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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

PUBLIC COPY

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[redacted]

DATE: MAY 24 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: 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 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, Texas Service Center, on November 3, 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of 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). Furthermore, counsel claims in his brief that the petitioner's documentary evidence should be considered as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the following regulation categories. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. The AAO further acknowledges that the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In counsel's brief, he does not explain why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not applicable to the petitioner's occupation. Instead, counsel simply claims that the regulations allow for the submission of comparable evidence. However, the regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation as a track and field assistant coach cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, counsel discusses evidence in his brief that specifically addresses four of the ten criteria at

8 C.F.R. § 204.5(h)(3) that relates to the petitioner's occupation. Further, the director found that the petitioner met at least one of the regulatory criteria. An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the petitioner's occupation. Moreover, although counsel failed to claim these additional criteria, the AAO finds that a track and field assistant coach could have published material about him pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) and could command a high salary pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Counsel provided no documentation as to why these provisions of the regulation would not be appropriate to the profession of a track and field assistant coach. Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. In the AAO's analysis of the evidentiary criteria below when comparable evidence is claimed, the AAO will determine whether the documentary evidence meets the requirements of the plain language of the regulation.

Moreover, the AAO acknowledges that counsel submitted an additional letter entitled, "Supplemental Evidence for Pending Appeal" on February 13, 2012. The regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that "[t]he affected party shall file the *complete* appeal including any supporting brief with the office where the unfavorable decision was made within 30 days after service of the decision [emphasis added]." Moreover, the regulation at 8 C.F.R. § 103.3(a)(2)(vii) provides that "[t]he affected party may make a written request to the [AAO] for additional time to submit a brief. The [AAO] may, for good cause shown, allow the affected party additional time to submit *one* [emphasis added]." A review of the record of proceeding reflects that counsel submitted Form I-290B, Notice of Appeal or Motion, on December 2, 2010, and indicated that a brief and/or additional evidence would be submitted within 30 days, which counsel did on January 3, 2011. However, as indicated above, counsel submitted supplemental evidence on February 13, 2012, which does not comply with the regulation at 8 C.F.R. §§ 103.3(a)(2)(i) and (vii). Regardless, the documentary evidence in the form of various articles reflects publication dates after the filing of the petition on September 9, 2010. Eligibility must be established at the time of filing. Therefore, the AAO will not consider these items as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

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

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[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).

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.*

II. ANALYSIS

A. Evidentiary Criteria[2]

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, he determined that the petitioner failed to establish 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.

The petitioner claimed eligibility for this criterion based on his receipt of an award from the U.S. Track & Field and Cross Country Coaches Association (USTFCCCA). While the petitioner submitted sufficient documentary evidence to demonstrate that the USTFCCCA award is a nationally recognized award for excellence in the field, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires more than one nationally or internationally recognized prize or award. 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

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

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). In the case here, the award from USTFCCCA constitutes only one nationally or internationally recognized award in which the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires more than one.

On appeal, counsel claims:

Regarding the purported award from CSO, counsel claimed:

> As no tangible award is given, a letter confirming these details and [the petitioner's] receipt of the award in 2001 is forthcoming from , though not yet available. The record will be supplemented as soon as the letter is received by undersigned counsel.

Regarding the purported award from CFF, counsel claimed:

> As no tangible award is given for this honor, a letter confirming these details is also forthcoming from and will be submitted as supplemental evidence as soon as the letter is received by undersigned counsel.

As of the date of this decision, including a review of the previously mentioned submission of supplemental evidence, counsel failed to submit any documentary evidence regarding the purported awards from CSO and CFF. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984). Counsel failed to demonstrate that the petitioner received any awards from CSO and CFF, and they are nationally or internationally recognized for excellence in the field consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

Moreover, on appeal, counsel claims that "the awards won by the athletes he has coached constitute comparable evidence, the submission of which is authorized by 8 C.F.R. § 204.5(h)(4)" and cites two unpublished AAO decisions. While the regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Further, 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). Moreover, the specific facts of those cases are not in the record. Without the records, it cannot be determined whether the facts of any other cases are similar to those of the present case. Regardless, as previously discussed, counsel failed to establish that the petitioner is eligible to submit comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Clearly, this criterion applies to the petitioner's occupation as the petitioner submitted a qualifying award and counsel claimed two other awards. In addition, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires "[d]ocumentation of the *alien's* receipt [emphasis added]," any awards won by athletes that were coached by petitioner do not meet the plain language of this regulation. However, while they will not be considered as comparable evidence, they will be considered below as they are relevant to the significance of the petitioner's original contributions under the regulation at 8 C.F.R. § 204.5(h)(3)(v).

Again, 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." As the petitioner only demonstrated that he received a single nationally recognized award for excellence, he failed to meet the plain language of this regulatory criterion that requires more than one prize or award.

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

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

The director determined that the petitioner failed to establish eligibility for this 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." Here, the evidence must be reviewed to see whether it rises to the level of original athletic-related 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).

On appeal, counsel claims the petitioner's eligibility for this criterion based on "athletes coached by [the petitioner] have succeeded at the highest levels and raised the caliber of competition, thereby significantly impacting the sport of track and field." In support of counsel's claims, he refers to several recommendation letters and various websites. While the petitioner, through his role as a coach, may have contributed to the personal accomplishments of several athletes, the petitioner failed to demonstrate that his original contributions have been of major significance in the field as a whole. Moreover, the letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance to his field. Furthermore, the letters provide insufficient information to reflect the extent of the petitioner's contributions on the athletes. For example, [redacted] indicated that she has won "[redacted] . . . was ranked as the [redacted]

Trials." Although stated that she has "known [the petitioner] for the past three years" and is "currently coached by him," does not credit the petitioner for her personal accomplishments such as winning four national titles. does not indicate when the petitioner began his coaching and failed to demonstrate that her success can be traced to the petitioner's training. Nonetheless, the petitioner failed to establish that any contributions that he has made to the coaching and training of have been of major significance in the field as a whole.

Similarly, the petitioner submitted a letter from and who stated that the petitioner's "coaching skills have manifested themselves clearly as several world class athletes have reached the peak of their performances under his assistance and coaching." While identified a few athletes who have been coached by the petitioner, failed to indicate the accomplishments of the athletes, let alone the influence or impact that they have had on the field, so as to demonstrate the petitioner's original contributions of major significance in the field. There is insufficient information to reflect that the petitioner's coaching and training has significantly impacted the field as a whole.

Likewise, the petitioner submitted a letter from who provided vague information that does not establish that the petitioner's contributions have been of major significance in the field. For instance, stated:

> Since the time that [the petitioner] began coaching, he has continued to coach more and more of the leading athletes in the world today, including decathletes, heptathletes, shot-putters, pole vaulters, jumpers and the like. He has had sustained extraordinary athletic coaching accomplishments in the United States and abroad during this time, coaching at leading universities in the United States, and coaching leading competitors in the world as well including Olympic athletes. I have seen his training and fitness techniques and regimens first hand, which are acknowledged to be at the forefront of the field today. He is known by leading coaches internationally for his accomplishments, continues to write articles in leading track and field journals, and has been awarded a prestigious national award for his coaching ability in the United States when he coached at

As indicated above, claimed that the petitioner has "sustained extraordinary coaching accomplishments" without identifying the petitioner's accomplishments and explaining how they can be considered as original contributions of major significance in the field. Moreover, stated that he seen the petitioner's training and fitness techniques without describing the petitioner's techniques and indicating how they are of major significance. As it relates to s reference to the petitioner's award and published articles, the regulations contain separate criteria regarding nationally or internationally recognized award and the authorship of scholarly articles. 8 C.F.R. §§ 204.5(h)(3)(i) & (vi). The AAO will not presume that evidence relating to or even meeting the awards and scholarly articles criteria is presumptive evidence that the petitioner also meets this criterion. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Therefore, while the petitioner's

award will not be considered under this criterion, it has already been discussed under the awards criterion. Although the petitioner's authorship of articles will not be considered under this criterion, they will be addressed under the next criterion. The articles are relevant to this criterion with regard to the impact they have had on the field that will be discussed later under this criterion.

The petitioner also submitted a letter from who stated:

> I competed against several European athletes at the Olympic and World Championships numerous times at international meets who were trained by [the petitioner] when they were members of their National Team. . . . I observed on a personal level the improvement in the performance of these competitors, which improvement can be attributable in large part to the abilities and coaching regimen brought by [the petitioner].

While generally praises the improvement of the athletes who were coached by the petitioner, she failed to establish that the petitioner has made original contributions of major significance beyond the limited number of athletes who were coached by the petitioner. Similarly, the petitioner submitted a letter from Committee, who stated that the petitioner "has coached several Olympic and national events in events." Although failed to identify a specific athlete that was coached by the petitioner, neither one explained how the petitioner's coaching equated to an original contribution of major significance in the field. The AAO is not persuaded that simply coaching athletes who compete in national and international competitions automatically demonstrates that the petitioner has made original contributions of major significance in the field.

Regarding the authorship of the petitioner's articles, the petitioner submitted documentary evidence reflecting the publication of his work in *Techniques* and www.decathlon2000.ee. On appeal, the petitioner submitted a letter from at the who stated:

> The article was so impactful that I contacted him after reading it to obtain more information about his approach and ideas. In his article, [the petitioner] explained the necessity of employing a multi-dimensional approach when training track and field athletes. [The petitioner] was also quite creative in adapting the fitness tool of "needs analysis" for track and field, specifically, as discussed in his article. [The petitioner] then employs the needs analysis in order to design a very precise strength training regimen, which results in better technique by the athletes, thereby improving their performance. The article included one of [the petitioner's] own, original training protocols, which focuses on single leg strength training. This is the real genius of [the petitioner's] approach, because the long jump, high jump, and pole vaulting events rely on the strength of a single leg for execution.
>
> Prior to [the petitioner's] introduction of his single leg strength training protocol, American coaches routinely relied on dual leg exercises, to the best of my

> knowledge. However, in light of [the petitioner's] article, coaches at some of the most competitive track and field programs in the country have adopted his single length training method, including myself.

In addition, on appeal, the petitioner submitted an email from , who had three follow-up questions for the petitioner after reading the article. It is noted that on appeal counsel claimed in his brief that a letter from , was submitted explaining the significance of the petitioner's article and training technique. However, a review of the record of proceeding fails to reflect the submission of the purported letter.

Nonetheless, email is insufficient to demonstrate that the petitioner's article and training technique has been of major significance in the field. While the AAO acknowledges the originality of the petitioner's work, the lack of supporting documentation does not establish the impact or influence of the petitioner's work on the field as a whole. Besides adopting the petitioner's technique at fails to provide specific information of any other universities who have widely adopted the petitioner's technique, so as to demonstrate that it has been of major significance. Instead, makes the general statement that "coaches . . . have adopted" the method without identifying a single coach or program. Moreover, s email only reflects additional questions that he had from reading the petitioner's article rather than evidence that has even adopted the petitioner's training technique.

While those familiar with the petitioner's work generally describe it as "extraordinary," there is insufficient documentary evidence demonstrating that the petitioner's work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, the regulatory criterion also requires those contributions to be of major significance. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that the "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. Moreover, the letters considered above primarily contain bare assertions of the petitioner's status in the field without providing specific examples of how those contributions rise to a level consistent with major significance in the field. 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.). The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

Further, USCIS may, in its discretion, use as advisory opinion 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 letters of support from the petitioner's personal contacts 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; *see also Matter of V-K-,* 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' 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 of original contributions of major significance.

Regarding the prizes and awards won by athletes coached by the petitioner, it is noted that none of the recommendation letters specifically attribute the petitioner as being the coach of athletes who won competitions. Instead, the letters indicate that the individual performances have improved under the coaching and tutelage of the petitioner. For example, stated that she "competed against several European athletes at the Olympic and World Championships numerous times at international meets who were trained by [the petitioner] when they were members of their National Team (heptathletes: ." made no mention of any awards won by these individuals rather than she "observed on a personal level the improvement in the performance of these competitors." Similarly, as mentioned above, failed to indicate that she won any competitions while the petitioner was her coach; instead indicated that she was "now reaching performance goals that were previously not within [her] reach." Likewise, stated that he "observed the outstanding results and athletic performances the athletes he was coaching achieved." However, failed to specifically identify the athletes and indicate their accomplishments. Regarding letter, he indicated that the petitioner coached Olympians Although competing in the Olympics is noteworthy, failed to demonstrate that any of these athletes garnered any medals. Further, stated that the petitioner "has coached several Olympic and national athletes" without indicating who were the athletes and if they garnered any awards that can be considered as major significance in the field.

The petitioner did submit a screenshot from www.georgiadogs.com regarding a profile of some of the petitioner's athletes at the reflecting the following:

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While these individual accomplishments reflect some success at the regional or conference level, the AAO is not persuaded that they constitute the petitioner's original contributions of major significance in the field. There is no evidence demonstrating that the personal accomplishments of the athletes have in any way impacted or influenced the field in a significant manner. Instead, they reflect noteworthy accomplishments to UGA and BSU. Moreover, any collegiate coach, or any athletic coach for that matter, can expect various levels of success of his athletes. It cannot be said that every coach whose athletes have some form of success at the regional and conference levels demonstrates contributions of major significance in the field as a whole.

Again, 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]." Without additional, specific evidence showing that the petitioner's work has been unusually influential, widely applied throughout his field, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion.

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

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

In the director's decision, he determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media." A review of the record of proceeding reflects that the petitioner submitted sufficient

documentary evidence establishing that he minimally meets the plain language of this regulatory criterion.

Accordingly, the petitioner established that he meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

A review of the record of proceeding fails to reflect that the petitioner claimed eligibility for this criterion at the time of the original filing of the petition or in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). However, on appeal, counsel is now claiming the petitioner's eligibility for this criterion based on the athletic competitions of his athletes as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). As such, the director could not have erred in his decision as the petitioner is only claiming eligibility for this criterion for the first time on appeal.

Regardless, as previously discussed, counsel failed to demonstrate that the regulatory criteria at 8 C.F.R. § 204.5(h)(3) do not readily apply to the petitioner's occupation as a track and field assistant coach. Therefore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. It is again noted that counsel claimed and submitted documentary evidence regarding several of the regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) thereby reflecting that the petitioner's occupation does readily apply. The regulation at 8 C.F.R. § 204.5(h)(4) is not a provision to simply allow an alien to circumvent the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) when an alien is unable to meet or submit documentary evidence of the criteria.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires "[e]vidence of the display of the alien's work in the field at *artistic* exhibitions or showcases [emphasis added]." The petitioner's field, however, is in athletics rather than the arts. The plain language of this regulatory criterion clearly indicates that it applies to artists. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation.

Even if the AAO was to accept counsel's comparable evidence claim, which the AAO clearly does not, the documentary evidence contained in record, which was already discussed under the original contributions criterion, reflected the performances of the petitioner's pupils in competitions and not the display of the petitioner's work in competitions. Athletes are not presented as the work of their coaches such that the coaches garner recognition from the event. In other words, the events are not promoted as exhibitions of a coach's work. Moreover, virtually every athlete "displays" his or her work in the sense of competing in front of an audience.

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

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

The director determined that the petitioner failed to establish eligibility for this criterion. On appeal, counsel claims the petitioner's eligibility for this criterion based on his role with the Olympia Athletics Club (OAC) and UGA's cross country and track and field team. 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 OAC, counsel refers to another letter from who stated:

> I hold the position of [CSO] Executive Officer. I am well qualified in the field of athletics to provide my opinion on behalf of both [the petitioner] and the organization by which he was employed as the and .
>
> [The petitioner] served with the which team is the acknowledged leading, finest and most prestigious track and field team in and which has held this reputation for many years. This team has included many of over the years, many of whom subsequently competed for and other leading track and field competitions internationally. [The petitioner] worked for this club as its primary Coach from 2001 until 2004 and was clearly serving in a critical capacity. Under his leadership, [OAC] developed numerous premier athletes in track and field who further competed in the world's leading international competitions.

The petitioner failed to submit any other documentary evidence regarding OAC. While indicated that he was qualified to provide his opinion, the petitioner failed to submit any documentation from OAC. 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. In the case here, the petitioner failed to submit any documentary evidence demonstrating that primary evidence and secondary evidence do not exist or cannot be obtained. Regardless, letter that has been provided 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, do they 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. As such, the petitioner failed to comply with the regulation at 8 C.F.R. §103.2(b)(2).

Nevertheless, provided insufficient information to demonstrate the petitioner performed in a leading or critical role and that OAC has a distinguished reputation. The submission of a single letter that simply indicates the job title and generally claims that the petitioner performed in a critical role is insufficient to establish eligibility for this criterion. In other words, it cannot be determined from the petitioner's job title alone that his role is leading or critical. provided vague, general information without establishing that the petitioner's role was leading or critical. 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. at 1108, *aff'd*, 905 F. 2d at 41; *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5. Similarly, Mr. Solomou's general and broad statement regarding the "develop[ment] [of] numerous premier athletes" is insufficient to reflect the distinguished reputation of OAC.

Regarding the petitioner submitted sufficient documentary evidence demonstrating that he performs in a leading or critical role. However, the petitioner failed to establish that team has a distinguished reputation. The petitioner submitted screenshots for website reflecting that Moreover, while the screenshots highlight some accomplishments of individual athletes for both men and women, there is no indication from the rankings that the indoor or outdoor teams have achieved significant success at the NCAA level, let alone moderate success in the SEC. The AAO is not persuaded that the documentary evidence submitted by the petitioner demonstrates the distinguished reputation of UGA's track and field team.

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.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

Similar to the artistic display criterion, counsel is claiming the petitioner's eligibility for this criterion for the first time on appeal. Counsel again claims that the petitioner is eligible to submit comparable evidence based on the "success of the athletes coached by [the petitioner]." For the reasons previously discussed, counsel failed to establish that the petitioner is eligible for the provisions of the submission of comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4).

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(x) requires "[e]vidence of commercial successes in the *performing arts*, as shown by *box office receipts* or record, cassette,

compact disk, or video *sales* [emphasis added]." In other words, this regulatory criterion requires evidence of commercial successes in the performing arts in the form of "box office receipts" or "sales." In the case here, the petitioner is not a performing artist such as a singer or actor; rather the petitioner is an athletic coach. Moreover, the record of proceeding fails to reflect that the petitioner submitted any documentary evidence regarding "box office receipts" or "sales."

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. 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.[3] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

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[3] 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).

ORDER: The appeal is dismissed.