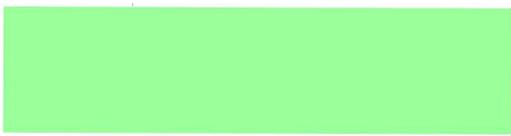
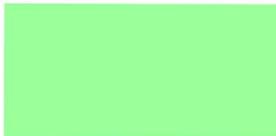




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 30 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:

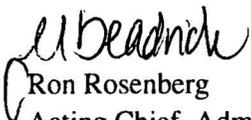
SELF-REPRESENTED

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary in athletics as a rowing coach.¹ The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

On appeal, the petitioner asserts that he meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (v), (viii), and (ix). For the reasons discussed below, the AAO will uphold the director's decision.

I. LAW

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

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

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

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

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

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on January 18, 2010 as an F-1 nonimmigrant student.

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

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

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

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

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

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). On the Form I-140, Immigrant Petition for Alien Worker, in Part 5, the petitioner lists his occupation as “Rowing Coach,” and in Part 6, “Basic information about the proposed employment,” he lists his job title as “Head Rowing Coach.” The petitioner submitted a December 23, 2011 letter from [REDACTED] Manager of Noncredit Instructional Programs, [REDACTED] Fitness and Recreation Center, stating that the petitioner has worked as a rowing coach and an instructor of fitness training to rowing students of various skill levels. [REDACTED] further states: “[The petitioner] has taught at [REDACTED] [REDACTED] for the past two years in both the Summer Term Instructional Program and the Noncredit Instructional Program, and has consistently received excellent reviews from his students.” The petitioner also submitted a December 6, 2011 letter from [REDACTED] Director of Athletics and Alumni Relations, [REDACTED] stating that the petitioner has worked for four years in the capacity of lead crew instructor, head crew coach, and lead coordinator of all instructional and competitive crew programs for the academy’s high school rowing program. In response to the director’s request for evidence, the petitioner submitted documentation indicating that he has worked as Head Sculling Coach at the [REDACTED] since May 2012 and as Head Rowing Coach for the [REDACTED] since March 2012. As the petitioner’s employment with the [REDACTED] and the [REDACTED] post-dates the filing of the petition, the AAO will not consider his work with those organizations as evidence to establish his eligibility. Eligibility must be established at the time of filing. 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. Regardless, based on the evidence submitted by the petitioner and the information provided on the Form I-140, the record is clear that the petitioner intends to continue to work as a rowing coach and instructor in the United States.

Aside from documentation establishing the petitioner’s intention to continue to work in the United States as a rowing coach and instructor, the petitioner submitted evidence of his athletic accomplishments as a Junior rower and a member of the [REDACTED] In addition, the petitioner submitted information regarding his collegiate rowing career as a member of the [REDACTED] There is no documentary evidence showing that the petitioner has competed nationally or internationally as a crew athlete subsequent to 2010. While a rowing coach and competitive rower may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in

any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. While the record demonstrates that the petitioner intends to continue working as a rowing coach and instructor, there is no documentary evidence indicating that he intends to compete regularly as an athlete in sporting events in the United States. The AAO acknowledges the possibility of an alien's extraordinary claim in more than one field, such as a rowing coach and rowing competitor, but the petitioner must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See 8 C.F.R. § 204.5(h)(5). In this matter, there is no evidence establishing that the petitioner intends to continue working in the United States as a rowing competitor. Specifically, the petitioner states on appeal: "I intend to continue to work in the field of coaching rowing in the United States." Accordingly, the petitioner must satisfy the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulations at 8 C.F.R. §§ 204.5(h)(2) and (3) through his achievements as a rowing coach.

III. ANALYSIS

A. Evidentiary Criteria³

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

As previously discussed, the petitioner submitted evidence of his athletic accomplishments as a Junior rower, as a member of the [REDACTED] and as a member of the [REDACTED]. The "field of endeavor" for which classification is sought, however, is coaching. There is no evidence indicating that the petitioner seeks to work in the United States as a competitive rower. Awards resulting from the petitioner's success as a competitive athlete cannot be considered evidence of his national or international recognition as a coach or an instructor. The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, awards won by the petitioner as a competitive athlete do not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

The petitioner submitted an August 26, 2009 certificate from the [REDACTED] "for his exceptional contribution to the development of the rowing sport in [REDACTED]." The petitioner also submitted a December 30, 2011 letter from [REDACTED] president of both the [REDACTED] and the [REDACTED] stating that the petitioner "received an award for outstanding performance as a coach and a rower in 2009 by the [REDACTED]"

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

This is a very prestigious award that any rowing coach could get in [redacted]. [The petitioner] definitely deserved it and had a positive vote from all the national coaches.” In addition, the petitioner submitted a letter from [redacted] Secretary General, [redacted] stating: “In 2009, [the petitioner] received an award as the best young coach from the [redacted]. The petitioner also submitted a November 17, 2011 letter from [redacted] Head Coach of the [redacted] stating: “[The petitioner’s] success on the national and international scene earned him a prestigious coaching award for an exceptional coach in 2009 by the [redacted]. The preceding references’ comments provide only limited information regarding the petitioner’s award and are not sufficient to demonstrate that his August 26, 2009 certificate from the [redacted] is a nationally or internationally recognized award for excellence in the field. The petitioner’s documentation also included an English language translation of an August 28, 2009 article in [redacted] entitled [redacted]

[redacted] but the petitioner failed to submit a copy of the original article published in the [redacted] language. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). On appeal, the petitioner submits a document bearing the logo of the [redacted] that he identifies as “the award eligibility requirements” for his August 26, 2009 award certificate for “exceptional contribution to the development of the rowing sport in [redacted].” The document lists Articles 57 – 59 of the [redacted] pertaining to the “Outstanding Contribution to the Development of the Rowing Sport in the [redacted] award. The AAO cannot ignore that the preceding articles were “approved, at a meeting held on 16 November 2009,” eleven weeks after the petitioner had already received his award from the [redacted]. Accordingly, the petitioner has not established that the submitted eligibility requirements were in effect on the date that he received his award from the federation.

The petitioner submitted a blurred photograph of his “Best Coach Award” for the 2005-2006 season from the [redacted]. The foreign language inscription on the award is illegible and was unaccompanied by a certified English language translation. Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English. The petitioner also submitted a letter from [redacted] Vice President of the [redacted] stating that the petitioner “received an award as the best [redacted] young coach in ’05 and ’06.” In addition, the aforementioned letter from [redacted] states: “[The petitioner] was recognized as the best [redacted] rowing coach in 2005 and ’06.” The preceding references’ comments provide only limited information regarding the petitioner’s award and are not sufficient to demonstrate that his Best Coach Award for the 2005-2006 season is a nationally or internationally recognized award for excellence in the field. The petitioner also submitted an English language translation of a

December 21, 2006 article in [REDACTED] entitled [REDACTED] but the petitioner failed to submit a copy of the original article published in the Serbian language. As previously discussed, 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. The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). On appeal, the petitioner submits a document bearing the logo of the [REDACTED] that he identifies as “the award eligibility requirements” for the [REDACTED] Best Coach Award for the 2005-2006 season. The document lists Articles 64 – 67 of the “Articles of Association of the [REDACTED] pertaining to the “Award for the Best Rowing Coach.” The AAO cannot ignore that the preceding articles were “approved, at a meeting held on 24 December 2011,” five years after the petitioner had already received his Best Coach Award from the [REDACTED]. Accordingly, the petitioner has not established that the submitted eligibility requirements were in effect on the date that he received his award from the club. Regardless, the petitioner’s Best Coach Award from the [REDACTED] reflects institutional recognition from the club that employed him rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.

In addition to the preceding deficiencies, the petitioner failed to submit evidence of the national or international *recognition* of his August 26, 2009 certificate from the [REDACTED] and his Best Coach Award from the [REDACTED]. 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 his burden to establish every element of this criterion. In this instance, there is no documentary evidence demonstrating that the petitioner’s awards were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

The petitioner submitted evidence of various awards won by competitive athletes that he coached. For instance, the petitioner submitted documentation of the silver and bronze medals from the 2006 [REDACTED] and the 2009 [REDACTED] respectively, won by rowers [REDACTED] whom he coached. Awards received by the petitioner’s rowers in various athletic competitions, however, do not equate to his receipt of those prizes.

On appeal, the petitioner states:

I included the photos of the silver and bronze medals from the 2006 [REDACTED] and 2009 [REDACTED] respectively, of the crews which I coached. *The rowers and their respective Federations receive the medals at the [REDACTED] [REDACTED] gave me the medals for coaching those crews.*

[Emphasis added.] The petitioner submits a November 12, 2012 e-mail message from [REDACTED] Events Coordinator, [REDACTED], stating:

I confirm that there is a medal presented in addition to the crew's medal at each [REDACTED]

However this medal is not for the coach personally but for the National Federation. Usually those medals are presented to the President of the federation or to a federation member at the Victory ceremony of each boat class.

[Emphasis added.] There is no documentary evidence showing that the petitioner himself was awarded a silver or bronze medal at the victory ceremony at the 2006 [REDACTED] or the 2009 [REDACTED]. Instead, the competition organizers presented the medals to [REDACTED] and the [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Prizes or awards received by organizations or individuals other than the petitioner himself do not meet the plain language requirements of the regulation. Nevertheless, the awards received by athletes the petitioner has coached will be considered later in this decision under the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii). As there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in coaching, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

The petitioner initially submitted two letters from [REDACTED] stating that the petitioner has been a member of the [REDACTED] since 2007. The petitioner also submitted a December 2011 letter from [REDACTED] Secretary General, [REDACTED], stating that the petitioner became a member of the club's board in 2008. The petitioner's initial evidence also included a December 30, 2011 letter from [REDACTED], president of both the [REDACTED] and the [REDACTED] stating: "[The petitioner] was elected by the members of the [REDACTED] board at the assembly in August, 2008. [The petitioner] is the youngest member of the board in the club's history." The letter from [REDACTED] did not specifically identify the petitioner as a member of the [REDACTED] or the date when the petitioner's membership commenced.

On June 1, 2012, the director requested further evidence pertaining to the petitioner's association memberships. The director specifically requested evidence showing that the associations "require outstanding achievements" of their members and stated that the petitioner may submit the "section of the association's constitution or bylaws which discuss the criteria for membership."

In response to the director's request for evidence, the petitioner submitted a July 20, 2012 letter from [REDACTED] Secretary General, [REDACTED] stating that the petitioner "is a full member of the [REDACTED]" but he does not specify the date when the petitioner became a full member. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The documentary evidence submitted by the petitioner fails to establish his full membership in the [REDACTED] on or before January 25, 2012. For instance, the petitioner did not submit evidence showing the date that his full membership was recorded in the Association's Book of Members (item 5 below). Furthermore, the AAO notes that the [REDACTED] articles submitted by the petitioner do not require "outstanding achievements" of those admitted to full membership. Specifically, Article 9 states:

1. Admission to full membership of the [REDACTED] requires a recommendation for a candidate to be given before the Association Assembly by regular members of the Association;
2. Admission to full membership requires evidence that the candidate's efforts and work have contributed to the quality and advancement of rowing in [REDACTED] and abroad;
3. Full-fledged members of the Association vote on the admission of a new Association member at a regular meeting of the Assembly;
4. New Association members are equal in terms of rights, duties, and liabilities;
5. New Association members are recorded in the Association's Book of Members;
6. Association members must be citizens of the [REDACTED]

There is no documentary evidence demonstrating that the requirements specified in items 1 – 6 above constitute outstanding achievements.

The petitioner's response also included articles 40 – 46 of the "Articles of Association of [REDACTED] governing "Club Members, Members' Rights and Duties." The AAO cannot ignore that the preceding articles were "approved, at a meeting held on 24 December 2011," more than three years after the petitioner had been elected to membership in August 2008. Accordingly, the petitioner has not established that the submitted eligibility requirements were in effect on the date that he became a member of the board. With regard to the "Admission of New Members," Article 40 states:

1. Candidates for the Board of Directors
 - individuals whose work has benefited the Club's operation and growth;
 - individuals who are national experts in rowing;
 - coaches with outstanding sports results;
 - individuals with particular merit in the development of rowing.
2. Admission of new members is decided by the Club's Board of Directors by a simple majority of all members (50% + 1).
3. The Board's decision may be appealed before the Assembly, whose decision shall be final.
4. New members shall have the same rights as all the other members of the Board of Directors.

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5. New members shall be recorded in the Club's register.
6. New members shall adhere to the Club's Articles of Association.

Regarding the four requirements for "Candidates for the Board of Directors" listed under item 1 above, it is unclear whether an individual may meet only one of the four or must meet all four in order to be a candidate. Without further evidence of these requirements, AAO cannot conclude that improving a club's operation and growth, being a national expert in rowing, or demonstrating merit in the development of rowing constitute outstanding achievements.

The petitioner failed to submit evidence pertaining to the membership requirements in response to the director's request for evidence. The director's decision stated:

It was requested the [petitioner] provide the applicable portions of all organization bylaws to demonstrate outstanding achievement was a membership requirement. The membership requirements for the membership requirements for the [redacted] was [sic] not provided in the request for evidence response.

On appeal, the petitioner submits the requirements for becoming a member of the [redacted] membership requirements in response to the director's request for evidence, the AAO will not consider this evidence offered for the first time on appeal. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaighena*, 19 I&N Dec. 533 (BIA 1988).

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "membership in associations" in the plural. The use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the AAO were to find that the petitioner's membership in the [redacted] meets the elements of this regulatory criterion, which the AAO has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner's membership in more than one association

requiring outstanding achievements of its members, as judged by recognized national or international experts.

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

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

The petitioner submitted a May 15, 2006 article in [REDACTED] entitled [REDACTED]. While the article notes that the petitioner coached a "junior class" pair at an [REDACTED] the article is not about the petitioner. Instead, the article is about two crews from the [REDACTED] rowing team that competed in the regatta in [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien . . . relating to the alien's work in the field." Thus, an article that mentions the petitioner but is "about" someone or something else cannot qualify under the plain language of this regulation. *See Noroozi v. Napolitano*, 11 CV 8333 PAE, 2012 WL 5510934 at *1, *9 (S.D.N.Y. Nov. 14, 2012); *also see generally Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show or a character within a show are not about the performer).

The petitioner submitted a June 4, 2006 article in [REDACTED] entitled [REDACTED] but the article is not about the petitioner. Instead, the article is about the selection process for the [REDACTED] rowing team.

The petitioner submitted a January 8, 2007 article in [REDACTED] entitled [REDACTED] but the article relates to the petitioner's work as a competitive athlete. The plain language of this regulatory criterion requires published material "relating to the alien's work *in the field for which classification is sought*." [Emphasis added.] In this matter, the "field for which classification is sought" is coaching. There is no evidence indicating that the petitioner seeks to work in the United States as a competitive rower. As previously discussed, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, published material about the petitioner's work as a competitive athlete does not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

In response to the director's request for evidence, the petitioner submitted the following:

1. An English language translation of an August 28, 2009 article entitled [REDACTED]

- [REDACTED] in [REDACTED]
2. An English language translation of a July 7, 2009 article entitled [REDACTED] in [REDACTED]
 3. An English language translation of an August 21, 2009 article entitled [REDACTED] in [REDACTED] and [REDACTED]
 4. An English language translation of a December 21, 2006 article entitled [REDACTED] in [REDACTED]

With regard to items 1 – 4 above, the petitioner failed to submit a copy of the original articles published in the [REDACTED] language in [REDACTED] and [REDACTED]. As previously discussed, 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. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, while items 2 and 3 quote the petitioner, the articles are not about him. Instead, they are about a pair of rowers coached by the petitioner (item 2) and a regional rowing conference at the [REDACTED] in [REDACTED] (item 3). The petitioner's response also included a letter from the Editor-in-Chief of [REDACTED] stating that his newspaper sells "approximately 30,000 copies per day" and a letter from the Chief Editor of [REDACTED] stating that his newspaper has "approximately 12,000" copies sold daily. Regarding the self-serving distribution information provided by [REDACTED] and [REDACTED] own editors, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (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). There is no evidence showing the distribution of [REDACTED] and [REDACTED] relative to other [REDACTED] newspapers to demonstrate that the submitted articles were published in a form of "major" media.

In addition, the petitioner's response to the director's request for evidence included a June 18, 2012 online article entitled [REDACTED]. This article was published subsequent to the petition's filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider material published after January 25, 2012 in this proceeding. Regardless, there is no evidence showing that the website which posted the preceding article qualifies as a form of major media.

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

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

The petitioner submitted his "National Rowing Umpire" license from the [REDACTED] dated June 27, 2007. The petitioner also submitted a September 27, 2011 letter from [REDACTED] Secretary General, [REDACTED], listing ten regattas in which the petitioner participated as a "licensed National Rowing Umpire." In addition, the petitioner submitted an October 2, 2011 letter from [REDACTED] Vice-Chief Rowing Referee, stating: "[The petitioner] took a part in 10 races, making sure that a dozen of rowers *complied with the race rules.*" [Emphasis added.] There is no evidence demonstrating that a rowing umpire actually judges the competitors' work, rather than merely ensures that rules and procedures are followed and the regattas are held in a safe and fair manner. The record lacks official competition rules from the [REDACTED] showing that serving as an "umpire" equates to participating as "a judge" of the work of others in the same or an allied field.

In response to the director's request for evidence, the petitioner submitted a July 17, 2012 letter from [REDACTED] Sports Director, [REDACTED], stating:

This letter serves as the confirmation that [the petitioner] served as the reviewer of the work other coaches at the [REDACTED] [The petitioner] was appointed as the head coach in 2005/6 season.

His duties as the head coach were to evaluate the work of 9 coaches who were working in the club. [The petitioner] was required to analyze their work and make suggestions to the director of the club for the improvement of coaching staff.

[The petitioner] was an excellent judge of the work of other coaches, because he was able to find their imperfections; point out to them and make sure that the other coaches grasped the concepts of rowing which [the petitioner] as the head coach thought would be best for the program.

[The petitioner] developed and then implemented a set of rules by which every coach would be evaluated at the end of the rowing season. Some of them are: observation off and on the water, ability to explain technical theories of rowing/sculling, psychological preparation, practice implementation, etc.

His quantitative set of coaching metrics proved so effective that we still use his system of review today.

Supervising and internally reviewing the performance of other coaches working at [REDACTED] does not equate to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of evaluating others on the same coaching staff. Further, the plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Rather than submitting a copy of the completed reviews from 2005-2006 showing the petitioner's assessments of the other coaches, the petitioner instead submitted a brief letter from [REDACTED] issued in 2012 attesting to the petitioner's involvement. There

is no documentary evidence showing the petitioner's specific assessments and the names of those he evaluated. As previously discussed, 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. Moreover, 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). In this instance, the record does not include primary evidence demonstrating the petitioner's participation as a judge. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* The July 17, 2012 letter from [REDACTED] does not comply with the preceding regulatory requirements.

The petitioner also submitted a July 18, 2012 letter from [REDACTED] Team Manager, stating:

The [REDACTED] would like to confirm that [the petitioner] was on the panel for judging the performance. [The petitioner] was part of the 3 member committee which purpose was to review the work of the [REDACTED] coaches. The quality of rowing in [REDACTED] has improved a lot since we established this committee.

* * *

[The petitioner] did an admirable job with the amount of work he had put into helping these national team coaches to achieve their utmost potential with coaching the [REDACTED] [REDACTED]. [The petitioner] assessed their work based on the results and performance the coaches achieved with their crews in the previous years. Additionally, [the petitioner] observed and evaluated the work of these coaches with their rowers on and off the water.

[The petitioner] gave them an effective feedback (visual, technical, verbal) and explained to them how to reduce their weaknesses in coaching and practice planning. [The petitioner] had to grade every coach's coaching ethic and submit his report to the [REDACTED] [REDACTED] would carefully review his assessments and decide whether to keep or replace the [REDACTED] team coaching staff.

Through [the petitioner's] exemplary efforts, the [REDACTED] coaches were able to grow and advance their abilities, ultimately benefiting the rowers and the [REDACTED] [REDACTED].

On appeal, the petitioner submits a November 1, 2012 letter from [REDACTED] stating: "I want to confirm that [the petitioner] judged the work of the [REDACTED] [REDACTED] in the summer of 2009 (August 1 – 4). The judging process was three days long because committee

members had to evaluate the work of four [REDACTED].” The AAO notes that the petitioner served as an assistant coach for the [REDACTED] in the summer of 2009. Supervising and internally reviewing the performance of other coaches on the team staff does not equate to participation as “a judge” of the work of others in the field. Further, the plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” Rather than submitting a copy of the evaluation report from 2009 showing the petitioner’s assessments of the coaches, the petitioner instead submitted brief letters from [REDACTED] issued in 2012 attesting to the petitioner’s involvement. There is no documentary evidence showing the petitioner’s specific assessments and the names of those he evaluated. Once again, 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. Moreover, 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. at 1136. The record does not include primary evidence demonstrating the petitioner’s participation as a judge. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.* The July 18, 2012 and November 1, 2012 letters from [REDACTED] do not comply with the preceding regulatory requirements.

The petitioner’s response to the director’s request for evidence included a July 30, 2012 letter from [REDACTED] President of [REDACTED], stating that the petitioner is the Head Rowing Coach for the [REDACTED]. [REDACTED] letter further states that the petitioner oversees “the work of his assistant coaches and the novice coaches,” including “assessing their performance.” The petitioner also submitted his Referee certificate from the [REDACTED] issued on July 30, 2012 and documentation of rowing events refereed by the petitioner in the United States starting in March 2012. On appeal, the petitioner submits an October 3, 2012 e-mail informing him of his assignment as chief referee for the [REDACTED] on October 13, 2012. The AAO notes that the petitioner’s employment as head coach for the [REDACTED] his qualification as a Referee with the [REDACTED] and the rowing events that he refereed in the United States from March 2012 to present all post-date the filing of the petition. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the preceding evidence in this proceeding.

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

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

On appeal, the petitioner asserts for the first time in these proceedings that he meets this regulatory criterion based on the awards received by his rowers. The AAO notes that the

petitioner did not claim eligibility for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v) initially or in response to the director's request for evidence. The director's June 1, 2012 request for evidence listed the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) and specifically stated: "No evidence has been provided for this criterion." The petitioner's response to the director's request for evidence failed to offer any specific arguments or evidence to overcome the director's finding. The issue for the AAO to determine on appeal is whether the director erred in his decision. In this instance, as the issue was never raised as a claim of eligibility before the director, the AAO cannot conclude that the director made any error in determining that the petitioner had not established eligibility for this criterion. Where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. at 764; *see also Matter of Obaigbena*, 19 I&N Dec. at 533. Regardless, the petitioner fails to explain how awards or race results for his rowers equate to evidence of his "original" contributions in the field of coaching. Further, the petitioner has not established that results from rowing events such as [REDACTED] and [REDACTED] competitions were majorly significant to the sport. Moreover, the documentary evidence submitted on appeal for this criterion relates to competitive results and coaching activities that post-date the filing of the petition. Once again, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Therefore, the AAO will not consider competitive results or coaching activities that occurred after January 25, 2012 as evidence to establish the petitioner's eligibility.

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

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

The AAO withdraws the director's finding that the petitioner's initial evidence meets this regulatory criterion. The initial evidence specifically submitted for this regulatory criterion consisted of only two letters from [REDACTED] discussing the petitioner's status as [REDACTED] board member and coach. The AAO notes that the petitioner's response to the director's request for evidence included the aforementioned July 17, 2012 letter from [REDACTED] discussing the petitioner's head coaching duties at [REDACTED] that was submitted for the judge of the work of others criterion at 8 C.F.R. § 204.5(h)(3)(iv). The petitioner also submitted competitive results for the rowers that he coached. While the petitioner performed in a leading role as head coach, there is no documentary evidence showing that the [REDACTED] has a distinguished reputation. Regarding the self-serving assertions from the [REDACTED] officers about the club's reputation, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, at 680.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence showing that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" in the plural. As previously discussed, the use of the plural is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Therefore, even if the petitioner were to submit documentary evidence showing that his

role and the reputation of the [REDACTED] meet the elements of this regulatory criterion, which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

While the petitioner did not specifically claim eligibility based on his role for any other organizations or establishments, the AAO notes that the petitioner did not begin coaching the [REDACTED] until March 2012 and the [REDACTED] until May 2012. As the petitioner began his head coaching positions for them subsequent to the petition's filing date, the AAO will not consider his roles for the preceding organizations as evidence to establish his eligibility. As previously discussed, eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

Although not specifically claimed by the petitioner for this regulatory criterion, the AAO acknowledges that the petitioner submitted letters of support from [REDACTED] and [REDACTED] stating that the petitioner was an "assistant" coach for the [REDACTED] and under [REDACTED]. There is no documentary evidence showing that the [REDACTED] has a distinguished reputation. 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. The next issue is whether the petitioner has performed a leading or critical role for the [REDACTED] as a whole. In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien is responsible for the success or standing of the organization. The petitioner failed to submit an organizational chart to demonstrate where his assistant coaching position fits within the overall hierarchy of the [REDACTED]. The AAO notes that [REDACTED] was the "team manager" and "head coach" and that [REDACTED] was the [REDACTED]. Further, while the petitioner submitted documentation showing that [REDACTED] coached by him have successfully competed at the international level for the [REDACTED] the evidence submitted by the petitioner does not establish that his role was leading or critical to the [REDACTED] as a whole.

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

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

The petitioner initially submitted a January 9, 2006 head coaching agreement with [REDACTED] stating that the petitioner would receive a monthly fee in the amount of 80,000 dinars. The petitioner also submitted information from the [REDACTED] website stating that the average net salary in [REDACTED] in December 2006 "totaled 28,267 dinars" and information from the [REDACTED] website stating that the average salary in [REDACTED] in June 2005 equals 25,503 dinars. The petitioner must submit evidence showing that he has earned a "high salary" or other "significantly high remuneration" in relation to others in his field, not simply a salary that is above "average" for all Serbian occupations. The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work. *See Matter of Price*, 20 I&N Dec. 953, 954

(Assoc. Comm'r 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding average salary information for those performing lesser duties is not a comparison to others in the field); *Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N.D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In response to the director's request for evidence, the petitioner submitted an April 27, 2006 contract with the [REDACTED] stating that the petitioner would receive a monthly payment of 85,000 dinars. The petitioner also submitted a July 12, 2012 letter from [REDACTED] stating that the petitioner was the highest paid coach at [REDACTED] for the 2006 season. In addition, the petitioner submitted information from the Statistical Office of the [REDACTED] indicating that the "average" gross salary for professional rowing coaches in the [REDACTED] in June 2006 was 48,240 dinars. The petitioner, however, must submit evidence showing that he has earned a "high salary" or other "significantly high remuneration," not simply earnings that are above "average" in his field. The petitioner's response also included a June 24, 2012 letter from [REDACTED] Administrator, [REDACTED] stating that the petitioner was the third highest paid rowing coach in the 2005-2006 season [REDACTED]

The petitioner failed to submit primary documentary evidence showing that he actually received the 80,000 dinar monthly remuneration from [REDACTED] and the 85,000 dinar monthly remuneration from the [REDACTED] in 2006. For instance, the petitioner did not submit his 2006 income tax forms from [REDACTED] or his 2006 bank statements showing the payments to his account at [REDACTED] in accordance with the payment terms specified in the aforementioned two contracts. As previously discussed, 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. *Id.* In this instance, the petitioner has not demonstrated that primary evidence of the payments he received from the [REDACTED] and the [REDACTED] does not exist or cannot be obtained. The documentation submitted by the petitioner fails to demonstrate that he received a high salary or other significantly high remuneration for services, in relation to others in the field. Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

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

IV. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three categories of evidence. *Id.* at 1122.

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

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

ORDER: The appeal is dismissed.

⁴ 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).