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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

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[REDACTED]

DATE: **MAY 02 2012** OFFICE: NEBRASKA 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on July 26, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in taekwondo. The director determined that 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 “sustained national or international acclaim” and present “extensive documentation” of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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 claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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 Criteria²

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

In the director's decision, she determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor. In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities. Based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion.

As evidence of the petitioner's purported awards, the petitioner submitted numerous photographs of medals and trophies with self-asserting captions, as well as photographs of himself posing with medals, trophies, and other participants. While the medals and trophies identify the events, they fail to reflect that they were awarded to the petitioner. For example, the petitioner submitted a photograph of four medals that only indicated that they were from the PanAm-Euro Cup. Although the petitioner indicated in his self-serving caption that he received "Gold in Sparring and Poomsae," there is no evidence that he actually garnered the medals. 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)). As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the *alien's receipt* [emphasis added]," simply submitting photographs of medals or trophies that do not indicate the recipient is insufficient to demonstrate that the petitioner actually garnered the medals or trophies.

Moreover, the petitioner submitted several certificates that acknowledged and thanked the petitioner for his participation, contribution, and dedication to service. For instance, the petitioner submitted a "Certificate of Recognition" from Discovery Taekwondo that recognized the petitioner for his "commitment and contribution in the propagation of Taekwondo." However, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires the petitioner to submit documentation of his "nationally or internationally recognized *prizes or awards* for excellence [emphasis added]," the AAO is not persuaded that documentation that merely acknowledges or recognizes the petitioner's participation, as well as certificates that thank the petitioner for giving demonstrations, equates to a prize or award consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

Furthermore, the petitioner failed to submit any documentary reflecting that they are nationally or internationally *recognized* for excellence in the field of endeavor. In other words, the petitioner failed to demonstrate that the certificates are nationally or internationally recognized for excellence beyond the awarding entities.

Likewise, the petitioner submitted certificates from tournaments that acknowledged the petitioner's participation but do not reflect that the petitioner won any prizes or awards. For example, the petitioner submitted a "Participation Certificate" from the 2009 U.S. Open Taekwondo Championships in Las Vegas, Nevada from February 11 – 15, 2009. However, the petitioner failed to submit any documentary evidence reflecting that the petitioner won any prizes or awards from this taekwondo championship. It is insufficient to demonstrate eligibility for this criterion by simply submitting evidence that he participated in a national tournament without evidence that he actually garnered any prizes or awards.

In addition, the petitioner submitted several certificates reflecting the petitioner's completion of various training courses. For instance, the petitioner submitted a "Letter of Commendation" from [REDACTED] World Taekwondo Headquarters indicating that the petitioner "completed the 19th Foreign Instructor Course for 3rd class." Although the document may demonstrate the petitioner's qualification as a foreign instructor, it falls far short in establishing that it is a nationally or internationally recognized prize or award for excellence in the field. Academic certificates and degrees while preparing for a vocation fall substantially short of constituting a national or international prize or award for recognition in the field.

Finally, the petitioner submitted the following documentation:

1. Three certificates from the 3rd Hadong – Korea International Women's Taekwondo Open Championship from November 11 – 15, 2004, reflecting third place in the senior group taekwondo gym., third place in the senior create poomsae, and second place in the senior compulsory poomsae;
2. A certificate from the California State Championship on March 20, 2010, reflecting second place in the first senior poomsae; and
3. Two certificates from the [REDACTED] Invitational on September 27, 2008, reflecting first place in the poomsae and first place in sparring.

While the petitioner submitted sufficient documentary evidence establishing his finishes, the petitioner failed to submit any documentary evidence demonstrating that his placements are nationally or internationally recognized prizes or awards for excellence in the field. Merely submitting evidence of the petitioner's receipt of prizes or awards is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) without documentary evidence reflecting that the prizes or awards are *nationally or internationally recognized* for excellence in the field of endeavor. There is no evidence demonstrating that the petitioner's awards are nationally or internationally recognized for excellence by the field beyond the awarding entities.

As discussed, the plain language of this regulatory criterion specifically requires that the petitioner's prizes or awards be *nationally or internationally recognized* for excellence in his field. In this case, the petitioner failed to demonstrate that his prizes or awards are tantamount to nationally or internationally recognized prizes or awards for excellence in the field of endeavor. As such, the AAO withdraws the decision of the director for this criterion.

Accordingly, the petitioner failed to establish that he meets 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.

The director determined that the petitioner failed to establish eligibility for this criterion. On appeal, the petitioner states:

I have been a member of the Philippine National Taekwondo Team [PNTT] and the Philippine National Taekwondo Demonstration Team [PNTDT] and have sent evidence of my membership in the form of an official letter coming from the Philippine Taekwondo Association [PTA] signed by the Deputy Secretary General [REDACTED] and together with it are official letters of requirements of membership in the team signed by [REDACTED] (Team Coach) and [REDACTED].

I am currently a member of the elite California Demonstration Team [Team-M] which I have submitted evidence of my membership, Official Letter from California Unified Taekwondo Association (CUTA) President Grandmaster [REDACTED] and submitted evidence for membership requirement from the Head Coach of the California Demonstration Team Master [REDACTED] who is also National Team Poomsae (Forms) Coach.

I have been a member of the Philippine Taekwondo Blackbelt Brotherhood [PTBB] and Batch Leader of the 24th batch moreover I have been the Team captain Of the [REDACTED] in which I studied having an athletic scholarship due to my outstanding skills in the art of Taekwondo.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, *which require outstanding achievements of their members*, as judged by recognized national or international experts in their disciplines or fields [emphasis added].” In order to demonstrate that membership in associations meet this criterion, a petitioner must show that associations require outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized

test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Regarding PNTT and PNTDT, the petitioner submitted a letter from [REDACTED] who stated that the petitioner was a member of PNTT and PNTDT. However, the petitioner failed to submit any primary evidence from PNTT and PNTDT to demonstrate that the petitioner was a member of the teams. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Instead of submitting primary evidence from PNTT and PNTDT regarding his membership, the petitioner submitted a letter from a representative of PTA. Moreover, the petitioner failed to submit any documentary evidence establishing that primary and secondary evidence do not exist. In addition, [REDACTED] letter is not an affidavit as it was not sworn to or affirmed by the declarant before an officer authorized to administer oaths or affirmations who has, having confirmed the declarant's identity, administered the requisite oath or affirmation. *See Black's Law Dictionary* 58 (9th Ed., West 2009). Nor, in lieu of having been signed before an officer authorized to administer oaths or affirmations, does it contain the requisite statement, permitted by Federal law, that the signers, in signing the statements, certify the truth of the statements, under penalty of perjury. 28 U.S.C. § 1746. The AAO notes that the regulation at 8 C.F.R. § 103.2(b)(2)(i) requires more than one affidavit.

Notwithstanding the above, the petitioner also submitted a letter from [REDACTED] Philippine Team Coach, who stated:

Every year, approximately 1,500 blackbelt competitors all over the Philippine compete within their respective regions to qualify to the Philippine National Taekwondo Championships. Only Players who place Gold, Silver and Bronze get to advance to the final evaluations round. The final evaluations round is a tournament that is organized by the Philippine National Coaches, former World Taekwondo Champions and the chief instructor of the [PTA] Grandmaster [REDACTED] to further sift through the best athletes from the Nationals Championship. The selection process does not rest solely on the winning results of the tournament. Every player is assessed by his skills, attitude, character and training potential.

The letter provided by [REDACTED] is insufficient to demonstrate that membership with PNTT requires outstanding achievements, as judged by recognized national or international experts in their disciplines or fields. [REDACTED] makes no mention of the petitioner's membership with PNTT and does not indicate how the petitioner qualified for membership with PNTT, such as the petitioner's placement at the National Taekwondo Championship. Again, as discussed under the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner failed to

submit any documentary evidence that reflected any nationally or internationally recognized prizes or awards. Moreover, the AAO is not persuaded that assessing “skills, attitude, character and training potential” is reflective of outstanding achievements consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

The AAO has previously determined that an alien’s participation as a member of a national team in the Olympics may demonstrate eligibility for this criterion as such teams are limited in the number of members and have a rigorous selection process. It is the petitioner’s burden, however, to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members as judged by recognized national or international experts in their fields or disciplines. The AAO will not presume that every national “team” is sufficiently exclusive.

Regarding PNTDT, the petitioner submitted a letter from [REDACTED], who stated:

Becoming a member is a dream for most Filipino Taekwondo enthusiast[s] but it does not come easy. To qualify, an athlete should have won medals or places on certain competitions like National Poomsae (Forms) Championship which is held once a year. The Qualifying athletes are then screened by the current Team members together with national team coaches. Accepted team members then starts rigorous training and performances to keep upholding the high standards of Philippine Taekwondo.

Likewise, [REDACTED] did not indicate that the petitioner was a member of PNTDT, let alone explain why the petitioner qualified for membership. Furthermore, [REDACTED] statement that “an athlete *should* have won medals or places on certain competitions [emphasis added],” indicates that winning medals or placing in competitions is not necessarily required for membership with PNTDT. Moreover, [REDACTED] indicates that the athletes are “screened” but provides no further information regarding the screening process, so as to demonstrate that outstanding achievements are an essential condition for membership. The lack of specific information gives the AAO an insufficient basis to determine that membership with PNTDT meets the plain language of this regulatory criterion.

Regarding Team-M, the petitioner submitted sufficient documentary evidence establishing his membership. However, the petitioner failed to establish that membership with Team-M requires outstanding achievements, as judged by recognized national or international experts in their disciplines or fields. While [REDACTED] Director of Team-M, briefly discussed the petitioner’s “effort and commitment” to taekwondo in the United States, he failed to indicate Team-M’s membership requirements, so as to demonstrate that outstanding achievements are required for membership.

The petitioner also submitted a letter from [REDACTED] Head Coach for Team-M, who indicated that the Team-M trial contains the pre-screening, practical examination, and formal interview stages. Regarding the pre-screening stage, although he indicated that athletes who were

able to win state, national, or international titles are given higher priority, there is no requirement that an athlete must have won any titles. Furthermore, while he indicated that the athlete must complete several practical exercises, such as running two miles in under 16 minutes, the AAO is not persuaded that minimally completing fixed exercises is indicative of outstanding achievements. Finally, he indicated that the last phase was to pass a formal interview. However, he stated that there are “no guidelines for the interviewing session and Team-M coaches may choose to discuss any Taekwondo topics.” Although there is no indication that Team-M coaches are recognized national or international experts, the lack of guidelines in the interview process is not reflective of outstanding achievements. The petitioner failed to establish that his membership with Team-M meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

As indicated above, the petitioner claims that he is a member of the PTBB. However, the petitioner did not refer to any documentary evidence to support his assertions, nor does a review of the record of proceeding reflect that he is a member of PTBB. 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)). Regardless, the petitioner failed to submit any documentary to establish that membership with PTBB requires outstanding achievements, as judged by recognized national or international experts in their disciplines or fields.

Regarding Letran College, the record of proceeding contains a certificate from Letran College certifying that the petitioner was member of the “Taekwondo Varsity Team” at the college. While the certificate demonstrates the petitioner’s membership with the team, the petitioner failed to submit any documentation establishing that outstanding achievements are required for membership with the varsity team. Simply submitting evidence of membership is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) without evidence reflecting that outstanding achievements, as judged by recognized national or international experts, are required for membership with the association.

Accordingly, the petitioner failed to establish that he 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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as

major media because of significant national distribution, unlike small local community papers.³ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

In the director’s decision, she determined that the petitioner failed to establish eligibility for this criterion. Specifically, the director stated:

USCIS advised the petitioner that it requires copies of published material which is about him and that sports articles which merely mention him as a competitor would not be sufficient. USCIS also advised the petitioner that “the evidence must establish that the articles were published in major media” and that “local papers or internet postings would not be sufficient.” The petitioner’s response consisted of a resubmission of selected articles which named and/or pictured him, but it cannot be found that any of the articles were about him nor did he submit evidence that any of the articles were published in major media. Thus, it cannot be found that he met the third criterion.

On appeal, the petitioner simply claims that “I have submitted Evidence of published Materials showing my skills and my recognitions in the field of Taekwondo.” As the petitioner failed to make any specific arguments or submitted any additional documentation, the petitioner failed to demonstrate that the director erred in her decision for this criterion.

The AAO notes that a review of the record of proceeding fails to reflect any published material about the petitioner relating to his work in professional or major trade publications or other major media. As indicated by the director, the petitioner submitted various photographs without submitting any written, journalistic coverage of the petitioner. As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “published material” and “the title, date, and author of the material,” the submission of photographs, either posted on the Internet or printed in a publication, without published material about the petitioner relating to his work fails to meet the plain language of this regulatory criterion. Similarly, captions accompanying photographs that merely identify the petitioner are not published material about him relating to his work. Likewise, material that simply lists the petitioner as one of numerous competitors but is not “published material” about the petitioner relating to his work is insufficient to meet the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For example, the petitioner submitted a screenshot from www.mb.com entitled, “UP Bets Shine in Taekwondo Tourney” that indicated in the material that [REDACTED] of Army edged [the petitioner], 1 – 0.” The article is not about the petitioner relating to his work, and the AAO is not persuaded by articles that briefly mention or list tournament results equate to published material. Again, the documentation submitted by the petitioner fails to reflect any published material about the petitioner relating to his work.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

Notwithstanding the above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the published material to be “in professional or major trade publications or other major media.” However, the petitioner failed to submit any documentary evidence establishing that the material was published in professional or major trade publications or other major media. In fact, the petitioner failed to identify where the material was published for the majority of the documentation. For instance, the petitioner submitted an article entitled, [REDACTED]. While the petitioner indicated that the article was from the “Samsung Best of the Best Taekwondo Championships,” the petitioner failed to identify the source of the article, let alone establish that the article was published in professional or major trade publications or other major media.

Moreover, although the petitioner did submit a few articles from *Tempo* and *Manila Bulletin*, the petitioner failed to submit any documentary evidence demonstrating that *Tempo* and *Manila Bulletin* are professional or major trade publications or other major media. Regardless, the articles are not published material about the petitioner relating to his work. Rather, the articles reflect photographs or simply list the petitioner as a competitor. Furthermore, the petitioner submitted several screenshots from the Internet. However, the AAO is not persuaded that postings on the Internet are automatically considered major media. The petitioner failed to submit any documentary evidence establishing that the websites, such as <http://thelance.com>, www.sunstar.com, and www.mb.com, are considered major media. In today’s world, many publications, regardless of size and distribution, post articles on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. However, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is “major media.” Nonetheless, the screenshots simply reflect tournament results and do not reflect published material about the petitioner relating to his work.

As discussed above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished 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.” In this case, the petitioner’s documentary evidence fails to reflect published material about him relating to his work in professional or major trade publications or other major media.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” Based on a review of the record of proceeding, the petitioner submitted sufficient documentary evidence demonstrating that he minimally meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

Accordingly, the petitioner 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.

In the director's decision, she determined that the petitioner failed to establish eligibility for this criterion. On appeal, the petitioner claims:

As a member of the [PNTDT] I have performed in major productions and events for the Philippine Taekwondo Associations, I have passed evidence of performances such Performances in Florida, Chicago and also leading Performance in the 23rd Southeast Asian Games which was held in the Cuneta Astrodome Manila, Philippines.

Currently Member of the California Demonstration Team [CDT] which performs all through-out California showcasing incomparable skills of Taekwondo and even Performed in the 2010 US [O]pen Taekwondo Championships which was held in Las Vegas, Nevada.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

Regarding PNTDT, as previously discussed under the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner failed to submit primary evidence establishing that he was a member of PNTDT. Regarding CDT, the petitioner submitted the previously mentioned letter from [REDACTED] (Head Coach of CDT), who briefly stated that the petitioner was “one of the core demo team members.” However, [REDACTED] failed to provide to explain why he considered the petitioner a “core” member of CDT. The lack of specific, detailed information is insufficient to demonstrate the significance of the petitioner's role. The petitioner failed to submit evidence showing his position in relation to that of the other members of the demonstration team. There is no evidence demonstrating how the petitioner's role differentiated him from the other performers. Without evidence establishing that the petitioner performed in a leading or critical role, it is insufficient to simply submit documentary evidence reflecting that he performed as a member of team in a performance setting. As the petitioner is a member of taekwondo demonstration team, it is expected that the petitioner will perform the routine duties of a martial artist in front of an audience. However, merely performing, even if the performances are considered noteworthy, does not equate to a leading or critical role. The petitioner failed to establish that his role in the demonstrations were leading or critical.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires the leading or critical role be “for organizations or establishments that have a distinguished reputation.” While

PNTDT may have a distinguished reputation, the petitioner failed to submit any documentary evidence establishing that CDT has a distinguished reputation.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” The burden is on the petitioner to establish that he meets every element of this criterion. Without documentary evidence demonstrating that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the AAO cannot conclude that the petitioner meets this criterion.

Accordingly, the petitioner failed to establish that he meets this criterion.

B. Summary

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

III. P-1 Nonimmigrant Admission

The AAO notes that at the initial filing of the petition, the petitioner indicated on Form I-140 that he was last admitted to the United States on June 16, 2006, as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seeks to enter the United States “temporarily and solely for the purpose of performing as such an athlete.” See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). The current record is devoid of any evidence to indicate that the petitioner is performing as an athlete at an internationally recognized level or that he is in the United States “temporarily and solely” for the purpose of performing as such an athlete. However, while USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

IV. 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.

Even if the petitioner had 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.

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.