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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

PUBLIC COPY

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DATE: **JUL 05 2011** Office: TEXAS 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, 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 in athletics.¹ The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

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

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO will uphold the director's decision.

I. Law

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

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

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

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

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

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on January 19, 2009 as an F-1 nonimmigrant student.

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

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, internationally recognized award) or through meeting at least three of the following ten categories of evidence:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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 1119-20.

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).

² Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. Analysis

A. Evidentiary Criteria

This petition, filed on August 17, 2009, seeks to classify the petitioner as an alien with extraordinary ability in taekwondo. The petitioner's August 10, 2009 "Statement of Intent" submitted at the time of filing states: "I will continue my profession by representing United States in various national/international championships in the sport of Taekwondo. I will also impart my knowledge/skills and train individuals in the sport so that they can represent the United States at the highest level." The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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

The petitioner submitted the following:

1. Diploma stating that the petitioner was granted "first place in individual female sparring in the 12th [redacted] of [redacted] [sic] [redacted] in December 2003;
2. Diploma certifying that the petitioner was awarded a bronze medal for "Female Junior Self Defence" [emphasis added] in the "6th Junior & 1st Veteran [redacted] in July 2004;⁴
3. Diploma certifying that the petitioner was awarded a bronze medal for "Female Junior 3rd Degree Pattern" [emphasis added] in the "6th Junior & 1st [redacted] in July 2004;
4. Diploma from the [redacted] tournament (2005) congratulating the petitioner for first place in the 52 kg category;
5. Fill-in-the-blank diploma awarded to the petitioner for "1st place on pattern 2nd degree in 1st [redacted] (2006);
6. Fill-in-the-blank certificate awarded to the petitioner stating: "For His/Her Participation in [redacted] World Championship of [redacted] World Championship Bronze Medal Hold [sic] At [redacted] On 28th – 1st [sic] May 2006";
7. Fill-in-the-blank diploma stating that the petitioner placed third in the "Junior – Pattern III. Female" [emphasis added] category at the "7th Junior and 2nd [redacted] in July 2006;

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

⁴ For clarification, the International Taekwon-do Federation (ITF) is a separate entity from the World Taekwondo Federation, the official governing body for the sport of taekwondo as recognized by the International Olympic Committee. See http://www.wtf.org/wtf_eng/site/about_wtf/intro.html, accessed on June 1, 2011, copy incorporated into the record of proceedings.

8. Fill-in-the-blank diploma stating that the petitioner placed second in the "*Junior Self-defense routine*" [emphasis added] category at the "7th Junior and 2nd" [redacted] in July 2006;
9. Diploma stating that the petitioner was granted "third place in Female [redacted] category up to 51 kg in the [redacted] in December 2006;
10. Diploma stating that the petitioner was granted "first place in Female Self-Defense [redacted] in December 2006;
11. Certificate from the Center of [redacted] stating that the petitioner received a gold medal in female individual sparring at the first [redacted];
12. Certificate from the Center of [redacted] stating that the petitioner received a bronze medal in the female individual pattern category at the 1st [redacted];
13. January 17, 2007 "Letter of Commendation" to the petitioner from the [redacted] of the [redacted] and [redacted] "for well-deserved success in sport in [redacted] and [redacted] Competitions in 2006";
14. December 21, 2006 diploma from the [redacted] recognizing the petitioner as "The best [redacted] 2006";
15. Diploma stating that the petitioner won 2nd place at the 15th [redacted] in the Female [redacted], Individual category (April 2007);
16. "Letter of Commendation" to the petitioner from the [redacted] and [redacted] "for well-deserved success in sport in [redacted] (2007);
17. December 21, 2007 diploma from the [redacted] recognizing the petitioner as "The best [redacted] 2007";
18. Fill-in-the-blank diploma congratulating the petitioner for winning 2nd place in the pattern competition, senior individual female division, 3rd degree category at the 4th [redacted] in April 2008;
19. Fill-in-the-blank diploma congratulating the petitioner for winning 1st place in the sparring competition, senior individual female division, 51 kg category at the 4th [redacted] in April 2008;
20. Certificate stating that the petitioner "has been conferred the title of [redacted] since August 17, 2005";
21. Certificate stating that the petitioner has been conferred the title of "[redacted] of the [redacted] since March 30, 2006."

The petitioner also submitted a July 29, 2009 letter from the [redacted] of [redacted] Park, Florida stating that the petitioner received two gold medals at the "2008 Open U.S. Championship in North Carolina"

and a gold medal and a bronze medal at the "2008 Open U.S. Championship in New York."⁵ Rather than submitting primary evidence of the preceding four awards, the petitioner instead submitted a letter attesting to their existence. 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)). 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 July 29, 2009 letter from the president of the USANTF does not comply with the preceding regulatory requirements.

In response to the director's Notice of Intent to Deny (NOID), the petitioner submitted a November 11, 2009 letter from the president of the ITF stating:

The International Taekwon-Do Federation (ITF) has been established since 1955. In over 50 years of existence which the students/practitioners were practicing in only a few countries, now are located in 125 countries

The ITF's headquarters is located in Vienna, Austria.

Since our inception, we have been able to organize 16th [sic] World Championships and 8th [sic] Junior World Championships. The World Championship is analogous to the Olympic games. As in the Olympic games, the best competitors are selected to represent each country. The students/practitioners participating in the World Championship are differentiated from the Junior Championship by age categorization. Those who are 18 years of age and up are able to compete in the World Championship and only 14 through 18 year old are able to compete in the Junior Championship. The Junior World Championship was created after we recognized the large interest in participation in the competition-aspect of Taekwon-Do amongst the youth. After the World and Junior Championships, we established regional tournaments, such as the European and Asian Opens. The growth in number of tournaments is in line with the growing number of students/practitioners interested, willing, and able to participate in these intense events. For example, last World Championship (Russia-2009) hosted 83 countries hence showing significant growth and interest in Taekwon-do ITF.

⁵ For clarification, the United States of America National Taekwon-Do Federation (USANTF) is a separate entity from USA Taekwondo, the official governing body for the sport of taekwondo in the United States as recognized by the U.S. Olympic Committee. See <http://usa-taekwondo.us/about-usa-taekwondo>, accessed on May 31, 2011, copy incorporated into the record of proceedings.

As in other major competitions, Taekwon-Do includes the medaling/placement for those who have excelled at the competitions. The awards are as follows: 1st place (gold), 2nd place (silver), 3rd place (bronze), and a diploma is awarded along with these award holders. The diploma is equal to a certificate of placement. A student/Taekwon-Do practitioner represents their country in individual and/or team events. A competition consists of several components. A student may compete in one category alone or in multiple categories.

The categories consist of the following:

1. Individual (competing alone against others) – Sparring, Patterns
2. Team (competing as home country vs. other country) – Sparring, Patterns
3. Special Techniques-which exhibit specialized skills in one particular area
4. Power Breaking Techniques
5. Self-Defense

Those who are invited to compete have achieved at minimum a first degree Black Belt (1st Dan). This achievement takes at least 3 years of study and training under a certified instructor. ITF has set standards for achievement and testing; therefore, those who are considered a Black Belt have met our set standards through various testing.

The petitioner also submitted a November 23, 2009 letter from the president of the USANTF stating:

Our organization is recognized as the United States National Taekwon-Do Federation, the national governing body for the ITF (International Taekwon-Do Federation).

The United States' Taekwon-Do Team was recently invited to and participated in the 9th Annual Pan-American ITF Championship, which took place in Yauco, Puerto Rico. The competition was held from the 19th till the 22nd of November 2009. There were approximately 1,000 participants, umpires, officials, honored guests, friends, and family members in attendance. Along with the United States, the following countries were participating in the Pan-American Championship: Canada, Puerto Rico, Mexico, Argentina, Venezuela, Columbia, Chile, Peru and Bolivia.

The U.S. Team had 13 competitors. Our team won 26 medals in total. Of those 26 medals, 8 were gold, 9 were silver, and 9 were bronze.

Our efforts and preparation for the [REDACTED] were apparent by the results yielded in the student's performance and winnings. [The petitioner's] [REDACTED] was one of the key factors contributing to our team's success. She was training the [REDACTED] up to several hours daily. At the same time [the petitioner] was preparing herself to compete in adult category and she showed great results – Gold medals.

The [REDACTED] has greatly benefited by the relationship built with [the petitioner] and we look forward to many more training sessions and competitions, which will yield similar gold standard results.

The preceding letters from the [REDACTED] of the [REDACTED] and the [REDACTED] are insufficient to demonstrate that awards distributed in their competitions are nationally or internationally recognized. USCIS need not rely on self-promotional material.⁶ Further, the medals received by the petitioner and her teammates at the 9th [REDACTED] [REDACTED] in November 2009 post-date the petition's August 17, 2009 filing date.⁷ 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 the competitive achievements of the petitioner and her teammates at the 9th Annual Pan-American ITF Championship in this proceeding. Nevertheless, the petitioner did not submit documentary evidence specifying the competitive categories in which the petitioner received gold medals at the 9th [REDACTED]

With regard to items 1 – 15, items 18 – 19, and the petitioner's other awards mentioned in the two letters from the [REDACTED] of the [REDACTED], the record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by the petitioner. For instance, there is no evidence of the official comprehensive results from the preceding competitions indicating the total number of entrants in the petitioner's competitive category or weight division. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with her award certificates, including those with misspellings and fill-in-the-blank sections. The submitted documentation does not establish that the petitioner's awards were recognized beyond the context of the events where they were presented and therefore commensurate with "nationally or internationally recognized" prizes or awards for excellence in the field.

The petitioner's response also included participation certificates for the 12th [REDACTED] [REDACTED] in 2003, the [REDACTED] [REDACTED] in 2006, the 4th [REDACTED] [REDACTED] in April 2008, the "6th Junior & 1st [REDACTED] [REDACTED] Malaysia" in July 2004, the 1st [REDACTED] [REDACTED] the 15th [REDACTED] [REDACTED]

⁶ 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).

⁷ For clarification, the record indicates that the petitioner participated in the 9th Annual Pan-American ITF Championship in Puerto Rico in 2009 rather than the multi-sport Pan American Games. The multi-sport Pan American Games are held every four years in the year preceding the Olympics (2003, 2007 and 2011 in this decade) and are conducted by the Pan American Sports Organization. See <http://www.olympics.bm/pasocourses.htm> and http://www.guadalajara2011.org.mx/eng/02_juegos/origen_ediciones.asp, accessed on June 1, 2011, copies incorporated into the record of proceedings.

██████████ in Slovenia in April 2007, the "7th Junior and 2nd ██████████ ██████████ in July 2006, and the ██████████ ██████████ in Puerto Rico in November 2009. There is no evidence showing that these certificates are nationally or internationally recognized prizes or awards for excellence in the field, rather than simply acknowledgments of the petitioner's participation in the competitions. Further, the latter participation certificate from the 9th ██████████ ██████████ in November 2009 post-dates the petition's August 17, 2009 filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's November 2009 participation certificate in this proceeding.

Finally, regarding items 1 – 21, the awards mentioned in the two letters from the ██████████ of the ██████████, and the participation certificates, the petitioner did not submit evidence of the national or international *recognition* of her particular awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's awards are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she meets 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 order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted ITF certificates indicating that she attained first, second, and third degree Dan levels. The record, however, does not include evidence of the membership requirements (such as bylaws or rules of admission) for the ITF showing that it requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. 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.⁸ Therefore, even if the petitioner were to submit supporting documentary evidence showing that the petitioner's membership in the ITF meets the elements of this criterion, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner's membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts. On appeal, the petitioner does not contest the director's findings for this criterion or offer any arguments. The AAO, therefore, considers this issue to be abandoned and will not further discuss it on appeal. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005). Accordingly, the petitioner has not established that she meets this criterion.

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

In 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.⁹

The petitioner submitted an August 12, 2004 article in *Sport* entitled '[REDACTED]' but the author of the material was not identified as required by the plain language of this regulatory criterion. The article includes an interview of the [REDACTED] of [REDACTED] and his impressions regarding the ITF's 6th [REDACTED] in Malaysia. The article only briefly mentions the petitioner and is primarily about her team in general. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien."¹⁰ Further, there is no circulation evidence showing that *Sport* qualifies as a professional or major trade publication or some other form of major media.

⁸ 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).

⁹ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

¹⁰ 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 submitted an article in [REDACTED] entitled "[REDACTED]" but the date of the material was not provided as required by the plain language of this regulatory criterion. Further, the article only briefly mentions the petitioner and there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a three-sentence article entitled "The homework was done excellent" listing her name and nine others, but date and the title of the publication were not provided as required by the plain language of this regulatory criterion.

The petitioner submitted a February 27, 2005 article in [REDACTED] entitled [REDACTED]" listing her name and nine others. This brief article is about the team in general and only mentions the petitioner's name in passing. The petitioner also submitted a May 9, 2007 article in [REDACTED] entitled [REDACTED]" but the author of the material was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the latter article, which includes an interview of the team trainer and his impressions regarding the team in general, is not about the petitioner. In response to the director's NOID, the petitioner submitted a letter from the [REDACTED] stating: "*Varzish-Sport* is a sport publication that is issued every week 5000 copies in number."

The petitioner submitted a two-sentence article in [REDACTED] entitled "[REDACTED] was graceful as crane" listing her name and six others, but the date and author of the material were not identified as required by the plain language of this regulatory criterion. Further, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a May 2008 two-page article in [REDACTED] (a magazine for airline passengers) entitled [REDACTED] but the article includes only six sentences mentioning her. In response to the director's NOID the petitioner submitted a letter from the publication's [REDACTED] stating: "[REDACTED] is the local issue (precisely the journal which should be read on board) and this issue has been being primed each month for about 5000 copies."

The petitioner submitted a two-sentence article entitled [REDACTED] listing her name and ten others, but the title of the publication and its date were not identified as required by the plain language of this regulatory criterion.

Unlike the preceding published material, some of the articles submitted by the petitioner were about her rather than primarily about her team. The petitioner submitted a January 14, 2005 eight-sentence article about her in [REDACTED] entitled [REDACTED]" but there is no evidence showing that this newspaper qualifies as a professional or major trade publication or some other form of major media. The petitioner also submitted a brief August 10, 2006 interview of her in [REDACTED] entitled [REDACTED]" but the author of the material was not identified as required by the plain language of this regulatory criterion. Moreover, there is no evidence showing that [REDACTED] qualifies as a professional or major trade publication or some other form of major media. The petitioner's documentation also included a March 29, 2007 interview of her in

██████████ entitled ██████████" The petitioner also submitted a 2008 interview of her entitled "The bright star of ██████████" but the title of the publication was not provided as required by the plain language of this regulatory criterion. Finally, the petitioner submitted a 2008 article in ██████████ entitled "██████████ wishes to win the world," but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In response to the director's NOID, the petitioner submitted a letter from the publication's ██████████ stating: "██████████ is a youth weekly paper in Tajikistan. Its circulation is more than four thousand & it's from 16 pages."

The circulation information provided in the letters from the editors of ██████████ and ██████████ indicates that their distribution is limited to approximately 4000 – 5000 copies. The self-serving information from the preceding editors is not sufficient to demonstrate that their publications qualify as major media. USCIS need not rely on self-serving assertions.¹¹ Even if the AAO were to accept the editors' information, which it does not, there is no evidence showing the distribution of ██████████ and ██████████ relative to other Tajikistani media to demonstrate that the submitted articles were published in professional or major trade publications or other *major* media.

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

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

Counsel argues that the petitioner's participation in taekwondo tournaments meets the elements of this regulatory criterion. The petitioner's field, however, is in athletics rather than the arts. The plain language of this regulatory criterion indicates that it applies to artists. Regarding the petitioner's participation in ██████████ tournaments, tournament participation is not a display of artwork but an athletic competition. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. This interpretation has been upheld by at least one district court. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (finding that the AAO did not abuse its discretion in finding that a performing artist should not be considered under the display criterion). While the AAO acknowledges that the district court's decision is not binding, the court's reasoning indicates that the AAO's interpretation of the regulation is reasonable. Moreover, the petitioner's participation and success in taekwondo tournaments have already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" her work in the sense of competing in front of an audience. Accordingly, the petitioner has not established 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.

¹¹ *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).

The petitioner initially submitted a letter from the [redacted] of the [redacted] and [redacted] stating:

[The petitioner] is working at [redacted] and [redacted] since 2003 as a [sic] instructor on [redacted] in junior groups.

* * *

During period of her work at [redacted] and [redacted] [the petitioner] has recommended herself as a well-organized, disciplined and diligent worker. The obligations assigned to her she fulfils with responsibility and scruple. She is well regulated and honest by nature. She is treating her pupils with consideration and care. She is highly considered by the staff and she is being an authority for the growing up younger generation. She is activity [sic] participating in all the events held by the Centre.

There is no evidence showing that the [redacted] and [redacted] has a distinguished reputation when compared to other organizations in her sport. Further, there is no documentation detailing the specific nature of the petitioner's duties and responsibilities as an instructor to demonstrate that her role was leading or critical. Moreover, there is no documentary evidence of official competitive results showing the extent of the petitioner's pupils' tournament successes. The submitted evidence fails to demonstrate how the petitioner's role differentiated her from the other staff working for the [redacted] and [redacted], let alone staff managers such as the Director General.

The petitioner also submitted a July 29, 2009 letter from the [redacted] of the [redacted] stating:

[The petitioner] has been selected to represent the [redacted] at [redacted] [redacted] which will be held in Saint Petersburg, Russia in October 2009. [The petitioner] was one of the main organizers for the USA national team selection and tournament which was held at the USA headquarters here in Ft. Lauderdale, Florida. She is also the head coach for the female USA team that will go to the world championships in St. Petersburg, Russia.

The October 2009 competition in St. Petersburg occurred subsequent to the petition's filing date. As previously discussed, the petitioner's 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. 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. Further, although the petitioner's response to the director's NOID included evidence of her participation in the ITF competition held in Puerto Rico in November 2009, there is no documentation of her participation in the World Championship in St. Petersburg one month earlier. Moreover, there is no documentary evidence showing that the USANTF female team coached by the petitioner has a distinguished reputation. As previously

discussed, 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. at 165.

In response to the director's NOID, the petitioner submitted a November 24, 2009 letter from counsel stating: "We did not intend to satisfy this criteria [sic]." On appeal, however, counsel argues: "Petitioner has presented evidence that she was a lead [redacted] in her native country of Tajikistan . . . as well as a coach for the [redacted] under the auspices of the [redacted]. Both these organizations have a distinguished reputation, both at the national levels in Tajikistan and United States." Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's appellate submission does not include documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

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

Summary

In this case, the AAO concurs with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, 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. 8 C.F.R. § 204.5(h)(3).

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

In his August 13, 2009 letter accompanying the petition, counsel initially argued that the reference letters should be considered as comparable evidence of the petitioner's extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the categories of evidence specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has submitted evidence pertaining to multiple categories of evidence. Where an alien is simply unable to meet three of the categories of evidence at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of her field. The petitioner's reference letters have already been addressed under the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) and (viii). While reference letters can provide useful information about an alien's qualifications or

help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute 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 references selected by the petitioner.

C. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO will 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 the preceding discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (vii), and (viii).

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(i), there is no evidence showing that the petitioner faced top national or international [REDACTED] competitors in the event categories in which she competed. Without evidence showing that the petitioner faced a significant pool of top competitors in Tajikistan, the United States, or internationally, the AAO cannot conclude that the submitted awards demonstrate her sustained national or international acclaim.¹² Awards won by the petitioner in age-restricted tournaments, in competitive categories with only a limited pool of entrants, or in competitions not shown to have a level of stature and scope comparable to those identified on the [REDACTED] website do not establish 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). 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 60899.¹³ Likewise, it does not

¹² As previously discussed, the World Taekwondo Federation is the official governing body for the sport of taekwondo as recognized by the International Olympic Committee. The World Taekwondo Federation's website identifies top taekwondo competitions such as the 2011 U.S. Open, the 2011 WTF World Taekwondo Championships, the 16th Pan American Games, and the Olympic Games. See http://www.wtf.org/wtf_eng/site/events/calendar.html, accessed on June 2, 2011, copy incorporated into the record of proceedings.

¹³ While the AAO acknowledges that a district court's decision is not binding precedent, the AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

follow that an athlete who has received awards in age-restricted competition, obscure tournaments, or event categories and divisions with only a small pool of entrants should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(3)(ii), there is no evidence showing that the ITF requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field. In regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(iii), the petitioner submitted articles about her in [REDACTED] and [REDACTED] but there is no evidence showing that the articles meet the remaining requirements of the regulation such as being published in major media. With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(vii), tournament participation is not a display of artwork but an athletic competition. Finally, regarding the documentation submitted for 8 C.F.R. § 204.5(h)(3)(viii), the petitioner did not submit evidence establishing that she performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

In this case, the record lacks extensive documentation of the petitioner's achievements as a taekwondo competitor, instructor, and coach. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the evidence of record falls short of demonstrating the petitioner's sustained national or international acclaim in the sport of taekwondo. 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 the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The submitted evidence does not establish that the petitioner's achievements at the time of filing were commensurate with sustained national or international acclaim in competitive athletics, coaching, or taekwondo instruction, and being among that small percentage at the very top of her field.

III. 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

[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.

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.

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

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

ORDER: The appeal is dismissed.