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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., Rm. 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

B2

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 26 2011

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $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. The director reopened the matter on the petitioner's motion, and denied the petition again. The Administrative Appeals Office (AAO) dismissed a subsequent appeal.[1] The AAO reopened the proceeding on its own motion. The AAO will affirm its previous decision. The petition will remain denied.

The petitioner seeks classification of 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 in athletics.[2] The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim as a coach.

At the outset, it must be noted that 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 for the alien under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On motion, counsel argues that the beneficiary has received a major, internationally recognized award and that she meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). We acknowledge that the standard of proof is preponderance of the evidence, as noted by counsel on motion. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. *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)(2) and (3). For instance, the plain language of the statute specifically requires that the beneficiary's "achievements have been recognized in the field through *extensive* documentation." [Emphasis added.] In this case, the petitioner has failed to demonstrate by a preponderance of the evidence that the beneficiary seeks to enter the United States to continue to work in her area of extraordinary ability, has achieved sustained national or international acclaim as a coach and that she is one of the small percentage who has risen to the very top of the field of endeavor.

For the reasons discussed below, the petition may not be approved.

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[1] The petitioner was initially represented by attorney [redacted] In this decision, the term "previous counsel" shall refer to [redacted]

[2] According to information on the Form I-140 petition, the petitioner was last admitted to the United States in 1999 as a H1-B nonimmigrant temporary worker in a specialty occupation. Her authorized period of stay in that classification appears to have expired on August 20, 2007.

I. Intent to Continue to Work in the Area of Expertise in the United States

This petition, filed on June 12, 2007, seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics coach. The statute and regulations require that the beneficiary seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Since her arrival in the United States in 1999, the record reflects that the beneficiary has coached for Southern Tier Gymnastics Academy in New York (1999 – 2002), Camden Gymnastics, Inc. in Georgia (2003 – 2005), and Integrity Gymnastics and Cheerleading in Ohio (2006 – present). In Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed the beneficiary's job title as "Optional Girls Team Coach." In addition, at the time of the filing of the petition, the petitioner submitted a January 31, 2006 letter from [redacted] Vice President and Co-Owner, [redacted] stating that she wishes to employ the beneficiary "in the position of Optional Girls Team Coach." Thus, the record is clear that the beneficiary intends to continue to work in the area of gymnastics coaching in the United States.

Aside from her work in the United States as a gymnastics coach, the record includes evidence showing that the beneficiary competed successfully in international gymnastics competitions in the 1980s and early 1990s. Most notably, the beneficiary won an Olympic team gold medal at the 1988 Olympics. While a competitive gymnast and a coach may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. While the record demonstrates that the beneficiary intends to continue working as a gymnastics coach, there is no evidence indicating that she intends to compete as a gymnast in the United States. We acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a gymnastics coach and a competitive gymnast, but the petitioner must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* 8 C.F.R. § 204.5(h)(5). In this case, there is no evidence establishing that the beneficiary intends to continue working in the United States as a competitive gymnast. Although the beneficiary's competitive accomplishments as a gymnast are not completely irrelevant and will be given consideration, ultimately she must satisfy the statutory requirement at section 203(b)(1)(A)(ii) of the Act as well as the regulations at 8 C.F.R. §§ 204.5(h)(2), (3), and (4) through her achievements as a coach.

USCIS recognizes that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too

speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence in the aggregate in the final merits determination. Specifically, in a case where an alien has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

II. Law

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

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

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

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

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

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

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

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

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

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[3] 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

[3] 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).

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 our appellate decision, the AAO will apply the test set forth in *Kazarian.* As the AAO maintains *de novo* review, the AAO will conduct a new analysis using 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).

III. Analysis

A. Major, internationally recognized award

The regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish eligibility through evidence of a one-time achievement, specifically a major, internationally recognized award. As previously noted, the beneficiary won an Olympic team gold medal as a competitive gymnast at the 1988 Olympics. This major, internationally recognized award, however, was the result of the beneficiary's achievements as a competitive athlete more than eighteen years prior to the filing date of the petition. Thus, the Olympic team gold medal that the beneficiary earned as a gymnast is not evidence of her sustained national or international acclaim as a coach, the occupation and area of expertise in which she seeks to continue to work in the United States. Subsequent to 1991, there is no evidence indicating that the beneficiary (age 33 at the time of filing) has remained active as a competitor in national or international gymnastics events. Further, the evidence is clear that the beneficiary intends to work as an Optional Girls Team Coach for the petitioner. The statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. In this case, the petitioner seeks to employ the beneficiary as a coach. The petitioner does not seek to employ the beneficiary as a gymnast. In fact, there is no evidence

showing that the beneficiary has sustained national or international acclaim through achievements as a competitive gymnast subsequent to 1991 or that she intends to work in the United States as a competitive gymnast. Accordingly, the petitioner has failed to submit evidence of a qualifying one-time achievement for the beneficiary as a coach.

B. Evidentiary Criteria

The petitioner has submitted evidence pertaining to the following categories of evidence 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 record includes evidence showing that the beneficiary won an Olympic team gold medal as a competitive gymnast at the 1988 Olympics. Among her other significant prizes and awards, the beneficiary placed third in the all-around at the [redacted]. In 1989, the beneficiary was a member of the first place team and placed second in the all-around at [redacted]. The same year, she also placed second in the all-around at the [redacted]. In 1990, she placed third in the all-around at [redacted]. The "field of endeavor" for which classification is sought, however, is coaching. There is no evidence indicating that the beneficiary seeks to work in the United States as a competitive gymnast. In our initial appellate decision, the AAO concluded that the preceding awards all resulted from the beneficiary's accomplishments as a competitive gymnast some two decades ago and thus cannot be considered evidence of her national or international recognition as a coach. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. There is no evidence showing that the beneficiary has received nationally or internationally recognized prizes or awards for excellence in coaching.

The AAO's appellate decision then erroneously introduced a new element to this criterion beyond the relevant regulatory language at 8 C.F.R. § 204.5(h)(3)(i) by stating: "Nationally or internationally recognized prizes or awards won by gymnastics competitors coached primarily by the beneficiary, however, can be considered for this criterion." In light of the court's findings in *Kazarian* that the AAO erred by "introducing new evidentiary requirements" and that the AAO's analysis must be "consistent with the relevant regulatory language" set forth in the criteria at 8 C.F.R. § 204.5(h)(3), we withdraw this statement. *See Kazarian v. USCIS*, 596 F.3d at 1122. "[N]either USCIS nor an AAO may unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5." *Id.* at 1121 (citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008)). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards

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

for excellence in the field of endeavor. Prizes or awards received by individuals other than the beneficiary herself do not meet the plain language requirements of the regulation.

On motion, counsel states: "[The beneficiary] has received . . . lesser nationally or internationally recognized prizes or awards for excellence in her field of endeavor through the prizes received by the athletes she has coached." As discussed above, the plain language of the regulation requires evidence of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Prizes received by the beneficiary's pupils in various athletic competitions do not equate to her receipt of those prizes. Nevertheless, the prizes received by athletes the beneficiary has coached will not be ignored and shall be considered in our final merits determination later in this decision.

Counsel further states:

> [I]n some cases, one type of "comparable" evidence submitted in connection with 8 C.F.R. § 204.5(h)(4) might satisfy more than one of the criteria set forth in 8 C.F.R. § 204.5(h)(3). See Policy Memorandum PM-602-0005 (August 18, 2010). [5] Because the successes and acclaim of a coach in artistic gymnastics are determined by the successes of the particular athletes that the coach trains, the individual centric categories of recognition outlined in 8 C.F.R. § 204.5(h)(3) do not readily apply to the circumstances of the instant petition. Therefore, the success of [the beneficiary's] pupils should be considered comparable evidence for purposes of meeting the requirements of 8 C.F.R. § 204.5(h)(3).

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the criteria "do not readily apply to the beneficiary's occupation." Counsel argues "that the individual centric categories of recognition outlined in 8 C.F.R. § 204.5(h)(3) do not readily apply to the circumstances of the instant petition." Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998). In fact, the record reveals that there are awards for coaching. For example, with regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), the petitioner submitted a May 12, 2009 letter from [redacted] stating that he received [redacted]. The petitioner also submitted an April 28, 2009 letter from [redacted], indicating that her organization bestows awards such as "Optional Coach of the Year" and "Regional Coach of the Year."[6] Accordingly, the petitioner has not

[5] USCIS has since posted a final, amended version of this memorandum. *See* PM-602-0005.1, *Evaluation of Evidence Submitted with Certain I-140 Petitions*, dated December 22, 2010.

[6] Moreover, according to the USA Gymnastics internet site, the National Association of Collegiate Gymnastics Coaches for Women confers awards such as "Head Coach of the Year" and "Assistant Coach of the Year." *See* http://www.usa-gymnastics.org/pages/post.html?PostID=5272&prog=h, accessed on September 7, 2010, copy incorporated into the record of proceeding. We note, however, that local or regional gymnastics coaching honors do not equate to "nationally or

established that the prizes and awards criterion does not readily apply to gymnastics coaches. Where an alien is simply unable to meet the regulatory categories 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.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

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

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

> In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the a[redacted] overall reputation.
>
> The petitioner submitted evidence showing that the beneficiary represented the [redacted] as a gymnast on its Olympic national team. The petitioner also submitted evidence showing that the beneficiary was designated as a '[redacted]' in 1988. In this case, "the field for which classification is sought" is coaching. We note that the beneficiary achieved the preceding honors based on her ability as a competitive athlete, not as a coach. Accordingly, the beneficiary's athletic accomplishments as a member of the [redacted]s national gymnastics team and designation as a Merited Master of Sports of the [redacted], before she was active as a coach, cannot serve to meet this regulatory criterion.
>
> The April 12, 2001 letter from [redacted] states that the beneficiary holds USAG [USA Gymnastics] Professional Membership. There is no evidence (such as membership bylaws) showing that USAG Professional Membership requires outstanding achievements, as judged by recognized national or international experts in the beneficiary's field or an allied one.

The petitioner's motion does not specifically challenge any of the AAO's initial appellate findings for this regulatory criterion. Rather, counsel simply repeats earlier claims that the beneficiary's 1988 membership on the gold medal Olympic team for the former Soviet Union as gymnast and her 1988 "Merited Master of Sports of the [redacted]" title meet the elements of this criterion. As indicated above, the plain language of this regulatory criterion requires evidence of the "alien's membership in associations in the field for which classification is sought." In this case, the field for which

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internationally recognized" prizes or awards for excellence in the field. Nevertheless, the existence of such honors demonstrates that the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) readily applies to the beneficiary's occupation.

classification is sought is gymnastics coaching. There is no evidence indicating that the beneficiary seeks to work in the United States as a competitive gymnast. As previously discussed, the statute and regulations require that the beneficiary seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. As such, the beneficiary's participation as a competitor on the 1988 [redacted] team and the Master of Sports title based on her accomplishments as a gymnast in the 1980s do not meet the elements of this criterion for purposes of establishing extraordinary ability as a coach.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

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

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

> In general, in order for published material to meet this criterion, it must be primarily about the beneficiary 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.[7]
>
> The petitioner submitted articles from the 1980s in [redacted] and [redacted] discussing the beneficiary's athletic accomplishments as a gymnast. The petitioner also submitted an April 2002 article in [redacted] . . . [the beneficiary]: Second youth." While the latter article briefly mentions her coaching positions, it is primarily about her prior athletic career and personal life. Aside from briefly mentioning that one of the beneficiary's gymnasts was her [redacted] "a Level 6 competitor," the article does not otherwise discuss her as a coach. On appeal, the petitioner submits a one-paragraph note that appears in the October 2000 issue of [redacted] While the note states that the beneficiary is coaching, it is entitled [redacted] and is a nostalgic follow-up (i.e. "where are they now?") to the beneficiary's athletic career. The brief note is based on the [beneficiary's] accomplishments as a gymnast rather than her claimed field of coaching. The plain language of this regulatory criterion requires published material "about the alien . . .

[7] 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.

relating to the field for which classification is sought." We cannot conclude that the preceding material relates primarily to the beneficiary's work as a coach.

The petitioner submitted a May 2002 article in [redacted] entitled [redacted] This article is about the Friendship Classic gymnastics competition rather than the beneficiary and only mentions her name in passing as follows: "In spite of a missed double back, [redacted] (Southern Tier) was notable on floor, thanks to her demonstration dance. She is coached by former [redacted] [the beneficiary]." Results accompanying the article indicate that the Friendship Classic consisted of a "Senior" category and a "Junior" category. [redacted] placed third in the All-Around "Junior" category. On appeal, the petitioner submits a bulleted posting under the "International I.D." section of the December 2003 issue of [redacted] quoting the beneficiary and indicating that five of [redacted] qualified for the USAG's Talent Opportunities Program. The author of this posting was not identified as required by the plain language of this regulatory criterion. Notwithstanding the above discussion, there is no evidence (such as circulation statistics) showing that *International Gymnast* qualifies as major trade publication or some other form of major media.

The petitioner submitted articles from [redacted] entitled "[The beneficiary] [redacted] (April 5, 2003), [redacted] (March 20, 2003), and [redacted] (March 23, 2002). The authors of these articles were not identified as required by the plain language of this regulatory criterion. Further, the latter two articles were about the Friendship Classic gymnastics competition rather than the beneficiary. Finally, there is no evidence (such as readership statistics) showing that [redacted] qualifies as major trade publication or some other form of major media.

The petitioner submitted an [redacted] of the beneficiary printed from www.intlgymnast.com, but the date and author of this material were not provided. The plain language of this regulatory criterion requires "published material about the alien in professional or major trade publications or other major media" including "the title, date and author of the material." The preceding evidence does not meet these requirements.

The petitioner's appellate submission includes local articles about junior athletes coached by the beneficiary in [redacted] and [redacted], but there is no evidence showing that these local newspapers qualify as major media.

Regarding articles about the beneficiary's junior athletes or the gymnastics competitions in which they competed, articles that fail to mention the beneficiary or that only mention her in passing do not meet the plain language of this regulatory criterion.[8]

[8] *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 petitioner does not now specifically challenge any of the AAO's prior findings for this regulatory criterion. Rather, the petitioner simply resubmits copies of several of the articles mentioned above. Counsel asserts that [redacted] is "the largest trade magazine for the field of artistic gymnastics," but he does not submit any circulation evidence to support his claim. 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); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Moreover, even if the petitioner were to submit supporting documentary evidence showing that the material in *International Gymnast* meets the elements of this criterion, which it has not, 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)(iii) requires material about the beneficiary in more than one major publication. 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. Thus, we 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.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

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

The brief submitted by counsel on motion does not claim that the beneficiary meets this criterion. The brief does not point to specific evidence in the record or challenge any of the AAO's appellate findings for this criterion.

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's initial appellate decision indicated that the assertions from [redacted] of the [redacted] were not supported by any documentary evidence of the beneficiary's participation as a [redacted] of the work of others. [redacted] lists nine [redacted] competitions between 1993 and 1997 in which he claims that the beneficiary served as a judge or an arbiter. The statements from [redacted] do not provide any substantive information about the competitions or specify the beneficiary's duties and responsibilities as a judge. Rather than submitting contemporaneous evidence of the beneficiary's participation as a judge at the preceding competitions (such as official records or a judge's credential), the petitioner has instead submitted only letters of support from [redacted] issued long after the competitions took place which repeat the same limited information. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary

evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established primary evidence of the beneficiary's participation as a judge in the competitions does not exist or cannot be obtained. Further, the letters of support from [redacted] do not equate to secondary evidence or affidavits.

Additional deficiencies pertaining to the evidence submitted for this criterion will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

As counsel failed to contest the decision of the director or offer additional arguments for this criterion, we consider it to be abandoned. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005). In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

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

The petitioner has not previously claimed eligibility under this criterion. On motion, counsel now states: "[The beneficiary's] work has been [redacted] . . . Her work is on [redacted] who . . . compete at the highest and most exclusive gymnastic skill levels . . . ." The beneficiary's field, however, is in athletics rather than the arts. The plain language of this regulatory criterion indicates that it applies to the artists. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Even if we were to consider the competitive gymnastics accomplishments of the beneficiary's [redacted] as comparable evidence under this criterion, it is their athletic work being displayed and recognized in competition. The competitive accomplishments of the beneficiary's [redacted] will be considered in our final merits determination later in this decision.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

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

The petitioner has not previously claimed eligibility under this criterion. On motion, counsel now states that the beneficiary performs in the critical role of [redacted] for the petitioner. The petitioner initially submitted a January 31, 2006 letter from the Vice President and Co-Owner of the petitioner stating:

> [The petitioner] was founded November 1, 2001. We currently employ 45 [redacted]. . We are widely known throughout the state as a center of high quality gymnasts and instructors and for our contribution to the sport of gymnastics.
>
> The position of [redacted] involves directing and coaching the [redacted], training athletes for the beam, floor and all-around events, preparing the team for competition, coaching and instruction of athletes on the use of the apparatus, observing athletes performance and correcting any weakness in technique, and advising on strategy at competitions. In addition, the position involves the responsibility of designing training programs, supervising the implementation of these programs and the development of gymnasts, and evaluating the gymnasts and selecting team for competitions.

The preceding letter was unaccompanied by documentary evidence to support the petitioner's claim that the petitioner is widely known throughout the State of Ohio as a center of high quality gymnasts and instructors and for its contribution to the sport of gymnastics. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

On motion, the petitioner submits a staff profile of Olympic medalist [redacted] (discussing his athletic accomplishments) and group photographs of Level 10 and Level 6 gymnasts posted on the petitioner's internet site. The photograph of the Level 6 gymnasts is accompanied by a caption congratulating them for being Ohio State Champions and identifying '[redacted]' as their coach.

The self-serving information provided in the letter originating from the petitioner's Vice President and Co-Owner and the promotional material posted on the center's internet site are not sufficient to demonstrate that it has earned a distinguished reputation in the sport of gymnastics. USCIS need not rely on self-promotional material.[9] For instance, there is no evidence showing that the petitioner has distinguished itself in national competition when compared to other successful gymnastics centers in this country (such as [redacted]). Further, there is no evidence demonstrating how the beneficiary's role differentiated her from the dozens of other employees working for the petitioner, let alone its coaches and its owners [redacted] and [redacted] For example, the petitioner failed to submit an organizational chart or other evidence documenting how the beneficiary's coaching position fits within the center's general hierarchy, or how that role and her duties are otherwise critical to the petitioner. In this case, there is no other evidence showing that the beneficiary had performed in a leading or critical role for the petitioner as of the petition's filing date. Finally, even if the petitioner were to submit supporting documentary evidence showing that the beneficiary's role and the petitioner's reputation meet the elements of this criterion, 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)(viii) requires the

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[9] *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

submission of evidence of a leading or critical role for more than one distinguished organization or establishment.

In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of 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.*

The January 31, 2006 letter from the Vice President and Co-Owner of the petitioner indicates that the beneficiary will receive an "annual salary of $35,000 plus standard company benefits." The petitioner also submitted a copy of the beneficiary's 2006 Form W-2, Wage and Tax Statement, reflecting compensation of $11,930.75. The plain language of this regulatory criterion, however, requires the petitioner to submit evidence demonstrating that the beneficiary has a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that the beneficiary's earnings are significantly high in relation to others in the field. In light of the above, the petitioner has not submitted the initial required evidence necessary to meet the plain language requirements of this criterion.

Summary

In this case, the petitioner has failed to demonstrate her receipt of a qualifying major, internationally recognized award as a [redacted] or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability as a [redacted] 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

C. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-1120. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) - (iv) and (vii) - (ix).

With regard to the beneficiary's awards as a [redacted] submitted for 8 C.F.R. § 204.5(h)(i), there is no evidence indicating that the beneficiary has received any nationally or internationally recognized awards in her sport since the early 1990s or that she intends to continue competing as gymnast in the United States. As discussed previously, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that she seeks to continue work in her

area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). Accordingly, the beneficiary's awards and competitive results demonstrating her past record of success as a national and international gymnastics competitor from the late 1980s to 1991 are not an indication that she has sustained national or international acclaim as a competitive gymnast during the fifteen years preceding the petition's filing date.

On motion, counsel states: "[The beneficiary] has received . . . lesser nationally or internationally recognized prizes or awards for excellence in her field of endeavor through the prizes received by the athletes she has coached." Counsel points to letters of support from former [redacted] gymnasts who state that they were coached by the beneficiary in the 1990s and officials of the [redacted]

The petitioner's appellate submission and motion include letters of support attesting to the beneficiary's coaching activity in [redacted] in the 1990s. The petitioner's appeal included a letter from [redacted] Secretary General, [redacted], stating: "[The beneficiary] . . . during the period with 1993 on 1997 worked in a Women's Olympic National Team of [redacted] on artistic gymnastics as the coach-choreographer (floor and beam) . . . ." On motion, the petitioner submits a new letter from [redacted] repeating this statement. Both letters list eleven gymnasts who [redacted] claims the beneficiary has trained. In addition, the petitioner's appellate submission included a letter from [redacted], the [redacted] from 1993 to 1997. [redacted] asserts that the beneficiary worked for her as a coach during that time, "rendering direct help and participation in preparation of such gymnasts as [redacted]

The petitioner's appellate submission included an April 8, 2009 letter from [redacted] a medalist at the 1988 Olympics who also competed in the 1996 Olympics. [redacted] asserts that while training for the 1996 Olympics the beneficiary "helped in my balance beam exercises." On motion, the petitioner submits an August 14, 2010 letter from [redacted] stating: "In 1996 I had training preparation for the Olympic Games, in the city of Minsk in Belarus. At that time, [the beneficiary] worked as a coach in the National Team of Belarus. With [the beneficiary] as one of my coaches, she trained me tremendously in my balance beam routines." The petitioner initially submitted a document entitled "The [redacted]" that identifies [redacted] coaches as [redacted] and [redacted]. The petitioner's initial evidence also included a profile of [redacted] posted on the Gymn Forum internet site stating: "[redacted] coach was [redacted] . . . After the 1992 Olympics, she retired and took part in exhibitions and clinics. Bu[redacted] decided to return to competition and moved to Houston, TX to train under [redacted]" Nothing in the record demonstrates that the beneficiary was [redacted] primary coach or that her success was mostly attributable to the beneficiary rather than [redacted], or [redacted]. On page 10 of his brief, counsel refers to the document entitled "The [redacted] stating that "the AAO has failed to properly balance the low evidentiary weight of this now defunct blog against the words of the athlete herself." We note, however, that it was the petitioner that provided the "The [redacted] in support of the petition. Moreover, counsel does not specifically challenge the facts provided about [redacted]

[redacted] primary coaches in the "The [redacted] or the profile of [redacted] posted on the Gymn Forum internet site. Unlike the two letters of support from [redacted] prepared especially for the instant petition, the pre-existing biography and profile provide independent and objective information about the coaches who are widely recognized and acknowledged as impacting [redacted] athletic career. Neither of these pre-existing documents submitted by the petitioner mentions the beneficiary as playing a significant role in [redacted] competitive successes.

The petitioner's appellate submission also included a December 1, 2009 letter from [redacted] who writes: "[The beneficiary] was the [redacted] She helped me become the Silver medalist at the European Cup 1995 and Bronze medalist in the European Championships 1996." On motion, the petitioner submits a July 28, 2010 letter from [redacted] stating: "[The beneficiary] was the coach and choreographer [redacted] and in this period she coached me. The training regimen was six days a week, for six hours per day. I personally interacted with [the beneficiary] during that period."

In a joint letter submitted with the petition, [redacted] credit their success "to having been trained" by the beneficiary. The petitioner also submitted documentation showing that [redacted] won a bronze at the DTB Cup in 1993, [redacted], a bronze at [redacted] Invitational in 1995. On motion, the petitioner submits an August 11, 2010 letter from [redacted] who states: "I . . . trained as part of the National Team of Belarus from 1993-97. I give much credit of our success to having been trained by [the beneficiary], who as famous gymnast – [redacted] won many sport titles and of course extraordinary coach."

The above attestations in the preceding individuals' letters, however, have reduced evidentiary value in light of evidence submitted in support of an I-140 petition filed by the beneficiary on December 26, 2001. Specifically, the beneficiary submitted her official "Work-Record Card" documenting her employment in the 1990s. This document reflects that that the beneficiary was employed as a "coach-masseuse" [redacted] from March 1, 1993 until September 10, 1993, at which time she became a coach-choreographer at the same school. She left that position on November 21, 1994. No additional employment appears on the beneficiary's Work Record Card until June 12, 1997, at which time she returned to the school as a "teaching coach." She returned to the position of coach-choreographer on September 4, 1997 and left on August 20, 1998. Thus, this official work record reflects no employment from November 21, 1994 to June 12, 1997. The beneficiary's official work record not only fails to corroborate the witness letters, it contradicts them.

The record also includes a 1998 Diploma stating that the beneficiary "entered [redacted] in 1989 and completed the full course of the Academy of Physical Education and Sports . . . in 1998." The petitioner submitted an article in *International Gymnast* from April 2002 that discusses the beneficiary's employment difficulties in the 1990s resulting from the arrest of her then husband. The article states:

> "Before 1993, my life was very good because everyone remembered my successes. But then I was nothing to everyone because of my husband."
>
> [The beneficiary] found herself shunned by former allies. "It's a long story, but everyone I knew and everyone who had supported me turned their backs on me," she explains calmly. "The sports committee did not allow me to work for a long time, basically because I was the wife of this thief."
>
> * * *
>
> Eventually, [the beneficiary] seized three simultaneous, separate coaching jobs (girls, boys and the Belarusian national team).

This article, written well after the beneficiary's employment gap, does not explain the discrepancy between her official work record and the aforementioned letters attesting to her coaching successful Belarusian gymnasts from 1993 to 1997. Rather, the beneficiary's quote confirms the information in the work record. The AAO's initial appellate decision informed the petitioner of the preceding inconsistencies and advised that:

> It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On motion, counsel argues that the AAO:

> incorrectly attributed improper inferences to this work record card. Just because [the beneficiary] did not work at the Olympic reserve school for children does not mean that [the beneficiary] did not work at all during this time period. The only evidentiary value of the work record card is that [the beneficiary] did not work for this school during the period represented by the gap in employment. The petitioner has submitted ample evidence explaining her participation with the Belarus Olympic team at this time.
>
> * * *
>
> The letters from [redacted] and [redacted] as well as athletes trained by the beneficiary during the period 1994 and 1997 all attest to the fact that [the beneficiary] was still employed by the Women's Olympic team during this time.
>
> What the AAO has failed to consider is that [the beneficiary] had been working three jobs prior to voluntarily ending her employment [redacted]. The

[redacted] was the only employer that maintained an official work record card system, while the Olympic team and junior Olympic team did not maintain such a system of reporting employment.

The petitioner submits an affidavit from the beneficiary stating:

> 8. I was an athlete until 1991 on the Soviet National Team. Between 1991 and 1993, I was not working when husband was convicted because I had a child and was finishing my college education.
>
> 9. In March 1, 1993, as per my work card attached hereto, I began working for the [redacted]. This is an organization affiliated with or related to the Bela-Russian National Team working together for the common goal to create world class gymnasts. I worked for this organization until Nov. 21, 1994. At the same time I was working for the Belarus National Team as a coach on Floor and Beam as an independent contractor. During this period, I worked 12 hours a day in both jobs. I needed the money since I was a single mother while my husband was incarcerated.
>
> 10. In November of 1994, I was still working on the [redacted], but since I had a young [redacted], I quit the youth team and worked only as an independent contractor for the [redacted] until 1997 working seven hours per day.
>
> 11. Again from 1997 until 1998 I also acquired another job in addition to working for the National Team pursuant to my work card. I worked approximately 12 hours per day during this period.
>
> 12. From 1993 to 1997, I worked as the coach and choreographer (floor and beam) for the Women's Olympic National Team of Belarus as an independent contractor on artistic gymnastics and trained such gymnasts as: [redacted]. My work during this period is corroborated in the attached statement of [redacted], the present Secretary General of the Belarus Gymnastics Association.

As discussed above, the petitioner was advised that independent objective evidence was required to resolve the aforementioned inconsistencies. *See Matter of Ho*, 19 I&N Dec. at 591-92. The beneficiary's affidavit and aforementioned letters of support submitted in support of this petition do not equate to independent objective evidence of her employment with [redacted] from 1993 to 1997. With regard to the letters of support, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Moreover, with regard to counsel's claim that the Olympic team and junior Olympic team did not maintain a system of reporting employment, 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. at 188-89 n.6; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503. Rather than submitting independent objective evidence of her employment (such as official employment records or tax records from 1993 to 1997), the petitioner relies on letters of support and an affidavit prepared for this petition more than a decade later. As previously discussed, the nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. *Id.* Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established primary evidence of the beneficiary's 1993 to 1997 employment with the Women's Olympic National Team of Belarus and the Belarus National Team does not exist or cannot be obtained. Further, the letters of support submitted by the petitioner do not equate to secondary evidence of the beneficiary's employment or affidavits.

Moreover, the record does not include evidence from the Belarus Olympic association explaining how many coaches train the Women's Olympic National Team of Belarus and the Belarus National Team or the significance of the beneficiary's alleged coaching positions. Further, there is no evidence showing that the beneficiary served as the preceding gymnasts' head coach or accompanied them to international competitions as their official coach. Without evidence showing that the success of the preceding Olympic gymnasts was primarily attributable to the beneficiary's coaching, we cannot conclude that their athletic accomplishments demonstrate her sustained national or international acclaim as a coach.

With regard to the beneficiary's coaching accomplishments in the United States, the petitioner submitted an April 12, 2001 letter from [redacted], stating that the beneficiary "is involved in coaching all levels of gymnasts, up to and including the international elite gymnasts." [redacted] further states that the most notable gymnasts coached by the beneficiary in the United States were [redacted], [redacted] and [redacted] While [redacted] identified the programs in which these gymnasts participated, she did not specify any of their nationally or internationally recognized prizes or awards. The petitioner also submitted a letter from [redacted] a correspondent for *International Gymnast*, asserting that [redacted] placed third at the "Junior Friendship Classic," an international competition held in 2002. The petitioner has not established that placing third in a "Junior" level competition equates to a nationally or internationally recognized award or is commensurate with achievement at the very top level of the sport. *See* 8 C.F.R. § 204.5(h)(2).

The petitioner submitted information on motion about the USA Gymnastics Women's Program competency levels stating:

> There are 11 Competency Levels to the USA Gymnastics Women's Program. Levels 1-4 are non-competitive levels that center on teaching the basic core skills for each of the 4 Olympic events.

* * *

The first competitive level is **Level Five**. It consists entirely of compulsory routines. Compulsory routines are a pre-choreographed series of skills that each competitor must perform. Once again they are made up of core skills needed for each event, built on the skills from a previous level. The philosophy of these routines is for the athletes to practice toward perfection of these basics. The minimum age for this level is 7 and there is no maximum age. At level 5 awards are given in achievement and places.

Level Six is also compulsory only level of competition. Each level builds on the skills of the previous level and likewise is judged with higher expectations. . . . The minimum age for this level of competition is 8.

* * *

The first level of optional competition begins with **Level Seven.** Optional competition consists of each gymnast performing her own routines for each event. The Federation of International Gymnastics (FIG) produces the optional rules every 4 years in conjunction with the Olympics.

There are four optional only **levels 7, 8, 9, 10**. The minimum age for level 8 is 8, while for levels 9 and 10 it is 9. As with the compulsory levels, the requirements and expectations from one level to the next increases.

Level 9 is the third level of optional competition. Its difficulty requirements and expectations are harder than at **Level 8**. **Level 10** is considered a Pre-Elite Level and for the truly dedicated and motivated gymnast.

Elite is the 11th level of competition. Like level 10 it is for the truly dedicated athletes. **The Elite level is broken up into 2 categories. National and International. JR. National Elites** compete skill testing and optional routines. **SR. National Elite** competes optional only; **JR. International Elite** competes optional only while **SR. International Elite** competes both compulsory and optional. It is from the International rank that our Olympic and World Championship teams are chosen.

The petitioner also submits data from USGyms.Net showing that out of 54,612 children involved in USA Gymnastics in the year 2000, only 1,767 qualified at Level 10 and only 190 qualified as Elite. We note that the statistics that the petitioner submitted for the population of 54,512 children include Level 4 "non-competitive" athletes and pre-teen youth at various intermediary levels.

In response to the director's request for evidence, the petitioner submitted results from the Region 5 Level 9 & 10 Championships in April 2007 indicating that [redacted] placed first in floor exercise, Junior Olympics Level 10 results reflecting that [redacted] placed fifth in the

"Junior B" category in 2007, and Motown Madness results for 2007 showing that the petitioner placed second in the Level 10 team competition. We note here that awards from regional competitions, such as the "Region 5" gymnastics championships, do not equate to "nationally or internationally" recognized awards. The petitioner also submitted 2008 results from various junior and regional competitions that post-date the filing of this petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider competitive achievements from 2008 or later in this proceeding.

On appeal, the petitioner submitted information about [redacted] and [redacted], but there is no evidence showing that they received any nationally or internationally recognized prizes or awards at the top level of the sport during their period under the beneficiary's direct tutelage. The petitioner also submitted three certificates from USAG indicating that [redacted] qualified for National Talent Opportunities Program Testing, the Women's Junior Olympic State Level 8 Championships in 2004, and the Junior Olympic Level 10 National Championships in 2008. The petitioner's appellate submission also included twelve congratulatory certificates presented to the beneficiary's pupils at the petitioning entity who qualified "to the Women's Junior Olympic Regional Level 8 Championships" in 2008 and 2009. The preceding certificates from 2008 and 2009 post-date the filing of the petition. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding certificates from 2008 and 2009 in this proceeding.

With regard to the statistical data from USGyms.Net and the beneficiary's U.S. athletes' receipt of awards in "Junior Olympic," restricted age group, or other non-elite level competition, we do not find such evidence demonstrates that the beneficiary "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). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[10] Likewise, it does not follow that a gymnastics coach who has had success coaching athletes at the "Junior" or non-elite level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen

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

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

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

to the very top of their field of endeavor." In this case, there is no evidence showing that elite level gymnasts coached primarily by the beneficiary have won nationally or internationally recognized prizes or awards.

Moreover, even if the petitioner were to resolve with independent objective evidence the inconsistencies in the record regarding the beneficiary's Belarusian employment in the 1990s; demonstrate that she was the primary coach of [redacted], [redacted], and [redacted] when they received internationally recognized awards in the mid-1990s; and establish that [redacted] third place in the "Junior Friendship Classic" in 2002 is a nationally or internationally recognized award, this evidence is not sufficient to demonstrate that the beneficiary's national or international acclaim as a gymnastics coach has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Without evidence showing that the gymnasts under the beneficiary's direct tutelage have received nationally or internationally recognized prizes or awards in the five years preceding the petition's filing date, we cannot conclude that her acclaim as a coach of elite gymnasts has been *sustained.*

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(iii), counsel points to the articles in *International Gymnast.* However, there is no evidence showing that articles in this magazine or in any major publications have been written about beneficiary, relating to her work as a coach, subsequent to 2003. Accordingly, the petitioner has failed to submit evidence that demonstrates that the beneficiary has sustained any acclaim as a gymnastics coach she may have garnered as of 2003. *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).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(vi), there is no supporting evidence showing significance of the Belarusian competitions, the names of the participating athletes judged by the beneficiary, or their level of gymnastics expertise. Without contemporaneous documentary evidence establishing that the beneficiary has actually participated as a judge and that her activities involved judging top athletes at the national level or above (rather than age-group categories or junior competitors), we cannot conclude that her involvement was commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor. For instance, [redacted] notes in her letter of support that she has served as an "International Brevet Judge" in internationally recognized competitions. There is no documentary evidence establishing that the beneficiary has served in a comparable judging position at the national or international level. Moreover, we cannot ignore the absence of evidence of the beneficiary's participation as a judge in the decade preceding the petition's filing date. The unsupported claim that the beneficiary served as a gymnastics judge during the 1990s is not sufficient to demonstrate that any acclaim she may have enjoyed has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

Beyond the categories of evidence at 8 C.F.R. § 204.5(h)(3), the petitioner submitted several letters of support, many of which have already been addressed. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters do not equate 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 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). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals selected by the petitioner or the beneficiary.

[redacted] states: "[The beneficiary] is a well-respected gymnastics coach within USA Gymnastics Region 5 not only due to her own personal gymnastic accomplishments, but her coaching abilities in training young athletes. She is a great asset to USA Gymnastics Region 5."

An April 14, 2009 letter submitted on appeal from [redacted]

> [The beneficiary's] athletes have competed at the highest level in the United States, and one of them won the 2008 Junior Olympic (J.O.) Floor Exercise Crown and was subsequently named to the J.O. National Team. . . . This year alone, three of [the beneficiary's] athletes have been offered full athletic scholarships to Division I Institutions.

In the same manner as [redacted] Head Coach at Ohio State University, states that the beneficiary "has helped her athletes earn (3) full scholarships to Division One institutions" during the 2009 gymnastics season. These accomplishments post-date the filing of the petition. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider achievements from 2008 and 2009 in this proceeding. Nevertheless, we cannot conclude that having one's gymnasts win a "Junior" level competition or secure college scholarships demonstrates sustained national or international acclaim at the very top of the field.

[redacted] "I have had the privilege of both coaching with [the beneficiary] [redacted] recruiting athletes that she has coached. Her knowledge of our sport is remarkable, and her ability to communicate what she knows to her athletes, young and old is tremendous."

[redacted] states: "I think [the beneficiary's] experience as a medal winning Olympian combined with her experience in coaching and her educational level are the perfect ingredient for the proper development of our young athletes."

[redacted] of the petitioner, states: "[The beneficiary] was an excellent athlete and an even more extraordinary coach of gymnastics. She is an irreplaceable asset to [the petitioner] and the children she coaches."

[redacted] states: "I have known [the beneficiary] from a young age. We were training at the same gym in Riga, Latvia. I spent years watching her grow from a young, talented gymnast to . . . Olympic Champion! . . . As I am a qualified expert in the gymnastics field, I consider [the beneficiary] as a coach with extraordinary abilities."

[redacted] states: "[The beneficiary] has proven herself as a talented coach. . . . Her achievements in sports as an Olympian gymnast help her in her work. Knowing gymnastics not by hearsay, she successfully transfers the experience to today's sportsmen."

[redacted] a world-renowned gymnastics coach and National Team Coordinator for USA Gymnastics, states:

> [The beneficiary] is a gymnastics coach of extraordinary ability and will continue to work as a gymnastics coach in the U.S. if her permanent residence is granted. . . . [The beneficiary] has participated multiple times at our "[redacted] National Training Camp" TOPs (Talent Opportunity Program), with [redacted]

In this case, the petitioner has submitted letters from impressive experts whose opinions are important in gymnastics. However, the opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *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"). Thus, the content of the experts' statements and how they became aware of the beneficiary'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 achievements and recognition that one would expect of a gymnastics coach who has sustained national or international acclaim.

We acknowledge that many of the beneficiary's references have credentials that are impressive. For example, [redacted] is the National Team Coordinator for USA Gymnastics. [redacted] states that she and her husband, [redacted] "have trained nine Olympic champions" and "fifteen world champions;" that she was head coach of the U.S. women's team for the 1996 Olympics; and that she served as National Team Coordinator for the U.S. women's team between 2001 and 2008 (during which period the team won 44 medals in World Championship and Olympic competition).

[redacted] is the head coach and owner of [redacted] states that he was named [redacted] and the [redacted] and that he has trained seven U.S. National Team Members including

gold, silver, and bronze Olympic medalists. He also served on the International Elite Committee for USAG and [redacted]

In describing her qualifications, [redacted] states:

> I . . . am t[redacted]n. . . . I served [redacted] of the [redacted] to the present, I have been an International Brevet Judge, including judging at the European, World and Olympic Games. From 1993 to the present, I have b[redacted] I have been a member of the Women's Technical Committee of the International Gymnastics Federation, serving [redacted] I have consulted for and/or [redacted]. I coached gymnasts [redacted] . . I also held the position of [redacted]

The preceding individuals' accomplishments indicate that the very top of the beneficiary's field is far higher than the level she has attained at this stage of her coaching career. While the petitioner need not demonstrate that there is no one more accomplished than the beneficiary to qualify for the classification sought, the evidence of record falls short of demonstrating that the beneficiary's achievements at the time of filing were commensurate with sustained national or international acclaim as a gymnastics coach, or being among that small percentage at the very top of the field of endeavor. 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 beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

IV. Conclusion

Review of the record does not establish that the beneficiary 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 beneficiary's achievements set her significantly above almost all others in her 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.

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The AAO affirms its previous decision. The petition remains denied.