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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

DATE: JUN 18 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:

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 on September 24, 2010. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on October 25, 2010. On May 2, 2012, the AAO issued a notice, advising the petitioner of the derogatory information in the record and affording her 15 days to respond. As of the date of this decision, more than a month later, the AAO has not received any responsive documents or explanation from the petitioner or counsel. The appeal will be dismissed with a finding of material misrepresentation.

I. PROCEDURE AND FACTUAL BACKGROUND

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, specifically, in the field of Chinese martial arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). In his September 24, 2010 decision, the director determined that the petitioner has 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; 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)-(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 has submitted a brief, asserting that the director erroneously concluded that the petitioner does not meet the prizes or awards for excellence criterion under 8 C.F.R. § 204.5(h)(3)(i), the membership in associations criterion under 8 C.F.R. § 204.5(h)(3)(ii), the published material about the alien criterion under 8 C.F.R. § 204.5(h)(3)(iii), and the original contributions of major significance criterion under 8 C.F.R. § 204.5(h)(3)(v). Counsel has filed no additional evidence.

For the reasons discussed below, the AAO finds that the petitioner has, by willfully misrepresenting a material fact, sought to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act. *See* section 212(a)(6)(C) of the Act. The AAO further finds that the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner has not presented at least three of the ten regulatory categories of evidence under the regulation at 8 C.F.R. § 204.5(h)(3). As such, the AAO finds that the petitioner has not demonstrated that she is one of the small percentage who are at the very top of the field and she has not shown sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO dismisses the petitioner’s appeal with a finding of material misrepresentation.

II. ISSUES PRESENTED ON APPEAL

A. Misrepresentation

The petitioner has willfully misrepresented material facts by submitting (1) a March 31, 2007 letter that discusses the petitioner's "innovative" Chinese martial arts style, and presenting the letter as having been authored by [REDACTED] President of the [REDACTED] and Vice President of the [REDACTED], (2) a March 31, 2007 letter from [REDACTED] the purported [REDACTED] and President of [REDACTED], asserting that the petitioner had won a bronze medal at the [REDACTED] and (3) uncertified English translations of excerpts from the newspapers *World Journal* and *Sing Tao Daily*, indicating that the petitioner had participated in the [REDACTED]

B. Eligibility under Section 203(b)(1)(A) of the Act

The AAO upholds the director's ultimate determination that the petitioner has not established her eligibility for the classification sought.

III. 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.

IV. MISREPRESENTATION

A. Legal Authority

Section 212(a)(6)(C) of the Act provides:

Misrepresentation. – (i) In general. – Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As outlined by the Board of Immigration Appeals (BIA), a material misrepresentation requires that the alien willfully make a material misstatement to a government official for the purpose of obtaining an immigration benefit to which one is not entitled. *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The term “willfully” means knowing and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the facts are otherwise. *See Matter of Tijam*, 22 I&N Dec. 408, 425 (BIA 1998); *Matter of Healy and Goodchild*, 17 I&N Dec. 22, 28 (BIA 1979). To be considered material, the misrepresentation must be one which “tends to shut off a line of inquiry which is relevant to the alien’s eligibility, and which might well have resulted in a proper determination that he be excluded.” *Matter of Ng*, 17 I&N Dec. 536, 537 (BIA 1980).

Accordingly, for an immigration officer to find a willful and material misrepresentation in visa petition proceedings, he or she must determine: (1) that the petitioner or beneficiary made a false representation to an authorized official of the United States government; (2) that the misrepresentation was willfully made; and (3) that the fact misrepresented was material. *See Matter of M-*, 6 I&N Dec. 149 (BIA 1954); *Matter of L-L-*, 9 I&N Dec. 324 (BIA 1961); *Matter of Kai Hing Hui*, 15 I&N Dec. at 288.

B. Analysis

Beyond upholding the director’s decision to deny the petition, the AAO is making a formal finding of willful misrepresentation of a material fact that should be considered in any future proceeding where the petitioner’s admissibility is an issue.¹ On May 2, 2012, in accordance with the regulation at 8 C.F.R. § 103.2(b)(16)(i), the AAO issued a notice advising the petitioner of derogatory information, indicating that she submitted (1) a false reference letter, dated March 31, 2007, purportedly from President [REDACTED] (2) a false reference letter, dated March 31, 2007, purportedly from [REDACTED], and (3) uncertified English translations of excerpts from newspapers that falsely stated the petitioner’s participation in the [REDACTED]. The petitioner certified and filed, through electronic filing, the Form I-140 petition, thus thereby certifying under penalty of perjury that “this petition and the evidence submitted with it are all true and correct.” In addition to certifying under the penalty of perjury that the evidence supporting the petition was true and correct, the petitioner’s initial submission to USCIS also included an undated statement, entitled “[REDACTED]” in which she summarized her purported accomplishments in the field of Chinese martial arts.

¹ It is important to note that while it may present the opportunity to enter an administrative finding of willful material misrepresentation, the immigrant visa petition is not the appropriate forum for finding an alien inadmissible. *See Matter of O*, 8 I&N Dec. 295 (BIA 1959). Instead, the alien may be found inadmissible at a later date when he or she subsequently applies for admission into the United States or applies for adjustment of status to that of a permanent resident. *See sections 212(a) and 245(a) of the Act*, 8 U.S.C. §§ 1182(a) and 1255(a).

As the derogatory findings relate to the criteria under the regulations at 8 C.F.R. §§ 204.5(h)(3)(i), (iii) and (v), they are material to this proceeding. The AAO's May 2, 2012 notice of derogatory information stated:

The initial evidence you submitted in support of this petition includes a March 31, 2007 letter allegedly from [REDACTED]. The signature on this letter, however, is dramatically different from [REDACTED] signature that appears on (1) an April 15, 2006 invitation, inviting [REDACTED] "president" of an unidentified organization, to attend the [REDACTED] [REDACTED], and extending the invitation to six other competitors at Mr. [REDACTED] organization, or (2) a blank copy of the 2006 U.S. [REDACTED] certificate of participation that does not list your name or any other participant's name. Moreover, the logos that purportedly make up the letterhead on this March 31, 2007 letter are clearly cut and pasted onto the letter.

Based on the above, the AAO has determined that the March 31, 2007 reference letter, which discusses the petitioner's "innovative and perfect style [that] instilled new life to [REDACTED]" is not authored by [REDACTED]. In short, the AAO has concluded that the petitioner submitted a reference letter that contains false information.

Additionally, the AAO's notice of derogatory information stated:

[A]lthough both you, in your statement, and [REDACTED] in his March 31, 2007 letter, claimed that you had won a bronze medal at the [REDACTED] [REDACTED] sponsored by the U.S. [REDACTED], you have not submitted an award certificate from that competition that lists your name. Moreover, based on independent online research, a United States Citizenship and Immigration Services (USCIS) officer found that the winners in the events listed on your competition registration, events 98 and 108 – were [REDACTED]. See [REDACTED] accessed April 27, 2012 and incorporated into the record of proceeding. According to this website, [REDACTED] the United States [REDACTED] [REDACTED] was originally known as [REDACTED].

Based on the above, the AAO has determined that the March 31, 2007 reference letter, purportedly from [REDACTED], which discusses the petitioner's "new style movements . . . with exquisite postures and breathing methods" and her competitive history, contains false information. Similarly, the AAO has found that the petitioner's undated statement also contains false information as to her competitive history. In short, the AAO has concluded that the petitioner submitted a reference letter and a statement that contain false information.

Finally, the AAO's notice of derogatory information stated:

[Y]ou have provided an uncertified English translation of a paragraph published in the newspaper *World Journal*, on [REDACTED] that states that the [REDACTED] "was held yesterday at [REDACTED]" and "was attended by almost one thousand competitors" from a number of countries. You have, however, also provided an uncertified English translation of a paragraph published in the newspaper [REDACTED] on October 20, 2006, that states that the [REDACTED] – the same tournament discussed on December 18, 2006 in the newspaper *World Journal* – "was held yesterday at [REDACTED]" and "was attended by almost one thousand competitors" from a number of countries. Your evidence does not explain why the two publications reporting on the same competition gave a different time and location for the same competition.

Based on the above, the AAO has determined that the two newspaper excerpts contain false information relating to the petitioner's competitive history and media coverage. In short, the AAO has concluded that the petitioner submitted two newspaper excerpts that contain false information.

By the petitioner submitting two reference letters, a statement and two newspaper excerpts, all containing false information relating to the petitioner's receipt of awards and prizes, as required under the regulation at 8 C.F.R. § 204.5(h)(3)(i), published material about the petitioner, as required under the regulation at 8 C.F.R. 204.5(h)(3)(iii), and/or the petitioner's original contributions of major significance, as required under the regulation at 8 C.F.R. 204.5(h)(3)(v), it appears that the petitioner has sought to obtain a visa by willful misrepresentation of a material fact. With regard to this derogatory information, 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. Because the petitioner submitted false documents misrepresenting her achievements, media coverage and contributions, the AAO cannot accord any of the petitioner's other claims any weight.

Pursuant to the regulation at 8 C.F.R. § 103.2(b)(16)(i), the petitioner was afforded 15 days (plus 3 days for mailing) to submit evidence to overcome the derogatory information cited above. The petitioner failed to provide a response to the notice advising her of the derogatory information outlined above. In short, the petitioner has offered no evidence to overcome the AAO's findings that the two March 31, 2007 reference letters, the petitioner's undated statement and the two newspaper excerpts contain false information and that the petitioner submitted false documents that misrepresent her achievements, media coverage and contributions in the field of Chinese martial arts.

The record shows that the petitioner submitted false documents, a finding that the petitioner has failed to overcome despite being advised of the derogatory information in the AAO's May 2, 2012 notice. An immigration officer will deny a visa petition if the petitioner submits evidence that contains false information. See section 204(b) of the Act. In general, a few errors or minor discrepancies are not reason to question the credibility of an alien or an employer seeking immigration benefits. See *Spencer Enterprises Inc. v. United States*, 345 F.3d 683, 694 (9th Cir. 2003) (upholding the AAO's finding that evidence in that matter was not credible). However, if a petition includes serious errors and discrepancies, and the petitioner fails to resolve those errors and discrepancies after an officer provides an opportunity to rebut or explain, then the inconsistencies will lead USCIS to conclude that the facts stated in the petition are not true. See *Matter of Ho*, 19 I&N Dec. at 591.

First, the petitioner submitted two March 31, 2007 reference letters, an undated statement and two newspaper excerpts that contain false information. A misrepresentation can be made to a government official in an oral interview, on the face of a written application or petition, or by submitting evidence containing false information. INS Genco Op. No. 91-39, 1991 WL 1185150 (April 30, 1991). Here, the petitioner's submission of the preceding documents in support of the Form I-140 petition constitutes a false representation to a government official.

Second, the AAO finds that the petitioner willfully made the misrepresentation. The petitioner certified and filed the Form I-140 petition, through electronic filing, thus certifying under penalty of perjury that the petition and the submitted evidence are all true and correct. See section 287(b) of the Act, 8 U.S.C. § 1357(b); see also 8 C.F.R. § 103.2(a)(2). More specifically, the signature portion of the Form I-140, at part 8, requires the petitioner to make the following affirmation: "I certify, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it are all true and correct." Further, the petitioner submitted an undated statement, entitled '[REDACTED]' in which the petitioner stated that she won a bronze medal at the [REDACTED] in [REDACTED] sponsored by the [REDACTED]. As discussed in the AAO's May 2, 2012 notice of derogatory information, not only had the petitioner not submitted an award certificate from that competition, but based on independent online research, a USCIS officer found that the winners in the events listed on the petitioner's competition registration, events 98 and 108 – were [REDACTED]. See [REDACTED], accessed April 27, 2012 and incorporated into the record of proceeding. On the basis of the petitioner's certified Form I-140 affirmation, made under penalty of perjury, and her undated statement, the AAO finds that the petitioner willfully and knowingly made the misrepresentation.

Third, the evidence is material to the petitioner's eligibility. To be considered material, a false statement must be shown to have been predictably capable of affecting the decision of the decision-making body. *Kungys v. United States*, 485 U.S. 759 (1988). In the context of a visa petition, a misrepresented fact is material if the misrepresentation cuts off a line of inquiry which is relevant to the eligibility criteria and that inquiry might well have resulted in the denial of the visa petition. See *Matter of Ng*, 17 I&N Dec. at 537.

As the false documents relate to the petitioner's eligibility for the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii) and (v), the documents are material to this proceeding. Accordingly, the AAO concludes that the misrepresentation was material to the petitioner's eligibility.

By filing the instant petition, submitting documents that contain false information on the petitioner's achievements, media coverage and contributions in the field of Chinese martial arts, the petitioner has sought to procure a benefit provided under the Act through willful misrepresentation of a material fact. Because the petitioner has failed to provide competent independent and objective evidence to overcome, fully and persuasively, the AAO's finding that she submitted falsified documentation, the AAO affirms the finding that the petitioner has willfully misrepresented a material fact. This finding of willful material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

Regarding the instant petition, the petitioner's failure to submit independent and objective evidence to overcome the derogatory information discussed in above seriously compromises the credibility of the petitioner and the remaining documentation. As previously discussed, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. at 591. Nevertheless, the AAO will address the petitioner's failure to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

V. ELIGIBILITY UNDER SECTION 203(B)(1)(A) OF THE ACT

A. Legal Authority

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. 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, internationally 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 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 the 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." *Kazarian*, 596 F.3d 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)." *Kazarian*, 596 F.3d 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 case, the AAO will review the evidence under the plain language of the regulatory requirements. As the petitioner did not submit qualifying evidence showing a one-time achievement, that is, a major, internationally recognized award, or evidence under any of the ten regulatory criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirements. *Kazarian*, 596 F.3d at 1122.

B. Translations

At the outset, the AAO notes that the petitioner has filed a number of foreign language documents, including newspaper publications and certificates of award, but she has failed to provide the proper translations for these documents, as required under the regulation at 8 C.F.R. § 103.2(b)(3), which provides "[a]ny 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." The petitioner has failed to provide information relating to the identity or competency of the translator(s), or information on whether the English translations are complete and accurate. Without certified translations, the foreign language documents have no evidentiary value.

C. Evidentiary Criteria³

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

When counsel initially filed the visa petition in June 2007, he claimed that the petitioner meets the prizes or awards for excellence criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i), because the

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 (vi).

³ Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

petitioner was awarded (1) the first place finish for both [redacted] event categories, at the [redacted] held in [redacted], (2) the first place finish for “mid-age [redacted] (B)” and the second place finish for “mid-age [redacted] (B),” at the [redacted] also known as, the [redacted] and (3) the first place finish for both [redacted] (B)” and “ [redacted] (B),” at the [redacted]

In support of his assertion that the petitioner meets this criterion, counsel provided (1) a March 31, 2007 letter not on official letterhead from [redacted] the purported [redacted] [redacted] stating that the petitioner “was awarded a gold medal in [the] [redacted] contest ([redacted]) and a bronze medal in the United States [redacted] [redacted]” held in [redacted] (2) an uncertified translation of an undated statement not on official letterhead from [redacted] the purported Vice-President of [redacted] and President of [redacted], listing the petitioner’s alleged competition results from 2004 to 2006; (3) an uncertified translation of an April 28, 2007 letter from [redacted], the purported [redacted] and President of [redacted] stating that the petitioner “won the top-grade prizes in both [redacted] and [redacted]” at the [redacted], and that she “won [a] copper medal [in] [redacted] at the 2006 [redacted] [sic] [redacted]”; (4) a March 29, 2007 letter not on official letterhead from [redacted] the purported [redacted] stating that the petitioner “has won numerous prizes, awards and medals for her extraordinary and unmatched [redacted]”; (5) a copy of the petitioner’s alleged [redacted] award certificate; (6) two undated award certificates allegedly issued at the [redacted]; (7) an April 15, 2006 letter from [redacted] inviting [redacted], “president” of an unidentified organization, to attend the [redacted] and extending the invitation to the petitioner and six other competitors at [redacted] organization; (8) a copy of a [redacted] certificate of participation signed by [redacted] that does not list the petitioner’s name or any other participant’s name; (9) copies of the petitioner’s two [redacted] certificates of award accompanied by uncertified translations; (10) copies of the petitioner’s alleged two [redacted] certificates of award accompanied by uncertified translations; (11) a copy of a certificate of honor allegedly issued to the petitioner by the [redacted] (12) a copy of a certificate of the foremost exponent of [redacted] issued by the USA [redacted] on November 16, 2007 accompanied by an uncertified translation; and (13) color photographs of the petitioner allegedly practicing martial arts or competing in martial arts events.

Notwithstanding the abovementioned evidence, the petitioner has not provided sufficient credible evidence showing that any of her prizes or awards constitute nationally or internationally recognized prizes or awards for excellence in the sport of martial arts. In his January 28, 2008 letter not on official letterhead, [REDACTED], the purported [REDACTED], stated that the [REDACTED] had “600 competitors from 15 countries and areas,” and that the competition awarded “only 24 medals.” The petitioner, however, has failed to provide evidence relating to the number of people who participated in her event category or the winner selection criteria for the category. Regardless, the petitioner did not provide primary or even secondary evidence of any award at this competition in Maryland. Instead, [REDACTED] purports to affirm the petitioner’s finish at this competition. The nonexistence or unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Moreover, as discussed above, USCIS obtained the online results from this competition which list different individuals as earning medals in her category. The petitioner has not resolved this inconsistency with independent objective evidence. Thus, the AAO concludes that the petitioner’s claim to have won this award is false. Moreover, 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. *Matter of Ho*, 19 I&N Dec. at 591.

[REDACTED] also stated that the [REDACTED] held in [REDACTED] – in which the petitioner allegedly finished in the first place in the [REDACTED] and [REDACTED] event categories – “attracted more than 1,200 competitors from different countries,” and that the competition awarded “only 6 first-place prizes to adult men and women winners.” Again, neither the letter nor any other evidence in the record indicates the number of participants or the winner selection criteria in each event category. In addition, [REDACTED] does not appear to be an official of the competition and he does not explain his authority to provide information about these competitions other than his unsubstantiated claim to have attended them. Similarly, although [REDACTED] stated in his April 28, 2007 letter that the [REDACTED] – in which the petitioner allegedly placed first in the [REDACTED] (B) and [REDACTED] (B) event categories – had “[o]ver 1000 practitioners” from different countries, neither the letter nor any of the petitioner’s evidence indicates the number of participants in the two event categories or the winner selection criteria for the categories.

Moreover, as stated above, the petitioner has submitted fraudulent information about one of the competitions. Specifically, the petitioner provided the uncertified English translation of a paragraph published in the newspaper *World Journal*, on December 18, 2006, that states that the [REDACTED] “was held yesterday at [REDACTED]” and “was attended by almost one thousand competitors” from a number of countries. The petitioner, however, also provided the uncertified English translation of a paragraph published in the newspaper *Sing Tao Daily* on October 20, 2006, that states that the [REDACTED] – the same tournament discussed on December 18, 2006 in the newspaper *World Journal* – “was held yesterday at [REDACTED] and “was attended by almost one thousand competitors” from a number of countries. The petitioner’s evidence does not explain why the two publications reported on the same competition gave a different time and location for the same

competition. The petitioner provided inconsistent evidence and “it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. at 591-92 (BIA 1988). The petitioner, however, has provided no such evidence to explain or reconcile the inconsistent and fraudulent evidence.

Accordingly, the AAO concludes that the petitioner has not met this criterion, because she has not submitted credible documentation of her receipt of lesser nationally or internationally recognized prizes or awards for excellence in the sport of martial arts. See 8 C.F.R. § 204.5(h)(3)(i).

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. 8 C.F.R. § 204.5(h)(3)(ii).

When counsel initially filed the visa petition, he claimed that the petitioner meets the membership in associations criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(ii). In support of his assertion that the petitioner meets this criterion, counsel filed: (1) an alleged May 28, 2000 appointment letter, issued by [REDACTED] accompanied by an uncertified translation; (2) an alleged identity card issued by the [REDACTED] in October 1998, accompanied by an uncertified translation; (3) an alleged [REDACTED] Association membership card, issued on October 20, 2005, accompanied by an uncertified translation; (4) an alleged certificate of pugilist issued by [REDACTED] on May 18, 2006, accompanied by an uncertified translation; (5) an undated statement from [REDACTED] stating that the petitioner “is now the commissioner of [REDACTED], vice president of [REDACTED] and so on,” accompanied by an uncertified translation; (6) a USA National [REDACTED] membership card, issued on December 18, 2007, after the date of filing; (7) a December 18, 2007 letter from [REDACTED] President of [REDACTED] (8) a [REDACTED] certificate of good standing, issued on December 18, 2007; and (9) a [REDACTED] certificate of membership issued on November 30, 2007, also after the date of filing.

None of the petitioner’s evidence, however, shows that any of the above associations require outstanding achievements of their members. Indeed, the petitioner has provided no evidence showing the membership criteria for any of the associations to which she claims to be a member. In the purported May 28, 2000 appointment letter, [REDACTED] provided no insights as to why the petitioner was appointed “Vice General Manager” of a committee within the organization. Moreover, an appointment to a committee is not a membership in an association. Similarly, although counsel contended in his brief filed in support of the visa petition that [REDACTED] is regarded as the highest level associations in the field, which requires applicants to have outstanding skill [sic] and accomplished conspicuous success in martial arts,” no evidence in the record supports this assertion. The unsupported assertions of counsel do not

constitute evidence. *Matter of Obaighena*, 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).

Similarly, the petitioner has not submitted any evidence on the membership selection criteria for either the [REDACTED] or the [REDACTED]. As such, the AAO cannot conclude that either organization requires outstanding achievements of its members.

Finally, the petitioner has filed a number of foreign language documents, including a May 28, 2000 appointment letter, membership card and identity card, but she has failed to provide the required certified translations for these documents, as required under the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, the petitioner has failed to provide information relating to the identity or competency of the translator(s), or information on whether the English translations are complete and accurate.

Accordingly, the AAO concludes that the petitioner has not met this criterion, because she has not submitted documentation of her 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. See 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. 8 C.F.R. § 204.5(h)(3)(iii).

When counsel initially filed the visa petition, he asserted that the petitioner meets the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In support of this assertion, counsel filed evidence showing that (1) the petitioner's name was to be included in the book [REDACTED] (2) the petitioner's name was mentioned once in a paragraph published in the newspaper *World Journal*, on [REDACTED] (3) the petitioner's name was mentioned once in a paragraph published in the newspaper *Sing Tao Daily*, on [REDACTED], and (4) the magazine *Genesis Monthly* published an article about the petitioner in [REDACTED].

The AAO finds that the petitioner has not met this criterion because of the following reasons. First, the AAO has insufficient evidence to find that the book [REDACTED] constitutes published material about the petitioner, because according to a December 6, 2005 memorandum from the book's editorial board, the book had not yet been published. Indeed, the record contains no evidence showing that the book was published as of the date of filing or, in fact, ever. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm'r 1971). Also, the petitioner has not provided any excerpt or pages of the book. As such, the AAO cannot conclude that the book is about the petitioner relating to her work in the sport of martial arts. Moreover, the petitioner has provided no information on the

publisher. As such, the AAO cannot find that the book's publisher constitutes a professional or major trade publication or other major media.

Second, the AAO cannot conclude that the one paragraph published in the newspaper *World Journal*, on [REDACTED] constitutes published material about the petitioner. The paragraph has three sentences, and mentions the petitioner's name once among six other names. The paragraph is not about the petitioner; rather, it is about a competition, in which the petitioner was one of "almost one thousand competitors." Also, although counsel stated in his brief filed in support of the visa petition that the *World Journal* "is the largest Chinese newspaper in North America," no evidence in the record supports this claim. The petitioner has also failed to indicate the author of the paragraph, as required under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, the petitioner has failed to provide the proper translation of this foreign language document, as required under the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, the petitioner has failed to provide information relating to the identity or competency of the translator, or information on whether the English translations are complete and accurate.

Third, the AAO cannot conclude that the one paragraph published in the newspaper *Sing Tao Daily*, on [REDACTED] constitutes published material about the petitioner. The paragraph has four sentences, and mentions the petitioner's name once among six other names. The paragraph is not about the petitioner; rather, it is about a competition, in which the petitioner was one of "almost one thousand competitors." Also, although counsel stated in his brief filed in support of the visa petition that the *Sing Tao Daily* is "circulated in 100 cities around the world," no evidence in the record supports this claim. The petitioner has also failed to indicate the author of the paragraph, as required under the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Furthermore, the petitioner has failed to provide the proper translation of this foreign language document, as required under the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, the petitioner has failed to provide information relating to the identity or competency of the translator, or information on whether the English translation is complete and accurate. Moreover, as stated above, the petitioner has not resolved the inconsistencies between this article and the one in the *World Journal*.

Fourth, although the [REDACTED] article is about the petitioner, the AAO does not have sufficient evidence to conclude that [REDACTED] is a professional or major trade publication or other major media. Counsel's assertion in his brief filed in response to the director's Request for Evidence that the magazine "is a mass media magazine which is very popular in New York City, especially in Chinese minority communities," is not supported by the evidence in the record. As stated above, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Regardless, a publication with circulation limited to one city that is not published in a predominant national language is not major media. The petitioner has also failed to indicate the author of the paragraph, as required under the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

Furthermore, the petitioner has failed to provide the proper translation of this foreign language document, as required under the regulation at 8 C.F.R. § 103.2(b)(3). Specifically, the petitioner has

failed to provide information relating to the identity or competency of the translator, or information on whether the English translation is complete and accurate. Finally, it is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. As such, for eligibility purposes, the AAO will not consider an article published in January 2008, when the instant petition was filed six months earlier, in June 2007.

Accordingly, the AAO concludes that the petitioner has not met this criterion, because she has not submitted credible published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. See 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

When counsel initially filed the visa petition, he asserted that the petitioner meets the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v), because she “has tried to combine firmness and softness and created her own style, which instilled new life to [redacted]” a form of Chinese martial arts. In support of this assertion, counsel provided a March 31, 2007 letter allegedly from [redacted]. As discussed above, the signature on this letter, however, is dramatically different from the signature of [redacted] that appears on the April 15, 2006 invitation and the blank certificate of participation discussed above. Moreover, the logos that purportedly make up the letterhead on this letter are clearly cut and pasted onto the letter. The petitioner has not resolved this discrepancy with independent objective evidence. Thus, this letter has no evidentiary value. In addition, 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. *Matter of Ho*, 19 I&N Dec. at 591. Thus, the credibility of the remaining letters, which either do not appear on letterhead or are accompanied by uncertified translations, also have diminished credibility.

The petitioner also submitted: (1) a March 31, 2007 letter from [redacted]; (2) an April 28, 2007 letter from [redacted]; (3) a March 26, 2007 letter from [redacted] and (4) a January 22, 2008 letter from [redacted], President of [redacted].

Many of the petitioner’s references praised the petitioner’s martial arts practice style. For example, according to [redacted] the petitioner “has created her own style of [redacted] . . . to perfectly harmonize firmness and softness, which is like instilling new life to [redacted]” He further stated in his March 26, 2007 letter that “[p]racticing her style makes the practitioners reconnect the mind to the body, the conscience to the subconscious, and themselves to nature.” He stated that “[t]hrough [the petitioner’s] meticulous

instruction, she has instilled in her students no only the drive to attain perfection in their craft, but to share this craft with others.”

Although the petitioner may have created her own martial arts practicing style, the evidence does not show that this constitutes a contribution of major significant in the sport of martial arts. The petitioner has provided no evidence that anyone, other than herself, practices her style of martial arts. Indeed, none of her references have stated that they practice her style of martial arts. In short, the AAO does not have sufficient evidence to assess the impact of the petitioner’s style of practice in the sports of martial arts beyond her unknown number of students. As such, the AAO cannot find that her style of martial arts practice constitutes a contribution of major significance in the sport of martial arts.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of qualifying contributions in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. Even if the AAO were to conclude that the petitioner’s own style of martial arts practice constituted a single example of contribution of major significance, the AAO would not have sufficient evidence of original contributions of major significance in the plural.

Accordingly, the AAO concludes that the petitioner has not met this criterion, because she has not submitted credible evidence showing that she has made original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the sport of marital arts. *See* 8 C.F.R. § 204.5(h)(3)(v).

D. Summary

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

VI. CONCLUSION

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of the field of Chinese martial arts. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the service center does not identify all of the grounds for denial in the initial decision. *See 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); *see also Soltane v. Dep’t of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

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 have risen to the very top of the field of endeavor.

By filing the instant petition and submitting demonstrably false evidence, the petitioner has sought to procure a benefit provided under the Act through the willful misrepresentation of a material fact. This finding of material misrepresentation shall be considered in any future proceeding where admissibility is an issue.

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 and the AAO enters a separate finding of willful misrepresentation of a material fact.

FURTHER ORDER: The AAO finds that the petitioner knowingly submitted false documents in an effort to mislead USCIS on elements material to her eligibility for a benefit sought under the immigration laws of the United States.