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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: NOV 18 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:
[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, 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 has received major, internationally recognized awards and that he meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (vi) and (viii). 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 The record reflects that the petitioner was last admitted to the United States on October 28, 2007 as a B-2 nonimmigrant visitor for pleasure.

(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. *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 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).

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

This petition, filed on April 17, 2008, seeks to classify the petitioner as an alien with extraordinary ability “in the field of Chinese Martial Arts.”

A. *Major, internationally recognized award*

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

The petitioner submitted the following:

1. Certificate of Award stating: “This is to certify, on this [redacted] that [the petitioner] win [sic] the First Place for mid-age (B) preying mentis [sic] on The Macao Traditional Chinese Martial Arts Celebrities Invitational Tournament”;
2. Certificate of Award stating: “This is to certify, on this [redacted] 6, that [the petitioner] win [sic] the Second Place for [redacted] [sic] on The Macao Traditional Chinese Martial Arts Celebrities Invitational Tournament”;
3. Certificate of Award stating: “This is to certify, on this [redacted], that [the petitioner] win [sic] the First Place for mid-age (B) preying mentis [sic] sword on the Macao Traditional Chinese Martial Arts Celebrities Invitational Tournament”;
4. Certificate of Award from the Qingdao City Physical Culture Administration and the Qingdao City Martial Arts Association stating: “This is to certify, on this [redacted] [redacted], that [the petitioner] win [sic] the First Place for mid-age preying mentis [sic] on the Qingdao 2nd Session of Sports Tournament”;
5. [redacted] Certificate of Honor from the Qingdao City Physical Culture Administration stating that the petitioner was “awarded Outstanding Martial Artist

- because of [his] great contribution to carrying on and developing Chinese traditional martial arts”;
6. [REDACTED] Certificate of Honor from the Qingdao City Physical Culture Administration stating that the petitioner was “awarded Outstanding Martial Artist because of [his] great contribution to carrying on and developing Chinese traditional martial arts”;
 7. [REDACTED] Certificate of Honor from the Qingdao City Physical Culture Administration thanking the petitioner for making a “great contribution to carrying on and developing Chinese traditional martial arts and keeping fit of the people [sic]”;
 8. “Notice of Issuing 2006 Qingdao City Outstanding Martial Arts Coaches” stating that the petitioner was listed among 104 “martial arts coaches” who received an “Outstanding Coach medal”;
 9. Three [REDACTED] Certificates of Participation stating that the petitioner achieved first place in events at the “2nd International Traditional Kung Fu Tournament & Masters Exhibition”;
 10. Three “First Place Award” certificates from events at the [REDACTED] [REDACTED] held July 17 – 19 in Plano, Texas;
 11. “Master Demonstration Excellence Award” dated [REDACTED] from the 2009 U.S. Open Martial Arts Championship; and
 12. “Certificate of Award” stating that the petitioner achieved first place in the “Adult ADV Weapons – Kung Fu Other Weapon Men” category at the [REDACTED] U.S. International Kuo Shu Championship in [REDACTED]

With regard to the English language translations submitted for items 1 – 8, the translations accompanying these awards were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. *Id.* In regard to items 9 - 12, these certificates include sections in the Chinese language that were not fully translated as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, regarding items 1 – 8, there is no evidence showing that these awards are major, internationally recognized awards rather than regional awards from a tournament held in Macao or local awards from “Qingdao City.” In regard to items 10 – 12, the AAO notes that the petitioner received these certificates subsequent to the petition’s April 17, 2008 filing date. Eligibility, however, must be established at the time of filing the petition. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). Accordingly, the AAO will not consider the “Certificate of Award” from the 2009 U.S. International Kuo Shu Championship, the Master Demonstration Excellence Award from the 2009 U.S. Open Martial Arts Championship, and the three first place award certificates from the 2009 Legends of Kung Fu World Martial Arts Championship in this proceeding. Nevertheless, there is no evidence showing that these certificates equate to major, internationally recognized awards. For example, the online event results for the 2009 Legends of Kung Fu World Martial Arts Championship list the top three finishers for more than 250 competitive categories including “Kids,

< 2 yrs exp” (kids with less than 2 years of experience) and “Adult Men, Advanced.”³ The petitioner is identified as placing first in the “Executive Men, Advanced” category of both the “Traditional Northern Praying Mantis” event and the “Open Flexible Weapon” event, but there is no evidence showing that the petitioner competed against anyone in his specific category. The AAO cannot conclude that placing first in an event category with no other competitors or a limited number of entrants is evidence of a major, internationally recognized award.

With regard to items 1 – 4 and 9 – 12, the record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by the petitioner. For instance, the petitioner failed to submit evidence of the official comprehensive results from the preceding competitions indicating the total number of entrants in his competitive category or age division. A victory in an event category with a limited pool of entrants or talent is not evidence of international recognition. Moreover, a competition may be open to athletes from various countries, but this factor alone is not adequate to establish that an award from the event qualifies as a major, internationally recognized award. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his award certificates.

Regarding items 1 – 12, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) requires the petitioner’s receipt of a major, internationally recognized award. There is no documentary evidence (such as extensive media coverage) showing the level of recognition accorded to the petitioner’s receipt of the preceding awards. The documentation submitted by the petitioner does not establish that his awards were recognized beyond the context of the events where they were presented and therefore commensurate with major, internationally recognized awards in the martial arts. Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement.

B. Evidentiary Criteria

The petitioner has submitted documentation pertaining to the following categories of evidence under 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.

As previously discussed, the petitioner submitted the following:

1. Certificate of Award stating: “This is to certify, on this 22nd day of August, 2006, that [the petitioner] win [sic] the First Place for mid-age (B) preying mentis [sic] on The Macao Traditional Chinese Martial Arts Celebrities Invitational Tournament”;

³ See <http://www.legendsofkungfu.com/downloads/External2009.pdf>, accessed on October 28, 2011, copy incorporated into the record of proceeding.

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

2. Certificate of Award stating: “This is to certify, on this [redacted], that [the petitioner] win [sic] the Second Place for [redacted] [sic] on The Macao Traditional Chinese Martial Arts Celebrities Invitational Tournament”;
3. Certificate of Award stating: “This is to certify, on this [redacted], that [the petitioner] win [sic] the First Place for mid-age (B) preying mentis [sic] sword on the Macao Traditional Chinese Martial Arts Celebrities Invitational Tournament”;
4. Certificate of Award from the Qingdao City Physical Culture Administration and the Qingdao City Martial Arts Association stating: “This is to certify, on this [redacted] that [the petitioner] win [sic] the First Place for mid-age preying mentis [sic] on the Qingdao 2nd Session of Sports Tournament”;
5. [redacted] Certificate of Honor from the Qingdao City Physical Culture Administration stating that the petitioner was “awarded Outstanding Martial Artist because of [his] great contribution to carrying on and developing Chinese traditional martial arts”;
6. [redacted] Certificate of Honor from the Qingdao City Physical Culture Administration stating that the petitioner was “awarded Outstanding Martial Artist because of [his] great contribution to carrying on and developing Chinese traditional martial arts”;
7. [redacted] Certificate of Honor from the Qingdao City Physical Culture Administration thanking the petitioner for making a “great contribution to carrying on and developing Chinese traditional martial arts and keeping fit of the people [sic]”;
8. “Notice of Issuing [redacted] Qingdao City Outstanding Martial Arts Coaches” stating that the petitioner was listed among 104 “martial arts coaches” who received an “Outstanding Coach medal”;
9. Three [redacted] Certificates of Participation stating that the petitioner achieved first place in events at the “2nd International Traditional Kung Fu Tournament & Masters Exhibition”;
10. Three “First Place Award” certificates from events at the “2 [redacted] [redacted] held July 17 – 19 in Plano, Texas;
11. “Master Demonstration Excellence Award” dated [redacted] from the 2009 U.S. Open Martial Arts Championship; and
12. “Certificate of Award” stating that the petitioner achieved first place in the “[redacted]” category at the 2009 U.S. International Kuo Shu Championship in July 2009.

With regard to the English language translations submitted for items 1 – 8, the translations accompanying these awards were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). In regard to items 9 - 12, these certificates include sections in the Chinese language that were not fully translated as required by the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, regarding items 1 – 8, there is no evidence showing that these awards are nationally or internationally recognized awards for excellence in the field rather than regional awards from a tournament held in Macao or local awards from “Qingdao City.” In regard to items 10 – 12, the AAO notes that the petitioner received these certificates subsequent to the petition’s April 17, 2008 filing date. As previously discussed, eligibility must be established at the

time of filing the petition. 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 “Certificate of Award” from the 2009 [REDACTED] from the 2009 U.S. Open Martial Arts Championship, and the three first place award certificates from the 2009 [REDACTED] in this proceeding. Nevertheless, there is no evidence showing that these certificates equate to nationally or internationally recognized awards for excellence in the field.

With regard to items 1 – 4 and 9 – 11, the record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by the petitioner. For instance, the petitioner failed to submit evidence of the official comprehensive results from the preceding competitions indicating the total number of entrants in his competitive category or age division. Victories in obscure tournaments or in event categories and divisions with only a small pool of entrants are not persuasive evidence of national or international recognition. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is “nationally or internationally recognized.” The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards.

Regarding items 1 – 11, the petitioner did not submit evidence of the national or international *recognition* of his particular awards, such as national or widespread local coverage of his awards in professional or general media. 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 his burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner’s awards were 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 he 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.

The petitioner initially submitted evidence of his membership in the United States of America Wushu Kungfu Federation (USAWKF), but there is no documentary evidence (such as membership bylaws or rules of admission) showing that the USAWKF requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner’s field. In response to the director’s notice of intent to deny (NOID), the petitioner submitted a June 25, 2008 Certificate of Membership for the America National Martial Arts Kung Fu Center (ANMAKFC) and a November 21, 2008 Certificate of Appointment from the ANMAKFC reflecting that the petitioner was “appointed to the position of Advisor.” The petitioner’s admission to membership and appointment as advisor in the ANMAKFC post-date the

petition's April 17, 2008 filing date. As previously discussed, eligibility must be established at the time of filing the petition. 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 June 25, 2008 ANMAKFC membership and November 21, 2008 advisor appointment in this proceeding. Nevertheless, there is no evidence showing the ANMAKFC requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

On appeal, the petitioner submits his membership certificates for the Qingdao Wushu Association (QWA) and the China Qingdao Shi Bei District Wushu Association (CQSBDWA), but he failed to submit documentary evidence of the organizations' membership requirements. The petitioner also submitted his membership certificate for the Chinese Wushu Association dated November 18, 2006 and a document entitled "Chinese Wushu Association," but the English language translations accompanying these documents were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). The "Chinese Wushu Association" document states: "The applicants for joining the Association must meet the following requirements: (A) agree with the Association's constitution; (B) wish to join the association; (C) have a certain influence in the field of martial arts." The AAO cannot conclude that the preceding requirements equate to outstanding achievements. The petitioner also submits a certificate dated 2008-2010 stating that he "has the Basic Membership of the Lily Lau Eagle Claw Kung Fu Federation International" (LLECKFFI) and marketing material for the organization, but there is no information regarding its requirements for Basic Membership. There is no documentary evidence demonstrating that the Chinese Wushu Association, the LLECKFFI, the QWA, and the CQSBDWA require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

In light of the above, the petitioner has not established that he 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.⁵

Counsel asserts that the petitioner's achievements have been covered in *World Journal*, *Sing Tao Daily*, *Qingdao Martial Arts Circle*, *China Town Monthly*, and *Biographies of Famous Masters in*

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

Concurrent Chinese Martial Art Circles, but there is no documentary evidence of this published material. 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 Obaighena*, 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). 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). Both the director's NOID and the March 2, 2010 decision specifically informed the petitioner that he failed to submit documentary evidence of published media coverage about him. The petitioner, however, failed to respond by submitting copies of the published material in *World Journal*, *Sing Tao Daily*, *Qingdao Martial Arts Circle*, *China Town Monthly*, and *Biographies of Famous Masters in Concurrent Chinese Martial Art Circles*. The petitioner also failed to submit documentary evidence showing the distribution of the preceding publications relative to other Chinese media to demonstrate coverage in professional or major trade publications or other major media.

On appeal, counsel points to an entry in *Wikipedia*, an online encyclopedia, that purportedly mentions the petitioner "as one of the founders of mantis boxing," but the petitioner did not submit documentary evidence of the article. While counsel provided the internet link for the *Wikipedia* entry, he did not submit a printout of the material from the website. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As previously discussed, it is the petitioner's burden to provide the requisite initial evidence. See 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). Furthermore, in visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); section 291 of the Act; 8 U.S.C. § 1361. Instead of simply identifying the internet link for the article, the petitioner should have submitted a printout of the material from *Wikipedia's* website. While the AAO finds it within its discretion to verify any evidence in support of the petition, it is not the AAO's burden to search for evidence on behalf of the petitioner. Nevertheless, with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ See *Lamilem*

⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

Badasa v. Michael Mukasey, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source.

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

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

The petitioner submitted a "First Grade Referee Certificate" issued by the Qingdao Sports Bureau in December 2006 and a "Certificate of Martial Arts Judge" (Third-Class) issued by the Physical Culture Administration of Qingdao City in January 2004, but the English language translations accompanying these documents were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Neither of the preceding certificates constitutes evidence of the petitioner's actual "participation" as a judge. There is no documentary evidence showing the names of the competitions judged by the petitioner, the dates that those events took place, the specific competitive categories he evaluated, or the names of the participating athletes. Rather, the preceding documents only reflect the petitioner's qualification to serve as a judge and a referee. Moreover, there is no evidence demonstrating that a "referee" actually judges competitors, such as assigning points or determining winners, rather than merely enforcing the rules and maintaining a fair contest. The record lacks official competition rules showing that serving as a "referee" equates to participating as a "judge" of the work of others.

The petitioner submitted a November 2007 letter from [REDACTED] stating that he worked "as judge for Qingdao City martial arts tournaments and Qigong competitions" and a December 16, 2007 letter from the [REDACTED] stating that he worked "as judge for our martial arts tournaments and Qigong competitions." The preceding letters do not include an address, a telephone number, or any other information through which their author can be contacted. The petitioner also submitted a September 2007 letter from [REDACTED] stating that he worked "as judge for our Tai Chi Chuan contests." The English language translations accompanying the preceding letters were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no documentary evidence indicating the dates of the competitions, the specific competitive categories judged by the petitioner, or the names of the participating athletes. Merely submitting documentary evidence identifying the petitioner as a judge without evidence demonstrating who he judged is insufficient to establish eligibility for this regulatory criterion. 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. Rather than submitting documentary evidence of his participation as a judge in specific competitions, the petitioner instead submitted brief, vague letters attesting to his purported involvement. 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 letters submitted by the petitioner do not comply with the preceding regulatory requirements.

In response to the director's NOID, the petitioner submitted an October 25, 2009 certificate stating that he received a "Master Demonstration Excellence Award" at the 2009 U.S. Open Martial Arts Championship. This award post-dates the petition's April 17, 2008 filing date. As previously discussed, eligibility must be established at the time of filing the petition. 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 "Master Demonstration Excellence Award" in this proceeding. Nevertheless, there is no evidence demonstrating that the petitioner's receipt of the preceding award constitutes evidence of his participation, either individually or on a panel, as a judge of the work of others in his field.

On appeal, the petitioner submits a June 2007 letter announcing the 2nd International Traditional Kung Fu Wushu Tournament & Masters Exhibition on August 11, 2007. The letter invites the petitioner and his students to attend and requests his services "as a Judge/Official." Although the petitioner submitted three August 11, 2007 Certificates of Participation stating that he achieved first place in events at the "2nd International Traditional Kung Fu Tournament & Masters Exhibition," there is no documentary evidence demonstrating that the petitioner actually participated as a judge of the work of others. As previously discussed, the plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Receiving an invitation or request to judge at a particular event is not tantamount to evidence of one's actual "participation" as a judge.

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

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

The petitioner submitted letters of support from his personal contacts discussing his martial arts achievements, skills, and talent. Success and talent in one's sport, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted his field.

[REDACTED] of the World Kuoshu Federation, states:

I have no doubt that [the petitioner's] talent will make him a success at his future endeavor. His expertise in Chinese Martial Arts, especially in Seven-Star Preying Mentis [sic], will expose this powerful form of Chinese Martial Arts to an entirely new group of practitioners, offering Americans a way to stay physically healthy and mentally balanced.

[REDACTED] compliments the petitioner on his martial arts expertise, but he does not provide specific examples of how the petitioner's original work has already impacted the field. There is no evidence showing that the petitioner's work constitutes original contributions of major significance in the field.

[REDACTED] for Preying Mentis [sic] Committee," Qingdao City Martial Arts Association, states:

Seven-Star Preying Mentis [sic] is regarded as a highly complex form, identified by very fast movements and alternate kick motions which are intricate and very challenging to master. Becoming a master in these complex forms is enough of a task to last a man's lifetime, but [the petitioner] went further and pursued to upgrade the techniques of Seven-Star Mentis, rather than just follow suit. He and [REDACTED] together created a new set of arrangement for teaching and practicing Seven-Star Preying Mentis [sic] Kung Fu, which emphasizes a harmonious use of practitioner's elbows, hips, and knees.

[REDACTED] states that [REDACTED] and the petitioner created instructional material for teaching and practicing Seven-Star Preying Mantis Kung Fu, but there is no documentary evidence showing that this work has notably influenced the field or otherwise equates to original contributions of major significance in the martial arts.

[REDACTED] "North of America Martial Arts School," states:

I have encountered few artists who can surpass [the petitioner] in terms of all-around skill. His technique is flawless, with exquisite detail work and plentiful surprises. He is a powerful and dynamic martial artist who is supremely in control of his craft. However, what sets him apart and ranks him even more highly than the finest martial artists in his unparalleled background and his diverse style. It was this quality that makes him a rising star, and a true asset to a community.

[REDACTED] compliments the petitioner on his skill, technique, and style, but he does not provide specific examples of how the petitioner's work has influenced the field at large.

[REDACTED] World Traditional Martial Arts Union and [REDACTED]

[REDACTED] states:

[The petitioner] is a great man with honesty, talents, and, most impressively, strong enthusiasm in promoting mass martial arts movements. Definitely, he is an expert practitioner, instructor and promoter of [REDACTED] and, especially, Seven-Star Preying Mantis [sic] (a specific system of Chinese martial arts).

[REDACTED] comments on the petitioner's personal qualities and area of expertise, but he does not provide specific examples of how the petitioner's work has influenced the field of martial arts in general or otherwise equates to original contributions of major significance in the field. Moreover, the AAO notes that the preceding letters from [REDACTED] do not include an address, a telephone number, or any other information through which their author can be contacted.

[REDACTED], states:

[The petitioner] is a master not only of the martial arts techniques, but the moral standard. His martial arts theories and his high martial arts moral standard account for a large part of what makes him such a remarkable and outstanding instructor. He used his theories and experience in developing, with [REDACTED] a new set of arrangement for Seven-Star Preying Mantis [sic] which is easy for new practitioners to learn and practice.

[REDACTED] states that the petitioner co-developed a new training arrangement for Seven-Star Praying Mantis, but there is no evidence showing that the petitioner's work has significantly impacted the field at large or otherwise constitutes an original contribution of major significance in the field.

[REDACTED] states:

[The petitioner] is not just another talented athlete, he is an exceptional, one-of-a-kind martial artist who clearly stands apart from the rest.

[The petitioner's] extraordinary talent is further substantiated by his effort in developing with me a new set of arrangement in preying mantis [sic] training. This new set emphasizes a combination of complex use and free use of elbows, hips, and knees, which has been used by many practitioners and instructors.

[REDACTED] compliments the petitioner on his talent as a martial artist and asserts that their praying mantis training arrangement has been "used by many practitioners and instructors," but he does not identify the practitioners and instructors using their training material or provide specific examples of how the petitioner's work has influenced the field as a whole.

[REDACTED] and [REDACTED] states:

The reason [the petitioner] has attained such a reputation as a trendsetter is based on his efforts in improving upon the known methods of Preying Mentis [sic] Kung Fu. The improvements on previous methods of training are many, such as better bodily health, improved quickness of the body, and superior methods of self-defense. Because of the undeniable improvements [the petitioner's] Preying Mentis [sic] methods provided, many top martial artists have utilized his training program and seen great results in international competitions.

does not specifically identify the “top martial artists” who have utilized the petitioner’s training program or provide documentary evidence of their competitive results. Moreover, there is no evidence documenting the number of martial arts schools in China or the United States who utilize the petitioner’s specific training methodologies. The record lacks evidence showing that the petitioner’s work has notably influenced practitioners throughout the martial arts field or otherwise constitutes original contributions of major significance in his sport. Further, the AAO notes that the letter from Mr. Liang does not include an address, a telephone number, or any other information through which he can be contacted.

and states:

[The petitioner’s] most notable contribution is in creating new training methods for the Seven-Star Preying Mentis [sic]. Long before I met him in 2009 at the U.S. Open Martial Arts Championship, I knew about [the petitioner’s] training techniques, which I can confirm are used in Asia, and primarily China. I personally used his training techniques for my own training, and also, to train top students at my own school in America. His new training technique is, in my opinion, one of the major contributions in the field in the past decade.

does not specifically identify the Seven-Star Praying Mantis training methods created by the petitioner, explain how they are original, or provide specific examples of how the petitioner’s contributions have impacted the field such that his work rises to the level of original contributions of major significance in the field. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

, states: “[The petitioner] is in the front lines of martial artists who are helping to spread the knowledge of martial arts. He is a revered instructor who has come up with many innovative, original, and unique techniques which have been subsequently utilized by countless martial artists.” asserts that the petitioner’s techniques have been utilized by countless martial artists, but the record does not include

documentary evidence to support his assertion. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The preceding references do not explain how the petitioner's martial arts programs and techniques are original, nor do they provide specific examples of how his contributions rise to a level consistent with major significance in the field. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). While the petitioner has earned the admiration of his references, there is no evidence demonstrating that he has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other instructors throughout the martial arts field, nor does it show that the field has significantly changed as a result of his original work.

The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is, however, 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 petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a martial arts practitioner and instructor who has made original contributions of major significance. Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, the AAO cannot conclude that he meets this criterion.

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

The petitioner submitted documentation of what is alleged to be his book entitled *Seven-Star Preying Mentis Function and Instructions for Practice* and an article he authored entitled "Taji plum-blossom mantis boxing," but the English language translations accompanying these documents were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of *scholarly articles* in the field, in professional or major trade publications or other major media" [emphasis added]. Generally, scholarly articles are

written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the record lacks evidence demonstrating that the petitioner's book and article were peer-reviewed, contain any references to sources, or were otherwise considered "scholarly." Moreover, there is no evidence showing that the petitioner's book equates to a professional or major trade publication or some other form of major media, or that his article was published in a professional or major trade publication or some other form of major media. The AAO notes that the record does not include evidence indicating the distribution or circulation of the petitioner's book or article. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted the following:

1. Grade-1 Social Sports Director Certificate from the Administration of Sports of Shandong Province stating: "This is to certify that [the petitioner] . . . works in [redacted]. The period he has been the social sports director is: Grade-3 __years Grade-2 __years Grade-1 __years." (2006);
2. Grade-2 Social Sports Director Certificate from the Physical Culture Administration of the People's Republic of China stating: "This is to certify that [the petitioner] . . . works in [redacted]. The period he has been the social sports director is: Grade 2 years Grade years Grade years." (December 5, 2005);
3. Letter of Appointment stating: "This is to certify, on this day of June, 2004, that we Prey Mentis [sic] Committee of Qingdao Martial Arts Association, does hereby invite [the petitioner] to serve as Chief Coach of Preying Mentis [sic], effective June of 2004.";
4. November 2007 letter from [redacted] stating that the petitioner served as Vice President, actively promoted martial arts in the borough, worked as a judge for Qingdao City martial arts tournaments and Qigong competitions, and coached martial arts practitioners in the city;
5. September 2007 letter from [redacted] Administration stating that the petitioner served as Vice President, actively promoted Tai Chi Chuan in the district, worked as a judge for Tai Chi Chuan contests, and coached Tai Chi Chuan practitioners in the borough; and
6. December 16, 2007 letter from the Qingdao City Senior Qigong Arts Association stating that the petitioner served as President, actively promoted martial arts in the city, worked as a judge for martial arts tournaments and Qigong competitions, and coached Qigong practitioners in the city.

With regard to items 1 – 6, the English language translations accompanying these documents were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, regarding items 1 – 4 and 6, the AAO notes that the documents do not include an address, a telephone number, or any other information through which the issuing organizations can be

contacted. Moreover, in regard to items 1 – 6, there is no documentary evidence showing that [REDACTED], the Qingdao Martial Arts Association, the Four Fang Borough Martial Arts Association, the Qingdao She Bei District Senior Physical Culture Administration, and the Qingdao City Senior Qigong Arts Association have 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. Finally, regarding items 1 – 3, there is no evidence showing that the petitioner's role as Social Sports Director for the Qingdao Mingyi Dress-making Company and role as Chief Coach of Praying Mantis for the Qingdao Martial Arts Association were leading or critical. Without documentary evidence showing that the petitioner's achievements differentiated him from the other staff working for the Qingdao Mingyi Dress-making Company and the Qingdao Martial Arts Association, the AAO cannot conclude that he was responsible for their success or standing to a degree consistent with the meaning of "leading or critical role." Accordingly, the petitioner has not established that he meets this criterion.

Summary

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

C. Final Merits Determination

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 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (vi) and (viii).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted awards do not rise to the level of nationally or internationally recognized awards for excellence in the field. The petitioner's evidence is also not indicative of or consistent with sustained national or international acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field. For instance, there is no evidence showing that the petitioner faced a significant pool of top competitors in China, the United States, or internationally. Awards won by the petitioner in age-restricted tournaments, in competitive categories with only a limited pool of entrants, or in competitions whose reputation

is undocumented do not establish that he “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 statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that an athlete who has received awards in age-restricted competition, obscure tournaments, or event categories and divisions with only a small pool of entrants should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. 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:

[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 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 the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner’s associations require outstanding achievements of their members, as judged by recognized national or international experts in his field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner failed to submit documentary evidence of published material about him in *World Journal*, *Sing Tao Daily*, *Qingdao Martial Arts Circle*, *China Town Monthly*, and *Biographies of Famous Masters in Concurrent Chinese Martial Art Circles*. The petitioner also failed to submit documentary evidence showing the distribution of the preceding publications relative to other Chinese media to demonstrate coverage in professional or major trade publications or other major media. The petitioner has not established that his level of media coverage is indicative of or consistent with sustained national or international acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

With regard to the evidence submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner failed to submit documentary evidence of his actual participation as a judge of the work of others in his field. Further, there is no evidence documenting the reputation,

significance, or magnitude of the tournaments he judged, or the level of expertise of those he evaluated. The petitioner failed to submit evidence demonstrating that he judged top martial artists at the national or international level rather than youth or novices at the local or regional level. *Cf., Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r. 1994); 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard). The documentation submitted by the petitioner does not establish that his level of judging is commensurate with sustained national or international acclaim at the very top of the field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), there is no documentary evidence demonstrating that the petitioner’s work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner’s failure to submit evidence demonstrating that he has made original athletic contributions of major significance in the field, the AAO notes that the petitioner’s claim is based partly on recommendation letters. While such letters can provide important details about the petitioner’s experience and activities, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s personal contacts. *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 section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a martial artist who has sustained national or international acclaim at the very top of the field. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(vi), as previously discussed, there is no documentary evidence demonstrating that the petitioner has authored scholarly articles in professional or major trade publications or other major media. The evidence submitted by the petitioner is not indicative of or consistent with sustained national or international acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner did not submit evidence establishing that he performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The evidence submitted by the petitioner is not indicative of or consistent with sustained national or international acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim in the martial arts, or being among that small percentage at the very top of the field of endeavor. The AAO cannot ignore the March 10, 2008 letter from [REDACTED] stating that the petitioner is “a rising star” and that he “is poised to become a name to remember.” The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. 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). 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).

D. Continuing work in the area of expertise in the United States

Beyond the decision of the director, the statute and regulations require that the petitioner seeks to continue work in his 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). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. On the Form I-140, Immigrant Petition for Alien Worker, Part 6, “Basic information about the proposed employment,” was left blank. In this case, the petitioner has not submitted letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement detailing plans on how he intends to continue working in the United States. Accordingly, the petitioner has not submitted “clear evidence” that he will continue to work in his area of expertise in the United States as required by the regulation at 8 C.F.R. § 204.5(h)(5).

III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. Further, the petitioner has not submitted clear evidence demonstrating that he will continue to work in his area of expertise in the United States. 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).

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.