Dec. at 591.

Outside of the basic adjudication of visa eligibility, there are many critical functions of the Department of Homeland Security that hinge on a finding of fraud or material misrepresentation. For example, the Act provides that an alien is inadmissible to the United States if that alien seeks to procure, has sought to procure, or has procured a visa, admission, or other immigration benefits by fraud or willfully misrepresenting a material fact. Section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182. Additionally, the regulations state that the willful failure to provide full and truthful information requested by USCIS constitutes a failure to maintain nonimmigrant status. 8 C.F.R. § 214.1(f). For these provisions to be effective, USCIS is required to enter a factual finding of fraud or material misrepresentation into the administrative record.²

With regard to the current proceeding, section 204(b) of the Act states, in pertinent part, that:

After an investigation of the facts in each case . . . the [Secretary of Homeland Security] shall, if he determines that the facts stated in the petition are true and that the alien . . . in behalf of whom the petition is made is an immediate relative specified in section 201(b) or is eligible for preference under subsection (a) or (b) of section 203, approve the petition

Pursuant to section 204(b) of the Act, USCIS has the authority to issue a determination regarding whether the facts stated in a petition filed pursuant to section 203(b) of the Act are true. In the present matter, we find that the petitioner submitted a fraudulent letter in response to the director's June 10, 2009 RFE and on appeal.

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

² It is important to note that while it may present the opportunity to enter an administrative finding of fraud, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. See *Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to permanent resident status. See sections 212(a) and 245(a) of the Act, 8 U.S.C. §§ 1182(a) and 1255(a).

Under Board of Immigration Appeals (BIA) precedent, a material misrepresentation is one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded.” *Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1961).

By filing the instant petition and falsely claiming that Mr. [REDACTED] wrote the July 17, 2009 letter, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Because the petitioner has failed to provide independent and objective evidence to overcome the inconsistencies in the record of proceeding, we find willful material misrepresentation. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner’s failure to submit independent and objective evidence to overcome the preceding derogatory information seriously compromises the credibility of the petitioner and the remaining documentation. Doubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591. The remaining documentation and the director’s bases of denial will be discussed below.

III. Analysis

This petition, filed on December 4, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a judge and technical director.

A. *Major, internationally recognized award*

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. 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 internationally recognized in the alien’s field as one of the top awards in that field.

On appeal, the petitioner asserts that he received an award as the “best head judge at the Pipeline World Competition in 2007.” The petitioner argues that the Pipeline World Competition is an event for the best bodyboarding competitors in the world and that only a “few judges and head judges are present.” On appeal, the petitioner re-submitted a letter from ██████████ on International Bodyboarding Association (“IBA”) letterhead stating that the petitioner received an “award as the best head-judge for the 2007 Pipeline Bodyboarding World Contest in Hawaii, the sport[’s] most prestigious event [as] recognized by IBA.” According to Mr. ██████████ description this event is a bodyboarding contest. However, neither the petitioner nor Mr. ██████████ states how many other head judges were present at the 2007 Pipeline Bodyboarding World Contest or why an award for “best head-judge” was presented during a bodyboarding competition. More importantly, there is no primary documentary evidence in the record of proceeding indicating that the petitioner received this award. 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that evidence of his award as a bodyboarding does not exist or cannot be obtained. Further, the letter from Mr. ██████████ does not equate to secondary evidence or an affidavit. In this case, there is no evidence showing that the petitioner has received nationally or internationally recognized prizes or awards as a bodyboarding judge.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3), specifically requires the petitioner’s receipt of a major, internationally recognized “award.” There is no documentary evidence demonstrating the petitioner’s receipt of this claimed award and no evidence that an award for “best head-judge” is recognized beyond the organizing body and therefore commensurate with a major, internationally recognized prize or award in the field.

B. Evidentiary Criteria at 8 C.F.R. § 204.5(h)(3)

The petitioner has submitted evidence pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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

³ The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

The record contains letters purportedly from [REDACTED] dated July 17, 2009⁴ and [REDACTED] dated July 16, 2009 stating that the petitioner received the following awards:

1. Brazilian best judge 1089 [sic], 1990 and 1995;
2. Brazilian tour best Head Judge 1996, 1998, 1999, and 2003;
3. Award as the best head judge for the 2007 Pipeline Bodyboarding World Contest;

The director did not find the petitioner eligible for this criterion, and we note that the petitioner did not address or contest the decision of the director for this criterion on appeal.

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.” In this case, the petitioner failed to establish that these awards equate to lesser nationally or internationally recognized *prizes or awards* for excellence. Furthermore, the petitioner did not submit documentary evidence of his receipt of the awards listed. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165 (citing *Matter of Treasure Craft of California* at 190).

Accordingly, the petitioner failed to establish 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 record contains a biography for the petitioner stating that the petitioner has been involved with the following organizations:

1. Associacao Paulista de Bodyboarding (APB);
2. Clube Santista de Bodyboarding (CSB);
3. Federacao de Bodyboarding do Estado de Sao Paulo (FEBBESP);
4. Associacao Brasileira de Bodyboarding (ABRASB);
5. Confederacao Brasileira de Bodyboarding (CBRASB);

⁴ See above for further discussion on Mr. [REDACTED] July 17, 2009 letter.

6. Uniao Panamericana de Bodyboarding (UPB);
7. Associacao Paulista de Arbitros de Surf and Bodyboarding (APJS);
8. International Surfing Association (ISA);
9. Global Organization of Bodyboarding (GOB);
10. Association of Women Bodyboarding (AWB); and
11. International Bodyboarding Association (IBA).

There is also evidence in the record of proceeding that the petitioner has been involved with the U.S. Bodyboarding Association (USBA).

Although the petitioner lists many organizations, the record contains no evidence that the petitioner is a member of these organizations or of the membership requirements (such as bylaws or rules of admission) for any of the organizations listed. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165 (citing *Matter of Treasure Craft of California* at 190). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

In his decision, the director determined that the petitioner failed to submit evidence that he meets this criterion. The petitioner did not submit any evidence on appeal.

Accordingly, the petitioner failed to establish 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

The petitioner claims eligibility for this criterion based on the following submitted documentation:

1. A letter by [REDACTED] dated July 17, 2009 stating that the petitioner has “appeared on [sic] magazines, newspapers and various articles concerning the sport of bodyboarding;”
2. Photographs of the petitioner in *Ride It!*, a bodyboarding magazine written in Portuguese; and
3. An article entitled “Bodyboarding and Surfing Rocks Itarare Beach.”

Even if the AAO had not found willful material misrepresentation, the July 17, 2009 letter by [REDACTED] is not evidence of published material about the petitioner. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165 (citing *Matter of Treasure Craft of California* at 190). The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the

petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Here, the petitioner failed to submit any documentary evidence demonstrating the non-existence of primary and secondary evidence in order for us to consider the petitioner's third-party letter.

Further, the regulation at 8 C.F.R. § 103.2(b)(3) 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." The record of proceeding contains a letter signed by [REDACTED] dated December 1, 2008 stating that the documents attached "were translated from Portuguese to English." The letter signed by Ms. [REDACTED] does not certify that the translations are complete and accurate or that she is competent to translate from Portuguese to English, as required by 8 C.F.R. § 103.2(b)(3). With the exception of item 3, which was written originally in the English language, none of the documents submitted by the petitioner contain properly certified English language translations. Further, the AAO notes that it is not clear that the articles are about the petitioner rather than about his former bodyboarding school. Moreover, the submission of photographs fails to meet the plain language of the regulation requiring "published material." 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. As this criterion specifically requires the title, date, author and any necessary translation, photographs do not qualify the petitioner under this criterion. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

The director determined that the petitioner did not meet this criterion. On appeal, the petitioner does not address the director's findings or provide additional evidence.

Accordingly, the petitioner failed to establish 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 specialization for which classification is sought.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." In this case, the petitioner only submitted letters and pictures as evidence of his serving as a bodyboarding judge. The petitioner did not submit primary evidence of his participation as a bodyboarding judge. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Here, the petitioner failed to submit any documentary evidence demonstrating the non-existence of primary and secondary evidence in order for us to consider the petitioner's third-party letters.

The director determined that the petitioner did not meet this criterion. On appeal, the petitioner does not address the director's findings or provide additional evidence. Therefore, the AAO will not discuss this criterion further.

Accordingly, the petitioner failed to establish 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 submitted letters of support discussing his work as a judge and technical director. We cite representative examples below. Talent and success in judging bodyboarding competitions, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

In his July 17, 2009 letter⁵, Mr. [REDACTED] states that the petitioner has:

Judged and directed events at the highest levels of competition as the world's most senior judge. Due to [the petitioner's] experience in the administration of the sport and his knowledge of skills in national and world competitions, he was nominated IBA 2004 to 2006 world tour head judge and technical director.

Following we cite some of the [petitioner's] accomplishments:

Brazilian best judge 1089 [sic], 1990 and 1995.
Brazilian tour best head judge 1996, 1998, 1999 and 2003.
World bodyboarding international judge 1995 and 1996.
World bodyboarding international head judge 2004 to 2006.
Award as the best head judge for the 2007 Pipeline Bodyboarding World Contest in Hawaii, the sport's most prestigious event [as] recognized by IBA.

In addition[,] he has appeared on [sic] magazines, newspapers and various articles concerning the sport of bodyboarding, without mentioning all [of] the judging courses to form an[d] train [sic] judges for international level competitions around the world.

* * *

His skills and determination have made him one of the elite head judges in this field being [sic] considered one of the top four best since 1995.

⁵ See above for further discussion on Mr. [REDACTED] July 17, 2009 letter.

In his July 4, 2008 letter, Mr. [REDACTED] wrote that the petitioner's "extensive experience judging has enabled him to be accepted on the panel of elite judges considered for selection for world tour events."

Mr. [REDACTED] owner of [REDACTED] a manufacturer of bodyboards, states that he and the petitioner have had a partnership since 1998 and that his company sponsored events organized by the petitioner throughout Brazil.

Mr. [REDACTED] for IBA, states that "like [in] many sports, [IBA tries] to assemble a judging panel with officials from various countries for all international level competitions." Mr. [REDACTED] states that the petitioner was selected as an international judge for the 2008 International Pipeline Pro event.

In her letter dated July 3, 2008, Ms. [REDACTED] Executive Secretary of the Association of Women Bodyboarders ("AWB"), states that "as one of only 10 world championship qualified judges [the petitioner] has been selected to be on our judg[ing] panel for the 2009 event."

The record of proceeding contains two letters from Mr. [REDACTED] operations manager of the U.S. Bodyboarding Association National Championship Tour. In his letter dated November 20, 2008, Mr. [REDACTED] states that the petitioner is a "huge asset to the tour as he has been trained on a world-class level to be a bodyboarding judge. This is a rarity in the United States and [a] staffing need to our tour." Mr. [REDACTED] also states that in 2007, the petitioner showed that he was "one of the most talented judge[s] in the world and [he] is able to fill a needed position as judge, head judge, and technical director at the following events on the USBA." Mr. [REDACTED] listed 26 events scheduled for 2009. The events listed were to take place in Hawaii, California, New York, and New Jersey.

In his letter dated July 18, 2008, Mr. [REDACTED] stated that the petitioner "was considered the best judge and head judge for several years during the 90s by the Brazilian Bodyboarding Confederation" and was "considered the best head judge at the 2007 world bodyboarding contest at Pipeline in Hawaii."⁶ Mr. [REDACTED] also stated that:

Bodyboarding as a [sic] organized sport is growing fast in the United States and [the petitioner's] knowledges [sic] and skills will be an important asset to the upcoming USBA plans as he could held [sic] the technical affairs of the association as well as be our main head judge and still lead some training and teach some classes to form [sic] new judges and to help USBA to rule [sic] and coordinate the growth of bodyboarding in the United States.

Although [REDACTED] speak admirably of the petitioner and his skills, their letters do not provide specific examples of the petitioner's original contributions that have significantly impacted the petitioner's field.

⁶ The AAO notes that Mr. [REDACTED] did not mention that the petitioner received an award recognizing him as the best head judge and instead stated that the petitioner was "considered the best head judge."

The preceding letters of support submitted by the petitioner describe him as a talented and successful judge, but they do not specify exactly what his original contributions in the sport have been, nor is there an explanation indicating how any such contributions were of major significance in his field. It is not enough to be a talented judge and to have others attest to that talent. 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. While the petitioner has earned the admiration of his references, there is no evidence demonstrating that he has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other judges nationally or internationally, nor does it show the field has specifically changed as a result of his work.

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 opinions 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 from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. 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 that one would expect of a bodyboarding judge who has made original contributions of major significance. Without extensive documentation showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude 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.

In his decision dated August 17, 2009, the director determined that the petitioner did not establish that he meets this criterion. On appeal, the petitioner does not provide additional evidence or address this criterion.

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

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

C. 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.

In this case, the specific deficiencies in the petitioner's documentation have already been addressed in our discussion of the evidence submitted for 8 C.F.R. §§ 204.5(h)(3). The submitted evidence is not indicative of the petitioner's sustained national or international acclaim as a judge and technical director and there is no indication that his individual achievements have been recognized in the field through extensive documentation.

We cannot ignore that the statute requires that the petitioner submit "extensive documentation" of the his 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 provide 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). The petitioner failed to submit evidence demonstrating that he "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 AAO notes that the petitioner is currently in the United States on a B-2 visa. Although the petitioner claims to be the best bodyboarding judge, the record of proceeding contains no evidence of the number of bodyboarding judges or bodyboarding head judges in the world. Other than reference letters mentioning his receipt of an award as the "2007 best head judge," the petitioner has not submitted evidence showing his position relative to that of other bodyboarding judges. As stated previously, there is no evidence indicating that the petitioner's "2007 best head judge" award is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

The petitioner submitted several reference letters praising his talents as a judge. However, none of the letters submitted provided the requirements necessary for serving as a bodyboarding judge or head judge. Ms. [REDACTED] letter stated that the petitioner was "one of only 10 world championship qualified judges," but did not state the requirements for a "world championship qualified judge."

The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) 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).

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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 with a finding of fraud and willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted fraudulent documentation in an effort to mislead USCIS and the AAO on elements material to his eligibility for a benefit sought under the immigration laws of the United States.