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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE: **JAN 23 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 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 and reaffirmed that decision on motion. The matter 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, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) in the athletics.¹ The director determined the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act; and 8 C.F.R. § 204.5(h)(3); *see also* H.R. 723 101st Cong., 2d Sess. 59 (1990). 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 and additional documentary 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

¹ Within the initial filing brief, counsel states, ██████████ might be directly beneficial to US economy because he will be the US singer. Further, he wants to run a music school in future [*sic*] and teach Wushu to the US Citizen and also might be very beneficial to US employers who have been engaging Wushu training school.”

(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 following ten categories of evidence.

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

- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

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

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a

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

new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

A. Evidentiary Criteria³

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 requirements the petitioner must address. First, pursuant to the plain regulatory language, the alien must be the recipient of the prizes or the awards (in the plural). The next requirement is that the evidence establishes that the prizes or the awards are nationally or internationally recognized. The final requirement relates to the criteria required to receive the award, which would indicate if the issuing entity bases their award selection on excellence in the petitioner's field of endeavor. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner claims that the following awards satisfy the plain language requirements of this criterion: a 1996 certificate of participation from the Wushu Federation of Asia for the 4th Asian Wushu Championship; a certificate of appreciation from the Olympic Council of Asia for the 13th Asian Games in Thailand in 1998; a certificate of participation from the International Karate-Do Goju-Kai Association in 2001; the gold medal for the All Nepal Open Kick Boxing Championship in 1995; the central region gold medal for the National Wushu Championship in 1995; and the central region silver medal for the National Wushu Championship in 1994. The director determined the petitioner failed to meet the requirements of this criterion.

Certificates of participation are not equal to prizes or awards. Participating in a competition does not reflect any level of excellence in the field and consequently these certificates do not meet the plain language requirements of "prizes or awards" within the regulation. 8 C.F.R. § 204.5(h)(3)(i). In reference to the remaining claimed prizes or awards, counsel's appeal brief indicates the director gave no consideration to the evidence and that two forms of evidence establish that these awards are nationally or internationally recognized. The first form of evidence is a letter from ██████████ ██████████ General Secretary of the Nepal Wushu Association. This letter delineates the selection method for Wushu players in Nepal. The second form of evidence is a chart reflecting the progression of athletes in Wushu from district to national level players. While these forms of evidence might indicate that national Wushu players are comprised from a national pool of candidates, they fail to establish that any of the awards on record received national or international

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

recognition. The petitioner provides no evidence establishing his awards are nationally or internationally recognized.

Thus, 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 establish. The first is that there are associations (in the plural) in the petitioner's field that consist of formal membership. The second requirement is that the petitioner is or was a member of these associations. The third element is that the associations require outstanding achievements (in the plural) as a condition of admittance. The final requirement is that admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field who determine if the aforementioned outstanding achievements are sufficient for admission.

The petitioner claims eligibility for this criterion based on membership with two associations; The World Kuo Shu Federation and the World United Martial Arts Federation-Nepal. The director determined the petitioner failed to meet the requirements of this criterion.

The petitioner's club is a member of The World Kuo Shu Federation. As evidence that this association requires outstanding achievements of their members, as judged by recognized national or international experts, the petitioner provides the "About Us" web page printout from this association. Although the printout indicates the association was founded by an expert, the record contains no evidence of the membership requirements for this association. As the record does not contain the bylaws or other official documentation of the association's membership criteria, the AAO cannot evaluate whether the petitioner's membership in this association meets the plain language requirements of this criterion. Additionally, the web page printout states, "Currently [December 29, 2008], there are more than 60 group members in T.W.K.S.F. [The World Kuo Shu Federation] Any qualifying organization – including schools, associations and federations – may join and participate in T.W.K.S.F activities." This association is not one that restricts its membership rolls to only those with outstanding achievements. The evidence the petitioner presents fails to establish that acceptance into this association is judged or adjudicated by nationally or internationally recognized experts in the field. While the evidence does refer to the executive committee, it falls short of identifying the caliber of those who grant membership.

It is important to note that the petitioner's club is a member of The World Kuo Shu Federation. Counsel's brief in support of the motion to reopen asserts that this "group membership" in The World Kuo Shu Federation qualifies under the regulation. Counsel's position is unsupported. 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). Additionally, the certificate from this organization clearly indicates that the “Eng Yang Kung Fu Club” has been accepted as a group member. This “group membership” concept is not reflected in the plain language of the regulation. 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). Consequently, this membership is not a qualifying one.

A letter from [REDACTED] this time as General Secretary of the World United Martial Arts Federation-Nepal, provides that the petitioner is a technical member of this association. [REDACTED] letter further provides that the criteria for technical membership are “that one must have complete knowledge, training and understanding of Martial Art [sic] and based on such understanding must have attained national recognition and have played at least two national championships, after substantial years of training education and training [sic] in martial art [sic].” This letter establishes that membership within this association is based on outstanding achievements of its members at the technical level. However, [REDACTED] letter does not state whether admittance is judged, or adjudicated, by nationally or internationally recognized experts in their field. As a result, this membership cannot meet the plain language requirements of this criterion.

Thus, the petitioner has not submitted qualifying evidence that meets this criterion.

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

In order to meet the requirements of this criterion, 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 or 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 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 submits several articles as evidence under this criterion. The director determined the petitioner failed to meet the requirements of this criterion.

The article titled, “[REDACTED] nominated as Chief of NWA,” was purportedly published in the *Kathmandu Post*. This article is not primarily about the petitioner. The name [REDACTED] within the title refers to “the first martial art coach of the country, [REDACTED] not the petitioner. The petitioner is mentioned in passing within one sentence in the middle of the article. The article is clearly not about the petitioner or related to his work in his field. Counsel’s initial filing brief asserts this article is published in the *Kathmandu Post*; however, this information cannot be ascertained

from the evidence on record. As a result, the AAO cannot determine if the article appeared in one of the required publication types. This article fails to meet the plain language requirements of this criterion.

The material titled, "Asian Games Countdown," appeared in *The Rising Nepal, Kathmandu*. While this article does appear in a publication, it does not constitute published material that is about the petitioner and his work in the field. The material consists of a single sentence and a photograph with biographical information. The petitioner's photograph and biographical information is interspersed with five other participants selected for the 13th Asian Games. This item is not about the petitioner; it is about the group of Nepalese Wushu players appearing at an upcoming competition. The only reference within the record related to this publication is counsel's assertion that it "is the first and foremost national sheet and one and only government own [sic] daily English newspaper of Nepal." Counsel provides no evidence to support his assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Consequently, the petitioner has failed to provide evidence to establish this is a qualifying publication under this regulatory criterion.

The article titled, "Our Wushu Players Participants of Asaid," was published in the *Gokhapatra* newspaper. The article's title serves as the initial indication that the article is not about the petitioner. The article is about Wushu as a sport and mentions the petitioner in addition to five other players. Moreover, the petitioner did not provide a full English translation required pursuant to 8 C.F.R. § 103.2(b)(3); he provided an "Extract from Gokhapatra." The translation reflects a general paragraph about the Wushu sport and the information related to the petitioner, but omits the content related to the other Wushu players. The regulation 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.) 8 C.F.R. § 103.2(b)(3). As a result, summary translations are not considered sufficient to meet the requirements of the regulation. As this evidence is insufficient to meet the appropriate evidentiary requirements, it will not be considered under this criterion or within the final merits determination.

Additionally, the petitioner provides evidence from a web site, groundreport.com, to establish that this publication qualifies as major media. This web site provides that the *Gorkhapatra* has millions of readers in Nepal but fails to provide any statistics to reflect the paper's circulation or distribution data to indicate if the publication is local or national in scale. The petitioner also fails to provide any additional evidence related to the distribution data of the *Gorkhapatra* to establish that this published material has a national rather than a local or a regional reach within Nepal. Publications with only a local or 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. This evidence fails to meet the plain language requirements of the regulation.

The article titled, "First UMA [World Martial Arts Association Nepal] Wushu Title to Young Hearts," appears in *Times*. Counsel fails to identify this article within any briefs and the petitioner fails to provide evidence related to this publication. As a result, this article cannot meet the requirement of this criterion that the article appear in a professional or major trade publication or other form of major media. More importantly, this article, as the title clearly indicates, is about the inaugural Wushu championships; it is not about the petitioner. The article mentions the petitioner as one of 16 competition officials. This is insufficient to establish that the article is about the petitioner and his work in the field. In addition, this article's translation fails to include the date and the material's author. Regarding the date, the translation provides, "September 22," but lacks the year the article appeared in the publication. In reference to the author, the translation simply states, "Times Reporter." These additional deficiencies establish that this translation fails to comply with this criterion's explicit requirements. As this evidence is insufficient to meet the appropriate evidentiary requirements, it will not be considered under this criterion or within the final merits determination.

The article titled, "Wushu a popular sport in Dolakha despite of too many difficulties [*sic*]," was published in the *Kantipur* newspaper. While this article contains a few quotes attributed to the petitioner, it is not primarily about the petitioner. The article reflects the difficulties of the new Wushu sport in this Nepali region. Again, the translation of this article fails to indicate the article's author, merely providing, "Kantipur Reporter." In reference to this newspaper qualifying as major media, the petitioner provides circulation statistics from the *Kantipur* web site. While this self-serving circulation data indicates that the *Kantipur* has a daily circulation figure of 250,000, the record lacks evidence of this publication's distribution data to determine if the publication is local or national in scale. The petitioner also fails to provide any additional evidence related to the distribution data of the *Kantipur* to establish this publication has a national rather than a local or a regional reach within Nepal. Publications with only a local or a regional reach are not considered to be major media and the petitioner has not established that this publication is a professional or major trade journal as required by the regulation. While this evidence fails to meet the plain language requirements of the regulation, the AAO will consider it within the final merits determination.

The article titled, "Difficulty to the Instructor," was published in the *Samacharpatra* newspaper. Similar to the above article published in the *Kantipur* newspaper, this article is about the difficulties the Wushu sport encountered in the Dolakha district. Consequently, this article experiences the same deficiencies as the above article in that it is not about the petitioner and his work in the field, the translation provides no named author, and the petitioner has failed to provide evidence to establish that this publication qualifies as a professional or major trade publication or other major media. Although counsel's initial brief indicates this publication "is a widely circulated Nepali daily newspaper," as previously stated, counsel's assertions are not sufficient to meet the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Consequently, the petitioner has failed to provide evidence to establish this is a qualifying publication under this regulatory criterion.

The article, "Popularity of Wushu Sport in Dolakha," was published in the *Sagarmatha* newspaper. This article's translation fails to comply with the plain language requirement of this criterion, that the translation identify the author. This article is about the popularity of the Wushu sport in the Dolakha district. While the petitioner may be more prominent within this article, it still falls short of meeting the regulatory requirement of being about him. As the article's title reflects, the topic of this article is the rising level of popularity of this sport within this region of Nepal. The record lacks any evidence of the circulation or the distribution statistics related to this newspaper and the petitioner has failed to establish that this newspaper is a form of major media. As a result, this article is insufficient to contribute to the petitioner establishing eligibility under this criterion.

Counsel's initial filing brief claims that the petitioner's name appears in a tournament booklet, and that this qualifies under this regulatory criterion. The booklet lists the petitioner as a judge at the 2008 U.S. International Kuo Shu Championship Tournament. The petitioner is not the primary or even a subordinate topic within this booklet. As a result, this booklet is deficient related to this criterion's most important element; that the published material be about the petitioner. Furthermore, printed material is not necessarily published material. Inclusion in a printed in a tournament booklet is not equal to published material about every one of the named participants in one of the required publication types. These booklets are intended to memorialize the competition's participants rather than being "published material . . . in professional or major trade publications or other major media." See 8 C.F.R. § 204.5(h)(3)(iii). The AAO cannot conclude that a competition booklet, which is not the result of independent media reporting and which is distributed or sold at a sports competition, meets the plain language of this regulatory criterion.

The petitioner submits a biographical page containing his information in addition to the information of five other individuals. This biographical page derives from a souvenir booklet from the 13th Asian Games. The petitioner has not provided any evidence that booklets of this type are considered one of the qualifying publications. As previously stated, these types of booklets are intended to memorialize the competition's participants rather than being "published material . . . in professional or major trade publications or other major media." See 8 C.F.R. § 204.5(h)(3)(iii). Also as previously stated, simple inclusion in a printed in a tournament booklet is not equal to published material about every named individual in one of the required publication types. The AAO cannot conclude that a souvenir, which is not the result of independent media reporting and which is distributed or sold at a sports competition, meets the plain language of this regulatory criterion.

The petitioner submits printouts from a web site as major media coverage. The petitioner's name appears on the Sadec Asia Pacific web site. The petitioner's name does not appear in a traditional article, as the web site merely lists his name next to his competitor at a tournament. This evidence clearly falls short of meeting the plain language requirements that the published material be about the petitioner and this evidence will not contribute to the petitioner satisfying the plain language requirements of this criterion.

The petitioner also submits an unsigned letter, purportedly from [REDACTED] Reference Librarian from the Library of Congress, Asian Division. As the letter is unsigned, it has

no evidentiary value. The author, purportedly [REDACTED] provides the Library of Congress microfilms and subscribes to the *Kathmandu Post*. The letter refers to “*Kantipura Publications*” or the “*Kantipura*” newspaper, which are both misnomers. The actual publication and newspaper name is *Kantipur*. The letter also indicates the Library of Congress microfilms the *Kantipur* newspaper. While this information may indicate the Library of Congress holds some interest in the named publications, the letter fails to provide information related to the circulation or distribution data of any of the publications. The fact that the Library of Congress, Asian Division microfilms and subscribes to these publications is insufficient to establish any of the named publications qualify under this criterion as in professional or major trade publications or other major media. As a result, the petitioner has failed to establish any of the named publications qualify as major media.

The petitioner provides a partially legible photocopy of a document that appears to be from the Press Council Nepal. This document appears to contain circulation data; however, the document is not legible enough to make a conclusion related to its contents. This document will not be considered as evidence.

On appeal, the petitioner provides new evidence related to this criterion in the form of a letter from [REDACTED] Station Manager of the Star FM radio station. This letter indicates that this radio station broadcasted a 15 minute interview with the petitioner, “on his daily life and about Wushu and martial art [*sic*] on July 2008.” The petitioner failed to provide a certified transcript of the interview to establish this event meets the plain language requirements of the regulation.

The petitioner has failed to establish the named publications both qualify as major media and that the published material is about him. Thus, 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.

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 field in which the petitioner seeks an immigrant classification within the present petition.

The petitioner submits evidence that he participated as a referee and judge at the South Asian Wushu Championship, Kathmandu 2000; several letters of appreciation from the National Sports Council for the petitioner’s contributions as a Wushu Judge in five competitions spanning from September through November 1996; certificates for the Inter School Wushu Championships in 1996 and 1998; and two certificates from the World United Martial Arts Federation Nepal from 2001 and 2003. The petitioner also provides evidence that he was listed as a judge at the 2008 International Kuo Shu Championship Tournament. The director determined that the petitioner failed to meet the

requirements of this criterion. The AAO will withdraw the director's determination related to this regulatory criterion.

The letter of appreciation from the National Sports Council for the petitioner's participation in the Regional Wushu Competition held in Makawanpur lacks any reference to a date during which the competition took place. As this evidence fails to establish a date upon which the qualifying activity occurred, it is insufficient to establish the petitioner's eligibility for this criterion. The petitioner submits two certificates from the World United Martial Arts Federation Nepal for competitions taking place on May 5 – 7, 2001, and June 7 – 9, 2003. The certificates appear to be intended for participants of the competition, but the issuing authority placed the petitioner's name on the certificate and wrote the title "Judge" in the place which should represent the participant's finishing position, e.g., first place, second place, etc. The certificate issued by the Third Inter School Wushu Championship also is intended for the competition's participants, but the issuing authority utilized this document to attempt to memorialize the petitioner's activities as a judge.

The evidence related to this 2008 International Kuo Shu Championship Tournament consists of a certificate of appreciation from the United States Kuo Shu Federation (USKSF), an advertisement page for the tournament, an undated welcome letter from [REDACTED], the USKSF President to all the "competitors, referees, staff and spectators," and page 73 from a tournament book or pamphlet. The certificate of appreciation related to the 2008 tournament thanks the petitioner for his "support and participation" in the tournament. Page 73 of the tournament book lists the petitioner as one of the judges.

The evidence from the South Asian Wushu Championship, Kathmandu 2000, the certificate for the Leo 4th Inter School Wushu Championship, the letters of appreciation from the National Sports Council for the petitioner's contributions as a Wushu Judge in five competitions from September through November 1996 and the pamphlet for the 2008 tournament each constitutes qualifying evidence that meets the plain language requirements of this criterion.

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

The petitioner claimed eligibility for this criterion within his initial petition filing and in his motion to reopen. The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submits letters that extol his achievements and characterize the petitioner as a sincere hardworking employee. These letters confirm that the petitioner has held various positions within several organizations. The AAO will not infer the nature of the petitioner's role solely from the title. The letters fail to describe the duties the petitioner performed for the organizations in his various roles. The letters also fall short of specifying how the petitioner contributed to the organizations in a way that is significant to the organization's outcome or what role he played in the organization's activities. In response to the director's request for evidence (RFE), the petitioner provided a web site printout of his biography from the American Wu Shu Society. This biography provides an account of the various positions the petitioner has occupied, but it does not establish that he has played a leading or critical role for organizations or establishments.

The regulation also requires that these organizations have a distinguished reputation. Counsel asserts: "[T]he applicant meets the criterion under 8 C.F.R. § 204.5(h)(3)(viii) by proffering evidence of leading role [*sic*] he has played in organizations of national repute." The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. 506. The petitioner has failed to provide evidence that any of the entities in which he allegedly performed in a leading or critical role, enjoy a distinguished reputation.

As such, the petitioner has failed to provide qualifying evidence under this criterion, and he consequently has not established that he meets the plain language requirements of this criterion.

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

B. 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 certificates of participation and three awards were issued within a two year period, and more than 14 years before the petition filing date. The petitioner failed to establish these certificates are nationally

or internationally recognized. Such evidence is uncharacteristic of a career of sustained national or international acclaim or the status as one of that small percentage who have risen to the very top of their field of endeavor.

The petitioner establishes that the World United Martial Arts Federation-Nepal requires outstanding achievements of its technical members, however the record lacks evidence that technical members are admitted using recognized national or international experts in the petitioner's field. Membership in one association that either does not require outstanding achievements of its members or that does not admit its members using recognized national or international experts in the petitioner's field, is not demonstrative of those who have achieved sustained national or international acclaim in their field.

Published material that is not about the petitioner or his work and that appears in news media without a national or international reach is not representative of national or international acclaim nor does it demonstrate the petitioner enjoys the status as one of that small percentage who have risen to the very top of their field of endeavor.

The record reflects that the petitioner has refereed martial arts competitions. The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's national or international acclaim. *See Kazarian*, 596 F.3d at 1122. One instance of judging at a south Asian tournament in 2000, five regional competitions in a three month span in 1996 and serving as a judge at a 2008 tournament that, while advertised as "international," is of undocumented significance are not indicative of sustained national or international acclaim or of one who has attained the status as one of that small percentage who have risen to the very top of their field of endeavor. USCIS need not rely on the self-promotional material of the tournament organizers as to the significance of the tournament.⁴

In the initial filing, the petitioner claimed his participation in a training seminar held in Nepal in 2007 as his major contribution to his field pursuant to 8 C.F.R. § 204.5(h)(3)(v). The petitioner fails to bridge his attendance at this training seminar with any contribution that the training seminar may have provided to the field of Wushu. Participation in a training seminar will not serve to establish the petitioner's sustained national or international acclaim or that he has attained the status as one of that small percentage who have risen to the very top of their field of endeavor

In the initial filing, the petitioner claimed photographs taken during his performances qualified as evidence of the display of his work in the field at artistic exhibitions or showcases pursuant to 8 C.F.R. § 204.5(h)(3)(vii). The interpretation that this criterion is limited to the visual arts is longstanding and has been upheld by a federal district court. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)).

⁴ *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The petitioner failed to provide any qualifying evidence of his leading or critical role for organizations or establishments. The petitioner relies on either his job title or the nominated position title with an organization or establishment as proof he performed in a leading or critical role, which is insufficient. The petitioner also failed to document the distinguished reputation of these organizations. As such, the evidence is not indicative of sustained national or international acclaim or that the petitioner has attained the status as one of that small percentage who have risen to the very top of their field.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who have risen to the very top of the field of endeavor. The petitioner, a "Wushu player," relies on awards predating the filing of the petition by several years that lack national or international recognition, membership in organizations that either do not require outstanding achievements of its members or that do not use recognized national or international experts to admit members, published material that may mention him but is not about him, judging duties almost exclusively at regional tournaments, and his job title working in organizations that do not have a distinguished reputation. These accomplishments are commensurate with an experienced athlete but not with status within the small percentage who have risen to the very top of their field.

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 in the martial arts 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 shows talent as a Wushu player, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field of martial arts instructors. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.