Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 04 2010

IN RE: Petitioner: [redacted]
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:

[redacted]

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 $585. 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A).[1] 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 of 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, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). 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

---

[1] According to information on the Form I-140 petition, the petitioner was last admitted to the United States in 2007 as a B-1 nonimmigrant visitor.

> (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, *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 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.[2] 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).

II. Analysis

---

[2] 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).

A. Evidentiary Criteria

This petition, filed on June 27, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a karate competitor and instructor. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).[3]

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

The petitioner submitted evidence of his receipt of first place in the Kumite and second place in the Kata events at the 3rd Asian Friendship Karate Cup in 2006. The petitioner also submitted a "Kumite Competitor Certificate" stating that he participated in the 2005 Funakoshi Shotokan Karate Association (FSKA) Annual World Karate Championships and a photograph of a small trophy from the event bearing the inscription "Fighting Spirit Award." The petitioner also submitted excerpts from the "Funakoshi Shotokan Karate Association VIII World Championships 19th Annual Program Booklet and Yearbook" (October 2006) which included a photograph from the preceding year's event showing the petitioner finished "4th place" in the Men's Black Belt Kumite (Super Middle Weight) division. The petitioner's evidence also included an Award of Excellence certificate stating that he "participated in the 2007 U.S.A. Shotokan Karate Federation International Masters Training Camp and Kata Bunkai Seminar," a Certificate of Merit for his participation in the 2008 International Martial Arts Association (IMAA) Conference, a certificate stating that he "honorably participated in the International Union of Karatedo Organizations 2008 training camp and junior championship" (March 2008), and a March 1, 2008 Certificate of Appreciation for his "participation in the program organized by the United Sherpa Association" in New York. There is no evidence showing that these four certificates equate to nationally or internationally recognized prizes or awards for excellence in karate, rather than simply acknowledging the petitioner's participation in the preceding events. Moreover, we note that the petitioner received the latter three participation certificates subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider these 2008 participation certificates in this proceeding. The petitioner also submitted Letters of Appreciation from the "Sherpa Society Service Sindhupalchok, Kathmandu" and Nepal Shotokan Karate Association (NSKA), and a photocopy of a May 20, 2006 "Best Player of the Year 2005" award plaque from the Nepal Karate Federation (NKF) and the National Sports Council. These Letters of Appreciation and award plaque were presented to the petitioner in honor of his aforementioned "4th place" in the Men's Black Belt Kumite at the 2005 VII FSKA World Karate Championship.

The AAO noted from the submitted photocopy that the petitioner's "Best Player of the Year 2005" award plaque misspelled "Council" as "Counail." On May 5, 2010, the AAO requested the original award plaque and information "identifying specifically all award recipients who received the 'Best Player of the Year 2005' designation." The petitioner responded by submitting the original award

---

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

plaque, the photograph in the "Funakoshi Shotokan Karate Association VIII World Championships 19th Annual Program Booklet and Yearbook" showing the petitioner finished "4th place," and copies of published articles submitted at the time of filing. The petitioner also submitted a July 6, 2010 letter from the President of the NKF stating that the petitioner received the "Best Player of the Year 2005" award plaque based on his "winning record from the 7th FSKA World Karate Championship . . . where [the petitioner] won the 4th place in kumite events of men's black belt 2nd Dan & 3rd Dan degree division and received the [F]ighting Spirit Award." The petitioner's response, however, did not specifically identify all the "Best Player of the Year 2005" award recipients as requested by the AAO. The petitioner's failure to submit requested evidence that precludes a material line of inquiry constitutes grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

Although documentation of the petitioner's awards appears in the record, evidence demonstrating their significance and national or international recognition is notably absent. The petitioner submitted excerpts from the FSKA VII World Championships 18th Annual Program Booklet and Yearbook and the FSKA VIII World Championships 19th Annual Program Booklet and Yearbook, and general information from the organizer's website, but these self-serving materials from the FSKA do not establish that the petitioner's 4th place and Fighting Spirit Award are nationally or internationally recognized awards in the sport of karate. The petitioner's awards are accompanied by no information about the divisions in which he competed, including how his competitions were nationally or internationally recognized in the field of karate or in the general area of martial arts. The petitioner did not submit evidence (such as official results) showing the number of participants in the competitive categories in which the petitioner received awards, the standing or recognition of the other participants in his categories, or any other indication that winning his awards conferred national or international recognition for excellence in karate or the martial arts. 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. Furthermore, with regard to awards won by the petitioner in obscure karate competitions not demonstrated to have a significant pool of competitors, we cannot conclude that such awards demonstrate qualifying forms of national or international recognition.

The petitioner submitted additional certificates for his successful completion of training courses and attainment of various belt rankings, but these certificates do not equate to nationally or internationally recognized prizes or awards for excellence in the field. The first, second, and third degree black belt certificates reflect that the petitioner earned a promotion in rank based on his successful completion of a karate skills test. Such promotions are inherent to the martial arts and they represent standardized progression to the next skill level.

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

(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.

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, proficiency certifications, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted evidence of his membership in the Nepal Shotokan Karate Association (NSKA), FSKA, Karetenomichi World Federation (KWF), World Elite Black Belt Society (WEBBS), and Japan Karate Association (JKA) of New York. The record, however, does not include evidence of the membership requirements for the preceding organizations. The petitioner submitted an April 15, 2008 letter from [redacted], General Secretary of the NSKA, stating that the NSKA "is a national karate organization that promotes the Shotokan style Karate." [redacted] letter does not explain how the petitioner was chosen to be a member of the NSKA or specify the criteria used in judging his application or nomination. The petitioner also submitted a letter from [redacted] President of the JKA, New York, stating that the petitioner is "the designated country representative" and is therefore the only authorized person to open and establish a karate branch using the JKA's name. This letter does not indicate how the petitioner was chosen as the representative and does not state that he was chosen based on outstanding achievement or that the choice was made by recognized national or international experts in his field. On appeal, the petitioner submits general information about the JKA from its website stating that the association has "a vast membership" and is "the world's largest and most prestigious karate organization." The submitted information does not indicate that the JKA requires outstanding achievement as a prerequisite for membership and instead, the vast numbers who belong suggest that outstanding achievement is not required. Finally, although by its name the WEBBS would be restrictive in its membership to those persons who earned a black belt, earning a black belt is not indicative of outstanding achievements as it reflects a level of martial arts proficiency that many people have achieved based on their successful completion of a skills test.

In response to the director's request for evidence, the petitioner submitted a Diploma of Certification and Appointment from the IMAA designating him as an authorized instructor and Sempai on January 26, 2008. The petitioner's appointment post-dates the petition's June 27, 2007 filing date. As previously discussed, 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. Accordingly, the AAO will not consider this evidence in this proceeding.

In this case, there is no evidence (such as membership bylaws or rules of admission) from the NSKA, FSKA, KWF, WEBBS, IMAA, or the JKA showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field. Accordingly, the petitioner has not established that he meets this criterion.

> *(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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[4]

The petitioner submitted photographs of him appearing in the FSKA VII World Championships 18th Annual Program Booklet and Yearbook, the FSKA VIII World Championships 19th Annual Program Booklet and Yearbook, the NSKA Bulletin for the 2005 International Invitational Shotokan Karate Championship, and the NSKA Shotokan Karate "Souvenir – 2062" program book. The petitioner also submitted event results in *FSK Sports Magazine* and an event program listing the petitioner among dozens of participants who competed in the KWF Championship on August 3, 2003 in Nagano, Japan. The petitioner's evidence also included a captioned photograph of him (two sentences with no author identified) in the December 24, 2006 *Gorkha Patra*. The plain language of this regulatory criterion requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The preceding photographs of the petitioner and participant listings do not meet these requirements.

The petitioner submitted the following articles:

1. "Unexpected Gold Medal for Nepal," published in the November 11, 2005 *Rajdhani*;
2. "International Skillful Karate Player [the petitioner]," published in *Sherpa Pratibimba* (2005);
3. "Following the Footprints of Pemba in Japan," published in *Rajdhani*;
4. "[The petitioner]: Talented International karateka in the arena of Nepali karate," published in *Taja Khabar*;
5. "Karate Should not be Taken only as a Competition and a Game of Winning and Losing," published in *Shotokan Karate*;

---

[4] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

> 10 years and I can strongly vouch for his outstanding character and professionalism as a sportsman and human being. . . . [The petitioner] lived in Japan and studied Karate under many great Karate Masters. His experiences in Japan and abroad give him VERY UNIQUE knowledge and a VERY UNIQUE approach to teaching our art.

The letter from Professor [redacted] does not specify exactly what the petitioner's original contributions in the sport of karate 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 knowledgeable and to have others attest to that knowledge. An alien must have demonstrably impacted his field in order to meet this regulatory criterion.

In response to the director's request for evidence, the petitioner submitted an April 15, 2008 letter from [redacted] stating:

> People who want to learn and train in Karate go to Japan to better understand Karate.
>
> Likewise, [the petitioner] also acquired his knowledge and training in Karate from JKA. He remained in Japan for seven years and returned to Nepal as a highly skilled and outstanding player. [The petitioner] is one of the very few Nepali Karate players, who have trained and acquired knowledge of Karate in Japan, by remaining in Japan for such a long period of time. Further, he is the only such player to return to Nepal to instruct and further develop Karate in Nepal. Due to his understanding of Japanese language and his training in Japan, [the petitioner] had the in depth knowledge of Karate, both it's [sic] practical, theoretical and cultural aspects. Such an in depth understanding is very rare among Nepali Karate players because of their lack of language skills and extensive training in Japan.

While the petitioner has competed in tournaments, participated in extensive karate training, and instructed his students, these activities do not equate to "original" athletic contributions of major significance in the field. Rather, the petitioner was competing in, learning, and teaching a well established martial arts style. 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. There is nothing to demonstrate that the petitioner's specific contributions in the field were original, such as a new method of instruction or modified karate techniques. Nor is there evidence demonstrating that any of his contributions were of major significance in the field, such as through the widespread adoption of his specific methods of instruction. Mastering and subsequently teaching an existing martial art form is not demonstrative of an original contribution to the field. While this suggests that the petitioner is knowledgeable and skilled in karate, it does not establish that he has made original athletic contributions of major significance in the field. Although the petitioner has earned the admiration of his references, there is no evidence demonstrating that his impact on the sport is commensurate with an original athletic contribution of major significance in the field.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. 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 karate competitor or instructor 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.

> *(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

In the original submission, counsel claims that photographs taken of the petitioner from throughout his career meet this criterion. The petitioner's field, however, is not in the arts. The plain language of this regulatory criterion indicates that it applies to artists rather than to karate competition and instruction. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's participation and success in karate competitions have already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his work in the sense of competing in front of an audience. The petitioner has not established that his participation in competitions compares to the artistic showcases contemplated by this regulation for artists. Accordingly, the petitioner has not established that he meets this criterion.

> *(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

The petitioner claims eligibility under this criterion by virtue of his participation with the NSKA as a Senior Instructor and later an Assistant Chief Instructor. On appeal, the petitioner submits a June 9, 2008 letter from [redacted] Member Secretary of the Nepali National Sports Council, stating that the NSKA "has been committed towards the progress and development of the sport of Karate since its very inception through participation and organization of various Karate Championships within zonal, national and international level." [redacted] further states that the NSKA has held "championship events" including the 3rd Asian Shotokan Karate Championship. The April 15, 2008 letter from [redacted] states that the NSKA "is a national karate organization in Nepal that promotes the Shotokan style Karate." The preceding statements provide general information about the NSKA, but there is no supporting evidence showing that the NSKA has a distinguished reputation. Further, the documentation submitted by the petitioner does not establish that his role for the NSKA was leading or critical. The letter from [redacted] states:

> [T]he NSKA offered [the petitioner] the position of Senior Instructor right away in November of 2005. No other Nepali Karate player has returned from Japan with such a long and extensive

> training in Japan to teach and instruct in Nepal. Therefore, [the petitioner] was unique among our instructors. Since [the petitioner] could instruct Karate in Japanese style by explaining the basics of Karate, the terms of which are all in Japanese language. For this reason, even South Asian instructors and players from India, Pakistan and Bangladesh came to train with [the petitioner] from time to time. [The petitioner] was promoted to Assistant Chief Instructor [o]n December 23, 2006 because of his outstanding performance.

The left side of [redacted] letter identifies multiple positions in the NSKA such as Chief Instructor, President, Vice-President, General Secretary, Secretary, Treasurer, and Members.[5] There is no organizational chart or other evidence documenting how the petitioner's Senior Instructor and an Assistant Chief Instructor positions fell within the general hierarchy of the NSKA. Moreover, without specific information regarding his duties and an explanation of the relevance or importance of his positions within the hierarchy of the NSKA, we cannot conclude that his role for the association was leading or critical. The submitted evidence does not establish that that the petitioner has been responsible for the success or standing of the NSKA to a degree consistent with the meaning of "leading or critical role." Finally, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the submission of evidence of a leading or critical role for more than one distinguished organization or establishment.

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

Summary

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). A final merits determination that considers all of the evidence follows.

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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-1120. In the present matter, 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)(i), (ii), (iii), (iv), (v), (vii), and (viii).

---

[5] The petitioner's name is not listed among the executive officers or the seven Members of the NSKA identified on the association's letterhead.

Regarding the awards submitted by the petitioner for 8 C.F.R. §§ 204.5(h)(3)(i), there is no evidence showing that he faced top national or international karate competitors in general rather than limited to those competing in the Shotokan karate style. Without evidence showing that he faced a significant pool of top karate competitors in Nepal, the United States, or internationally, we cannot conclude that the submitted awards demonstrate his sustained national or international acclaim. Awards won by the petitioner in age-restricted tournaments, in competitive divisions with only a limited pool of entrants, or in competitions not shown to have a level of stature and scope comparable to those identified on the USA National Karate-do Federation (USA-NKF) website do not establish that he "is one of that small percentage who have risen to the very top of the field of endeavor."[6] *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[7] Likewise, it does not follow that an athlete who has received awards in age-restricted competition, obscure tournaments, or event categories and divisions with only a small pool of entrants should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." Further, regarding the petitioner's "Best Player of the Year 2005" award, there is no evidence indicating that this award is commensurate with sustained national or international acclaim at the very top of the field. Despite the name of the award "Best Player" implying a single winner, it appears that multiple awards were given.

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner submitted no evidence demonstrating the reputation, significance, or magnitude of the "first Asian Shotokan Karate Championship" in February 2005 or the level of expertise of those purportedly "refereed" by him. Moreover, we note that the petitioner has submitted evidence of his

---

[6] The USA-NKF is sanctioned by the U.S. Olympic Committee and is "the National Governing Body for the Sport of Karate in the United States." The USA-NKF's website identifies karate competitions such as the USA Open, the USA Karate Nationals, the World Championships, the Pan American Games, the World Cup, and the World Games. *See* http://www.usankf.org/index.php?option=com_content&view=article&id=1&Itemid=2, accessed on August 16, 2010, copy incorporated into the record of proceeding.

[7] While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

> [T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

participation as a "referee" for only one competition. The statute and regulations, however, require "extensive documentation" and the petitioner to demonstrate that his national or international acclaim in the sport of karate 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 extensive or commensurate with *sustained* national or international acclaim.

While the petitioner has earned the respect and admiration of his references, the evidence of record falls short of demonstrating his sustained national or international acclaim as a karate competitor or instructor. 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).

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 and 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.