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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 5 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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 gymnastics 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 documentary evidence. For the reasons discussed below, the AAO upholds the director's ultimate determination that the petitioner has not established her 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.*

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[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).

II. ANALYSIS

A. 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 awards as a competitor, as a trainer or coach, and also awards issued to those she has purportedly coached. The director determined that the petitioner failed to meet the requirements of this criterion.

Any prizes or awards that may have been garnered as a competitor are not within the petitioner's field of endeavor as a gymnastics coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise). As the petitioner's field of endeavor under which she is applying is that of a coach rather than a competitor, the awards issued to the petitioner as a competitor will not be considered in this antecedent procedural step of the decision. Additionally, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires "[d]ocumentation of the *alien's* receipt [emphasis added]," the submission of declarations reflecting awards won by the petitioner's students do not meet the plain language of this regulation. Therefore, the AAO will only consider the awards the petitioner received as a coach in this antecedent procedural step.

Within counsel's appellate brief, she asserts that the petitioner's "own awards can still be considered when 'a beneficiary has clearly achieve [sic] recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level.' AFM § 22.2(i)(1)(C)." The portion of the AFM upon which counsel relies clearly pertains to an alien who has received *recent* national or international acclaim as an athlete and has successfully sustained this acclaim as a coach at a national level. However, the petitioner's most recent acclaim as an athlete dates back to 2001, which hardly demonstrates recent national or international acclaim. The petitioner had almost nine years to develop acclaim as a coach. Consequently, the petitioner's own awards as a competitor will not be considered in this antecedent procedural step.

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

The petitioner provided the following "diplomas" relating to her performance as a coach or trainer:

- December 22 – 23, 2007, as the trainer of the winning team within the 5th level program in the Championship of Children Sports School of the Olympic Reserve for the Santa Claus prizes in rhythmic gymnastics.

- December 22 – 23, 2007, as the trainer of the winning team in group exercises within the 5th level program for the Santa Claus prizes of the Championship of Children Sports School of the Olympic Reserve in rhythmic gymnastics.

- December 22 – 23, 2007, as one of the trainers of the third place team within the 5th level program in group competition for the Santa Claus prizes in the Championship of Children Sports School of the Olympic Reserve in rhythmic gymnastics.

- March 15, 2008, as the trainer of the winning team in the group competition within the 5th level program of the Championship of Children Sports School of the Olympic Reserve in rhythmic gymnastics.

- May 17 – 18, 2008, as the coach of the prizewinner within the 5th level program of the Championship in Rhythmic Gymnastics of Children Sports School of the Olympic Reserve #5.

- May 17 – 18, 2008, as the trainer of the prizewinner within the 6th-7th level program of the Championship of Children Sports School of the Olympic Reserve in rhythmic gymnastics.

The record lacks evidence demonstrating that any of the above diplomas enjoy national or international recognition. Consequently, the petitioner has failed to meet the plain language requirements of this criterion.

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

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that she 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 her membership card, welcome letter, safety certification and "Member Club" certificate all from USA Gymnastics. USA Gymnastics issued the "Member Club" certificate in the name of "NU AGE Gymnastics and Dance." The director determined that the petitioner failed to meet the requirements of this criterion.

Counsel's appellate brief also states that the petitioner and those she coaches have been selected to participate in various summer camps run by coaches of national teams of various European countries. Counsel also asserts that the invitations to these summer camps satisfy the requirements of this criterion. The unsupported assertions of counsel in a brief are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel fails to explain the correlation between memberships in an association and being selected to attend a summer camp. As such, the AAO does not find counsel's contention persuasive.

The petitioner demonstrates membership in USA Gymnastics. However, she has provided no evidence demonstrating that this association requires outstanding achievements of its members, or that admittance into the association is judged, or adjudicated, by nationally or internationally recognized experts in their field. As such, this membership cannot serve to satisfy this criterion's requirements. Regarding the "Member Club" membership certificate naming Nu Age Gymnastics and Dance, this membership fails to identify the petitioner as a member of any association. Regardless, the petitioner has already demonstrated her individual membership in this organization.

Even if the petitioner were to establish that her own membership in USA Gymnastics is a qualifying one that requires outstanding achievements, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in "associations" 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).

Consequently, 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 she 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 six articles as evidence under this criterion. The director determined that the petitioner failed to meet the requirements of this criterion.

Regarding the January 9, 1997, article titled, "Elena Nikolashkina," the translation lacks the name of the author and the publication in which the article appeared. The petitioner also failed to provide evidence demonstrating that the publication is a professional or major trade publication or other major media. The May 23, 2010, article titled "Conqueror of Miami from Samara" authored by Andrei Fedorov appears in *Khudozhestvennaya Gimnastika*. However, the petitioner provided no information relating to this publication demonstrating that it is a professional or major trade publication or other major media. The evidence accompanying the initial petition filing also contained a May 27, 2010, article titled, "Yelena Nikolashkina: The Children in America are the Same as in Russia," also authored by Andrei Fedorov, which appears in *Samarski Izvestia*. This evidence suffers the same evidentiary flaw as the previously discussed article by Mr. Fedorov; that the petitioner provided no information relating to this publication demonstrating that it is a professional or major trade publication or other major media.

The August 29, 2010, article titled, "For the Future of Sports America," authored by Sergey Shahmaev, is downloaded from Kontinent Media Group. Counsel asserts that this article appeared in four Russian newspapers, including *Pyccknn Akyeht Weekly, Kohtnhegt* and *Obzor*, but failed to demonstrate that any of these newspapers is one of the publication types required by the regulation. The petitioner also submitted two additional articles that either lacks the author's name or is not about the petitioner relating to her work in the field. Within the initial filing brief, counsel provides several assertions relating to the above named publications indicating the publications are reputable. However, that a publication is reputable is insufficient to demonstrate that it meets the standards that the publication be a professional or major trade publication or other major media as required by the regulation. The unsupported assertions of counsel do not constitute evidence. *Phinpathya*, 464 U.S. at 188-89 n.6;

Matter of Obaigbena, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

In response to the director's Notice of Intent to Deny (NOID), the petitioner submitted information from the Kontinent Media Group's web site, which relates to the article titled, "For the Future of Sports America." Counsel's brief in response to the NOID asserted that the *Pyccknn Akyeht Weekly* is distributed throughout the Midwest with more than 50,000 weekly readers, the *Kohtnhegt* "serves the northeast, west and south [of the United States], with more than 140,000" weekly readers, and that the *Obzor Weekly* enjoys 50,000 readers in the Russian community in Chicago and Wisconsin. This limited distribution in a foreign language within the United States is insufficient to demonstrate that these publications qualify as major media. In today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet and make their stories available to large electronic databases. To ignore this reality would be to render the "major media" requirement meaningless. International accessibility by itself is not a realistic indicator of whether a given publication is "major media." Counsel also asserts that the Kontinent Media Group's newspapers generate more than 1.5 million online readers. Regarding the self-serving material printed from the Kontinent Media Group's website, USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

Counsel's brief in response to the NOID also indicated that there are no trade publications directly relating to rhythmic gymnastics, and that the numerous gymnastics trade publications rarely feature rhythmic gymnastics except to report event results. Counsel provides three examples of gymnastic media coverage that contains minimal coverage of rhythmic gymnastics. The regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." In order to properly claim comparable evidence, a petitioner must demonstrate that she is unable to qualify for this highly restrictive immigrant classification due to the nature of her occupation. The petitioner must explain why she is unable to submit evidence that satisfies the minimum number of regulatory criteria at 8 C.F.R. § 204.5(h)(3), and she must explain how the criteria are not readily applicable to her occupation. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation as a rhythmic gymnastics coach cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has claimed that numerous criteria directly apply to her occupation. As a result, the petitioner has not demonstrated that she may claim comparable evidence in the present petition. Regardless, evidence that directly relates to a criterion, but simply is insufficient to satisfy the criterion's requirements is not "comparable" evidence to the standards set forth at 8 C.F.R. § 204.5(h)(3).

Counsel references an unpublished and nonbinding AAO decision regarding this regulatory criterion. 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.

Additionally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires evidence of published material in "professional or major trade publications or other major media" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya,* Civ. Act. No. 06-2158 (RCL) at *12; *Snapnames.com Inc.*, 2006 WL 3491005 at *10.

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

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

The director determined the petitioner met the requirements of this criterion. The AAO concurs with the director's eligibility determination related to this criterion.

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

The director discussed the evidence submitted pursuant 8 C.F.R. § 204.5(h)(3)(v) and found that the petitioner failed to establish her eligibility. The appellate brief lacks any discussion of this specific criterion and the petitioner failed to identify an incorrect application of law or statement of fact underlying the director's findings as it relates to this criterion. The AAO, therefore, considers this issue to be abandoned. *Desravines v. U.S. Atty. Gen.*, 343 Fed.Appx. 433, 435 (11th Cir. 2009) (a passing reference in the arguments section of a brief without substantive arguments is insufficient to raise that ground on appeal).

> *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 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 provides evidence relating to Nu Age Gymnastics and Dance. The director determined that the petitioner failed to meet the requirements of this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). As previously noted, the AAO can infer that the plural language in the regulatory criteria has meaning and that federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya,* Civ. Act. No. 06-2158 (RCL) at *12; *Snapnames.com Inc.*, 2006 WL 3491005 at *10. As such, even if the AAO were to conclude that Nu Age Gymnastics and Dance is a qualifying organization and that the petitioner performed in a leading or critical role for the organization, it remains that she is unable to satisfy the plain language requirements of this criterion.

Notwithstanding this fatal evidentiary flaw, the AAO will evaluate Nu Age Gymnastics and Dance as the petitioner asserts her role for this organization is qualifying. The petitioner submitted advertisement paraphernalia relating to Nu Age Gymnastics and Dance indicating that she is the managing director of the dance school, news articles listing her as the chief coach, the coach, and the chief coach of calisthenics, and Nu Age Gymnastics and Dance's 2010 For Profit Corporation Annual Report, which lists the petitioner as an officer with the designation of "VP." Even if this designation represents the vice presidential position, the petitioner has failed to provide evidence directly from Nu Age Gymnastics and Dance that provides the vice president's duties within the organization. The AAO will not infer the nature of the petitioner's role solely from the job title. The record lacks evidence showing that the petitioner's role for the Nu Age Gymnastics and Dance was leading or critical. The petitioner has provided no evidence specifying how the she contributed to the organization in a way that is significant to the organization's outcome or what role she played in the organization's activities. The petitioner's evidence fails to demonstrate how her role differentiated her from the any other coaches or employees of Nu Age Gymnastics and Dance. Consequently, the petitioner has failed to demonstrate she performed in a leading or critical role within Nu Age Gymnastics and Dance.

Counsel's brief in response to the NOID asserts that Nu Age Gymnastics and Dance enjoys a distinguished reputation based on the petitioner's involvement with the organization and that the gym has received invitations to several competitions. Counsel also outlines the testimony of Tyana

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

he Florida state chair for rhythmic gymnastics. indicates that she determines which groups to invite to state competitions and she was aware of the petitioner as a gymnast and a coach. While Ms. s letter does indicate that the petitioner has coached athletes who placed in the Florida state competitions, her letter does not indicate that Ms. actually invited the petitioner's gym to a state competition. Regardless, the petitioner has not demonstrated the distinguished reputation of the gym by simply being invited to a state level competition. The petitioner provided a table of results relating to the Florida state competition and highlighted the entries that are purportedly members of Nu Age Gymnastics and Dance. The tables of results contain a "Team" column heading, which bear "NUR" within the same row as the gymnasts highlighted by the petitioner. This evidence does not contain a legend indicating the name of the team that "NUR" represents. Consequently, these results cannot be attributed to Nu Age Gymnastics and Dance.

Chair for the U.S. Region Six Rhythmic Gymnastics Organization, invited Nu Age Gymnastics and Dance to the region six championships based on the gym's performance at the Florida state competition. These two invitations, while not demonstrating a distinguished reputation, do reflect a certain level of the organization's success. Counsel also asserts that two media articles written about the gym demonstrates its distinguished reputation. This decision previously discussed the shortcomings of these two articles under the published material criterion as the articles fall short of qualifying as major media. The petitioner failed to submit independent, objective evidence demonstrating that Nu Age Gymnastics and Dance has a distinguished reputation. The AAO is not persuaded that every gymnastics organization receiving invitations to compete demonstrates a distinguished reputation. The petitioner failed to submit any documentary evidence, for example, that distinguishes Nu Age Gymnastics and Dance from other gymnastics organizations whose students compete.

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

B. Letters of Support

Counsel's appellate brief indicates that the letters of support were intended to place much of the other evidence in proper context and the letters were not meant to form a cornerstone of eligibility for the petitioner. Counsel also indicates that some of the "testimonials" originate from outside the petitioner's circle of friends and that the letters should have been considered as evidence within the director's decision. As an example of statements the director should have considered, counsel references a general affirmation of technical ability and expertise.

The director's decision discussed the letters under the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v). Counsel no longer asserts that the petitioner meets this criterion on appeal, effectively abandoning that claim. *Sepulveda v. U.S. Att'y Gen.,* 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). However, counsel's appellate brief stated: "[T]hese letters were provided to place the evidence in the proper context. . . . this evidence

was not submitted to be a cornerstone for the application." Counsel also indicates that these letters were intended to provide insight into the petitioner's qualifications, and that the director should have considered these letters as evidence, but fails to identify under which criterion she felt the letters should be applied.

Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Insofar as they address the criteria at 8 C.F.R. § 204.5(h)(3) rather than provide general attestations of technical ability and expertise, the letters have been considered as requested, "to place the evidence in the proper context." Any additional consideration is more applicable to a final merits determination rather than to the antecedent procedural step.

C. 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.[4] 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.

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[4] 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).

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.