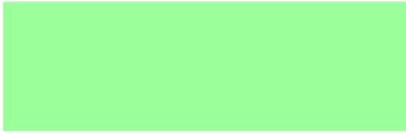




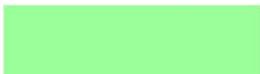
U.S. Citizenship
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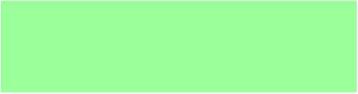
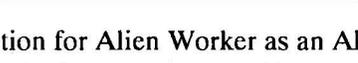
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DATE: **JAN 22 2013**

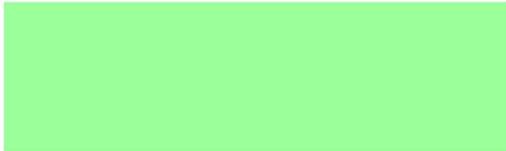
Office: TEXAS SERVICE CENTER

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 in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics as a [REDACTED] pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

The petitioner’s priority date established by the petition filing date is May 3, 2012. On May 11, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on August 17, 2012. On appeal, the petitioner submits a brief with no additional documentary evidence. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established her eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. See H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Proper Standard of Proof

Counsel indicated on the Form I-290B, Notice of Appeal or Motion, Part 3 that instead of applying the preponderance of the evidence standard of proof, the director applied a higher standard. The record does not support counsel's assertion that the director held the petitioner's evidence to an elevated standard beyond that which is required by most administrative immigration cases, the preponderance of the evidence standard of proof. The most recent precedent decision related to the preponderance of the evidence standard of proof is *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). Counsel cited this decision on the Form I-290B. The preponderance of the evidence standard does not preclude USCIS from evaluating the evidence. The *Chawathe* decision stated:

[T]he "preponderance of the evidence" standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation's eligibility as an "American firm or corporation" under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375 n.7. The final determination of whether the evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988) (finding that the appropriate entity to determine eligibility is USCIS). Ultimately, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989)). The *Chawathe* decision further states:

Even if the director has some doubt as to the truth, if the petitioner submits relevant, probative, and credible evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987) (discussing "more likely than not" as a greater than 50% chance of an occurrence taking place). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

Id. As the director concluded that the petitioner had not submitted relevant and probative evidence satisfying the regulatory requirements, the AAO concludes that the director did not violate the appropriate standard of proof. According to this analysis, the AAO affirms the director's ultimate conclusion that the evidence does not establish the petitioner's eligibility.

B. Additional Claims of Error on Appeal

On the Form I-290B, counsel also attributes three additional general errors to the director. First, counsel asserts that the director imposed novel substantive and evidentiary requirements beyond those in the regulation and that the director's decision was in direct conflict with agency guidance. Second, counsel cites *Buletini v. INS*, 860 F. Supp. 1222, 1234 (E.D. Mich. 1994), indicating the director incorrectly applied the regulations. Third, counsel cites *Matter of Price*, 20 I&N Dec. 953 (Act. Assoc. Comm'r 1994), asserting the director's "discussion of the different regulatory criteria at times is inherently inconsistent, manipulative, diverges from the relevant facts and issues that should be considered under each criterion. As such, the Director abused his discretion in denying the instant petition." Within the appellate brief counsel failed to provide examples of these alleged errors or to identify conclusions that resulted from these alleged errors. Therefore, the AAO will not address counsel's general assertions on the Form I-290B within this decision.

C. Evidentiary Criteria²

One-time achievement.

As the claimed one-time achievement, defined at 8 C.F.R. § 204.5(h)(3) as a major internationally recognized award, the petitioner submitted evidence of her first place finish at the [REDACTED]. The director determined that this award did not amount to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3) as the petitioner failed to provide evidence demonstrating the award was reported in top international media. The director further concluded that the award also falls short of a one-time achievement as it is not recognized as one of the top awards in the field as a whole, rather than within an age-limited category within the field. The director noted that the [REDACTED] category is limited to participants whose fourteenth or fifteenth birthday occurs during the calendar year in which the competition took place.

With regard to a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), a Federal Court recently stated:

The . . . debate over what constitutes a "major" international award [is one] that neither party can hope to win. Common experience draws no line of demarcation between those awards that are "major" and those that are not. The applicable law in this case draws no clearer line, other than to establish that some awards are "major, internationally recognized award[s]" and others are "lesser nationally or internationally recognized prizes or awards". 8 C.F.R. § 204.5(h)(3) & (3)(i). Nothing in either the INA or the regulations implementing it explains how USCIS or a reviewing court is to differentiate between "major" and lesser awards. In legislative history, Congress named the Nobel Prize as its

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

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sole example of a major, internationally recognized award that would by itself demonstrate “extraordinary ability.” *Kazarian*, 596 F.3d at 1119 (citing 1990 U.S.C.C.A.N. 6710, 6739). No one suggests that an alien must win a Nobel Prize to qualify, and no one suggests that [the petitioner’s] awards are on par with a Nobel Prize. What awards less prestigious and recognized than the Nobel Prize qualify as major, international awards is a question that the law does not answer. There is little question, moreover, that Congress felt it unnecessary and perhaps inadvisable to define “major” in this context. It entrusted that decision to the administrative process.

Rijal v. U.S. Citizenship & Immigration Services, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) *aff’d*, 683 F.3d 1030 (9th Cir. 2012). This same court determined that USCIS did not act arbitrarily and capriciously when it:

[C]onsidered the relevant factors and articulated a rational connection between the facts it found and the choice it made. USCIS explicitly considered the awards and all of the evidence [the petitioner] submitted to support his claim that they were major, international awards. USCIS articulated a rational connection between those facts and its conclusion that his awards were not “major.” [Evidentiary citation omitted.] Another adjudicator might have come to a different conclusion, but that is irrelevant. Unless the court can conclude that no rational adjudicator would have come to that conclusion, the USCIS did not act arbitrarily and capriciously.

Id. at 1345-46 *aff’d*, 683 F.3d 1030.

Counsel states within the appellate brief: “Where the Director then errs most profoundly is to also provide a short list of other awards [in addition to the Nobel Prize] which he presumes would meet the intent of Congress. His error is not that such awards would not be approved of by Congress, his error is in making a list at all.” The director’s list, however, was an example of other awards that the director stated “may” serve as a qualifying one-time achievement. The director did not indicate that his list was an exclusive list of qualifying one-time achievements.

Regardless of whether it is appropriate to list examples of potentially qualifying awards, the AAO concurs with the director’s ultimate conclusion that the petitioner has not demonstrated a qualifying one-time achievement. Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even lesser internationally recognized awards could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress

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that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The AAO affirms director's determination that the petitioner failed to provide evidence to establish that her first place finish was a qualifying one-time achievement that is, a major, internationally recognized award, as her finish was not reported in top international media and the competition was limited to those younger than 15 years of age and was not open to the petitioner's entire field such that it can be considered one of the top awards in the field.

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the alien is the recipient of the prizes or the awards (in the plural). The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion. The petitioner provided numerous medals and certificates relating to her performance in [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner has demonstrated that she has received prizes or awards issued for excellence in the field of endeavor. The remaining requirement that the petitioner must establish is that at least two of the prizes or awards themselves are nationally or internationally recognized. Counsel's appellate brief asserts that the director erred with regard to whether the petitioner's prizes or awards are nationally or internationally recognized and that the director's conclusion is inconsistent with the director's finding that there exists published material about the petitioner in qualifying media. Counsel asserts the prizes or awards are nationally or internationally recognized based on the stature of the issuing authority or on the stature of the event at which the accolade was issued. Even if the petitioner were to establish that the competitions are nationally or internationally recognized, this level of acknowledgement does not automatically impute such recognition to every level of prize or award available at the competition. A prize or an award does not garner national or international recognition from the competition in which it is awarded, nor is it derived from the individual or group that issued the award. A national or international level competition may issue lesser awards that merely receive local or regional recognition, which do not meet the plain language requirements of this criterion. Rather, national and international recognition results through the awareness of the accolade in the eyes of the field nationally or internationally. This can occur through several means; for example, through media coverage. Additionally, unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

The evidence relating to the petitioner's first place finish at the [REDACTED] [REDACTED] meets the plain language requirements of the regulation. Although this award is

not sufficient to meet the one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3) as counsel asserts, it is sufficient to meet the requirements of the lesser prizes or awards criterion. The director's concerns, including that the competition was age-specific, is appropriately considered within a final merits analysis. This award was the highest award available in the petitioner's field, in her age group and received media coverage from major media sources.

Regarding the [REDACTED] the petitioner failed to provide sufficient media coverage for either award to be considered a nationally or internationally recognized prize or award. The petitioner provided a letter from [REDACTED] [REDACTED] s letter states that the petitioner has sustained both international and national acclaim and that her achievements have been recognized in the field of [REDACTED]. Although [REDACTED] letter verified that the petitioner received the [REDACTED] awards for two consecutive years, 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.). Similarly, 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). Furthermore, as evidence of receiving these two awards, the petitioner only submitted photographs of the awards themselves in which the text is not in the English language. "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." 8 C.F.R. § 103.2(b)(3). The letter from [REDACTED] and other media coverage are not primary evidence of the awards as required by the regulation at 8 C.F.R. § 103.2(b)(2).

The petitioner provided her competition results listed on two websites, [REDACTED]. However, the petitioner failed to provide evidence relating to either website being considered as a form of media that might support the position that coverage on either website equates to national or international recognition of the award. The record lacks evidence that [REDACTED] are online versions of television or print media with a national reach. The petitioner has not presented any evidence to establish that the content from [REDACTED] can be considered to receive national or international recognition. The petitioner bears the burden to establish eligibility, and in this instance she failed to provide any evidence regarding the reputation of the websites. National or international accessibility by itself is not a realistic indicator of a given website's reputation. 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 the petitioner's burden to establish that she meets every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner's competition placements are recognized beyond the presenting organizations, [REDACTED] and are therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

The petitioner provided a letter from [REDACTED] a sports newspaper in [REDACTED] indicated that the petitioner was the subject of several articles that appeared

in the newspaper. [REDACTED] also indicated that the [REDACTED] “is the biggest and oldest national sports newspaper in [REDACTED]” His letter also asserts the publication has a monthly circulation of 85,000 within the country. The record is deficient of additional documentary evidence to corroborate [REDACTED] assertions of the prominence of this publication. USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 317 F. App’x 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). While the petitioner provided several articles from the [REDACTED] the petitioner provided no independent information relating to the circulation or the distribution data of the [REDACTED] and thus, the petitioner may not rely on this publication to establish that this award is nationally or internationally recognized.

A review of the remaining published material on record reveals that the publications primarily failed to name any specific prize or award. Additionally, the record failed to reflect that the published material that did mention specific awards has a national reach. As such, the petitioner has failed to establish that any of her accolades are nationally or internationally recognized prizes or awards. Although the petitioner provided evidence to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(iii) under the published material criterion, the evidence that sufficiently meets the plain language requirements of that criterion failed to identify any of the prizes or awards claimed under this criterion. Had the submitted evidence that satisfied the published material criterion also discussed the claimed prizes or awards, it may have been sufficient to satisfy the requirements of this criterion.

While the petitioner demonstrated that the [REDACTED] was sufficient, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) also requires “prizes or awards” in the plural, which 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. Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The director determined that the petitioner met the plain language requirements of this criterion. The AAO affirms the director’s favorable determination as it relates to this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner’s contributions (in the plural) in her field. These contributions must have already been realized rather than being potential, future contributions. The

petitioner must also demonstrate that her contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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). Contributions of major significance connotes that the petitioner’s work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner claims that “her stylistic movements and unique technique” satisfies the requirements of this criterion, and that her contributions are evidenced by the expert letters submitted initially and in response to the director’s RFE. The director determined that the petitioner failed to meet the requirements of this criterion.

Regarding the letter from [REDACTED] [REDACTED] indicated that the petitioner’s contribution to the sport is “through her unique weight transfer points in the execution of the Viennese cross and her transition from Ronda to Promenade. These contributions have resulted in a new understanding of balance in the female ballroom transition pieces that is now being taught by leading experts and emulated by top competitors.” If the petitioner’s original techniques were being adopted and taught by leading experts in the field, this has the potential to qualify under this criterion. [REDACTED] does not, however, provide the names of any of the leading experts that he asserts have begun teaching the petitioner’s techniques. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Additionally, the petitioner did not provide letters from any expert instructors who claim to have adopted her techniques and who claim that this new method of instruction has resulted in an impact within the petitioner’s field.

The letter from [REDACTED] winner of multiple [REDACTED] indicated that the petitioner’s “unique innovations are now being widely adopted by other competitors,” and that he has recently “witnessed the implementation of these same innovations in the style of the advanced competitive dancers . . . Their use is so widespread that they are now routinely taught to advanced dancers in both the U.S. and at international studios.” [REDACTED] also did not provide any specifics relating to those who he alleged routinely teach the petitioner’s techniques. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

While some of the remaining letters also reference the petitioner’s unique techniques, none provide additional information relating to the impact on the petitioner’s field. The remaining letters also describe how the petitioner would be an asset to the sport and praise her skills and knowledge of the sport. Skills and knowledge in one’s field, however, are not necessarily indicative of original athletic contributions of major significance in the field. It is not enough to be skillful and knowledgeable and to

have others attest to those talents. An alien must have demonstrably impacted her field in order to meet this regulatory criterion. The reference letters submitted by the petitioner briefly discuss her physical skills, but they do not provide sufficiently specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance.

The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

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 "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. 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 letters from experts 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; 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" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). 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.

Even if the petitioner's weight transfer technique is an original contribution impacting her field as a whole, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) also requires evidence of the alien's athletic "contributions" in the plural, which 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. Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning.

Based on the above analysis, the petitioner has not submitted evidence that satisfies the requirements of this criterion.

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

This criterion contains multiple evidentiary elements the petitioner must satisfy. The plain language requirements of this criterion require that the work in the field is directly attributable to the alien. Generally, 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts. This interpretation is longstanding and has been upheld by a federal district court in *Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). The alien's work also must have been displayed at artistic exhibitions or showcases (in the plural). While neither the regulation nor existing precedent speak to what constitutes an exhibition or a showcase, Merriam-Webster's online dictionary defines exhibition as, "a public showing (as of works of art)."³ Merriam-Webster's online dictionary also defines showcase as, "a setting, occasion, or medium for exhibiting something or someone especially in an attractive or favorable aspect."⁴ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner's burden to demonstrate that the display of her work in the field claimed under this criterion occurred at artistic exhibitions or at artistic showcases. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner's field is in [REDACTED]. Within the initial filing statement, former counsel stated: "[The] Petitioner has sustained national and international acclaim as a competitive athlete and coach in the field of [REDACTED]. The petitioner performed in an athletic display or coached those who did, rather than an artistic display. As the petitioner has not created tangible pieces of art that were on display at exhibitions or showcases, she has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role's matching duties. A critical role should be apparent from the petitioner's impact on the organization or the establishment's activities. The petitioner's performance in this role should establish whether the role was critical for organizations or

³ See <http://www.merriam-webster.com/dictionary/exhibition>, accessed on November 20, 2012, a copy of which is incorporated into the record of proceeding.

⁴ See <http://www.merriam-webster.com/dictionary/showcase>, accessed on November 20, 2012, a copy of which is incorporated into the record of proceeding.

establishments as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."⁵ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. at 306. Therefore, it is the petitioner's burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

Throughout the proceedings the petitioner claimed eligibility by performing a critical role for only one organization, [REDACTED]. The director determined that the petitioner failed to meet the requirements of this criterion.

The petitioner provided a letter from [REDACTED] in which [REDACTED] indicated that the petitioner was an instructor at the club. The AAO will not infer the nature of the petitioner's role solely from the job title. The letter falls short of specifying how the petitioner contributed to the organization in a way that is significant to the organization's outcome or what role she played in the organization's activities. As such, the petitioner cannot rely upon the [REDACTED] to qualify under this criterion based on the evidence on record.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) also requires that the petitioner have performed in a leading or critical role for "organizations or establishments" in the plural, which 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. Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning.

Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

⁵ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on November 20, 2012, a copy of which is incorporated into the record of proceeding.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁶ 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; *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)). Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁶ 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).