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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

DATE: **DEC 08 2011**

OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on February 25, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her 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 “sustained national or international acclaim” and present “extensive documentation” of his or her 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 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 claims that the petitioner received a one-time achievement and meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for

individuals seeking immigrant visas as aliens of extraordinary ability. *See* 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 the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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. 2010). Although

the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

Id. at 1119.

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

This petition, filed on [REDACTED], seeks to classify the petitioner as an alien with extraordinary ability as a ballet dancer.

A. One-Time Achievement

At the initial filing of the petition, prior counsel² for the petitioner claimed to meet this standard based on her receipt of the gold medal in the women's division at the [REDACTED]

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

² [REDACTED] Esq.

Dance Competition from [REDACTED] While the petitioner submitted sufficient documentary evidence establishing her receipt of this award, the petitioner also submitted a letter from [REDACTED]

The [REDACTED] is open to dancers of all nationalities (in 1995: 24 different nationalities were represented), who can prove that they are professional dancer of high level issuing from famous schools and companies. The contestants are chosen at the discretion of the organizer. Out of about 120 candidates, about 60 dancers will be admitted to the competition.

* * *

Recognized across the entire world for its originality, the [REDACTED] is an important gathering, permitting dance to evolve in all its splendor and to adapt itself to different forms of choreographic expression.

I would also like to emphasize that this cultural event is linked to pedagogical projects with the goal of developing a few essential virtues during the heart of youth: the sense of discipline and the sustained and voluntary effort of this discipline.

Prior counsel also referred to other recommendation letters regarding the [REDACTED] For example, [REDACTED] stated:

The esteemed reputation of the [REDACTED] that has recognized her artistry by jury with a gold medal, is known by reputation in the world of dance. The significance of being a Gold Medalist in this competition is recognition that distinguishes the recipient as being one in the very top percentage of ballet artists in the world.

Moreover, [REDACTED] stated that winning the gold medal is “an achievement that could be compared to winning a world championship in any sport competition.” Further, [REDACTED] stated that “[t]his competition is highly revered in the dance world and it’s [sic] finalists are among the finest artists in dance.”

In the director’s decision, she determined that the “evidence does not establish that the competition and its awards maintain a level of prestige in the field of endeavor or the world at large which is indicative or a one-time major award sufficient in and of itself to qualify the petitioner as an alien of extraordinary ability.” On appeal, counsel refers to the above mentioned letters and submitted a letter from [REDACTED] who stated:

The international ballet competition in [REDACTED] is a major international cultural and artistic event. Competitors include some of the best ballets [sic] artists from around the world. Some of the most influential personalities are also connected to the competition. Of hundreds that apply, only a selected pool of dancers [is] allowed to compete for the highest prize, the gold medal. After passing the preliminary rounds, [the petitioner] surpassed every other dancer at the competition and won the Gold

Medal award. This award clearly distinguishes [the petitioner] as one of the top ballet dancers in the world.

The petitioner also submitted a letter from [REDACTED] who stated “that only dancers of the highest caliber and exceptional abilities can attain this coveted gold medal prize.” Finally, counsel argues that promotional material “touts her Gold Medal prize . . . unequivocally demonstrates the significance of the competition and award in the field of ballet.”

Given Congress’ intent to restrict this category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize.

While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien’s field as one of the top awards in that field. While the recommendation letters provide some evidentiary weight and demonstrates a lesser nationally or internationally recognized award for excellence pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), they fall far short in establishing that the gold medal from the [REDACTED] is a major, internationally recognized award.

The AAO is not persuaded that the gold medal is remotely comparable to such major, internationally recognized awards as the Pulitzer Prize, the Academy Award, or an Olympic Medal. In fact, these major, internationally recognized awards have been well established and well recognized in their respective fields for decades. In contrast, the petitioner won the [REDACTED]. Moreover, the petitioner submitted a screenshot from [REDACTED] reflecting that “[t]he reputation of the [REDACTED] competition has considerably increased during these last years.” Clearly, the reputation of the competition has not achieved preeminent status and is still evolving as opposed to the longstanding reputations of the Olympics and Academy Awards. Finally, a review of [REDACTED] reflects that the [REDACTED] scheduled for April 10 – 14, 2007, was postponed and has not been rescheduled.³ In fact, as of the date of this decision, there is no indication that the competition has taken place since 2003. While [REDACTED] indicated that she would be presiding over the [REDACTED] Competition in 2005, the website lists the results of the [REDACTED] Competition with no coverage past 2003. It appears that the [REDACTED]

³ See [REDACTED] Accessed on November 22, 2011, and incorporated into the record of proceeding.

Competition is no longer in existence, and the petitioner's gold medal is not reflective of a major, internationally recognized award pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

A. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 8 C.F.R. § 204.5(h)(3).⁴

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Moreover, it is the petitioner’s burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate her receipt of prizes and awards, she must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that [redacted] prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

On appeal, counsel argues the petitioner’s eligibility for this criterion based on being “bestowed the [redacted]” Counsel refers to the petitioner’s claims on her curriculum vitae submitted on appeal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984).

It is noted that the record of proceeding contains a purported translation reflecting:

COMPETITION “PROFESSIONAL SUCCESS – ‘95”

[The petitioner].

Cosmopolitan and “Most-Bank” are honored to invited you to the award ceremony “Professional Success-‘95”, which will be held on April 26 at 3 p.m. at the hotel [redacted]

Addendum

AWARDED: [the petitioner], 26 years old, Moscow. The soloist of [redacted] [redacted]. Won the Golden Award at the [redacted] [redacted] [sic] in 1995.

⁴ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

While the petitioner submitted the cover of an issue of *Cosmopolitan* (Russian edition), the petitioner failed to submit the original document that was purportedly translated. Furthermore, it appears that the petitioner was invited to attend the award ceremony rather than that the petitioner actually won an award at the ceremony. Moreover, the translation reflects that the petitioner won the [REDACTED] instead of winning an award from Professional Success – [REDACTED]. Finally, although counsel refers to circulation statistics for *Cosmopolitan* (in the United States), the petitioner failed to submit any documentary evidence demonstrating that an award from Professional Status – [REDACTED] is nationally or internationally recognized for excellence in the field.

As discussed above, the petitioner submitted sufficient documentary evidence demonstrating that the petitioner's receipt of the gold medal at [REDACTED] Competition qualifies as a lesser nationally or internationally recognized award for excellence. In the director's decision, she determined that the regulation at 8 C.F.R. § 204.5(h)(3)(i) "uses the plural when referring the 'awards or prizes.'" On appeal, counsel argues:

USCIS erred in imposing a temporal limitation on the receipt of the award and in requiring multiple prizes or awards in this category. . . . However, USCIS itself has clarified that **"although some items in the regulatory lists occasionally use plurals . . . it is entirely possible that the presentation of a single piece of evidence in that category may be sufficient."** [Adjudicator's Field Manual] 22.2(b)(i)(1)(C) (emphasis added).

Counsel also refers to an unpublished decision of the AAO dated March 22, 2007. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. 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). Moreover, the specific facts of the case, which include, for instance, information on the award and recipients, are not in the record. Without the records, it cannot be determined whether the facts of any other case are similar to those of the present case.

Furthermore, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires more than one prize or award. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a"

foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, while there may be instances where a single piece of evidence is sufficient to demonstrate an alien's eligibility for a criterion, such as evidence reflecting that the alien has participated as a judge of the work of others (8 C.F.R. § 204.5(h)(3)(iv)), the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) clearly requires more than one prize or award. It is noted that it is possible that a single piece of evidence could reflect the petitioner's receipt of multiple prizes or awards.

Accordingly, the petitioner failed to establish that [REDACTED] meets this criterion.

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

The director determined that the petitioner failed to establish eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted the following documentation:

1. A photograph with a caption indicating that the petitioner teaches at the [REDACTED], unidentified title, July 16, 2001, unidentified author, [REDACTED]
2. A photograph with a caption indicating that the petitioner performed at a fundraiser, unidentified title, November 23, 2006, unidentified author, [REDACTED];
3. A photograph with a caption entitled, '[REDACTED]', May 2005, [REDACTED]
4. A photograph with a caption regarding the [REDACTED] [REDACTED], unidentified title, November 17, 2005, unidentified author, [REDACTED]
5. A screenshot of a blog entitled, [REDACTED], [REDACTED], July 13, 2008, [REDACTED]
6. A partially translated article entitled, '[REDACTED]', April 13, 1995, unidentified author, [REDACTED]
7. A partially translated article entitled, '[REDACTED]', unidentified date, unidentified author, unidentified publication;
8. A partially translated excerpt; unidentified title, unidentified date, unidentified author; *Belarusian Encyclopedia*, Vol. 11;
9. A partially translated excerpt, unidentified title, 1999, [REDACTED], [REDACTED]

10. A partially translated article entitled, [REDACTED] in a Dance,” December 24, 1999, [REDACTED]
11. A partially translated article entitled, “[REDACTED]” October 1994, [REDACTED]
12. A partially translated article entitled, “[REDACTED] to [REDACTED] June 27, 1998, [REDACTED]
13. An unidentified title, unidentified date, unidentified author, [REDACTED]
14. A partially translated advertisement, unidentified title, unidentified date, unidentified author, [REDACTED]
15. A partially translated advertisement, unidentified title, unidentified date, unidentified author, [REDACTED]
16. A partially translated article entitled, “[REDACTED]” August 26, 1999, unidentified author, [REDACTED]
17. A partially translated article, unidentified title, unidentified date, unidentified author, unidentified publication;
18. A schedule entitled, “[REDACTED]” 1995, unidentified author [REDACTED]
19. A screenshot entitled, “[REDACTED]” unidentified date, unidentified author, [REDACTED]
20. A screenshot entitled, “[REDACTED]” December 6, 2006, unidentified author, [REDACTED]
21. An article entitled, “[REDACTED]” September 2007, [REDACTED]
22. An article entitled, [REDACTED] [REDACTED]” July 26 – August 1, 2000, [REDACTED]
23. An announcement entitled, [REDACTED]” November 24, 2006, unidentified author, [REDACTED]
24. An article entitled, [REDACTED]” November 15, 2002, [REDACTED]
25. An article entitled, “[REDACTED]” January 29, 2000, [REDACTED]

26. A screenshot entitled, "[redacted]" February 18, 2003, [redacted]
27. An article entitled, [redacted] November 16, 2002, [redacted];
28. An article entitled, [redacted] October 2003, [redacted]
29. An article entitled, "[illegible] [redacted]" December 5 – 11, 2002, unidentified author, unidentified publication;
30. An article entitled, [redacted]" unidentified date, [redacted]
31. An article entitled, [redacted]" unidentified date, [redacted] unidentified publication;
32. A screenshot entitled, [redacted]" December 8, 2005, unidentified author, [redacted]
33. A snippet entitled, [redacted] December 30, 2006, unidentified author, [redacted]
34. An article entitled, [redacted] at [redacted]" December 2005, unidentified author, [redacted]
35. An announcement, unidentified title, August 4, 2000, unidentified author, [redacted]
36. An article entitled, [redacted]" December 1, 2000, [redacted]
37. An article entitled, [redacted] at [redacted]" December 7, 2003, [redacted]
38. An article entitled, [redacted] January – June 2006, unidentified author, [redacted]
39. A screenshot entitled, [redacted]" August 7, 2009, by [redacted], [redacted] and [redacted]
40. A screenshot entitled, [redacted]" 2009, unidentified author, [redacted]

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” 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.⁵ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

The regulation at 8 C.F.R. § 103.2(b) provides in pertinent part:

(3) Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a *full* English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English [emphasis added].

As indicated above, the petitioner submitted numerous partially translated documents that do not comply with the regulation at 8 C.F.R. § 103.2(b)(3) that requires “full English language translation[s].” Without full English language translations, the petitioner failed to establish that the evidence reflects published material about her relating to her work. In addition, with the exception of 15 items, the petitioner failed to include the title, date, and/or author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Regardless, none of the documentary evidence submitted by petitioner reflects published material about the petitioner relating to her work. Instead, the documentary evidence is about the shows in which the petitioner performed. For example, item 27 is about the opening production of [REDACTED]. Although the petitioner is mentioned one time as playing [REDACTED] the article is not about the petitioner relating to her work. Articles that are not about the petitioner do not meet this regulatory criterion. *See, e.g., Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Similarly, captions accompanying photographs, such as items 1 – 4, that merely identify the petitioner are not published material about her relating to her work. Likewise, advertisements and announcements for shows and productions, such as item 23, that simply list the petitioner as one of the performers are not “published material” consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Furthermore, on appeal, counsel argues:

⁵ 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.

[T]he National Television Station in Belarus created a 25-minute film solely about [the petitioner] in her honor. . . . [The petitioner] also made a television appearance on international network CBS. . . . These TV appearances, which exclusively feature [the petitioner], solidify her qualification under this criterion.

Notwithstanding that counsel failed to submit primary evidence of the petitioner's television appearances pursuant to the regulation at 8 C.F.R. § 103.2(b)(2) and relies on information from unrelated sources, such as [REDACTED], this regulatory criterion requires "published material" in professional or major trade publications or other major media. As television interviews, programs, and appearances are not published material in professional or major trade publications or other major media, they clearly do not meet the plain language of this regulatory criterion.

Further, regarding items 39 and 40, the screenshots were posted after the filing of the petition on June 16, 2008. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

In addition, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "in professional or major trade publications or other major media." As indicated above, the petitioner submitted several documents that were posted on the Internet. However, the AAO is not persuaded that postings and blogs on the Internet from printed publications, organizations, or Internet-based media outlets are automatically considered major media. In today's world, many newspapers, businesses, and other media outlets post stories and information on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. The AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media." The petitioner failed to submit any documentary evidence establishing that the websites are considered major media.

Moreover, the only evidence submitted by the petitioner in order to demonstrate that the material was published in professional or major trade publications or other major media were screenshots from *Wikipedia* regarding [REDACTED]. As there are no assurances about the reliability of the content from this open, user-edited Internet site, the AAO will not assign weight to information from *Wikipedia*. See [REDACTED], 540 F.3d 909 (8th Cir. 2008).⁶ The AAO notes regarding item 6, that the article from the [REDACTED] was

⁶ See also the online content from [REDACTED], accessed on November 22, 2011, and incorporated into the record of proceeding is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or

partially translated, failed to include the author, and was about the [REDACTED] rather than about the petitioner relating to her work. [REDACTED] as discussed under the awards criterion, the petitioner failed to submit the original document and it appears to reflect an invitation to the petitioner to attend an awards ceremony rather than published material about the petitioner relating to her work.

Furthermore, as indicated above, the petitioner failed to indicate where numerous articles were published, such as item 31, let alone that they were published in professional or major trade publications or other major media. In fact, regarding items 13 – 16, the petitioner failed to identify the names of the publications; instead the petitioner simply indicated that they were published in a “Beijing Paper,” and a “Nanning Newspaper.”

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” The burden is on the petitioner to establish that she meets every element of this criterion. The petitioner failed to include the title, date, author, and/or full translation for the majority of the documentation. Moreover, the petitioner failed to demonstrate that any of the documentary evidence reflected published material about the petitioner relating to her work. Finally, the petitioner failed to establish that any of the material was published in professional or major trade publications or other major media.

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

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

In the director’s decision, she determined that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues that the petitioner meets this criterion based on her coaching of students at the Rotaru International Ballet School (RIBS) from 2003 – 2005 and at the Continental Ballet Company (CBC) from 2006 – 2007, as well as her coaching of ballet dancers including N [REDACTED] and [REDACTED]

A review of the record of proceeding reflects that the petitioner submitted a letter from [REDACTED] who stated:

I invited [the petitioner] to participate in the [RIBS’] summer intensive programs in 2003, 2004, and 2005. She assisted in evaluating students and making professional recommendations for their training based on her training and artistic performance abilities as a world-class dancer.

In addition, the petitioner submitted promotional materials from RIBS reflecting that the petitioner was a member of the “international guest faculty.” Moreover, the petitioner submitted promotional material from the CBC reflecting that the petitioner taught an advanced ballet course “through serious technical training.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” Serving as an instructor or coach as part of one’s job duties does not equate to participation as a judge of the work of others in the field. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of teaching in a classroom setting or coaching athletes and performing artists.

There is no evidence demonstrating that the petitioner actually served “as a judge of the work of others.” In stark contrast, the AAO notes that the petitioner submitted a “Certificate of Participation” from the [REDACTED] regarding her 2005 gold medal that reflects the 11 jury members who judged the competition. Clearly, these individuals served as a judge of the work of others; specifically a ballet competition, as opposed to the petitioner who taught and coached students.

Regarding [REDACTED] and [REDACTED] the documentary evidence submitted on appeal reflects events occurring after the filing of the petition. For example, the petitioner submitted a letter, dated March 2, 2010, from the USA International Ballet Competition (IBC) reflecting that [REDACTED] was accepted to compete at the 2010 USA IBC. Furthermore, the petitioner submitted an email, dated March 10, 2010, from the World Ballet Competition (WBC) reflecting that [REDACTED] was accepted to compete at the 2010 WBC. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. There is no evidence reflecting that the petitioner coached or instructed [REDACTED] prior to the filing of the petition. Regardless, the petitioner failed to demonstrate that her coaching and instructing equates to serving as a judge of the work of others consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

The AAO notes that prior counsel also claimed the petitioner’s eligibility for this criterion based on her participation as a guest dancer and guest of honor for various events and performances. Clearly, performing as a guest dancer does not entail judging the work of others.

For the reasons discussed above, the petitioner failed to demonstrate that she served as a judge of the work of others in the same or an allied field of specification for which classification is sought consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

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

The director determined that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues:

Unlike a physicist or mathematician whose unique scientific discoveries are easily illustrated on paper, a dancer's contributions to the field of ballet are demonstrated in her performance through factors such as technique, expression, movement, and artistic nature. [The petitioner] has presented the best evidence available to describe her original contributions: letters from other ballet professionals who know what it takes to be an extraordinary ballet dancer. The many publications in the record substantiate the statements in the letters about [the petitioner's] extraordinary ability as a dancer and world-wide acclaim. USCIS erred in dismissing [the petitioner's] supreme level of artistry in ballet and describing her as a mere "talented performer."

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original artistic-related contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

As indicated by counsel on appeal, the petitioner claimed eligibility for this criterion based on recommendation letters from several individuals. While the recommendation letters praise the petitioner for her skills as a ballerina, they fail to indicate that she has made original contributions of *major significance* in the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For instance, the letters from [REDACTED] refer to the petitioner's achievement of winning a gold medal at the [REDACTED]. The petitioner's receipt of the gold medal, as well as the recommendation letters, were already considered under the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i). The AAO will not presume that evidence relating to or even meeting the awards criterion is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

Furthermore, [REDACTED] discussed the petitioner's status as a "prima ballerina." Specifically, [REDACTED] stated:

The word 'prima' originated from Latin, which means 'first'. A prima ballerina is therefore the highest level that a ballet dancer can attain in a company or organization. The Prima Ballerinas have the most experience, talent, and prestige

over all the other ballerinas in the company. They have earned the title of true artists through their technical mastery, phenomenal commitment, impeccable stage presence, and years of dancing experience. [The petitioner] was bestowed the extraordinary title of Prima Ballerina at the [REDACTED] [REDACTED], which is one of the oldest and greatest ballet companies of the world, and the [REDACTED]. This title alone exhibits extraordinary distinction as a ballet dancer.

In order to demonstrate eligibility for this criterion, the petitioner must establish that she has made original contributions and demonstrate how those contributions have been of major significance in the field. However, the recommendations letters fails to explain how the petitioner's achievement of receiving the title of "prima ballerina" is an original contribution to the field and how it has impacted or influenced the field, so as to demonstrate that it has been of major significance. The AAO is not persuaded that every ballet dancer who obtains the title of "prima ballerina" also demonstrates an original contribution of major significance in the field.

Moreover, while the recommendation letters praise her artistic talents and "her outstanding, unique and spiritually engaging skills as a performer," none of the letters indicated how the petitioner's skills are original contributions of major significance to the field. Merely having a diverse skill set is not a contribution of major significance. Rather, the record must be supported by evidence that the petitioner has already used those unique skills to impact the field at a significant level in an original way. Furthermore, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. See *Matter of New York State Department of Transportation*, 22 I&N Dec. 215, 221 (Comm'r 1998).

In addition, [REDACTED] indicated that the petitioner "only serve[s] to help our culture to understand, learn and be inspired by artists of her ability." However, [REDACTED] failed to indicate how the petitioner has already helped the culture in a substantial manner, so as to establish that the petitioner has made original contributions of major significance in the field. Similarly, [REDACTED] stated that he can attest to the advantage of the petitioner becoming "a permanent part of the performing arts community in the USA for reasons of artistry and preservation." However, [REDACTED] failed to indicate how the petitioner has already contributed to the artistry and preservation in a manner consistent with original contributions of major significance in the field. Furthermore, [REDACTED] stated that the petitioner is "[o]ne who not only *can* contribute as a dancer to her community and country while she performs, but also through her magnificent training and generous soul, serve to further the standard of *future* young Americans who dream of dancing [emphasis added]." A petitioner cannot file a petition under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the petitioner has yet to make any original contributions of major significance in the field. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that USCIS cannot "consider facts that come into being only subsequent to the

filing of a petition.” *Id.* at 176. While the letters speculate on the future promise of the petitioner’s work, the assertion that the petitioner’s work is likely to be influential is not adequate to establish that she has already made original contributions of major significance in the field.

While those familiar with the petitioner generally describe her as “extraordinary” and “outstanding,” there is insufficient documentary evidence demonstrating that the petitioner has made original contributions of major significance in the field. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by solicited letters that simply repeat the regulatory language but do not explain how the petitioner’s contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *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); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner’s present contributions.

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (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 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added].” Without additional, specific evidence showing that the petitioner’s work has been unusually influential or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this criterion.

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

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

In the director’s decision, she determined that the petitioner failed to establish eligibility for this criterion. On appeal, counsel argues that the petitioner “submitted ample evidence of the showcase of her dancing in the form of invitations to perform in galas and ballets around the world.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the display of the alien’s work in the field at artistic exhibitions or showcases.” The petitioner is a ballet dancer. When she is performing before an audience, she is not displaying her work in the same sense that a painter or sculptor displays his or her work in a gallery or museum. The

petitioner is performing her work, she is not displaying her work. In addition, to the extent that the petitioner is a performing artist, it is inherent to her occupation to perform. Not every performance is an artistic exhibition designed to showcase the performer's art. If the AAO was to accept that a performance artist like the petitioner meets this criterion, it would render the regulatory requirement that the petitioner meet at least three criteria meaningless as this criterion would effectively be collapsed into the criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

The interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

Therefore, while the petitioner's performances have evidentiary value for another criterion, they cannot serve to meet this criterion. Instead, as the petitioner's performances are far more relevant to the aforementioned "leading or critical role" criterion set forth at the regulation at 8 C.F.R. § 204.5(h)(3)(viii), they will be discussed separately within the context of that criterion.

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

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

The director found that the petitioner established eligibility for this criterion. Specifically, the director stated:

To meet this criterion, the petitioner equates her having performed as lead characters in ballets as performing a leading or critical role for the organizations (ballet companies) as a whole. While it is true that it is critical for a ballet company to have a performer to fill, for example, the role of [REDACTED] in the ballet [REDACTED] it does not necessarily follow that the person chosen to fill that role is leading or critical to the company as a whole. For instance, such a role might be filled by a guest performer who plays no larger role in the company and then leaves once the performances have concluded. While it is clear that the petitioner has consistently performed the lead role in many well known ballets and with reputable ballet companies, the record lacks evidence to establish how the petitioner's importance to the companies went beyond performing her roles well or was otherwise extraordinary relative to others in parallel positions or more senior positions in the organization(s).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role *for organizations or establishments* that have a

distinguished reputation [emphasis added].” A ballet production, such as [REDACTED] does not equate to an organization or establishment consistent with the plain language of this regulation. However, the petitioner’s performances for ballet companies who produce shows could be considered.

A review of the record of proceeding does reflect that the petitioner performed in a leading or critical role for the [REDACTED] and the [REDACTED]. As evidenced by the petitioner’s recommendation letters, as well as promotional material for the various productions of the ballet companies, the petitioner was the “prima ballerina” and suggests that the petitioner’s role was leading or critical. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires that the leading or critical roles be “for organizations or establishments that have a distinguished reputation.” While the petitioner submitted ballet programs, the petitioner failed to submit any documentary evidence demonstrating that the [REDACTED] has a distinguished reputation. In other words, the petitioner failed to submit any documentary evidence that distinguishes these ballet companies from other ballet companies.

Similarly, the petitioner submitted various programs demonstrating that she performed for various ballet companies such as the [REDACTED], [REDACTED] and the [REDACTED]. The petitioner failed to submit any documentary evidence establishing that any of these ballet or dance companies have a distinguished reputation. It is noted that in response to the director’s request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), the petitioner submitted screenshots from [REDACTED] regarding *Carmen* and [REDACTED] regarding [REDACTED]. Once more, the documentary evidence relates to ballets rather than organizations or establishments.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a *distinguished reputation* [emphasis added].” In this case, although the petitioner demonstrated that she has performed in a leading or critical role, the petitioner failed to establish that those performances were for organizations or establishments that have a distinguished reputation.

Accordingly, the petitioner failed to establish that she 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 the director’s decision, she determined that the petitioner failed to establish eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires “[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.” In counsel’s brief, he did not contest the findings of the director for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO 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 at 1115. The petitioner did not meet the plain language for any of the criteria, of which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO’s preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In the final merits determination, the AAO must look at the totality of the evidence to determine the petitioner’s eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner garnered a gold medal at the [REDACTED] has achieved “prima ballerina” status for two ballet companies, and has performed in numerous ballets. However, the personal accomplishments of the petitioner fall short of establishing that she “is one of that small percentage who have risen to the very top of the field of endeavor” and that she “has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See 8 C.F.R. § 204.5(h)(2), 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” The petitioner’s evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Although the AAO determined that the petitioner failed to meet the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner submitted a single nationally or internationally recognized award occurring approximately 13 years prior to the filing of the petition. The AAO is not persuaded that such an award is consistent with the sustained national or international acclaim required for this highly restrictive classification. See 8 C.F.R. § 204.5(h)(3) and section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i).

While the AAO determined that the petitioner failed to meet the published articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the AAO notes that the petitioner failed to submit a single article that was published material about her relating to her work. The evidence submitted is not demonstrative that her achievements have been recognized in the field of expertise. *See* 8 C.F.R. § 204.5(h)(3). Instead, the petitioner submitted documentary evidence that simply listed her name or credited the petitioner as a performer.

Although the AAO determined that the petitioner failed to meet the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), an evaluation of the significance of the petitioner's claimed judging experience is sanctioned under *Kazarian*, 596 F. 3d at 1121-11 to determine if such evidence is indicative of the extraordinary ability required for this highly restrictive classification. In this case, the petitioner based her eligibility on teaching and coaching students. Without evidence pre-dating the filing of the petition that sets the petitioner apart from others in her field, such as evidence that she has served as a judge of acclaimed ballet dancers or of a national or international competition rather than aspiring students or amateurs, the petitioner failed to demonstrate that she "is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

While the AAO determined that the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner based her claim of eligibility entirely on recommendation letters. It must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from individuals, especially when they are colleagues of the petitioner without any prior knowledge of the petitioner's work, 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 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. Again, none of the letters submitted on behalf of the petitioner reflect any original contributions of major significance.

Although the AAO determined that the petitioner failed to meet the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the AAO notes that the petitioner demonstrated that she performed in a leading or critical role for the [REDACTED] without establishing that they have distinguished reputations. Evidence of the petitioner's roles with organizations that have not been shown to have a distinguished reputation is not persuasive evidence that she "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

Finally, the AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of her sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5,

1991). The petitioner also claimed eligibility for the awards criterion based on an award from the "Professional Success-'95." However, the petitioner based her eligibility on a translation without submitting the original document, and the purported translation only reflects that the petitioner was requested to attend the ceremony. In addition, the petitioner claimed eligibility for the published material criterion based on partial translations that do not comply with the regulation at 8 C.F.R. § 103.2(b)(3), and the petitioner failed to submit the title, date, and/or author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the petitioner failed to establish that any of the material was published in professional or major trade publications or other major media. The AAO is not persuaded that such evidence equates to "extensive documentation" and is demonstrative of this highly restrictive classification. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010) citing *Matter of E-M*- 20 I&N Dec. 77, 80 (Comm'r 1989).

The evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim as a ballet dancer. The regulation at 8 C.F.R. § 204.5(h)(3) requires that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and this his or her achievements have been recognized in the field of expertise." While the petitioner submitted documentation demonstrating that she has won an award and performs as a ballerina, the documentary evidence is not consistent with or indicative of sustained national or international acclaim.

USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899. In *Matter of Racine*, 1995 WL 153319 at *1, *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 [redacted] ability with that of all the hockey players at all levels of play; but rather, [redacted] 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.

The court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. Likewise, it does not follow that the petitioner who has not offered any evidence that distinguishes her from others in her field, should necessarily qualify for approval of an extraordinary ability employment-based visa petition. 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."

While the petitioner need not demonstrate that there is no one more accomplished to qualify for the classification sought, it appears that the very top of her field of endeavor is far above the level she has attained. For example, [redacted] "is the most celebrated artist in the dance world," [redacted] proclaimed him "the greatest living dancer," and he has won numerous awards including three [redacted]. When compared to the petitioner,

█ has more persuasively established himself as within that “small percentage at the very top of the field of endeavor.”

The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not established that her achievements at the time of filing the petition were commensurate with sustained national or international acclaim, or that she was among that small percentage at the very top of the field of endeavor.

III. O-1 Nonimmigrant Admission

The AAO notes that at the time of the filing of the petition, the petitioner indicated that she was admitted to the United States as an O-1 nonimmigrant on February 1, 2008. While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different 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 petitioner's qualifications).

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 has approved a nonimmigrant petition on behalf of the alien, 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).

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).

IV. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her 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.

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.