

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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

PUBLIC COPY



B2

DATE: MAY 17 2012 Office: NEBRASKA SERVICE CENTER FILE 

IN RE: Petitioner: 
Beneficiary: 

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

ON BEHALF OF PETITIONER:


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 with the field office or service center that originally decided your case by filing a 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, 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 as a ballroom dance trainer.¹ The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel states that the petitioner has satisfied at least five categories of evidence "to show that she is an extraordinary individual." More specifically, counsel asserts that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (v), (viii), and (ix). For the reasons discussed below, the AAO will uphold the director's decision.

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,

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on August 19, 2009 as a B-2 nonimmigrant visitor for pleasure.

(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.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

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.*

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

II. INTENT TO CONTINUE WORK IN THE AREA OF EXPERTISE IN THE U.S.

The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). On the Form I-140, Immigrant Petition for Alien Worker, in Part 5, the petitioner lists her occupation as “Dance Teacher.” The petitioner submitted a December 29, 2009 letter from [REDACTED] Academy, stating: “We are happy and excited to offer employment for [the petitioner]. . . . We are in the process of structuring her classes. Her main work is in training individual dancers for dance competitions, instead of teaching mass group classes.” Thus, the record is clear that the petitioner intends to continue to work in the area of dance training and teaching in the United States.

In addition to documentation establishing the petitioner’s intention to continue to work in the United States as a dance trainer, the petitioner submitted documentation pertaining to her athletic achievements as a ballroom dance competitor in the 1980s. There is no documentary evidence showing that the petitioner has competed nationally or internationally as a ballroom dancer since that time period. While a competitive dancer and a dance trainer may share knowledge of ballroom dancing, the two rely on very different sets of basic skills. Thus, competitive dancing and dance instruction are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

Id. at 918. The court noted a consistent history in this area. While the record demonstrates that the petitioner intends to continue working as a dance trainer, there is no evidence indicating that she intends to compete as ballroom dancer in the United States. The AAO acknowledges the possibility of an alien’s extraordinary claim in more than one field, such as teaching and competitive dancing, but the petitioner must demonstrate “by clear evidence that the alien is coming to the United States to continue work in the area of expertise.” See 8 C.F.R. § 204.5(h)(5). In this case, there is no documentary evidence establishing that the petitioner intends to continue working in the United States as a competitive ballroom dancer. Accordingly, the petitioner must satisfy the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulations at 8 C.F.R. §§ 204.5(h)(2) and (3) through her achievements as a dance teacher and trainer.

USCIS recognizes that there exists a nexus between competing and teaching in a given sport. To assume that every extraordinary athlete’s area of expertise includes teaching, however, would be too speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence of record. Specifically, in a case where an alien has achieved *recent* national or international acclaim as a competitive athlete and has sustained that acclaim in training top competitors at a national level, the AAO can consider the totality of the evidence as establishing an

overall pattern of sustained acclaim and extraordinary ability such that the AAO can conclude that conducting dance training is within the alien's area of expertise. However, as the petitioner in the present matter has had an extended period of time to establish her reputation as a dance trainer beyond the years in which she competed as ballroom dancer in 1980s, the petitioner must demonstrate her extraordinary ability as a dance trainer.

III. ANALYSIS

A. Evidentiary Criteria³

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

The AAO withdraws the director's finding that the petitioner meets this regulatory criterion.

The petitioner submitted certificates indicating that as a competitive ballroom dancer she was awarded first place in the "Dance kaleidoscope 88' Class 'C' National Program," second place in the "Dance kaleidoscope 88' Class 'C' European Program," second place in the "Dance kaleidoscope 88' Class 'C' Latin Program," second place in the "Leningradskaya spring-88' . . . class 'C' . . . National program," and first place in "Class C" of "The Rhythm of Friendship '88'" competition. There is no supporting documentary evidence demonstrating that the preceding Class "C" award certificates from the 1980s are "nationally or internationally recognized" prizes or awards for excellence in competitive ballroom dancing. Regardless, the "field of endeavor" for which classification is sought is dance teaching and training. There is no evidence indicating that the petitioner seeks to work in the United States as a competitive ballroom dancer. Awards resulting from the petitioner's success as a dance competitor cannot be considered evidence of her national or international recognition as a dance teacher or trainer. As previously discussed, the statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, awards won by the petitioner as a ballroom dancer in national or international competitions do not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a dance trainer.

The petitioner also submitted the following:

1. A December 07, 2008 certificate from the Committee of Cultural Administration of Municipal Education in the City of Gatchina for providing "a significant contribution to the development of the cultural and leisure activity" in the city;
2. A January 7, 2007 certificate and a trophy from the Committee of Physical Culture and Sport of Saint Petersburg for having prepared contestants for "the Open Competition in Ballroom Sport Dance" at the "Rising Stars 2006" contest;

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

3. A January 10, 2008 certificate from the Committee of Physical Culture and Sport of Saint Petersburg for having prepared contestants for “the Open Competition in Ballroom Sport Dance” at the “Rising Stars 2007” contest;
4. A December 17, 2007 Diploma awarded to the petitioner by the Dance Sport Federation of Leningrad Region for “active participation in training” of “Beginner” dance couples for the “Christmas Souvenir” ballroom competition;
5. A certificate and trophy from the Dance Sport Federation of the Republic of Komi for “active participation in training of children and youth dance couples” who competed at the “Russian Student Ball 2007” competition, awarded by the Dance Sport Federation of the Republic of Komi;
6. A Diploma and trophy awarded to the petitioner for mentoring the dance ensemble “Olympia” which took 1st place in the Latin Program of the “Polar Ball” Open International Competition (2002);
7. An award from the Public School of Ballroom Sport Dance “Olympia” for “a significant contribution by the mentoring of dance couples and children-youth ensembles of ‘Olympia’ 2006-2007”;
8. An award from the Public School of Ballroom Sport Dance “Olympia” for “a significant personal contribution by the mentoring of dance couples and children-youth ensembles of ‘Olympia’ 2008-2009”;
9. A January 14, 2005 certificate from the Committee of Physical Culture and Sport of Saint Petersburg for having prepared contestants for “the Open Competition in Ballroom Sport Dance” at the “Rising Stars 2004” contest;
10. Award from the Head of the Administration of Municipal Education of the City Gatchina to the petitioner for her active participation in conducting festivities dedicated to the 210th anniversary celebration of the City of Gatchina;
11. A December 23, 2008 certificate of gratitude from the Public School of Ballroom Sport Dance “Olympia” to the petitioner for “her personal contribution to the District and Regional Development of Sport Dance of Russian Federation Years 2007-2008”;
12. A December 27, 2005 award certificate from the Committee of Cultural Municipal Education of the City of Gatchina given to the petitioner for providing “a contribution to the development of dance art” as a trainer for the “Olympia” dance school.
13. A December 27, 2003 Diploma awarded to “Children’s ensemble ‘Olympia’ Group ‘Children – 2’ for 1st Place among children’s ensembles in Latin Program” at the Leningrad Region “Christmas Souvenir” competition;
14. A January 7, 2004 Diploma awarded to the “Olympia” children’s ensemble for “1st Place in Latin and Arbitrary Program Group ‘Children 1’” at the “Rising Stars 2004” “regional competition of ballroom sport dance”;
15. A Diploma awarded to the “Olympia” children’s ensemble for “1st Place in Latin and Arbitrary Program Group ‘Children 1’” at the “Rising Stars 2004” “regional competition of ballroom sport dance”;
16. A Diploma presented to the petitioner as leader of the “Children – 1” team for the “Olympia” dance school for achieving 1st place in the team competition in the “Children – 1” category of the Latin Program “Class E” at the “Cup of CIS” (Commonwealth of Independent States) competition (2003);

17. A May 10, 2003 Diploma awarded to the "Olympia" children's ensemble for achieving 1st Place among ensembles in the Latin Program at the XII Open Championship of Arhangelsk Region, "The Mayor's Cup of Arhangelsk";
18. A Diploma stating that "Sport Dance Club Olympia" was a "Nominee" for the "Eksersis" national award "for high achievements in a Sport Dance in 2004";
19. An April 29, 2008 Diploma from the Head of the Department of Culture in the City of Gatchina presented to the "Olympia" dance ensemble for its participation as a contestant in the "We are born for inspiration" gala-concert;
20. An April 12, 2009 Diploma from the City of Gatchina presented to the "Olympia" dance ensemble and the petitioner for participating in the "Rain of Stars 2009" charitable event;
21. A Diploma awarded to the "Olympia" Children's Ensemble for 1st place in the Latin Program at the "Cup of Sport Dance Center 'Zenit'" (2004);
22. A Diploma awarded to two of the petitioner's students for 1st place in the Latin Program, Class "C" at the "Petersburg Ball - 2007";
23. A December 17, 2007 Diploma awarded to the petitioner's student for 1st place in the "Beginners" group at the "Christmas Souvenir" ballroom competition;
24. A Diploma awarded to two of the petitioner's students for 1st place in the "Children-1 Class 'E'" group at the "Dancing Spring - 2006" ballroom competition;
25. A Diploma from the Dance Sport Federation of the Republic of Komi awarded to two of the petitioner's students for 1st place in the "8 Dances" program at the "Russian Student Ball - 2007" competition;
26. A Diploma awarded to two of the petitioner's students for 1st place in the Latin Program at the "Governor's Cup of the City of Perm 'Crystal Slipper - 2008'" ballroom competition;
27. A December 17, 2007 Diploma awarded to the petitioner's student for 1st place in the "Beginners" group at the "Christmas Souvenir" ballroom competition;
28. A Diploma from the Dance Sport Federation of Saint Petersburg awarded to two of the petitioner's students for 1st place in the "Children-2" program at the "Nevskiy Cup - 2005" ballroom competition;
29. A Diploma awarded to two of the petitioner's students for 1st place in the "Latin Program Class C" at the "Legends of the Sport Dance" (2007) ballroom competition;
30. A Diploma awarded to two of the petitioner's students for 1st place in the "Children-2" category at the "Rating-Competition of the Dance Sport Federation of Saint Petersburg" (April 2008);
31. A Diploma awarded to two of the petitioner's students for 1st place in the "European Juniors-1" program at the "Peter the Greatest" competition (February 2008);
32. A Diploma awarded to two of the petitioner's students for 1st place in the "Latin Dance" program of the "Peter's Cup - 2008" ballroom competition (November 2008);
33. A Diploma awarded to two of the petitioner's students for 1st place in the "Juniors-2" European Program at the "Winter Pattern - 2008" ballroom competition;
34. A Diploma awarded to two of the petitioner's students for 1st place in the "Juniors-1" group in the Latin Program at the "Rising Stars 2006" regional ballroom competition;

35. A Diploma awarded to two of the petitioner's students for 1st place in the "Latin Program Class C-13" at the "Rising Stars 2007" regional ballroom competition;
36. A Diploma awarded to two of the petitioner's students for 2nd place in the "'Youth' 8 Dances, Class D" category at the Rating-Competition of the Dance Sport Federation of Saint Petersburg" (April 2008);
37. A Diploma awarded to two of the petitioner's students for 2nd place in the "Children-2" "8 Dances" program at the "Legends of Sport Dance" ballroom competition (April 2007);
38. A Diploma awarded to two of the petitioner's students for 2nd place in the "Juniors-2" Latin Program at the "Winter Pattern - 2008" ballroom competition;
39. A Diploma awarded to two of the petitioner's students for 2nd place in the "Youth" group, "8 Dances," "D Class" category at the "Winter Pattern - 2008" ballroom competition; and
40. A Diploma awarded to two of the petitioner's students for 2nd place in the "Juniors-1" Latin Program at the "Legends of Sport Dance" ballroom competition (April 2007).

Items 1 – 5, 7 – 15, 17, 19, 20, 25, 26, 28, 30, and 34 – 36, reflect local, regional, or institutional recognition rather than nationally or internationally recognized prizes or awards for excellence in the field of endeavor. With regard to the Diploma stating that "Sport Dance Club Olympia" was a "Nominee" for the "Eksersis" national award "for high achievements in a Sport Dance in 2004" (item 18), earning a nomination does not equate to receipt of a prize or an award. Further, there is no evidence showing that the petitioner herself received an Eksersis award or nomination for her excellence as a dance trainer. The plain language of this regulatory criterion requires evidence of "the alien's receipt" of nationally or internationally recognized "prizes or awards" for excellence in the field of endeavor, not her dance school's receipt of a nomination. Finally, regarding items 1 – 40, the petitioner did not submit evidence of the national or international *recognition* of the awards, such as national or widespread local coverage of the awards in dance publications or sports media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is her burden to establish every element of this criterion. Moreover, a competition may be open to contestants from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." In this case, there is no documentary evidence demonstrating that the petitioner's awards are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires 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.

The petitioner submitted an undated "Membership Banner" from the Dance Sport Federation of Russia (FTSR), but the banner does not list the petitioner's name or identify her as a member. In a January 4, 2009 letter accompanying the petition, counsel asserts that the Membership Banner confirms the petitioner's membership in the FTSR. The AAO must look to the plain language of the documents executed by the petitioner and not to the statements of counsel. See *Matter of Izummi*, 22 I&N Dec. 169, 185 (Comm'r 1998). Further, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). There is no documentary evidence from the FTSR specifically identifying the petitioner as a member. Moreover, there is no documentation (such as bylaws or rules of admission) showing that the FTSR requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted a March 15, 2005 credential (Identification [REDACTED] classifying her as a "Leading Specialist" of the Dance Sport Federation of Saint Petersburg (DSFSP). The petitioner also submitted a September 5, 2008 letter from the DSFSP stating: "From March 2004 until August 2007, [the petitioner] was hired part timely [sic] by the International Organization of Dance Sport Federation of Saint Petersburg as a leading specialist in competition conduction." In response to the director's request for evidence (RFE), the petitioner submitted general information about the DSFSP from its website and the constitution of the DSFSP. Counsel points to Section 4, "Structure and Federation controls," of the constitution as evidence of the DSFSP's membership requirements. Section 4 discusses conference assembly and voting procedures, but it does not specify the requirements for becoming a member of the DSFSP or for being designated as a "Leading Specialist." On appeal, the petitioner submits information from the DSFSP (also known as FTS SPb) stating:

On the basis of Charter FTS SPb from June, 02nd, 1992. Positions No. 12 from February, 21st. 1998 about existence of conference of delegates FTSR, the Instructions of the structure of the conference FTSR and other normative documents is reported about the following:

1. The revisions committee 60 days prior to conference forms out the lists of the new applicants for certain positions in the presidium of qualified specialists. This list is formed by results of calculations of the counting commission and by following criteria:
 - A work experience of the trainers-teachers in dancing sports;

- Professional achievements of trainers-teachers in dancing sports (taking a cumulative quantity of the scored points);
 - The judicial experience in dancing sports (taking a cumulative quantity of the scored points);
 - A judicial category;
 - Quantity of participations in the international and Russian championships (taking a cumulative quantity of the scored points);
 - Quantity of the winning places in the International and Russian championships (taking a cumulative quantity of the scored points);
 - Quantity of the letters of recommendations;
 - And other given documents from the candidate.
2. The revision committee 40 days prior to the conference reviews the lists of candidates in presidium FTSR and chose the president FTSR.
 3. The executive committee 30 days prior to conference mails out across St.-Petersburg and Northwest district to all dancing groups, dance studios, dance clubs, dance schools, individual sportsmen in sports ballroom dances about being able to participate in the conference of FTS SPb. In the invitation the following is included:
 - The agenda of general meeting of delegates;
 - Business projects, planned events for the subsequent period of board;
 - Lists of alternate members of board and presidium;
 - Reports on the done work of board and presidium;
 - Other information.

At conference there is a representation of the proposed members to be of the board and presidium of leading experts. We review proposed business projects and actions plans for the subsequent period of all candidates are heard. Delegates of the conference that are there vote. On the basis of the vote tabulations by counting commission (not less than 2/3 list quantities of delegates of conference) we approve the new members of board and presidium of leading experts FTS SPb affirms.

The preceding information discusses DSFSP selections for the “presidium of qualified specialists,” the “presidium of leading experts,” and new members of the board. The March 15, 2005 DSFSP credential and the September 5, 2008 letter from the DSFSP submitted by the petitioner, however, do not state that she is a member of the “board” or the “presidium” of the DSFSP. Instead, the credential and letter both identify her as a “Leading Specialist.” Regardless, gaining work experience, receiving a judicial qualification, earning a cumulative quantity of scored points over an undefined period, and submitting recommendation letters from colleagues do not equate to outstanding achievements. There is no documentary evidence demonstrating that the petitioner’s membership classification within the DSFSP required outstanding achievements, as judged by recognized national or international experts in her field.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “membership in associations” in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single

high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation. See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to establish that her membership in the DSFSP meets the elements of this regulatory criterion, which it does not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

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

In 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.⁴

The petitioner initially submitted April 6, 1985 and March 5, 1986 articles in *Gatchinskaya Pravda*, but the English language translations accompanying the articles were not full and complete translations as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. *Id.* In response to the director’s RFE, the petitioner submitted a letter from *Gatchinskaya Pravda*’s managing editor asserting that the newspaper has a circulation of “about 229,000 editions monthly.” The self-serving nature of the managing editor’s claim is not sufficient to demonstrate that *Gatchinskaya Pravda* is a form of major media. USCIS need not rely on self-promotional material. See *Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving

⁴ 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.

assertions on the cover of a magazine as to the magazine's status as major media). The petitioner failed to submit objective documentary evidence showing the distribution of *Gatchinskaya Pravda* relative to other Russian media to demonstrate that the submitted articles were published in a form of major media. Moreover, the plain language of regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the field for which classification is sought." In this matter, the "field for which classification is sought" is dance training and teaching. The AAO cannot conclude that the preceding articles relate to the petitioner's work as a dance trainer. As previously discussed, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, published material about the petitioner's accomplishments as a competitive dancer does not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a dance trainer.

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

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

In the director's decision, she determined that the petitioner failed to establish her eligibility for this regulatory criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original artistic or athletic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted a December 23, 2008 certificate of gratitude issued to her by the Public School of Ballroom Sport Dance "Olympia" for "her personal contribution to the District and Regional Development of Sport Dance of Russian Federation Years 2007-2008." The petitioner also submitted a December 27, 2005 award certificate from the Committee of Cultural Municipal Education of the City of Gatchina recognizing her for providing "a contribution to the development of dance art" as a trainer for the "Olympia" dance school. The preceding certificates do not indicate how the petitioner's contributions as a dancer trainer were original, nor do they provide information regarding how the petitioner's contributions have impacted the field at a level indicative of contributions of "major significance" in the field. There is no documentary evidence demonstrating that the petitioner's work as a dance trainer was recognized beyond her school and municipality such that her work constitutes artistic or athletic

contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's original contributions be "of major significance in the field" rather than limited to a particular educational institution or municipality. The record lacks documentary evidence showing that the petitioner has made original artistic or athletic contributions that have significantly influenced or impacted her field at large.

The petitioner submitted a letter from P.P. Dorochov, President of the FTSR, stating:

[The petitioner] is a highly professional [sic] with good teaching skills. She also has her own major experience by being a dancer of "International" Class. She uses her unique teaching technique in mentoring her dancers special skills to achieve high results. She has her own creative approach. She also professionally uses her knowledge and prepares dancers for performances.

The Dance Sport Federation of Russia states that [the petitioner] radically influenced the development and preparation processes of children-youth dancing groups in ballroom sport dance of Russia.

praises the petitioner's teaching skills, experience, and knowledge, but he does not explain how the petitioner's teaching contributions were original. Further, fails to provide specific examples of how the petitioner's instructional techniques have "radically influenced the development and preparation processes of children-youth dancing groups" or have otherwise significantly impacted her field. There is no documentary evidence demonstrating that the petitioner's work rises to the level of original artistic or athletic contributions of "major significance" in the field.

In response to the director's RFE, the petitioner submitted a letter issued to her by stating:

Every year, the city government invites your children's dance ensembles to perform on State level holidays. Yearly, you and your students extend dancing values; bring the personal contribution in maintenance and development of the culture of people. After the beautiful performances of your ensemble, the significant quantity of people wants to get engaged in this noble kind of culture – "Ballroom Dance."

* * *

Thanks to performances of your students, popularity of ballroom dance and the quantity of professionally dancing people has increased yearly. You have enriched the Nation with dancing art and increased the cultural and economic relations between cities and the countries. Your bright, colorful performances involved a large quantity of international visitors to Gatchina and tourists who wished to see the show of your students again and again.

█ asserts that the petitioner's "performances involved a large quantity of international visitors to Gatchina and tourists who wished to see the show of [her] students again and again," but he fails to provide any specific information regarding the number of tourists or audience members in attendance at the petitioner's students' shows. While the petitioner's work may have improved the cultural scene in Gatchina and generated interest in ballroom dance in her local community, there is no specific evidence demonstrating how the petitioner's original work has "enriched the Nation with dancing art and increased the cultural and economic relations between cities and the countries." USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). There is no documentary evidence showing that the petitioner's students' performances constitute original artistic or athletic contributions of "major significance" in the field.

On appeal, the petitioner submits a letter addressed to her from █ California, stating:

We would like to thank you from the bottom of our hearts for all that you have done for our students at Plaza Production I. You have no idea how grateful we are for all your voluntary work. Not only we truly appreciate your time and knowledge, but we also recognize your uniqueness and "one-of-a-kind" style of teaching.

We acknowledge the following features of your technique:

- Ability to work with the big group of children;
- Ability to correct errors with delicacy;
- Ability to reveal hidden capability in children;
- To teach children to think, listen and to understand the teacher;
- To develop in children love to dance;
- To develop a sense of a rhythm, coordination, and movement;
- Ability to move your beginner students from a simple routine to a compete production;
- Ability to make each student feel special, and give them the power to spread their wings and find their hidden talents.

█ compliments the petitioner regarding her teaching abilities, but █ does not specify how the petitioner's work is original or equates to original artistic or athletic contributions of major significance in the field. Assuming the petitioner's teaching skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. See *Matter of New York State Department of Transportation*,

22 I&N Dec. 215, 221 (Comm'r 1998). Regardless, there is no evidence showing that the petitioner's teaching techniques have significantly impacted the field beyond the pupils under her immediate tutelage. As previously discussed, contributions limited to the institutions and municipalities where the petitioner taught do not equate to original contributions of major significance to the field as a whole.

The petitioner's appellate submission also includes a letter from V.F. Karpunin, Director of the Olympia Public School of Ballroom Dance, stating:

In the training process with "Beginning" children trainer [the petitioner] uses her considerable experience of teaching and works on the basic emphasis on developing of the musical ear, development of the exact rhythm counts of music, learning of a specific exercises for accentuation of work of certain concrete groups of muscles, achieves ideal coordination, attention focusing at dance executions, uses special respiration-movement exercises, uses her method of training developed by her where she uses a certain positions for children for easier perception and understanding of material. Reveals in "beginning" children the predispositions of talent hidden in them and in time starts to develop their talent, distinguishing and analyzing personal dominants of small dancers. An important feature in the training process, which trainer [the petitioner] carries out remarkably is very competently being able to talk to children and parents, precisely explains and produces explanatory remarks after the conducted lessons, conducting training diaries with tasks, estimations, achievements and results. Shows to parents and their children elementary complexes of exercises for easily keep in mind and repeatedly (training) of a studied material of dance in house conditions. Conducts explanatory work with parents "beginning" to dance children about that "Dances" are the fine acting medicine helping effectively to develop and strengthen health and coordination of your child, thereby carries away parents and children to be engaged in this kind of dancing sports, raising attendance of employment.

Selection in categories and groups "Children," "Children-2," "Juniors," "Youth," trainer-teacher [the petitioner] displays after one or more years of training of children at school "Olympia" a method of preliminary tests and results on feeling of a rhythm, balance, coordination, techniques of work of feet and foot, for more older of children – capability instantly to repeat movement or a small complete production. The techniques of preparation of dancers-sportsmen of trainer [the petitioner] begins with integrated development of ethical and esthetic qualities of the person, harmony of mentality, a rising of technical skill, all-round functional and physical development. Analysis and appraise the degree of absolutely irreproachable fulfillment of movement, receiving in them fulfillment, profound sensual, analyze of emotional feeling of children-dancers during (in the course of) fulfillment dance [the petitioner] allocates that each kinds of dance has the special physical, biomechanics and is musical-rhythmic features.

Dances of the "European" program possess mathematical precision, accuracy and logicity of lines, thus the trainer develops, first of all, aerobic possibilities of a children. In the subsequent the trainer methodically fulfills following criteria in dance: Speed or

smoothness of movements, dance accomplishment by a blochno-modular special course, working off of special endurance (saving the energy of the human being), coordination of movements, flexibility and plasticity, correct breath by a technique of teaching of ball dance.

She applies a method of techniques release (Release based Technique) - the techniques of modern ball dance based on exemption (release) of some groups of muscles for the purpose of reception of skills of use only of those groups of muscles which are necessary in the course of dance. By means of techniques the release develops understanding of own body (the balance sheet, an articulation (an impulse, energy), gravitation (the center of gravity, work with weight), balance sheet displacement, work of feet . . . that gives the big variety for development of ball lexicon of the dancer.

She applies a technique of contact improvisation (Contact Improvisation, CI) – a basis which physical contact (contact methods), research and the movement analysis, both the dancer, and a couple as a whole. Contact methods of improvisation are weight transfer, the counter balance sheet, rotation, movement with falling, the jump, elevating, etc. The following stage of teachings of [the petitioner] she fulfills with emotional perception of a dancing pair, fulfilling by images and feelings, giving effects of expressive unique dance, displaying the uniqueness dancing plastics, thus showing all depth of ideas of dance and an emotional condition of the dancers. [The petitioner] in the teaching activity applies three basic things: commenting, instructing, and a correcting. It applies principles: Education and development, a system and sequence, presentation, supervision, display, availability and possibility of execution, durability of training, [the petitioner] as a trainer receives the highest of any results.

Extraordinary and unique professional qualities of trainer-teacher [the petitioner] include enthusiasm for the profession, personal high motivation for achievement of the highest results, high sports and pedagogical skills, high capability to the analysis and introspection, the professional competence, the self-discipline, a healthy conduct of life, skills of planning and career construction, esthetic taste, dialogue freedom in collective of children and parents, ability to cope with obstacles and difficulties to find a way out of difficult situations, psychological maneuverability, purposefulness, possesses skills of the leader – all it means that [the petitioner] is the talented and “extraordinary” person.

discusses the petitioner’s training processes, preparation techniques, release techniques, and leadership skills, but he fails to provide specific examples of how her work has impacted the field at level indicative of original contributions of “major significance” in the field. For instance, there is no documentary evidence showing the widespread adoption of the petitioner’s original methods of instruction by numerous dance schools or that her work is otherwise recognized as majorly significant to her field as a whole. also concludes that the petitioner’s skills demonstrate that she is “extraordinary,” but merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

While the petitioner has earned the admiration of the preceding references, the record does not establish that she has made original artistic or athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other dancers, teachers, or trainers, nor does it show that the field of ballroom dancing has specifically changed as a result of her work. Thus, the AAO concurs with the director's determination that the reference letters submitted by the petitioner did not meet the elements of this regulatory criterion. The opinions of the petitioner's references are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of dance trainer who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original work has been unusually influential, widely applied throughout her field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this regulatory criterion.

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

The petitioner submitted an October 23, 2009 letter from the President of the Dance Sport Federation of the Leningrad Region listing the dance results of Olympia dance school children under the petitioner's coaching supervision from 2000 through 2008. The petitioner also submitted a November 14, 2008 letter from the Head of the Municipal Department of the Public School of Ballroom Sport Dance "Olympia" stating: "[The petitioner] . . . in 2000 started teaching . . . children and youth groups in 'E' and 'D' classes, and working with a children group. The teaching experience is 6.5 years. From 2003 to 2004 [the petitioner] was on a maternity leave." The petitioner's initial evidence also included two letters of thanks signed by her young students.

The petitioner also submitted the following:

1. A December 27, 2003 Diploma awarded to "Children's ensemble 'Olympia' Group 'Children - 2' for 1st Place among children's ensembles in Latin Program" at the Leningrad Region "Christmas Souvenir" competition;
2. A January 7, 2004 Diploma awarded to the "Olympia" children's ensemble for "1st Place in Latin and Arbitrary Program Group 'Children 1'" at the "Rising Stars 2004" "regional competition of ballroom sport dance";

3. A Diploma awarded to the "Olympia" children's ensemble for "1st Place in Latin and Arbitrary Program Group 'Children 1'" at the "Rising Stars 2004" "regional competition of ballroom sport dance";
4. A Diploma presented to the petitioner as leader of the "Children – 1" team for the "Olympia" dance school for achieving 1st place in the team competition in the "Children – 1" category of the Latin Program "Class E" at the "Cup of CIS" (Commonwealth of Independent States) competition (2003);
5. A May 10, 2003 Diploma awarded to the "Olympia" children's ensemble for achieving 1st Place among ensembles in the Latin Program at the XII Open Championship of Arhangelsk Region, "The Mayor's Cup of Arhangelsk";
6. A Diploma stating that "Sport Dance Club Olympia" was a "Nominee" for the "Eksersis" national award "for high achievements in a Sport Dance in 2004";
7. An April 29, 2008 Diploma from the Head of the Department of Culture in the City of Gatchina presented to the "Olympia" dance ensemble for its participation as a contestant in the "We are born for inspiration" gala-concert;
8. An April 12, 2009 Diploma from the City of Gatchina presented to the "Olympia" dance ensemble and the petitioner for participating in the "Rain of Stars 2009" charitable event;
9. A Diploma awarded to the "Olympia" Children's Ensemble for 1st place in the Latin Program at the "Cup of Sport Dance Center 'Zenit'" (2004);
10. A Diploma awarded to two of the petitioner's students for 1st place in the Latin Program, Class "C" at the "Petersburg Ball - 2007";
11. A December 17, 2007 Diploma awarded to the petitioner's student for 1st place in the "Beginners" group at the "Christmas Souvenir" ballroom competition;
12. A Diploma awarded to two of the petitioner's students for 1st place in the "Children-1 Class 'E'" group at the "Dancing Spring - 2006" ballroom competition;
13. A Diploma from the Dance Sport Federation of the Republic of Komi awarded to two of the petitioner's students for 1st place in the "8 Dances" program at the "Russian Student Ball - 2007" competition;
14. A Diploma awarded to two of the petitioner's students for 1st place in the Latin Program at the "Governor's Cup of the City of Perm 'Crystal Slipper – 2008'" ballroom competition;
15. A December 17, 2007 Diploma awarded to the petitioner's student for 1st place in the "Beginners" group at the "Christmas Souvenir" ballroom competition;
16. A Diploma from the Dance Sport Federation of Saint Petersburg awarded to two of the petitioner's students for 1st place in the "Children-2" program at the "Nevskiy Cup – 2005" ballroom competition;
17. A Diploma awarded to two of the petitioner's students for 1st place in the "Latin Program Class C" at the "Legends of the Sport Dance" (2007) ballroom competition;
18. A Diploma awarded to two of the petitioner's students for 1st place in the "Children-2" category at the "Rating-Competition of the Dance Sport Federation of Saint Petersburg" (April 2008);
19. A Diploma awarded to two of the petitioner's students for 1st place in the "European Juniors-1" program at the "Peter the Greatest" competition (February 2008);

20. A Diploma awarded to two of the petitioner's students for 1st place in the "Latin Dance" program of the "Peter's Cup - 2008" ballroom competition (November 2008);
21. A Diploma awarded to two of the petitioner's students for 1st place in the "Juniors-2" European Program at the "Winter Pattern - 2008" ballroom competition;
22. A Diploma awarded to two of the petitioner's students for 1st place in the "Juniors-1" group in the Latin Program at the "Rising Stars 2006" regional ballroom competition;
23. A Diploma awarded to two of the petitioner's students for 1st place in the "Latin Program Class C-13" at the "Rising Stars 2007" regional ballroom competition;
24. A Diploma awarded to two of the petitioner's students for 2nd place in the "Youth' 8 Dances, Class D" category at the Rating-Competition of the Dance Sport Federation of Saint Petersburg" (April 2008);
25. A Diploma awarded to two of the petitioner's students for 2nd place in the "Children-2" "8 Dances" program at the "Legends of Sport Dance" ballroom competition (April 2007);
26. A Diploma awarded to two of the petitioner's students for 2nd place in the "Juniors-2" Latin Program at the "Winter Pattern - 2008" ballroom competition;
27. A Diploma awarded to two of the petitioner's students for 2nd place in the "Youth" group, "8 Dances," "D Class" category at the "Winter Pattern - 2008" ballroom competition; and
28. A Diploma awarded to two of the petitioner's students for 2nd place in the "Juniors-1" Latin Program at the "Legends of Sport Dance" ballroom competition (April 2007).

In response to the director's RFE, the petitioner submitted results for dance competitions in which Olympia dance school couples coached by her achieved first and second place. The director found that the petitioner had performed in a leading or critical role for the Olympia dance school, but that the preceding competitive results were not sufficient to demonstrate that the school has a distinguished reputation. On appeal, the petitioner submits published material documenting the distinguished reputation of the Olympia dance school. Thus, the petitioner has established that she performed in a leading or critical role for the Olympia dance school and that the school has a distinguished reputation. The AAO notes, however, that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Accordingly, demonstrating a leading or critical role for only a single distinguished organization, the Olympia dance school, does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

In light of the above, the petitioner has not established that she meets this regulatory criterion.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted an October 12, 2009 letter from [REDACTED] stating that the petitioner earned an “annual income higher than any other coach up to 2.0-2.5 times” while working at the Olympia Public School of Ballroom Dance. In response to the director’s RFE, the petitioner submitted her Russian tax return for 2007 reflecting total earnings of 910,754 rubles. The petitioner’s 2007 earnings included 216,000 rubles from the Olympia dance school, 557,754 rubles from private training sessions, and 137,000 rubles in competition award monies, totaling 910,754 rubles. The petitioner also submitted an April 1, 2010 letter from [REDACTED] Gatchina Administration of Municipal Education, stating: “For nowadays, average earnings of the teaching trainer of ballroom sport dance is: 20,450 rubles.” The AAO notes that monthly earnings of 20,450 rubles equate to yearly earnings of 245,400 rubles. The preceding letters from [REDACTED] were unaccompanied by documentary evidence of the specific governmental wage data upon which their observations are based. The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Moreover, the submitted documentation does not specify the number of hours worked by the petitioner in 2007. For instance, the submitted documentation does not indicate whether or not the petitioner’s earnings differential was based on her conducting more private training sessions and working longer hours in relation to others rather than her commanding a significantly higher rate of pay per session or a high hourly wage relative to others in the field.

On appeal, the petitioner submits a March 21, 2007 article in the Belarusian sports magazine *Sport Panorama* mentioning average salaries for directors, assistants, and instructor-methodologists at school-sports establishments in Belarus. The salary information discussed in the article, however, is not relevant to dance trainers in Russia. The petitioner also submits a September 16, 2010 article in *Newsland* stating: “The average wages of teachers at the Russian schools now constitute 17.4 thousand r[u]bles.” The petitioner, however, must submit documentary evidence regarding the earnings of dance trainers who perform similar work rather than for Russian school teachers in general. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm’r 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

The petitioner’s appellate submission also includes a September 8, 2010 “Audit Report” from [REDACTED] (an “audit company” in St. Petersburg, Russia) stating:

According to a database on tax declarations of physical persons of the Russian Federation it is reported:

- On point No. 1: the average total annual earnings of the trainer-teacher in city. municipal, budgetary and children-youthful schools on ballroom dances across St.-Petersburg and Northwest district correspond to a limit from 190,000 - 249,000 rubles;

- On point No. 2: the average total annual earnings of the trainer-teacher on ballroom dances across Russia correspond to a limit of 170,000 - 205,000 rubles;
- On point No. 3: the average total annual earnings of the highly paid trainer-teacher on ballroom dances correspond to a limit of 880,000 - 1,140,000 rubles;
- On point No. 4:
 - The declared annual earnings [the petitioner] for 2006 – 772,340 rubles;
 - The declared annual earnings [the petitioner] for 2007 – 910,754 rubles;
 - The declared annual earnings [the petitioner] for 2008 – 1,023,989 rubles.

E.P. Ulich's letter is unaccompanied by documentary evidence of the petitioner's 2006 and 2008 tax returns and the specific printouts from the Russian Federation tax declaration database upon which his observations are based. As previously discussed, the nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Regardless, the petitioner's reliance on "average" earnings data is not an appropriate basis for comparison. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence demonstrating that she has received "high salary or other significantly high remuneration for services" in relation to others in the field rather than simply earnings that are above average in her field. Accordingly, the documentation submitted by the petitioner does not establish that she has received a high salary or other significantly high remuneration for services in relation to others in the field.

In light of the above, the petitioner has not established that she meets this regulatory criterion.

B. Summary

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

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.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories 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.

ORDER: The appeal is dismissed.

⁵ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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).