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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: JUL 0 2 2012 Office: NEBRASKA 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, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, 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 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, counsel asserts that the petitioner meets three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO upholds the director's ultimate conclusion that the petitioner has not established his 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 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.*

[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 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.

It should be noted that counsel did not raise this claim in the initial filing, nor in response to the director's request for evidence, but did submit the accompanying evidence to be used to evaluate this criterion. On appeal, counsel asserts that the petitioner "is an 8th degree black belt in taekwondo and Ssang Jul Gon (nunchucks)." Counsel also states that "there are less than 50,000 individuals worldwide who have been recognized with this level of expertise in taekwondo" and that reaching the 8th Dan "requires that the member have outstanding achievements, such as championships and demonstrated expertise, as judged by these high ranking masters."

Contained in the initial filing are certificates from the Korea Ssang Jul Gon Association and the Korea Pro Taekwondo Association indicating that the petitioner attained the 8th Dan (black belt) and a certificate from Kukkiwon- World Taekwondo Headquarters indicating that the petitioner attained the 7th Dan. While these certificates show the petitioner's achievement, they are not indicative of membership. The petitioner did not submit any additional documentation regarding the requirements of the 7th and 8th Dans, nor proof of membership in these associations. In addition, there is no evidence that any of these associations require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. Finally, the petitioner did not submit any accompanying evidence to corroborate counsel's above-mentioned statements. The unsupported assertions of counsel do not constitute evidence. *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).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish that the evidence was qualifying. 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), citing *United*

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

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).

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 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. *Id.*

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

In response to the director's request for evidence, the petitioner submitted an unsigned statement, purportedly from HOKI Taekwondo, stating that the petitioner was "in charge of a Nunchuk leadership class." The statement also confirmed that the submitted DVD is a video session of one of the petitioner's classes and that the DVD was offered for sale. Finally, the statement includes information regarding the company's website address, establishment date and mission statement. The petitioner did not submit any information regarding DVD sales or influence. In addition, the petitioner resubmitted a "Letter of Recommendation" with a stamped signature from [redacted] that the petitioner is "a well-qualified Ssang Jul Gon (nunchaku) instructor based on his Ssang Jul Gon experiences and achievements." The letter provides a listing of the petitioner's "experiences" and credits the petitioner with "Development of a Three-Tiered Baton Nunchaku for Self-Defense," "Development of Training Nunchaku and Competition of Nunchaku," and "Development of Nunchaku Competition Protection Equipments[*sic*]." On appeal, the petitioner submitted an unreferenced photocopy of what are assumed to be the above mentioned items, with no additional information to show that these items have been widely adopted, or even to support the claim that the petitioner was involved in the development of them.

In addition, counsel provides information regarding nine of the petitioner's students who, counsel asserts, "have seen great success in the taekwondo industry" and six of whom have been "part of the Korean National Demonstration Team." Also submitted was a one page printout from the Kukkiwon website about their Demonstration Team, which states the team is comprised of "about 70 members who are the top Taekwondo practitioners in the world in skill and tradition." However, the record lacks documentary evidence regarding the selection requirements, their high skill level, nor to confirm that these individuals were the petitioner's students or in fact, members of the Demonstration Team. There are a number of letters contained in the record that reference the petitioner's experience and skill, but fail to identify the petitioner's original athletic contributions to the field or provide specific examples of how those contributions rise to a level consistent with major significance in the field, such as examples of the usage of the nunchuks and protective gear which were asserted to have been developed by the petitioner. The petitioner failed to submit sufficient corroborating evidence, which

could have bolstered the weight of the reference letters. Vague, solicited letters that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.[3]

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original, but of "major significance" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

On appeal, counsel asserts that the petitioner "has competed at events and has displayed his skills" and that he "has contributed significantly to spread the reputation of taekwondo, not only with his own achievements, but by mentoring other athletes to become national and international athletes." The petitioner provided a "Certificate of Appreciation" from the 16th California Open International Taekwondo Championship referencing his "outstanding performance." Since no additional information or evidence was provided, the exact nature of this certificate is unclear. In response to the director's request for evidence, counsel stated that due to the petitioner's "unique and outstanding ability" in teaching nunchuks, the petitioner has "clearly made an original artistic [*sic*] contribution of major significance in the field." As noted previously, the unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506.

While the petitioner may be a skilled and supportive member of the taekwondo community who has trained students and competed himself, these activities do not equate to "original" athletic contributions of major significance. The submitted evidence does not establish that the petitioner's specific contributions to the field were original, such as a new method of instruction, nor that any of his contributions were of major significance in the field, such as the widespread adoption of his specific methods of instruction.

Thus, the AAO concurs with the director's determination that the petitioner did not submit documentary evidence to meet the elements of this regulatory criterion.

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

In response to the director's request for evidence counsel asserts that the petitioner's appointments to three different taekwondo associations "of distinguished reputations" qualify as an "original artistic [*sic*] contribution of significance." While the submitted evidence does confirm the appointments, the AAO concurs with the director who stated in her denial that the "record lacks documentary evidence to

[3] *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

demonstrate that these appointments are inherently leading or critical" and that there is no "documentary evidence to establish that any of the organizations maintains a distinguished reputation in the field".

On appeal, the petitioner submitted a brochure from the 24th Annual Fort Worth International Taekwondo Championships held in 2004 and the invitation letter for the event. It should be noted that in response to the director's request for evidence, counsel asserted that this was evidence under 8 C.F.R. § 204.5(h)(3)(iv). Counsel now claims that the petitioner's "leading role" in the instruction of Poomse (form) "was critical" to the event. While the invitation letter does state that "this seminar is instrumental in developing the participating athlete's skills" and that "having you instruct and lead our athletes" would "encourage U.S. athletes to continue our tradition of excellence," there is no evidence that distinguishes the petitioner's role from any other instructor's role at this event, nor that the petitioner performed a critical or leading role. Furthermore, the record does not contain any documentary evidence to show that this is an organization or establishment with a distinguished reputation. From the brochure, it appears that the tournament was open to competitors who were willing to pay the registration fee. Finally, it should be noted that petitioner's name does not appear anywhere in the program, nor is there any mention of the seminar. However, there is a special registration form and full page description for a seminar taught by [redacted] the United States' Olympic team coach. The documentary evidence fails to reflect that the petitioner performed in a leading or critical role beyond that of instructor for this one event. The record contains no evidence to illustrate the petitioner's role within the organizational hierarchy or his impact on the organization to demonstrate how the petitioner's one seminar would be considered leading or critical for the entire organization. As previously stated, the unsupported assertions of counsel do not constitute evidence. The unsupported assertions of counsel do not constitute evidence. *Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Ramirez-Sanchez*, 17 I&N Dec. at 506.

On appeal, counsel also asserts that the petitioner held a "critical position" as "chief instructor for the [redacted] and "was seminal in raising the reputation and recognition of the ssang jul gon as a competitive martial art." While counsel refers to Exhibit E, no documentation was attached. In reviewing the record, there is the previously referenced "Letter of Recommendation" with a stamped signature from [redacted], stating that the petitioner is "a well-qualified Ssang Jul Gon (nunchaku) instructor based on his Ssang Jul Gon experiences and achievements." The documentary evidence submitted did not provide any additional information with regard to how the petitioner's position as an instructor fit within the organizational hierarchy, such that it could be considered leading for the entire organization, nor how the petitioner's role as an instructor impacted the organization such that it rises to the level of a critical role for that organization. Furthermore, the record contains no evidence that the Korea Ssang Jul Gon Association is an organization or establishment with a distinguished reputation.

A further review of the record does show that the petitioner was appointed as [redacted] by the World Ssang Jul Gon Federation in October 2007 with no explanation of this role or its duties.

Thus, there is not any additional documentation to indicate whether the petitioner served in a critical or leading role, nor whether the World Ssang Jul Gon Federation is an organization with a distinguished reputation.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

B. 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.

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.

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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 at 145. 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).

ORDER: The appeal is dismissed.