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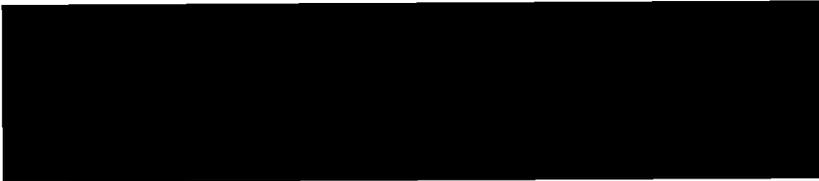
IN RE:

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 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director and the AAO determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

On motion, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the "AAO erred in their appreciation of the facts presented in this case." For the reasons discussed below, the petitioner's motion does not overcome the AAO's findings.

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 criteria.

- (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

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).

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

This petition, filed on August 9, 2007, seeks to classify the petitioner as an alien with extraordinary ability in the martial arts. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

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

The petitioner submitted the following Nepali certificates: gymnastics awards from the 1980s, a 1984 first position certificate from the Second National Martial Arts Competition, an undated second position certificate from the Free Style Open Karate Competition organized by Shito-Ryu Karate Do and a 1984 second position certificate from the First Sagarmatha Tae Kwon Do Competition. The petitioner also submitted a 2003 "Hall of Fame" certificate recognizing the petitioner's "dedication to the martial arts" from the World United Martial Arts Federation (WUMA). In support of the significance of the Hall of Fame certificate, the petitioner submitted a list of 2003 awardees from WUMA's website, www.wuma.uk.com. The petitioner was one of 67 individuals to receive this recognition. The awards were issued in various categories, including several "dedication" awards, some to martial arts in general, some to an individual club, one to the awardee's students and one to "the arts." The list includes three "Kung Fu Instructor of the Year" awards, two "Long Serving Student" awards and several merely in a "Dan" (black belt category) level.

On June 11, 2008, the director issued a Request for Evidence (RFE) advising that the gymnastic awards were not evidence of acclaim as a martial artist and requesting evidence of the significance, scope and criteria for the awards documented. In response, the petitioner asserts that gymnastics and Wushu martial arts are "two sides of a coin." The petitioner supported this assertion with materials about Wushu indicating that it included gymnastics as part of the training. The petitioner further asserts that his 1984 martial arts awards were national in scope. The petitioner submitted a letter from [REDACTED] of WUMA, asserting that the Hall of Fame award was issued in recognition of the petitioner's "many successful years within the Martial Arts."

The director concluded that the letter from [REDACTED] did not establish the significance of the Hall of Fame award, that the petitioner had not documented the significance of his martial arts awards, . . . and had not sufficiently established that gymnastics and martial arts are the same field.

* * *

On appeal, counsel does not address the director's concerns directly. Rather, counsel simply reviews the evidence that was submitted and asserts that the martial arts and gymnastics awards were national in scope. The petitioner submits a new letter from [REDACTED] stating the following requirements for the Hall of Fame award:

1. Martial Artist must be a member of WUMA family.
2. Refereed must be national/International tournaments.
3. Must be hold [sic] Black belt 1st Dan and above.
4. Must have made contribution to the Nation as a coach, referee or an official.
5. Dedication to the Martial Arts for the lifetime must have studied at least 10 years actively in Martial arts any style Full-Semi-Light Contact and also Kata/Forms and Self-defence.

letter includes WUMA's website address. Moreover, the petitioner previously submitted materials from WUMA's website. As stated above, the website materials list 67 awardees, some of whom are only students. This information is not entirely consistent with assessment of the award on appeal. By presenting evidence from WUMA's website, the petitioner has introduced the website into the record of proceeding for consideration. Thus, we have reviewed the site at www.wuma.uk.com. The website includes an online nomination form for the Hall of Fame award at www.wuma.uk.com/old/HOF/HOF%20Nomination%20Details.htm (accessed July 28, 2009 and incorporated into the record). The nomination form indicates that the awards were initiated by to reward instructors "with their own appreciative students nominating them." Significantly, the form also contradicts the letter provided by on appeal, stating:

The nominees need not be in WUMA, this award is for ALL MARTIAL ARTISTS. You can use this form to nominate outstanding martial artists who have trained hard with no acclaim. Instructors who have worked hard teaching you with no acclaim, a fellow student who you feel is worthy, etc. Don't miss this one off [sic] chance to at last reward your Instructor or Student with what they deserve.

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). The record does not resolve the discrepancies between the website materials, some of which were submitted by the petitioner, and assertions on appeal. Moreover, 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.

While Wushu martial arts may incorporate some gymnastics techniques, we concur with the director that gymnastics is a separate field and that awards in gymnastics are no indication of acclaim in the martial arts.

* * *

The petitioner's own attestation cannot establish the significance of his 1984 martial arts awards. Specifically, 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)). Similarly, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). While the 1984 awards may have a national pool of candidates, the awards must be nationally *recognized*. On appeal, the petitioner submits a letter from of the Nepal Shito-Ryu Karate Do Association, National Sports Council, asserting that the Free Style Open Karate Competition took place at the National Stadium and

was a “National Level Tournament.” Objective evidence of this award’s significance, such as evidence that the competitions are covered in the major media or garner any media attention, would have bolstered [REDACTED] statement.

With regard to the petitioner’s 2003 Hall of Fame certificate from the WUMA, counsel states:

The requirement in the form displayed in the WUMA website is for Hall of Fame Award 2008, which according to [REDACTED] in his letter is still in process. It is a different criteria from the those [sic] that were applied in 2003 when petitioner received the Hall of Fame Award.

There being no inconsistency the doubt casted [sic] on any aspect of the petitioner’s proof must be lifted. Moreover, the Director in its evaluation of the petitioner’s documentary evidences accepted and admits their authenticity.

Contrary to counsel’s claim, nowhere in the director’s discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) is there a specific statement accepting or admitting the authenticity of the petitioner’s awards. Rather, the director’s decision stated: “Most notably, the petitioner has provided no objective documentary evidence to establish the significance of his martial arts awards and Hall of Fame award.” Counsel does not address the AAO’s statement that 67 individuals received WUMA Hall of Fame awards in 2003, “including several ‘dedication’ awards, some to martial arts in general, some to an individual club, one to the awardee’s students and one to ‘the arts.’ The list includes three ‘Kung Fu Instructor of the Year’ awards, two ‘Long Serving Student’ awards and several merely in a ‘Dan’ (black belt category) level.” The AAO noted that this information is not entirely consistent with [REDACTED] assessment of the award on appeal. We reaffirm this finding. Moreover, the petitioner has not established that the statement in [REDACTED] September 29, 2008 letter that the “WUMA 2008 Hall of Fame award 2008 is in process now” refers to the development of new and different award criteria rather than simply to the process of receiving nominees for that year’s award. In this instance, the petitioner has not submitted independent and objective evidence to resolve the inconsistency regarding the specific criteria for the WUMA Hall of Fame award. It remains that the Hall of Fame criteria described in [REDACTED] letter are completely different than those identified on WUMA’s official online nomination form at www.wuma.uk.com/old/HOF/HOF%20Nomination%20Details.htm. Nevertheless, there is no evidence showing that the petitioner’s Hall of Fame award for “dedication” equates to a nationally or internationally recognized award for excellence.

Regarding the awards from the various competitions won by the petitioner, we reaffirm the AAO’s finding that there is no evidence showing that these awards are nationally or internationally recognized in his field. The record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by him. For instance, there is no evidence of the official comprehensive results from the preceding competitions indicating the total number of entrants in the petitioner’s competitive category or weight division. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence establishing that

the petitioner's awards had a significant level of recognition beyond the context of the events where they were presented. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards. Moreover, with regard to awards won by the petitioner in obscure sporting events not demonstrated to have a significant pool of competitors, we cannot conclude that such awards demonstrate qualifying forms of national or international recognition.

The AAO's appellate decision further stated: "Even if we considered the awards of an alien's students to be comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4), a claim not raised by the petitioner, the record does not contain the awards or evidence of their national significance."

On motion, the petitioner submits an August 19, 2009 letter from [REDACTED] stating: "I have accomplished Bronze Medal in WUMA world championship 2000 in Sicily, Italy under guidance by coach [the petitioner], and Silver Medal in Millennium cup WUMA tournament 2000 in London, UK." The petitioner also submits a photograph of himself posing with [REDACTED], who is holding up a trophy, in front of a banner at the 2000 WUMA World Championship. The petitioner submits additional photographs of him posing with athletes at an event he identifies as the 10th South Asian Games (SAG) in 2006. The petitioner's initial evidence included letters of support from some of those athletes. For example, the petitioner submitted a July 22, 2007 letter from [REDACTED] stating: "We have gone together to participate 10th SAG Games in Colombo, Sri Lanka on [sic] 2006, I have achieved 1 place and received Gold Medal on that SAG games and [the petitioner] was the leader of our Nepal Wushu Team." The petitioner also submitted a March 13, 2007 letter from [REDACTED] stating: "We just have gone together to participated [sic] 10th SAG Games in Colombo Sri Lanka on [sic] 2006, I have achieved 2nd Place and received Silver Medal on that game. I am really proud of my teacher [the petitioner]" None of the preceding athletes specify their dates of training under the petitioner's direct tutelage. Moreover, while the petitioner has submitted photographs from the preceding competitions, the record does not contain copies of the preceding awards or evidence of their national or international significance (as previously noted in the AAO's appellate decision). The photographs alone, without evidence demonstrating, for instance, the number of entrants who competed in each award category, their level of experience, and the significance of the competitions, is not sufficient to establish that the awards received at these competitions are nationally or internationally recognized. Accordingly, the petitioner has not established that athletes coached primarily by him have won nationally or internationally recognized prizes or awards.

In support of his appeal, the petitioner submitted a July 27, 2008 certificate from the United States Kuo Shu Federation stating that he won second place in the "ADV Tai Ji – Yang Style Men" category in the 2008 U.S. International Kuo Shu Championship Tournament held at the Marriott Hunt Valley Inn in Maryland. The petitioner also submitted a photograph of him holding a trophy in front of a Tiger Claw.com poster. A caption below the photograph added by the petitioner states: "U.S. Capital Classics Martial Arts Tournament Washington, D.C. Aug. 2008 Advance Tai Chi Event and received 4th place trophy." In addressing this evidence, the AAO stated:

The petitioner also submitted 2008 U.S. award certificates from competitions that appear from the photographs to have taken place in hotel conference rooms rather than stadiums. These certificates, however, postdate the filing of the petition and cannot be considered evidence of the petitioner's eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

On motion, the petitioner submits material from the organizer of the 2008 U.S. International Kuo Shu Championship Tournament, including a "2008 Write-Up" and pages from the tournament program reflecting best wishes to the organizer from various politicians, but this evidence does not establish that the petitioner's award is nationally or internationally recognized in the martial arts. Nevertheless, the preceding competition was held subsequent to the petition's filing date. A petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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. Accordingly, the AAO will not consider awards from 2008 in this proceeding.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

Initially, the petitioner claimed to be a "Life Member" of WUMA. The petitioner initially submitted official certificates documenting his full membership in the World Board of Black Belts (WBOB) of WUMA. The petitioner also submitted a letter certifying that the petitioner is the Director of the International Body Guard Union, Nepal (IBU – Nepal). In his RFE, the director requested evidence of the petitioner's life membership in WUMA and the membership requirements for any association of which the petitioner is a member. In response, the petitioner submitted a card documenting his WUMA life membership and a letter from [REDACTED] affirming the petitioner's life membership but providing no information as to the requirements for that membership. Regardless, for the reasons stated above, [REDACTED] credibility is seriously diminished.

The director noted that the petitioner had failed to respond to the request for evidence of the membership requirements for the associations of which he is a member. Counsel's appellate brief does not address this criterion and the petitioner submitted no new evidence addressing the membership criteria for the above associations.

The membership criteria are an essential element of this criterion according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Despite the director's specific request, the petitioner has not documented the membership criteria of WUMA, WBOB or the IBU-Nepal. In light of the above, the petitioner has not provided the required initial evidence to meet this criterion.

On motion, counsel does not address the AAO's findings directly and the petitioner does not submit any further evidence for this criterion. Rather, counsel simply reviews the evidence that was submitted and asserts that the petitioner holds "membership in associations in his filed [sic] of endeavor that requires [sic] outstanding achievements of their members." Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

Initially the petitioner submitted pictures of himself available at www.nepalhorizons.com and undated articles about himself appearing in *Sahashrabdi* and *Naba Yuba*. The petitioner also submitted brief mentions of himself appearing in 2002 and 2003 in *Nepal Samacharpatra*, *Space Time*, *The Himalayan Times*, *The Himalayan New Service*, *Rajdhani* and *Kantipur Mangsir*. The petitioner also submitted an article about [REDACTED] that mentions the petitioner in an unidentified publication.

In his RFE, the director requested evidence of the significance of the above publications, such as circulation and distribution data. In response, the petitioner personally attests to the circulation and distribution of the publications, sometimes vaguely referencing them as "popular and read in Nepal" and sometimes citing www.wikipedia.org or www.newsofnepal.com/factsheet/samachar.htm. With regard to information from *Wikipedia*, 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. We reviewed www.newsofnepal.com/factsheet/samachar.htm (accessed July 29, 2009 and incorporated into the record of proceeding), which confirms that *Nepal Samacharpatra* is a "vernacular national daily" with a circulation of 800,000, making it the "second highest circulated daily" in Nepal. The petitioner submitted a 2001 article quoting him in *Khel Sansar*.

The director concluded that much of the material only briefly mentioned the petitioner and that the petitioner had not provided the necessary evidence to demonstrate that any of the

publications constitute major media. Counsel does not address this criterion on appeal but the petitioner submits information about www.nepalhorizons.com, indicating it averages 10,000 visits daily and features videos, online radio, community pictures, blogs, news and interviews. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaighena*, 19 I&N Dec. 533, 537 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Regardless, the petitioner has not demonstrated that the posting of his video of his performance on a website that includes “community pictures” constitutes published material about him or is indicative of or consistent with national or international acclaim.

While we are satisfied that *Nepal Samacharpatra* is major media, the brief mention of the petitioner in this publication cannot be said to be published material “about” the petitioner. Despite the director’s request, the petitioner has not submitted circulation, distribution or other data that might establish that the publications that did carry articles about the petitioner, *Sahashrabdi* and *Naba Yuba* are professional or major trade journals or other major media.

On motion, the petitioner does not specifically challenge any of the AAO’s appellate findings for this regulatory criterion. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner’s arguments, and appropriately addressed the evidence and arguments in its decision.

The petitioner resubmits a five-sentence article in the September 21, 2002 issue of the *Himalayan Times* entitled “Wushu competition.” The article only briefly mentions the petitioner along with several others. The plain language of this criterion, however, requires that the published material be “about the alien.” Moreover, the author of the article was not identified as required by the plain language of this criterion and there is no evidence (such as circulation statistics) showing that this English language newspaper qualifies as a form of major media in Nepal.

The petitioner resubmits an untitled article in *Sports World* (October 2001), but the author of the material was not identified. Further, the English language translation of the article submitted in response to the director’s request for evidence does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. The petitioner’s motion includes an August 21, 2009 letter from the president of the Nepal Sports Journalist Forum stating that *Sports World* “is one of the renowned sports magazines in Nepal with circulation across 68 districts.” The record, however, does not include evidence such as circulation figures showing the distribution for *Sports World* relative to other Nepali media to demonstrate that the submitted article was published in a form of major media.

The petitioner resubmits a July 27, 1997 article in *Kantipur* entitled “Success of Galaxy Students in International Wushu.” This article is not about the petitioner and only briefly mentions him along with several others. Further, the author of the article was not identified and the English language translation accompanying the article was not certified by the translator that he or she is competent to translate from the foreign language into English. *See* 8 C.F.R. § 103.2(b)(3). The petitioner’s motion includes information from Kantipur Publications Pvt. Ltd. stating that *Kantipur Daily* has a daily circulation of 250,000, but the self-serving nature of this information from the newspaper’s publisher is not sufficient to demonstrate that the publication is a form of major media.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

The petitioner submitted certificates reflecting that he refereed various competitions in 1998, 1999, 2000, and 2003. In finding that the preceding evidence did not satisfy this criterion, the AAO’s appellate decision stated: “The petitioner submitted evidence that he is a qualified referee and has refereed competitions. The record contains no evidence that referees do more than enforce the rules.” On motion, the petitioner does not specifically challenge this finding or submit evidence addressing this issue. Accordingly, we reaffirm our earlier finding regarding this issue.

The petitioner also submitted certificates stating that he served on the jury of or as a judge for the Second Inter School Wushu Championship in an unknown year, the First Inter School Wushu Championships in 1994, the Fourth “Panathion” International High School Karate and Kick Boxing Championship in Kathmandu in 1997, the First International Invitational Semi Contact Karate and Full Contact Kick Boxing Championship in Kathmandu in 2001, the First WUMA Goju-Kai-Karate (Woko) League Championship in 2002 and the First WUMA Wushu Championship in 2002. Accordingly, this evidence appears to meet the plain language of this regulatory criterion. However, several deficiencies pertaining to this evidence were noted by the director and by the AAO. These deficiencies will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

In finding that the petitioner’s evidence did not satisfy this criterion, the AAO’s appellate decision stated:

Initially, the petitioner submitted letters from other martial artists supporting the petition. [REDACTED], a martial arts instructor in Virginia and the petitioner’s former fellow team member, broadly affirms the petitioner’s “great influence” in the field. [REDACTED]

██████████ asserts that he has “learned with” the petitioner. ██████████ lists his own accomplishments and asserts that he is “really proud” of his teacher, the petitioner. The director’s RFE requested examples of specific original contributions and objective evidence of their significance in the field. In response, the petitioner relies on his length of time in the field, his leading roles for martial arts associations and his Hall of Fame Award.

The director concluded that the petitioner had not identified original contributions or demonstrated the impact of those contributions. On appeal, counsel does not address this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be both original and of major significance. The petitioner has not demonstrated that accruing lengthy experience or the mere act of serving in a leading role is original. We note that the regulations already include a criterion addressing an alien’s leading or critical role, 8 C.F.R. § 204.5(h)(3)(viii), which will be discussed below. We are not persuaded that evidence submitted to meet that criterion must also meet this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria. For the reasons discussed above, the petitioner has not established the significance of his Hall of Fame Award.

Without evidence of specific original contributions that have demonstrably impacted the field of Wushu, the petitioner cannot demonstrate that he meets this criterion.

On motion, counsel states:

For this particular criterion, we believe that the AAO erred in not appreciating the letters submitted by other marital artist [sic] supporting this petition. These letters are testimonials of the numerous contributions of the petitioner in the field of martial arts in the form of his achievements as competitor and coach/instructor. . . . Finally, by producing students, namely ██████████ and ██████████ who received the highest Nepali decoration, Gorkha Dakshin Bahu Medal in 2001 from ██████████ for achieving a medal for the country in international WUMA World Championship in Sicily, Italy 2000 under his tutelage is a major significant contribution in the field of martial arts in Nepal.

Counsel does not address the AAO’s findings directly and does not specify which letters the AAO “erred in not appreciating.” For instance, the AAO’s appellate decision discussed the letters from other martial artists. Nevertheless, the petitioner’s motion does not specifically identify his “original” contributions and there is no evidence demonstrating the impact of those contributions. The petitioner’s motion includes an August 15, 2009 letter from ██████████ of WUMA-Nepal, stating that the petitioner has been “an outstanding coach.” ██████████ further states:

[The petitioner’s] guidance, direction, and support to the players made possible to achieve many Gold Medals in the National and International championship.

His dedications in Martial Art are highly remarkable in the history of Nepalese sport. He has been awarded by the Hall of Fame in 2003 by WUMA Head Quarters in Cheltenham, England. I found him very sincere, hard working and very skillful person in his way of Martial Arts.

With regard to the awards received by the petitioner and his students, this evidence has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it is again emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Moreover, [REDACTED] letter does not explain how the petitioner's contributions were "original" or provide specific examples of how those contributions have significantly influenced the martial arts field.

Counsel further states that the petitioner has contributed to "the development of Wushu in Nepal and India during his long active and dedicated service as [an] officer in nationally and internationally recognized associations." As discussed in the AAO's appellate decision, the petitioner has not demonstrated that accruing lengthy experience or the mere act of serving in a leading role is original. We reiterate that the regulations already include a criterion addressing an alien's leading or critical role, 8 C.F.R. § 204.5(h)(3)(viii), a criterion that the petitioner has already met.

With regard to the petitioner's athletic and coaching achievements, the reference letters do not specify exactly what his original contributions in the martial arts have been, nor is there an explanation indicating how any such contributions were of major significance in his field. 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 those offering letters of support, 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 martial arts practitioners nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's 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 an immigration petition are of less weight than preexisting, independent evidence of original contributions of major

significance that one would expect of a martial artist who has sustained national or international acclaim.

Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision. Without extensive documentation showing that the petitioner's original work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of athletic contributions of major significance, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

The AAO previously found that the Nepal Wushu Association enjoys a distinguished reputation and that the petitioner's role of Secretary General was leading or critical role for that association. Accordingly, the petitioner has established that he meets this second 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 finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner initially submitted a letter from B.S. and Company Registered Auditors in Nepal asserting that, "according to the appointment/contract letters," the petitioner receives the equivalent of \$300 from WUMA Nepal, \$230 from [REDACTED], \$200 from the [REDACTED] and \$300 from [REDACTED] for a total of \$1,000 per month. The letter further states that the average salary for a martial artist in Nepal is \$300 monthly. In his RFE, the director requested tax documents, wage statements or similar evidence of income and evidence that the petitioner's income is significantly high in relation to others in the field. The petitioner's response did not address this criterion.

On appeal, counsel notes that the court in [*Buletini v. INS*, 860 F. Supp. 1232, n. 12 (E.D. Mich. 1994)], found that the appropriate comparison was with others in the field in that country rather than with members of the field in the United States or internationally. We do not contest this principle. It is still the petitioner's burden, however, to demonstrate that that his wages compare with the most renowned and experienced members of his field in Nepal.

First, the petitioner did not comply with the director's request for the primary evidence of his remuneration. Even assuming that tax documents or wage statements do not exist or are not

available,³ the B.S. and Company letter submitted by the petitioner references “appointment/contract letters.” The petitioner did not submit those letters. Second, the letter from B.S. and Company does not explain where it obtained information about the “average” martial artist salary in Nepal. Regardless, it is insufficient to document that the petitioner earns more than the average salary in his field. Rather, he must earn a “significantly high” salary. The record does not document top-level salaries for martial artists in Nepal.

Finally, the petitioner only earned higher than average remuneration by combining four salaries. It is unknown how many hours the petitioner worked for each employer. We cannot conclude that collecting higher than average wages by working more hours than average is indicative of or consistent with national or international acclaim.

On motion, counsel does not address the AAO’s findings directly and the petitioner does not submit any further evidence for this criterion. Rather, counsel simply states that the petitioner has received a high salary in relation to others in his field. Counsel again cites *Buletini* for the contention that the appropriate salary comparison involves others in the alien’s field in the country where he was working rather than with members of the field in the United States or internationally. As previously noted, we do not contest this principle. The petitioner, however, has not submitted primary evidence of his actual remuneration for any specific period of time or provided an appropriate basis for comparison showing that his earnings were significantly high in relation to those of others in the field. Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner’s arguments, and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

In this case, we concur with the director’s determination and our appellate findings that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

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. 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).

³ The unavailability or non-existence of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.*

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 martial arts awards which are over 20 years old cannot demonstrate sustained national or international acclaim. The director also noted that the petitioner's gymnastics awards were over 20 years old and that they did not pertain to the field of endeavor for which classification is sought. On motion, counsel argues that the AAO erred in affirming the director's conclusion that awards predating the filing of the petition by 20 years cannot demonstrate sustained national acclaim. We agree with counsel that plain language of 8 C.F.R. § 204.5(h)(3)(i) "does not give a timeline on which the awards should have been received." However, 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 the martial arts or gymnastics as of the date of filing of this petition. Moreover, there is no further qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i) or the other regulatory criteria documenting the petitioner's more recent national or international acclaim as a martial artist or gymnast in the years immediately preceding the filing date.

Regarding the evidence submitted for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), we cannot ignore the lack of articles about the petitioner in major publications from 2004 through the petition's filing date. 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 national or international acclaim in the martial arts in the years immediately preceding the filing date.

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner submitted certificates stating that he served on the jury of or as a judge for the Second Inter School Wushu Championship in an unknown year, the First Inter School Wushu Championships in 1994, the Fourth "Panathion" International High School Karate and Kick Boxing Championship in Kathmandu in 1997, the First International Invitational Semi Contact Karate and Full Contact Kick Boxing Championship in Kathmandu in 2001, the First WUMA Goju-Kai-Karate (Woko) League Championship in 2002 and the First WUMA Wushu Championship in 2002. Only the latter certificate specifies the event or category judged by the petitioner, but the submitted evidence does not indicate the number of competitors he judged at the First WUMA Wushu Championship, their names, and their level of expertise. With regard to the remaining certificates, there is no supporting evidence (such as an event program) showing the specific competitive categories judged by the petitioner, the names of the participating athletes, and their level of expertise. Moreover, there is no evidence indicating the level of notoriety or stature associated with the preceding competitions and the specific means by which the petitioner was selected to judge at the events.

In addressing this evidence for 8 C.F.R. § 204.5(h)(3)(iv), the AAO's appellate decision stated:

In his RFE [request for evidence], the director requested evidence of the selection criteria for these positions and the duties and responsibilities for these positions. In response, the petitioner submitted a letter from ██████████ asserting that the petitioner passed an exam to qualify as an A Class Referee, which allows him to participate as a worldwide referee at WUMA events. ██████████ asserts that A Class is an international referee, B Class is a national referee and C Class is a judge. As discussed above, the credibility of ██████████ is seriously diminished.

The director concluded that the petitioner had not submitted the evidence requested and that obtaining certification and performing “common” duties inherent to that certification cannot serve to meet this criterion. On appeal, counsel appears to be asserting that the director engaged in the “circular” reasoning that concerned the court in *Buletini*, 860 F. Supp. at 1231. Counsel states (grammar as it appears in original):

The [director’s] requirement that Petitioner has not garnered any recognition consistent with national or international acclaim as a result of providing these services (Judge, Referee) nor is there any indication that this places him among the small percentage who have risen to the very top of the field of endeavor and therefore in the absence of such evidence, petitioner does not meet this criterion plainly gross misinterpretation of the law.

First, as stated above, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, [20 I&N Dec. 715 (BIA 1993)]. The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Second, the *Buletini* court found that requiring a petitioner to demonstrate that a particular judging responsibility required extraordinary ability was circular. To avoid any analysis of the judging duties, however, would be to equate local, low-level judges in the judges’ own community with national level judges. Obviously, most judging fails between the two extremes and must be evaluated on a case-by-case basis. Such evaluation considers not whether the position requires extraordinary ability, the concept rejected by the *Buletini* court, but whether the judging position is indicative of or consistent with national or international acclaim. *Accord Yasar [v. DHS]*, 2006 WL 778623 at *9; *All Pro Cleaning Services [v. DOL]*, 2005 WL 4045866 at * 11. Those who are sought as judges by national entities or, on a case-by-case basis, local entities outside their communities have a stronger claim than those who serve on local panels.

The petitioner’s judging services in 2001 and 2002 appear to have been above the school level. That said, they were all the “first” of their kind and their reputation is undocumented. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The 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's failure to provide evidence regarding the significance of these events, such as media coverage of these events or programs listing the number, age and status of competitors, precludes a finding that the petitioner meets this criterion. Moreover, the record lacks evidence of the petitioner's service as a judge after 2002. Thus, the evidence is not indicative of sustained acclaim in 2007 when the petition was filed.

On motion, counsel does not address the AAO's findings directly and the petitioner does not submit any further evidence for this criterion. Rather, counsel briefly summarizes the submitted evidence and asserts that the positions held by the petitioner in various competitions are "indicative of his sustained national or international acclaim." Although the petitioner's judging certificates appear to meet the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), there is no supporting evidence documenting the reputation of the competitions being judged so as to establish that the petitioner's participation as judge is commensurate with the requirements of this classification. For example, there is no evidence establishing that the petitioner's activities involved judging top athletes in notable event categories with a significant pool of national or international competitors. Participation as a judge for an obscure competition or for an event category with a narrow field of competitors of unknown skill level is not indicative of national or international acclaim at the very top of the field. Moreover, the AAO's appellate decision noted that the record lacks evidence of the petitioner's participation as a judge in competitions after 2002. Accordingly, we reaffirm our finding that the submitted evidence does not establish that the petitioner's 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)(iv) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's national or international acclaim in the years immediately preceding the filing date.

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii), although the petitioner was found to have met this criterion, there is no supporting evidence showing that the petitioner continued to perform in a leading or critical role for the Nepal Wushu Association or any other distinguished organization in the years immediately preceding the petition's filing date. Accordingly, the submitted evidence does not establish that the petitioner's 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)(viii) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's national or international acclaim in the years immediately preceding the filing date.

In this case, the specific deficiencies in the documentation pertaining to the remaining regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii), (v) and (ix) have already been addressed. The submitted evidence for these criteria is not indicative of the petitioner's sustained national or international acclaim at the very top of his field. For instance, there is no evidence showing that the petitioner has received a high salary or other remuneration commensurate with being among that small percentage who have risen to the very top of his field. 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 eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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 AAO's August 4, 2009 decision dismissing the appeal is affirmed. The petition will remain denied.