

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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: **AUG 07 2012** Office: TEXAS SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

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

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 for the beneficiary as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim of the beneficiary 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 on behalf of the beneficiary under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, upon review of the entire record, including the evidence submitted on appeal, the AAO upholds the director's conclusion that the petitioner has not established eligibility for the exclusive 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. 723 101<sup>st</sup> 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.<sup>1</sup> 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 antecedent regulatory requirement of three types of evidence. *Id.*

---

<sup>1</sup> 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. Evidence of a one-time achievement

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

For the first time on appeal, counsel asserts that the petitioner satisfies this requirement based upon his "receipt of first place [REDACTED]"

[REDACTED] The record contains a copy of a fill-in-the-blank achievement certificate signed by the Chairman of the International Wushu Federation (IWUF), a letter with a certified translation from the IWUF, Chinese Wushu Association and Henan Bureau of Sports, an almost identical letter from the General Bureau of Sports of China, and various internet printouts. Counsel further asserts that the petitioner also satisfies this requirement based upon his receipt of "first place at the Jiansho event in the first Afro-Asian Wushu Kung-Fu Championships in 2002 in Egypt." The petitioner submitted a copy of a fill-in-the-blank certificate and a copy of two photographs from an unknown source with an uncertified translation, which is of no probative value.

Regarding the letters, neither letter is signed and therefore are of no evidentiary value. With regard to the internet printouts, the information provided highlights that the First World Traditional Wushu Festival was also a festival with "over 4,000 martial artists [] perform[ing] traditional Wushu." Furthermore, according to the documentation submitted by the petitioner to demonstrate the selection criteria for the United States of America Wushu Kung Fu Federation, "[u]nlike the official World Wushu Championships, IWUF member organization members are allowed to send more than one team to participate," and that "team trials are open to every citizen and permanent resident of the United States." The petitioner also submitted an internet printout from <http://plumblossom.net>, a U.S. team which participated in the festival. As the petitioner is not a U.S. citizen or permanent resident, these documents are not relevant to his team. While the Plum Blossom team expresses excitement about

attending the event, the selection document confirms that the festival was not of the same caliber as the official World Wushu Championships.

The record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive categories won by the petitioner. For instance, the petitioner failed to submit evidence of the criterion for selection to participate and official comprehensive results from the preceding competitions indicating the total number of entrants in his competitive category. A victory in an event category with a limited pool of entrants or talent is not evidence of international recognition. Moreover, a competition may be open to athletes from various countries, but this factor alone is not adequate to establish that an award from the event qualifies as a major, internationally recognized award. Furthermore, the AAO will not presume that a festival, or an event held for the first time, as is the case for the preceding awards, equates to a major, international competition. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his award certificates.

The documentation submitted by the petitioner does not establish that his awards were recognized beyond the context of the events where they were presented and therefore commensurate with major, internationally recognized awards in the martial arts. Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement.

#### B. Evidentiary Criteria<sup>2</sup>

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

Although the director found that "the evidence submitted meets this criterion," based on a review of the entire record, the AAO must withdraw the findings of the director for this criterion.

As discussed above, the record contains no evidence that the petitioner's first place finishes at [REDACTED] and at [REDACTED] in the Jiansho event are nationally or internationally recognized prizes or awards for excellence, either at the major or lesser level.

The record also contains evidence that the petitioner won first place [REDACTED] of the People's Republic of China in 2003. Supporting evidence in the record demonstrates that this event was comprised of "14 different competitions and 124 types of performances" and "athletes of different minority groups from over 34 delegations."

---

<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

In the original filing, counsel asserts that the petitioner won [REDACTED] at the National Games of the People's Republic of China. However, the record only contains a copy of two certificates with certified translations for a second place finish for the Male Sword Competition and a third place finish for the "other Male Fist Competition (3 Types)" issued for the National Sports Competition in 1997 held in Taiyuan. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The original filing contains a printout from *Wikipedia* regarding the 11<sup>th</sup> National Games of the People's Republic of China which states that the games were held in Shandong from October 16 - October 28, 2009 and that "4 winter sports [] were held in Shenyang, Changchun and Qingdao between January and April 2009."

In response to the director's request for evidence, counsel states that that the awards won [REDACTED] for the 8<sup>th</sup> National Games of the People's Republic Of China. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591. The AAO also notes that with regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008).

Given the inconsistencies between the certificates presented and the assertions made by counsel, the AAO cannot presume that the petitioner participated in any of the National Games of the People's Republic of China or that he received first place in any competition. It remains the petitioner's burden to submit evidence addressing every element of a given criterion, including that a prize or award is nationally or internationally recognized.

---

<sup>3</sup> Online content from *Wikipedia* is subject to the following general disclaimer:

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

See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on July 26, 2012, a copy of which is incorporated into the record of proceeding.

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

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

The director concluded that the petitioner did not meet this criterion under 8 C.F.R. § 204.5(h)(3)(ii). Counsel does not contest this finding on appeal. Upon review of the entire record, the AAO affirms the director's findings.

*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.*

Although the director found that "the evidence submitted meets this criterion," based on a review of the entire record, the AAO must withdraw the findings of the director for this criterion.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulation, it must be appear in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

The December 2007 article in *Kung Fu Tai Chi Magazine* lists the petitioner as one of "38 Shaolin Immigrants to the San Francisco Bay Area." The plain language of the regulation requires the article to be "about" the petitioner. The AAO will not presume that an article where the petitioner is one of thirty-eight individuals profiled is about the petitioner. See generally *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). The AAO also notes that, unlike many of the other individual's biographies, the article does not mention that the petitioner has won any awards, rather that "[h]e participated in many Shaolin tours."

In response to the director's request for evidence, counsel asserts that the article in the *Yan Zhao Evening News* "reaches as many as 3,500,000 Chinese readers throughout the nation." The petitioner submitted information from the website address <http://www.admimai.com> that states that this daily paper has a circulation of 3,500,000 per issue and that "[i]t is the first medium brand choice for domestic business and foreign country business to widen their business influence in northern China."

---

<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

However, in the original filing, the petitioner submitted information from the website address <http://baike.baidu.com> that states the paper “is mainly published in Shijiazhuang – the capital city of Hebei,” that “[i]t is also distributed in main middle-size cities in the province” and that the “highest issue[] volume reached 350,000. As previously mentioned, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. at 582.

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory 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 found that the petitioner satisfied the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and the AAO affirms that finding.

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

The director concluded that the petitioner did not meet this criterion under 8 C.F.R. § 204.5(h)(3)(v). Counsel does not contest this finding on appeal. Upon review of the entire record, the AAO affirms the director's findings.

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

Although the director found that “the evidence submitted meets this criterion,” based on a review of the entire record, the AAO must withdraw the findings of the director for this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires “[e]vidence of the alien's authorship of *scholarly articles* in the field, in professional or major trade publications or other major media.” (Emphasis added.) Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the record lacks evidence demonstrating that the petitioner's articles were peer-reviewed, contain any references to sources, or were otherwise considered “scholarly.” Furthermore, the translations of the articles did not comply with the terms of 8 C.F.R. § 103.2(b)(3):

*Translations.* 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.

While the articles do contain translations, the certificate of accuracy signed by the translator is for the information regarding the publication and not for the articles themselves.

In light of the above, the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(vi).

### C. Summary

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 antecedent regulatory requirement of three types of evidence. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

### D. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 596 F.3d at 1119-20.

The director reviewed all of the evidence in the record and provided a detailed discussion of her findings in the final merits determination. After careful review of the record, the AAO affirms the director’s findings. The classification sought requires “extensive documentation” of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

As the petitioner satisfies only a single criterion, the AAO cannot find that petitioner is one of the small percentage who has risen to the top of his field or that the petitioner has sustained national or international acclaim, as required by 8 C.F.R. §§ 204.5(h)(2) and (3). Even assuming that the petitioner won the awards referenced in the record for which the petitioner submitted no persuasive evidence to demonstrate that they are nationally or internationally recognized, the awards all date from 2004 or earlier. As such, they cannot by themselves establish eligibility. 8 C.F.R. § 204.5(h)(3). They are also not indicative of or consistent with sustained national or international acclaim, as the petitioner filed the petition on June 1, 2011. On appeal, counsel asserts that “the AAO has previously examined the concept of ‘sustained acclaim’ in *Matter of \_\_\_\_\_*, VSC, EAC 02-099-53226.” Counsel did not include a copy of the unpublished decision. 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.

Furthermore, as indicated by the offer letter from Shaolin Academy, the petitioner is seeking to be employed as a "Martial Arts Practitioner," a position that will "require[] him to perform Chinese martial arts in many national and international level competitions; impart his expertise of Chinese traditional Kung Fu and Wushu to the students of our academy; and serve as a senior instructor for our management team." The record contains no evidence of the petitioner's accomplishments as instructor. The statute and regulations require the petitioner's national or international acclaim to be sustained and that he seeks *to continue work in his area of expertise* in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a martial arts instructor and a martial artist share knowledge of the sport, the two rely on very different sets of basic skills. Thus, instruction and competition are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

*Id.* at 918. The court noted a consistent history in this area. While the record demonstrates that the petitioner intends to compete and work as an instructor, there is no evidence demonstrating his accomplishments as an instructor. While the AAO acknowledges the possibility of an alien's extraordinary claim in more than one field, such as martial arts instructor and martial artist, the petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See 8 C.F.R. § 204.5(h)(5).

### III. CONCLUSION

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

Review of the record, however, does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner is a skilled martial artist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, 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.