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

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: APR 2 3 2012 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: 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,

Lori B for

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an "alien of extraordinary ability" in athletics as a ski instructor and coach, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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, the petitioner submits a brief with no new evidence. For the reasons discussed below, the AAO upholds the director's ultimate determination that the petitioner has not established his eligibility for the classification sought.

I. LAW

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

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

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

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

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

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Previous O-1 Visa

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude

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

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

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

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

B. Translations Submitted With the Petition

Each of the foreign language documents that the petitioner submitted at the time he filed the petition appear to be accompanied by a single blanket certification from the translator rather than each document being accompanied by its own certification verifying the completeness and accuracy of the translation. The regulation at 8 C.F.R. § 103.2(b)(3) requires that: "Any document containing foreign language submitted to USCIS shall be accompanied by *a* full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." (Emphasis added.) The regulation does not allow a single certification from the translator for numerous foreign language documents that the translator does not identify in the certification. The AAO is therefore, unable to determine whether the evidence supports the petitioner's claims. Accordingly, the foreign language documents accompanying the initial petition are not probative and will not be accorded any evidentiary weight in this proceeding. This determination does not affect the new evidence submitted in response to the request for evidence (RFE) that bears a single certification for each piece of evidence.

C. Evidentiary Criteria[2]

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien be the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to the event. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provides letters from and articles from (although the photocopy of the article fails to reflect the publication name), in addition to "media kits" from several photographs of trophies and awards; evidence relating to the 2002 competition; and the history page from *Synchroski.com*. Counsel also submits information from unpublished AAO decisions that support the recognition of awards that are received as part of a team. Each of the above claimed awards date from eight years or more prior to the petition filing date. The director determined that the petitioner failed to meet the plain language requirements of this criterion.

Several of the expert letters assert claims of the national or international recognition of the petitioner's prizes or awards. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 95 CIV. 10729 MBM, 1997 WL 188942, *5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990).

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

With the exception of the evidence relating to the 2002 the petitioner's primary evidence of photographs of trophies and awards, all exhibit at least one of the below evidentiary defects:

- The evidence is distorted masking the recipient's name;
- The evidence does not list the petitioner's name on the trophy or the award; or
- The evidence is in a foreign language but is not accompanied by the required translation pursuant to 8 C.F.R. § 103.2(b)(3).

Additionally, the name of the presenting entity or the competition is not apparent from the submitted evidence. The evidence relating to the 2002 does demonstrate that the petitioner is the recipient of a qualifying award under this criterion. The evidence includes: (1) this competition's medal reflecting a first place finish, (2) media reports of the petitioner's team finishing in first place, (3) a letter from verifying that the petitioner was a member on the 2002 team, and (4) a letter from who served as a judge at the 2002 competition.

While the petitioner did submit two foreign language certificates as primary evidence, he did not submit the required complete certified translations of those certificates. Regarding the remaining claimed awards, the petitioner has provided no legible primary evidence demonstrating the petitioner received any of the awards. In this case, while the petitioner submitted secondary evidence in the form of letters confirming he received various awards, the petitioner failed to submit any documentary evidence demonstrating that primary evidence does not exist or cannot be obtained, which is required by 8 C.F.R. § 103.2(b)(2); the failure to do so creates a presumption of ineligibility.

Regardless, the letters that the petitioner provides are not affidavits as each is not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, do they contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. The petitioner has not demonstrated that the required evidence is unavailable or cannot be obtained, and therefore the petitioner is presumed ineligible pursuant to 8 C.F.R. § 103.2(b)(2). As such, the AAO will not consider the above listed evidence regarding the petitioner's awards as it does not conform to the regulatory requirements.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of "prizes or awards" in the plural, which 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. *See Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff,* 2006 WL 3491005 at *1, *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).

In reference to the unpublished decisions that counsel references, it is not necessary to for the AAO to answer the question that counsel poses relating to awards received as part of a team as the petitioner has not submitted evidence that qualifies as primary evidence required by the regulation. However, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The AAO may consider the reasoning within the unpublished decision; however, the analysis does not have to be followed as a matter of law.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that he is a member of more than one association in her field. Second, the petitioner must demonstrate that the associations require outstanding achievements (in the plural) of their members. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides letters from experts in the industry, news articles, website printouts from three associations, and photographs that are reportedly of the petitioner with the team at the competition. The petitioner claims membership in the following: (1) the (2) the (3) the (4) the and (5) the The petitioner also claims the position of level three examiner in under this criterion. A position, however, is not a membership. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner claimed eligibility for this criterion based on his relation to teams and committees. However, based on the evidence on record, the teams and committees claimed by the petitioner do not satisfy the regulatory requirements. The regulation clearly requires "membership in associations in the field." Without evidence of committee membership requirements and evidence of whether admittance

is judged by recognized national or international experts in their disciplines or fields, the membership does not qualify under this criterion. Moreover, a committee is not an association. Under the present set of facts, appointment to this committee does not satisfy each of the regulatory requirements. Regarding the petitioner being a member of several teams, without evidence of team membership requirements and evidence of whether admittance to the team is judged by recognized national or international experts in their disciplines or fields, the petitioner's membership on the aforementioned teams does not qualify under this criterion. Under the present set of facts, inclusion on these teams does not satisfy each of the regulatory requirements.

As evidenced by the statutes, membership in that association merely requires that individual member applicants have reached the age of 18 years and have successfully passed exams for training courses. Honorary members may be an individual who significantly contributed to the development of teaching skiing and snowboarding. These requirements do not equate to outstanding achievements.

The letter from indicates that he "can attest to [the petitioner's] membership in associations in skiing and ski coaching that require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." assurances of membership requirements are insufficient to demonstrate the petitioner's eligibility relating to this criterion. 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. Likewise, regarding the letter from relating to the petitioner's membership in both the committee" and the the record lacks evidence to demonstrate that these entities qualify as "associations," that each entity requires outstanding achievements of their members, or that admittance is judged by recognized national or international experts. Additionally, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc.*, 1997 WL 188942 at *5.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must primarily be about the petitioner and the contents must relate to the petitioner's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published

item's title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides several articles for consideration under this criterion. Counsel's appellate brief states that the director concluded that the petitioner failed to meet this criterion without any analysis. However, a review of the director's decision indicates that the director concluded that the petitioner did meet this criterion. However, The AAO departs from the director's eligibility determination related to this criterion for the reasons outlined below.

Regarding the foreign language article titled, "Mistakes Also Happen to Top Class Skiers," counsel claims this article appeared in *Magazin Vecer* and asserts this publication is the third largest daily newspaper in Slovakia. The article is about the petitioner and his work in his field. However, the petitioner provides no information related to the distribution data of this newspaper to establish this published material has a national rather than a regional reach within Slovakia. The unsupported assertions of counsel in a brief in reference to the status of a publication being major media are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). Publications with only a regional reach are not considered to be major media and the petitioner has not established this publication is a professional or major trade journal as required by the regulation. Additionally, the translation of this document fails to comply with the regulatory requirement that each submitted published article include the date in which the work was published. The AAO will not consider this evidence as it fails to meet the required evidentiary standards. Additionally, the foreign language article titled, "They Eat Even the Soup with Chopstics [sic]" bears the same shortcomings and the AAO will also not consider this evidence.

Regarding the photocopy of the article titled, '[redacted] appearing in the [redacted] the article is not about the petitioner relating to his work in the field. The article, as the title suggests, is about [redacted], then director of the [redacted] ski school. The petitioner is merely mentioned in the closing paragraph of the article. As such, this evidence fails to satisfy the plain language requirements of this criterion. Additionally, the petitioner failed to provide sufficient evidence showing that the [redacted] qualifies as a form of major media. As such, he has not demonstrated that this evidence satisfies all the plain language requirements of this criterion.

The petitioner also submits three articles relating to the [redacted] team. Each article is about the team itself or a competition in which the team is contending. The articles do not mention the petitioner and are therefore, not about the petitioner and relating to his work in the field. Therefore, this evidence cannot meet the plain language requirements of this criterion. The record fails to reflect within which publication the article titled, '[redacted] appeared. Therefore, the AAO cannot determine if the published material derives from a professional or major trade publication or other major media. Also, the petitioner failed to provide the full text of the article titled, '[redacted]" The petitioner failed to provide the whole article as evidence as it stops in the middle of a sentence at the bottom of the page. Lastly, the

petitioner did not provide evidence of the article's author as required by the plain language of the regulation.

Accordingly, the petitioner has not submitted evidence that meets the plain language requirements of this criterion and the AAO departs from the director's determination that the petitioner satisfied this criterion's requirements.

> *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.*

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

As evidence relating to this criterion, the petitioner provides a letter from Counsel's appellate brief states that the director concluded that the petitioner failed to meet this criterion without any analysis. However, a review of the director's decision indicates that the director concluded that the petitioner did meet this criterion. However, The AAO departs from the director's eligibility determination related to this criterion for the reasons outlined below.

letter states, "[The petitioner] also meets the criteria as a judge of the work of others as a selector for the also indicates that he appointed the petitioner to the "selector" position. letter, by itself, is insufficient to demonstrate that the petitioner has satisfied the judging regulatory requirements. The record contains no evidence that the currently employs or that he is authorized to verify former employee information on behalf of this organization. The regulation at 8 C.F.R. § 204.5(g)(1) states that, "Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s)." As the judging in the present case is part of the petitioner's work experience, the evidence from is insufficient.

letter may serve as a form of evidence to corroborate other evidence, but it fails to demonstrate that the petitioner's duties as a "selector for the encompassed duties in a formal judging capacity as contemplated by the regulation. The evidence alleges that the petitioner participated as a judge without offering concrete evidence in support of the contentions. The record lacks any specific information relating to the duties in question. The record does not show that the petitioner actually performed judging duties for the rather the letter merely repeats the regulatory language, which fails to satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd.*, at 1108; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

Accordingly, the submitted evidence fails to satisfy the plain language requirements of this criterion and the AAO departs from the director's determination that the petitioner satisfied this criterion's requirements.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) to his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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). Contributions of major significance connotes that the petitioner's work has significantly affected or impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provides several expert letters containing descriptions of the petitioner's accomplishments in addition to two articles. The director determined that the petitioner failed to meet the plain language requirements of this criterion.

Counsel questions the director's treatment and analysis of the submitted expert letters. Counsel claims the director merely summarized the expert's opinions and ignores the petitioner's achievements without indicating how the expert's opinions are incorrect. In her decision, the director expressly addressed the two expert letters that were submitted in response to the RFE. The director continued, however, that the documentation "[t]aken as a whole" did not demonstrate that the petitioner had made contributions of major significance in the field. The AAO will evaluate all of this evidence below, including the additional expert letters and articles.

The letters not expressly addressed in the director's decision are from [redacted] and [redacted] a member of the 2006 and 2010 [redacted] opines that the petitioner meets the definition of extraordinary ability in skiing and lists the petitioner's accomplishments. [redacted] includes the petitioner's accomplishments as a founding member of [redacted] which he asserts is the first governing body of the ski industry in the petitioner's home country. [redacted] does not provide an explanation of how the petitioner's accomplishments as a founding member of [redacted] are original in the field of skiing or serve as a contribution of major significance to the field of skiing. Although the petitioner provides secondary evidence indicating he is a founding member of [redacted] through the foreign language article "Mistakes Also Happen," the petitioner failed to provide primary evidence from [redacted] demonstrating his part in the organization's

founding. The petitioner has not demonstrated that primary evidence of his role in founding is unavailable or cannot be obtained, and therefore the petitioner may not rely on this secondary evidence to demonstrate his eligibility. *See* 8 C.F.R. § 103.2(b)(2). Of additional importance, the article "Mistakes Also Happen," appears to be accompanied by a blanket translator's certification that also accompanied all of the foreign language documents submitted with the initial petition. The regulation at 8 C.F.R. § 103.2(b)(3) does not allow such a blanket certification and this article, in addition to its translation, are not probative and will not be accorded any evidentiary weight in this proceeding.

also indicates that the petitioner is only one of five skiers to rise to the position of examiner, which he asserts is the highest level of certification in ski instruction. He does not, however, explain the impact that the petitioner has effected on competitive skiing within the position of examiner. The petitioner relies entirely on expert letters to demonstrate that he held the position of examiner and failed to provide evidence from the entity under which examiners serve, the It is also noteworthy that listed the extraordinary ability criteria that he felt the petitioner satisfied, and he did not indicate that it was his opinion that the petitioner satisfied the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), under which counsel indicates letter should be applied. Finally, indicates that one of the petitioner's greatest achievements is his authorship of five ski manuals published by the governing authority. However, does not explain the impact that the petitioner has effected on competitive skiing based on these manuals or assert that the petitioner's instruction manuals are widely used within the ski industry. Simply authoring instruction manuals that have no demonstrable effect on the industry cannot be construed to be contributions of major significance.

, winner of two also indicates that the petitioner has achieved the following: (1) he is one of the founding members of the governing body for ski instruction; (2) he has represented in international competitions; (3) he has attained the examiner position within ski instruction in , and (4) he has been a member of elite teams such as the 2002 asserts that as one of the founding members of the ski instructors governing body, the petitioner "fostered the birth of Slovakia's highest and most respected association in the field." The petitioner failed to provide primary evidence demonstrating that he is one of the founding members of this association. It is noteworthy that listed the extraordinary ability criteria that he felt the petitioner satisfied, and he did not indicate that it was his opinion that the petitioner satisfied the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), under which counsel indicates letter should be applied.

, lists the petitioner's accomplishments and states:

> [The petitioner] built the ski industry in his home nation through the establishing [sic] of a governing body, authorship of manuals on the sport, becoming one of only a few that became examiners to teach instructors at the highest level, participation as a member of

numerous national teams, winner of national and international awards as a coach and a skier.

also fails to explain how the petitioner's accomplishments, either individually or collectively, have exerted a significant impact on the petitioner's field. does not discuss how the establishment of the governing body assisted in building the ski industry in or how this affected the rest of the petitioner's field. It is also unclear from letter how participation as a team member on national teams or winning national or international awards is original or demonstrates a significant impact on the field as a whole.

In response to the director's RFE, the petitioner provides two additional expert letters for consideration under this criterion. The first letter is from The petitioner submitted what appears to be a photocopy of letter resulting in portions of the letter being illegible. However, asserts: "[The petitioner's] impact on skiing has been profound. As was part of communist Czechoslovakia until 1989, there was no ski industry. [The petitioner] was instrumental in the creation of commercial skiing and the development of the sport of skiing ." also explains the petitioner's position on the was a result of his attainment of "the highest level of licensure in the world." however does not explain how the petitioner has used this position or these achievements to have an original impact of major significance on his field. Of additional importance, the petitioner failed to provide evidence of this licensure from the body under which it was issued. The record contains a foreign language version and a translation into English of a separate license. However, the translation of the license is insufficient as it bears no certification, which is mandated by 8 C.F.R. § 103.2(b)(3). Accordingly, this license is not probative and will not be accorded any evidentiary weight in this proceeding. The brief accompanying the initial petition indicates the title of this license is, and The petitioner provided a printout from the website, which indicates that the acronym stands for of skiing and snowboarding," which differs from the evidence listed in the initial brief. As a result, the license cannot be considered to be primary evidence of the petitioner's attainment of "the highest level of licensure in the world." Claims relating to this licensure within expert letters is insufficient to establish that the petitioner actually attained the claimed licensure. similar to previous letters, discusses the petitioner's accomplishments in the field without providing an explanation of the impact of these accomplishments on the field as a whole. It is noteworthy that listed the extraordinary ability criteria that he felt the petitioner satisfied, and he did not indicate that it was his opinion that the petitioner satisfied the original contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v), under which counsel indicates letter should be applied.

The final letter counsel requests the AAO to apply to this criterion is from explains that he is familiar with the petitioner from their attendance at the 1995 discusses how the petitioner's appointment to the committee led to the development of the curriculum on coaching skiing in and that the petitioner "determined how to coach skiing, the exam to coach

and who received licensure to coach it for his nation." On appeal, counsel asserts that the petitioner's achievements should be viewed in totality and that:

> Few in skiing have done as much to impact an industry as [the petitioner] has upon skiing. As a world and national champion, to the creator of the commercial ski industry in his home country to author of ski manuals and national technical committee member, he is one of the very few at the pinnacle of the ski industry.

The record does not contain evidence reflecting that the petitioner is "the creator of the commercial ski industry in his home country." The petitioner has failed to provide evidence that he either is a founding member of or that demonstrates being a founding member of is evidence that he is the creator of this industry in his home country. The record does establish the remaining achievements listed in counsel's above quote; however, the petitioner has not shown the impact of these achievements on the ski industry. The AAO has also considered the awards listed in counsel's quote within the awards criterion above in this decision. The AAO will not presume that evidence directly relating to one criterion is presumptive evidence that an alien meets a second criterion. Such a presumption would negate the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria. Where evidence directly relates to one of the regulatory criteria, USCIS is not obligated to consider that same evidence under a second criterion for which the relevance is not apparent. Significantly, section 203(b)(1)(A)(i) of the Act requires the submission of "extensive evidence." The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien meet at least three of the ten regulatory criteria. Additionally, the only element from counsel's quote that may be considered an original contribution is that the petitioner is the author of ski manuals. The AAO has already discussed these manuals above finding that simply authoring instruction manuals that have no demonstrable effect on the industry cannot be construed to be contributions of major significance.

The Board of Immigration Appeals (BIA) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing to *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N at 1136.

Vague, solicited letters 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" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions

statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. at 500, n.2. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. at 165. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

In view of the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy through the submission of evidence. The first is that the petitioner is an author of scholarly articles (in the plural) in his field in which he intends to engage once admitted to the United States as a lawful permanent resident. Scholarly articles generally report on original research or experimentation, involve scholarly investigations, contain substantial footnotes or bibliographies, and are peer reviewed. Additionally, while not required, scholarly articles are oftentimes intended for and written for learned persons in the field who possess a profound knowledge of the field. The second element is that the scholarly articles appear in one of the following: a professional publication, a major trade publication, or in a form of major media. The petitioner must submit evidence satisfying each of these elements to meet the plain language requirements of this criterion.

The petitioner provides several instruction manuals, which counsel alleges are published by governing bodies and elsewhere. The director determined that the petitioner failed to meet the requirements of this criterion.

Counsel's appellate brief references the letter from [redacted] in which he indicates that the petitioner's authorship of manuals on skiing created for the national governing body are "equivalent to authorship of scholarly articles in a professional or trade publication." USCIS may not unilaterally impose novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian,* 596 F.3d at 1221, *citing Love Korean Church v. Chertoff,* 549 F.3d 749, 758 (9th Cir.2008). Thus, qualifying evidence under this criterion must consist of scholarly articles published in professional or major trade publications or other major media.

By referencing [redacted] use of the word "equivalent," counsel may be attempting to assert that the manuals are comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4), which allows for the submission

of comparable evidence where the above standards at 8 C.F.R. § 204.5(h)(3) do not "readily apply" to the petitioner's occupation. In this case, counsel claims that at least seven of the regulatory criteria directly apply to the petitioner's occupation. Counsel has not asserted that even this criterion does not readily apply. Specifically, counsel has not asserted or documented that there are no professional or major trade publications or other major media that publish scholarly articles in the petitioner's field. Thus, he may not claim comparable evidence, in the alternative. *See* 8 C.F.R. § 204.5(h)(4).

Finally, counsel cites to the *Kazarian* decision for the proposition that the director improperly diminished the petitioner's evidence as it relates to his manuals considered under this criterion. However, analysis of the plain language of the regulation reveals that it is a mandated requirement that the evidence consist of scholarly articles in one of the required publication types. Nothing in *Kazarian* requires USCIS to consider material that does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) under this criterion.

The documents the petitioner submits under this criterion are:

- The '[redacted] bearing a date of October 1996;
- The April 1997 '[redacted]' manual; and
- The 2008 '[redacted]

It appears that each of these manuals is accompanied by a blanket translator's certification that also accompanied all of the foreign language documents submitted with the initial petition. The regulation at 8 C.F.R. § 103.2(b)(3) does not allow such a blanket certification and these manuals, in addition to the translations, are not probative and will not be accorded any evidentiary weight in this proceeding. Additionally, each of these manuals lacks evidence that it was published, or that it was published in the required publication type.

The petitioner also submits a 1999/2000 '[redacted]' manual. The record, however, lacks evidence demonstrating that the material was published in one of the required publication types. As such, this manual also fails to meet the plain language requirements of this criterion.

Within the initial filing brief, counsel refers to the '[redacted]' dated October 10, 2006, and '[redacted] 2007, which the petitioner allegedly authored. Both "manuals" appear to be slides from a presentation and each form of evidence lacks any indication that this material is published as counsel asserts. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 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). This evidence fails to meet the plain language requirements of this criterion.

As the petitioner has provided no evidence demonstrating that the submitted evidence satisfies the plain language requirements of this criterion, he may not rely upon his authored manuals as qualifying evidence relating to this criterion.

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor existing precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."[3] Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden,* 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or a similar reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner claims he performed in a leading or critical role as the head coach of the [redacted] a member of the 2002 [redacted] and as several [redacted] national teams from 1995 through 2002, and a member of the [redacted] The petitioner relies exclusively on expert letters to demonstrate that he meets the plain language requirements of this criterion. The director determined that the petitioner failed to meet the requirements of this criterion.

[redacted] indicates that he personally selected the petitioner as the [redacted] He also indicates that the petitioner created and coordinated the ski racing program at his facility. This letter from the petitioner's former employer demonstrates the petitioner performed in a lead role for this organization. However, the record lacks evidence that establishes that the [redacted] is an organization that enjoys a distinguished reputation. As such, the petitioner's performance for this organization will not serve to satisfy the plain language requirements of this criterion.

The remaining expert letters are insufficient to demonstrate that the petitioner has satisfied the requirements of this criterion. USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15. The record contains no evidence that any of the remaining experts are employed by the organizations or establishments identified within counsel's initial brief. The record also lacks evidence demonstrating that any of the authors of the expert letters are authorized to verify former employee information on behalf any of the organizations that counsel identifies. The regulation at 8 C.F.R. § 204.5(g)(1) requires that, "Evidence relating to qualifying experience or training shall be in the form

[3] *See* http://www.merriam-webster.com/dictionary/distinguished, [accessed on March 27, 2012, a copy of which is incorporated into the record of proceeding.]

of letter(s) from current or former employer(s)." Consequently, the petitioner's reliance exclusively upon expert letters to demonstrate eligibility is insufficient. The submitted expert letters may serve as a form of evidence to corroborate other evidence, but the letters fail to demonstrate that the petitioner is able to satisfy the plain language requirements of this criterion.

Therefore, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. As the petitioner is claiming to be among those in the top of his field, so must he demonstrate that his salary is among those in the top of his field. The petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field.[4] The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner provides a job offer letter from a page from the Online Wage Library – FLC Wage Search Results, a 2009 National Wage and Salary Survey from the National Ski Areas Association, and evidence from Mountain States Employment Council. The director determined that the petitioner failed to meet the requirements of this criterion.

The letter from is dated November 17, 2009. The letter offers the petitioner the position as a professional snow sports master educator in return for a $51,105.60 salary. First, the record contains no evidence that the petitioner had already commanded this salary as of the date of filing as required under the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix). An offer of future salary or remuneration cannot serve as qualifying evidence under this criterion.

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[4] While the AAO acknowledges that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated, "[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with . . . 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."

Second, the FLC Wage Search Results relate to the broad category of coaches and scouts and does not directly relate to the petitioner's field or the position of professional snow sports master educator for a ski resort. Additionally, the FLC Wage data is limited to coaches and scouts in the north central Colorado nonmetropolitan area rather than "in relation to others in the field" as the regulation at 8 C.F.R. § 204.5(h)(3)(ix) plainly requires. The plain language of this regulatory criterion requires evidence of "a high salary or other significantly high remuneration for services, *in relation to others in the field*." (Emphasis added.) Merely earning above average wages does not constitute a "high salary" or "significantly high remuneration." The petitioner did not document what the high end salaries are nationally in his occupation. Thus, the record is void of objective earnings data showing that the petitioner has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. at 954. In the present case, the evidence submitted by the petitioner does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

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.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a

final merits determination.[5] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

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[5] The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).