

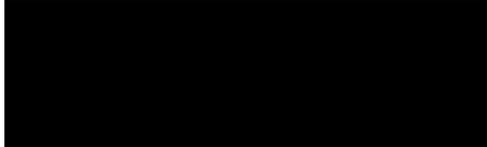
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **SEP 23 2010**

IN RE:

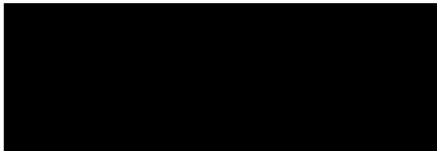
Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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,

*M. Deardnick*

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

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the beneficiary meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that he submitted comparable evidence of his extraordinary ability. For the reasons discussed below, we uphold the director's decision. Specifically, the evidence, much of which relates to a different area of expertise, does not establish the beneficiary's sustained national or international acclaim in the field identified as the proposed area of employment listed on the petition.

## **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. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

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

(ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;

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

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

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

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

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

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification, *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 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 (9<sup>th</sup> Cir. 2003); see also *Soltane v.*

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

*DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## II. Analysis

This petition, filed on July 1, 2008, seeks to classify the beneficiary as an alien with extraordinary ability as a media relations manager.

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” As the beneficiary intends to continue working as a media relations manager, he must demonstrate that this occupation is within his area of “expertise.” The petitioner has not demonstrated that media relations manager is within the area of expertise of a competitive athlete. Thus, the beneficiary’s athletic achievements are not relevant to this petition.<sup>2</sup>

### A. *Major, internationally recognized award*

The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized award*. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien’s field as one of the top awards in that field.

In her brief submitted with the I-140 petition, counsel asserts that the beneficiary received the following international awards:

[REDACTED]

Counsel submitted information about the beneficiary printed from [REDACTED] on July 21, 2006, [REDACTED] on July 21, 2006, and what appears to be the [REDACTED] website. On August 4,

<sup>2</sup> *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise).

2010, the AAO attempted to view the information submitted on the internet and could only access the information printed from [REDACTED]. The AAO was able to confirm that the beneficiary received a [REDACTED]. On appeal, counsel asserts that the beneficiary was the “recipient of countless major internationally recognized awards throughout his career as a professional skateboarder.”<sup>3</sup> The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record of proceeding contains no evidence establishing that the X Games or ASA competitions are considered “major, internationally recognized awards.” Further, the record contains no evidence that obtaining awards or prizes as an in-line skater is relevant to the beneficiary’s proposed employment as a media relations manager.

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

The petitioner has submitted evidence pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>4</sup>

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

The petitioner submitted evidence showing that he has achieved the following:

[REDACTED]

As the petitioner did not establish that the beneficiary is the recipient of major, nationally or internationally recognized awards, the AAO will also consider the following awards under this criterion:

[REDACTED]

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<sup>3</sup> There is no evidence in the record of proceeding that the beneficiary was a professional skateboarder, rather he previously competed in in-line skating competitions.

<sup>4</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Although the petitioner has submitted evidence that the beneficiary has received several awards, there is no evidence showing the level of recognition attributable to these achievements and therefore that they are nationally or internationally recognized. Significantly, in his request for evidence ("RFE") and in his decision, the director noted that the in-line skating awards received by the petitioner almost 10 years before filing the Form I-140 are not in the beneficiary's field. Counsel did not address the director's concerns in her response to the director's RFE or on appeal.

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

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

In order for published material to meet this criterion, it must be about the beneficiary and, as stated in the regulation, be printed in professional or major trade publications or other major media. To qualify as other 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.<sup>5</sup>

In her brief dated June 26, 2008, counsel referenced the following articles as being relevant to this criterion:

[REDACTED]

The record of proceeding contains an article entitled "[REDACTED]" published in the [REDACTED]. The article mentions the beneficiary and it includes a one-sentence quote from the beneficiary regarding the role of an athlete-management agency. While the beneficiary is mentioned in the article, the article is not about the beneficiary but rather about extreme sports.

The record of proceeding contains a photocopy of an article entitled "[REDACTED]" published in [REDACTED] on November 1, 2000. The AAO notes that the date of the article was handwritten on the face of the article. Also, the last line of the article has been cutoff making it impossible to determine if the record contains the entire article. Therefore, because it is unclear as to whether or not the file contains the entire article, the AAO is unable to determine if the article is

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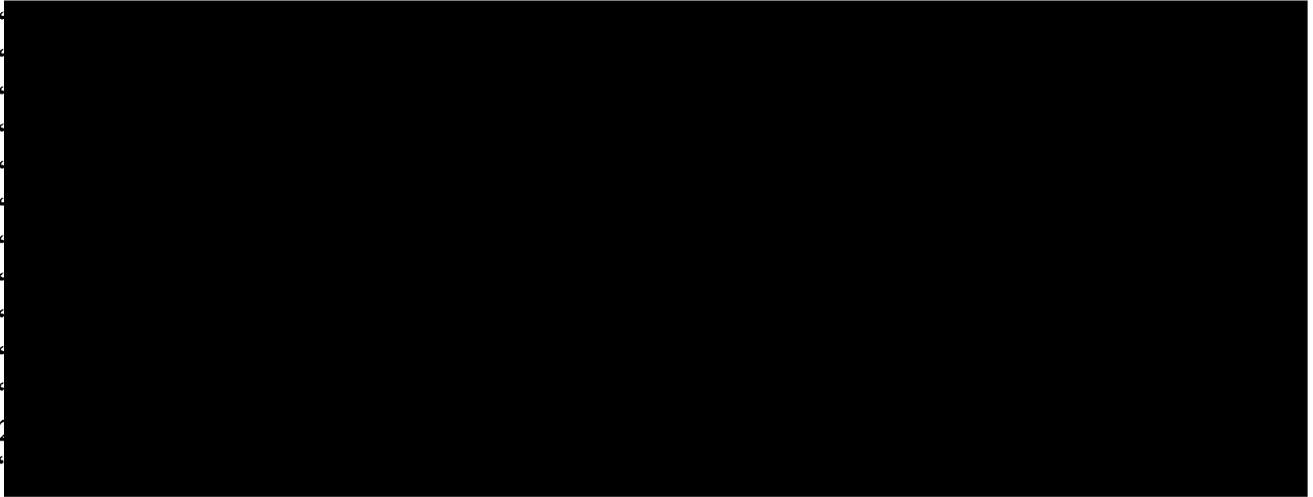
<sup>5</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

about the beneficiary or about warning children about the dangers of tobacco use. Even if the article is primarily about the beneficiary, it does not relate to his work in the field for which classification is sought, media relations manager, as required under 8 C.F.R. § 204.5(h)(3)(iii).

The record of proceeding contains an article entitled [REDACTED] published in the [REDACTED]. This five-sentence article is about the beneficiary and includes his photograph. Although the [REDACTED] article is about the beneficiary, the record of proceeding contains no evidence, such as circulation statistics, indicating that the [REDACTED] qualifies as a form of major media. Moreover, it does not relate to the field for which classification is sought.

The record of proceeding contains an article entitled [REDACTED]. Although [REDACTED] article mentions the beneficiary, the record of proceeding contains no evidence, such as circulation statistics, indicating that the [REDACTED] qualifies as a form of major media. While the beneficiary is mentioned in the article, the article is not about the beneficiary but rather about the modern Australian man. Again, the AAO notes that the record does not contain the entire article. Moreover, it does not relate to the field for which classification is sought.

In addition, the record contains copies of the following:



We note that the 12 articles above come from websites. In today's world, many news articles and printed materials, regardless of size and distribution, are posted on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is a professional or major trade publication or other "major media." The petitioner must still provide evidence, such as, a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or other major media in order for us to credit these articles.

With the exception of the member profile interview on [REDACTED] website, the articles only briefly mention the beneficiary and are instead articles about extreme sports. The plain language of this regulatory criterion, however, requires “[p]ublished material about the alien.” Accordingly, articles that are not about the beneficiary do not meet this regulatory criterion.<sup>6</sup> In addition, the record contains several articles in which the authors are not identified as required by the plain language of this regulatory criterion. Again, such articles do not meet the regulatory criterion.

Counsel also referenced the beneficiary’s work as a host and reporter in the following as being relevant to this criterion:

[REDACTED]

The beneficiary’s work as a host and reporter is not published material about the beneficiary and will be addressed under a separate criterion.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

On appeal, counsel states that the record contains evidence of the beneficiary’s “original contributions of major significance to the field of extreme sports.” In her response to the director’s request for evidence (“RFE”), counsel stated that the beneficiary “has served as a pioneer for the world of extreme sports for well over 15 years, not only as an athlete but as a media relations genius.” Counsel also states that the beneficiary’s work “securing feature stories” and media coverage has helped to “propel the companies and athletes he represents into the mainstream.” Although counsel states that the beneficiary has made original contributions of major significance to extreme sports, counsel statements are general and she does not provide examples of the beneficiary’s original contributions. The plain language of this regulatory criterion, however, requires “original” contributions of “major significance.” The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

The petitioner submitted several letters of support praising the beneficiary’s talent as an athlete and media relations manager. We cite representative examples below noting, however, that talent and the ability to secure employment in one’s field are not necessarily indicative of contributions of major significance.

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<sup>6</sup> See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The record contains a letter from [REDACTED], the petitioner's director of communications stating:

[The beneficiary] demonstrates a level of accomplishment in his field that places him among the most renowned athletes and sports media representatives in the world. He has sustained an international reputation over a 16-year period, based on his work history with the most renowned sports organizations. He has distinguished himself from his contemporaries on a global level due to his original contributions to the field.

The record of proceeding also contains a letter from [REDACTED], stating that the beneficiary "has made a significant impact on the whole action sports industry" and that the beneficiary's "skills are unparalleled and especially exemplified in his over 16 years of experience as a participant and host in international extreme sports competitions."

The record of proceeding also contains a letter from [REDACTED]

states:

[The beneficiary] has been a crucial figure in the action sports industry. He holds over 16 years of experience as a participant and host in international action sports and is a veteran and industry leader. His experience with the media and intimate knowledge of how this business works is why he is one of the only people I trust to represent me within the media.

[REDACTED] handwrote at the end of the letter "[REDACTED]"

While experience is evidence of exceptional ability in a lesser category under section 203(b)(2), 8 C.F.R. § 204.5(k)(3)(ii)(B), however the beneficiary's experience is not relevant under 8 C.F.R. § 204.5(h)(3)(v).

The record also contains a letter from [REDACTED]:

Throughout my career I have had the opportunity of working with the most renowned athletes, sports media representatives, and action sports commentators and I can undoubtedly state that [the beneficiary] is among the best in the world. He is a superb spokesperson who is well[-]respected and highly admired in the action sports industry. His impressive talent has resulted in his receipt of numerous prestigious awards as well as his assignment to work as commentator for renowned organizations such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

[The beneficiary's] international reputation as an extraordinarily talented action sports athlete, media representative and commentator, his in-depth understanding and experience within the field and his cutting edge approach to the job all make him critical to the world of sports.

The record also contains a letter from [REDACTED], a long snapper for the [REDACTED] stating that the beneficiary is one of the "few athlete/media professionals whose celebrity status as an athlete, combined with his extensive knowledge of extreme sports, makes him one of the most sought after media spokespersons in the industry of extreme sports competition."

The record also contains a letter from [REDACTED], currently the legal counsel for Central Equity Limited and previously the general manager of [REDACTED] [REDACTED] states that the beneficiary "has made extreme sports and sports media representation his life's work and has only begun to bring his passion and knowledge of the skill [sic] to the American sports industry."

The record contains a letter from [REDACTED] Games letterhead stating:

[The beneficiary] has an extraordinary mind for this line of work, and has been instrumental in amplifying the media coverage for [the petitioner's] athletes (and, hence, for the X Games as well.) One demonstration of his ingenuity was that he was responsible for setting up a studio specifically for interviewing [the petitioner's] athletes at the Winter X Games. This encouraged media outlets to increase the amount of time they gave to the X Games, and substantially increased our media exposure. He also managed to convince NBC to air an interview with [REDACTED] sponsored athlete who has won six gold medals in the [REDACTED] competitions. This coverage by a major network was a terrific boom for the X Game's media exposure.

The record also contains a letter from [REDACTED], chief editor of [REDACTED] Magazine, stating:

[The beneficiary] is recognized in the field as an extreme sports media relations guru, and his contributions to the field are unparalleled. This is precisely why his talent is sought after by individuals such as myself, seeking to gain media exposure and collaborate on projects that will continue to bring worldwide attention to the extreme sports field.

The record also contains a letter from [REDACTED] a professional snowboarder and winner of a Gold medal at the 2006 [REDACTED] [REDACTED] states:

[The beneficiary] succeeded in making [the petitioner] one of the most prominent sponsorship organizations in extreme sports. He was responsible for securing cover stories for numerous [petitioner-sponsored] athletes in [REDACTED], [REDACTED], and a barrage of other preeminent extreme sports publications. He also made a dramatic impact on the amount of coverage [the petitioner-sponsored] athletes received in mainstream media outlets, such as [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Exposure of [the petitioner-sponsored] athletes on [REDACTED] also increased dramatically, thanks to [the beneficiary].

adds that he and other athletes are able to concentrate on “honing [their] athletic abilities” while relying on the beneficiary’s “amazing media savvy to keep [them] in the public’s eye.”

The record contains a letter from vice president of programming and development for Fuel TV, stating that the beneficiary’s “initiative and perseverance” resulted in Fuel TV creating two shows focusing on [the petitioner-sponsored] athletes.” states that the beneficiary is “heads-and-shoulders above nearly everyone in his field.” adds that the beneficiary’s work has made the petitioner “one of the most sought[-]after sponsors in the world of extreme sports” and the beneficiary’s “vision has been a marvelous asset to this rapidly expanding area of sports.”

The record contains a letter from , an award-winning freestyle motocross professional athlete, stating:

I worked directly with [the beneficiary] in 2007/2008 in order to obtain worldwide media attention for my world[-]record distance jump on New Year’s Eve at the in Las Vegas. This event served as the first where the world’s best athletes are given the opportunity to push the boundaries of what might be humanly possible and push the progression of their sport to unfathomable levels. This even went live on ESPN and was picked up by media globally. It was a huge success in all respects and in particular because of the media coverage that it garnered. I owe this achievement to [the beneficiary]. Through his media expertise, he ensured that all potential avenues for event exposure were secured and the media exposure was such that it carried over to my next world record event in 2009, where I jumped onto and off the

The record also contains a letter from for Source Interlink Media. states that the beneficiary is responsible for a successful partnership between his company and the petitioner. The petitioner sponsors a dozen sporting events hosted by ASG. According to this partnership has “directly led to a dramatic increase in exposure for the [petitioner-sponsored] athletes.”

The record also contains a letter from vice president of VBS.tv, stating that the beneficiary is “in great part responsible for one of our most successful shows in 2008, which followed surfers competing for the . This show had approximately 3 million viewers, and has been picked up by for a new season in 2009.” states that the beneficiary will continue to represent the petitioner as a co-producer.

The preceding letters describe the beneficiary as a dedicated and talented media relations manager who has represented athletes and sponsors, but they do not specify exactly what his original contributions 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 talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien’s contributions must be not only original but of major significance. We must presume that the phrase “major significance” is not

superfluous and, thus, that it has some meaning. Moreover, the petitioner must demonstrate the beneficiary's contribution in the field rather than simply to an employer or client. While the petitioner has earned the admiration of those offering letters of support, there is no evidence demonstrating that he has made original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on media relations nor does it show that the field has somehow changed as a result of his work. Talent and success as a media relations manager, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the beneficiary has made original contributions that have significantly influenced or impacted his field.

The opinions of experts in the field are not without weight and have been considered above. 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 (Comm'r. 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, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)).

The letters considered above primarily contain bare assertions of widespread recognition and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions have influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>7</sup> The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media*

In her brief on appeal and in further detail in her response to the director's RFE, counsel listed a number of articles and media coverage "generated" by the beneficiary in his role as a media relations manager. In order to meet the plain language requirements of this criterion, the beneficiary must be the author of the articles. The beneficiary's ability to "generate" interest from a publication to

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<sup>7</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

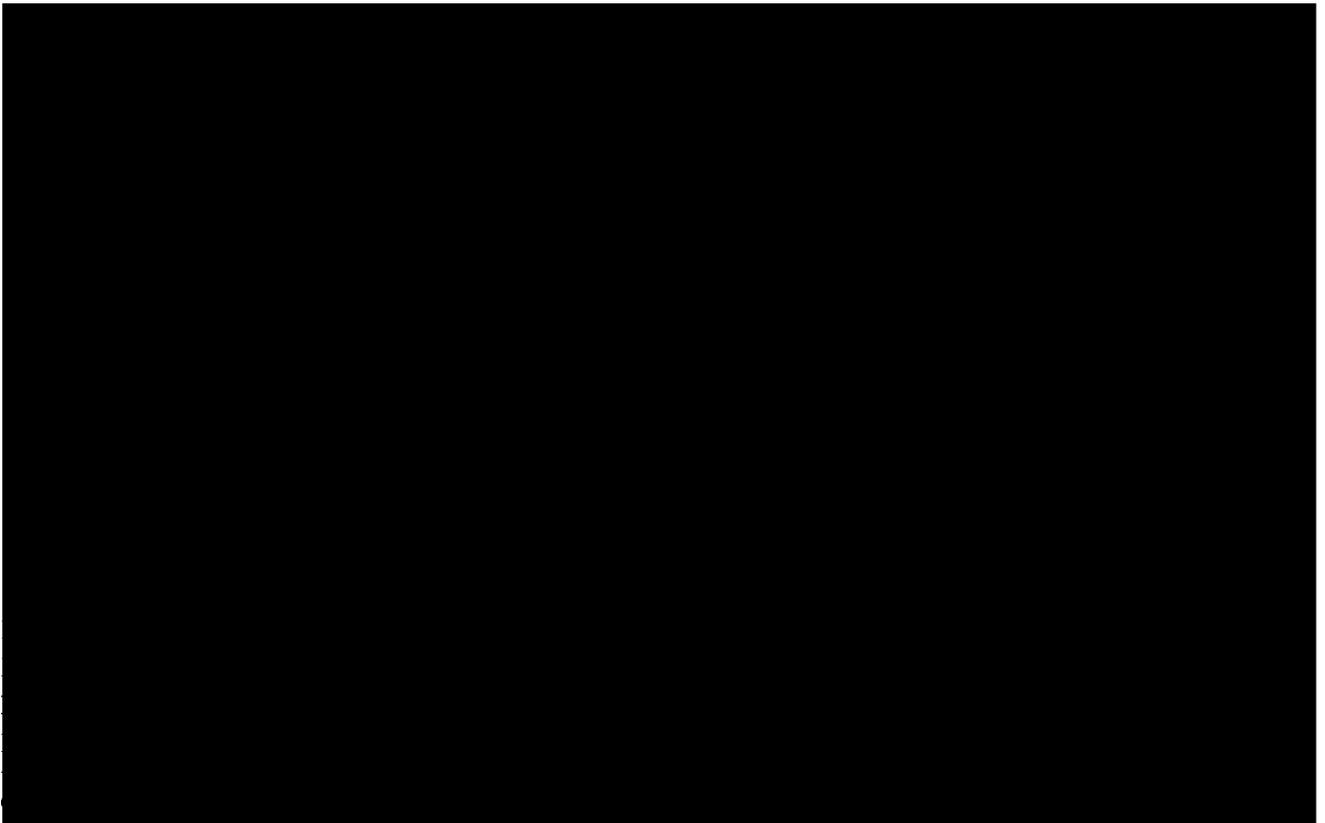
interview and write an article on an athlete is not sufficient to meet this criterion. Further, the plain language also requires that the article be “scholarly.” The record contains no evidence that the articles listed are considered “scholarly” such that they appear in scholarly publications, are aimed at scholars, or have garnered attention from scholars.

The record contains one article written by the beneficiary entitled “[REDACTED]” published on [REDACTED]. The record contains no evidence that this website is a form of “major media” or that the article submitted is “scholarly” in nature as required by the plain language of this regulatory criterion. Further, even if this article were sufficient, the regulation requires more than one article.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

On appeal, counsel states that the beneficiary has performed in a critical role for organizations that have distinguished reputations. In her brief dated June 26, 2008, counsel lists the following organizations and positions:



At issue for this criterion, according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii), is the nature of the role the petitioner was hired to fill and the reputation of the entity that hired him.

The list of positions above appears to focus on individual projects and the beneficiary's title for each project. This list does not provide detailed information regarding the beneficiary's role in each project, the dates that the beneficiary worked on these projects, or how such work is "leading" or "critical" for such companies as ██████████, ██████████ or ██████████. The beneficiary's ability to secure employment and contribute to the overall content of a television show, film, or magazine article does not equate to a leading or critical role for the show, film, the production company, or the magazine. Further, the beneficiary has not established how his position fits within the overall hierarchy such that his role could be considered "leading or critical role."

The record of proceeding also contains reference letters addressing the beneficiary's role for different organizations. In his letter, ██████████ states that the beneficiary was "involved with ██████████ in many key capacities ever since the inaugural ██████████ in 1995." ██████████ states that the beneficiary was an expert judge and became a part of a "commentary team." ██████████ does not explain how the beneficiary's roles as expert judge and member of a commentary team were leading or critical for ██████████ or how those roles fit within the overall hierarchy of the organization.

In his letter, ██████████ states:

[The beneficiary] was an integral part of the strategic team at ██████████. He was involved in the strategic building of athlete careers from revenue generation to image building via extensive PR and communications. At ██████████ he built and maintained relationships with athlete clients and developed key contacts with major industry leaders and mainstream global media. [The beneficiary] was also the crucial driver of revenue generating, specialist niche action sports events. His role included conceiving event ideas, gaining sponsorship, booking world recognized athletes and securing media partnerships and exposure. In his role he built and maintained strategic relationships with key industry stakeholders, city counsels, media and sponsors as well as executing entertaining events.

Although the letter provides the beneficiary's duties while at ██████████ does not explain how this role fit within the overall hierarchy of the organization or how many other people performed the same duties as the beneficiary.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

In his decision, the director noted that the record contains evidence of the beneficiary's salary. However, there is no evidence in the record indicating that the beneficiary's pay is high in relation to others in his field. Counsel did not address this criterion on appeal.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

***C. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)***

On appeal, counsel states that the previously discussed letters and the media coverage generated by the beneficiary are also comparable evidence. Counsel states that the media coverage generated by the beneficiary is comparable evidence of the beneficiary's "critical roles for some of the most prominent figures in the industry." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the above standards "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the standards specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel's submissions specifically address 8 C.F.R. § 204.5(h)(3)(i), (iii), (v), (vi), (vii), and (ix). Where an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. We note that the beneficiary's letters of support have already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(v). While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. *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 commentary for the proposed regulations implementing the statute provides that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals selected by the beneficiary.

***D. 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*, 596 F.3d 1115 at 1119 - 1120. The petitioner failed to establish eligibility for any of the criteria under the regulation at 8 C.F.R. § 204.5(h)(3), let alone the regulatory requirement of three. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Regardless, we will highlight some of the petitioner’s claims of eligibility as they pertain to a final merits determination.

With regard to the evidence submitted for the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i), most of the awards listed in the record were won more than 10 years before the petitioner filed the Form I-140 on behalf of the beneficiary. Moreover, the awards were for the beneficiary’s athletic ability and not for his abilities as a media relations manager.

In addition, even though the petitioner failed to demonstrate eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we also cannot ignore that the statute requires the petitioner to submit “extensive documentation” of sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even if we would find that the four print articles met the plain language of the regulation, we do not find that four articles, one of which was published more than a decade prior to filing and another whose date is handwritten on the article itself, are sufficient to establish the sustained national or international acclaim as a media relations manager. The remaining materials appear on self-promotional websites of undocumented significance.

Further, the petitioner claims eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(v) based entirely on recommendation letters, which are not sufficient to meet this highly restrictive classification. We note that the letters were all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. 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.

Finally, the petitioner has not established the requirements of 8 C.F.R. § 204.5(h)(3)(viii). The record of proceeding contains no document explaining the beneficiary's position within the hierarchy of the various organizations listed. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.<sup>8</sup> The AAO notes that while the letter written by [REDACTED] provided a description of the beneficiary's role and duties while working for [REDACTED] it did not provide sufficient information regarding the extent that the beneficiary's role was critical to [REDACTED]. Even if we would find that the beneficiary performed a critical role for [REDACTED] the petitioner has not established that [REDACTED] has a distinguished reputation when compared to others in its industry.

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).

#### ***E. Prior O-1 Nonimmigrant Visa Status***

While U.S. Citizenship and Immigration Services (USCIS) approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of beneficiary's qualifications).

Moreover, if the previous nonimmigrant petition was approved based on the same unsupported assertions that are contained in the current record, the approval would constitute material and gross error on the part of the director. Due to the lack of required initial evidence in the present record, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant visa petition.

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<sup>8</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. at 15.

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

#### **IV. Conclusion**

Review of the record does not establish that the beneficiary 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 beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.