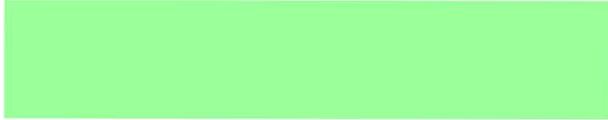




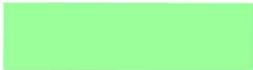
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 31 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 director, Texas Service Center, denied the employment-based immigrant visa petition on October 10, 2012. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on November 9, 2012. The appeal will be dismissed.

According to parts 2 and 5 of the petition, filed on June 25, 2012, the petitioner seeks classification as an alien of extraordinary ability, as a “professor/consultant,” pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). According to her statement dated June 19, 2012, filed in support of the petition, her “goal is to move the United States to continue [her] line of work in the field of Exercise and Sport Psychology, focusing on performance enhancement and quality of life in areas such as Education, Athletics and Business.” The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability as a professor/consultant.

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; 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)-(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 files a 24-page statement and supporting documents, many of which the petitioner had previously filed. The petitioner notes that the director found in the petitioner’s favor as relating to the participation as a judge criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv) and the authorship of scholarly articles criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vi). The petitioner then contests the director’s findings as relating to the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v), and the leading or critical role for organizations or establishments criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

For the reasons discussed below, the petitioner has not established her eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that she is one of the small percentage who are at the very top in the field of exercise and sport psychology, and she has not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner’s appeal.

I. THE 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.

United States 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. 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, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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.” *Kazarian*, 596 F.3d at 1121-22.

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 (vi).

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)." *Kazarian*, 596 F.3d 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 case, the AAO affirms the director's finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that she is one of the small percentage who are at the very top in the field of exercise and sport psychology, or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that her achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

In his October 10, 2012 decision, the director concluded that the petitioner failed to establish she met this criterion. On appeal, the petitioner has not specifically challenged the director's finding. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

² Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

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. 8 C.F.R. § 204.5(h)(3)(ii).

In his October 10, 2012 decision, the director concluded that the petitioner failed to establish she met this criterion. On appeal, the petitioner has not specifically challenged the director's finding. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner asserts that she meets this criterion because she has provided "national newspaper articles . . . as well as . . . several letters from major Portuguese media institutions, which attest the validity of the petitioner[']s statement relative to the newspapers being of national caliber and considered major media." On appeal, the petitioner has provided translations for material published in [REDACTED] and [REDACTED]. The AAO, however, will not consider these documents because the petitioner should have provided these documents to the director. In his July 7, 2012 request for evidence (RFE), the director requested the translations of the published material. The petitioner, however, failed to provide the requested evidence in her September 12, 2012 response to the director's RFE. Instead, the petitioner stated in page 3 of her response to the RFE she "believe[s] that there is no need to translate the paper clippings previously submitted." Under the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii), the petitioner is required to provide the necessary translations for any published material. A petitioner may submit anything in support of an appeal, including new evidence; however, where a service center has requested specific evidence in a request for evidence, and the petitioner failed to comply with the request, that particular evidence will not be considered 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, 766-67 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). If the petitioner wishes evidence to be considered, she must submit the documents in response to the director's request for evidence. *Id.*

Moreover, even if the AAO were to consider the translations submitted on appeal, the petitioner has not shown she meets this criterion. First, the petitioner has failed to show that the published material is about the petitioner, relating to her work. For example, the petitioner has provided a May 7, 2009 [REDACTED] banner blurb entitled "[REDACTED]" This entire blurb contains one sentence and mentions the petitioner's name once. The one-sentence blurb is about [REDACTED] support of [the petitioner's] book, not about the petitioner. The petitioner has provided a May 8, 2010 *Record* piece entitled "[REDACTED]" The entire piece consists of four sentences, mentioning the petitioner's name once. The petitioner has provided a

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December 29, 2010 [REDACTED] article, entitled "[REDACTED]" [REDACTED] This article consists of six paragraphs and mentions the petitioner's name and her book "[REDACTED]" once. As its title suggests, the article is about Portuguese tennis player [REDACTED], and mentions that he had requested the petitioner's service. The article is not about the petitioner. The petitioner has provided a May 2011 [REDACTED] article, entitled "[REDACTED]." This article consists of two paragraphs, and although it references that the Portuguese tennis player "began working . . . with two psychologists," it does not specifically mention the petitioner by name. As suggested by its title, the article is about the tennis player, not the petitioner. In addition, the petitioner has not provided any information relating to the author of this 2011 article. The petitioner has provided an April 8, 2011 [REDACTED] article, entitled [REDACTED].

This six-paragraph article mentions the petitioner's name twice. The article is not about the petitioner, rather, as its title suggests, it is about [REDACTED] and his coaching team of approximately 10 people, including the petitioner. The petitioner has provided a May 10, 2009 [REDACTED] article entitled [REDACTED]. The article consists of 16 paragraphs and mentions the petitioner's name three times. As its title suggests, the article is not about the petitioner, as relating to her work; rather it is about tennis players' ties, and includes the petitioner and other professionals' commentaries on the topic.

Second, the petitioner has provided insufficient evidence showing that [REDACTED] constitutes a professional or major trade publication or other major media. The petitioner has provided three [REDACTED] articles. One of them, an August 8, 2003 [REDACTED] article entitled [REDACTED] references the petitioner's receipt of the [REDACTED] academic award from the [REDACTED] but is not about the petitioner, relating to her work. According to a November 6, 2012 letter from [REDACTED] Director of the [REDACTED], "the Portuguese newspaper [REDACTED] is an in-print weekly publication (28,000 average circulation), distributed nationally and internationally to 85 countries, including the United States of America, and is therefore considered major media (annual average circulation of 1,456,000)." [REDACTED], however, did not specify that in 2003 or 2004, [REDACTED] constituted major media. Rather, her information relating to [REDACTED] relates to its status when she signed the letter in November 2012. In addition, [REDACTED] failed to specify the basis of her knowledge relating to [REDACTED] circulation or reach. The Portuguese Association of Audit Bureau of Circulation (APCT) index to the publications included in the information bulletin on Portuguese media, from which the data on [REDACTED] and [REDACTED] derives, does not even list [REDACTED].

Third, the petitioner has provided an undated letter from [REDACTED] Tennis Editor of [REDACTED] and a Tennis Commentator for [REDACTED] stating, "[i]n 1998, [REDACTED] wrote and published an article in [REDACTED] (national monthly publication) about [the petitioner's] Master degree thesis project, which was focused on developing and implementing a program to enhance the performance of elite tennis players from the [REDACTED] of the [REDACTED]." The record, however, lacks a copy of the 1998 article or any information relating to [REDACTED]. The regulation at 8 C.F.R. § 103.2(b)(2) provides that the non-existence or other unavailability of

required evidence creates a presumption of ineligibility. The same regulation also provides the procedure for documenting the non-existence or unavailability for required evidence and the requirements for submitting secondary evidence or affidavits. The petitioner has not complied with that regulation or submitted secondary evidence or affidavits. As such, the petitioner has failed to show that the 1998 [REDACTED] article is about the petitioner, relating to her work in the field, or is published in a professional or major trade publication or other major media.

Fourth, the petitioner has provided documents relating to television and radio stations interviewing her. According to an undated letter from [REDACTED] a senior journalist and anchor for [REDACTED] the petitioner "and her pioneer projects in [REDACTED] were featured on tennis program [REDACTED] on [the] network [REDACTED] . . . [on] 09/05/2009 at 2:30 pm." The letter further provides that "[REDACTED] is a national and international television broadcasting company" and its program [REDACTED] "is viewed across the country by a wide audience." According to a September 10, 2012 letter from [REDACTED] a journalist for the [REDACTED] the petitioner "was interviewed by [the] national network [on] the 30th of April 2010 in [the] program [REDACTED] featuring [her] work as a performance enhancement consultant, [her] published [book] [REDACTED] and successes in the area of applied sport psychology." The letter further provides that the interview, "heard by a wide audience across the country, was very educative and inspirational, and [REDACTED] believe[s] her advice together with the resources she provided by publishing her applied book with applied strategies for success, contributed to improve the lives of many individuals." According to an undated letter from [REDACTED] a Portuguese radio station, the petitioner "was interviewed [by [REDACTED] a] national radio station, which is heard by a wide audience in the whole country, in which she spoke about [her] book, her work in the area of performance enhancement and well[-]being applied to tennis, as well as applied to other sports and domains such as education, health and business."

First, these broadcasts are not published material with an author as required under 8 C.F.R. § 204.5(h)(3)(iii). Second, the petitioner provided no transcripts or other primary evidence of the broadcasts. Regardless, none of these letters or any other evidence in the record are sufficient to establish that the television or radio station constitutes major media. The evidence submitted to show the status of the television and radio stations is from individuals associated with the stations. Such self-promotional evidence has minimal evidentiary value. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 2009 WL 604888 (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). The petitioner has not supported the self-promotional evidence with more independent evidence or official data published by the media outlets.

The record also contains evidence relating to other published material. The petitioner has provided an April 2009 Portuguese [REDACTED] article relating to the petitioner's book [REDACTED]. The petitioner, however, has provided no information relating to the author of the article. The petitioner has provided published material from the [REDACTED]; publications from 2001 to 2002 and 2006.

The petitioner, however, has provided no document showing that any of the material is published in a professional or major trade publication or constitutes other major media. The petitioner has provided an August 29, 2002 [REDACTED] article, entitled "[REDACTED]" Although the article mentions that the petitioner was then studying at the [REDACTED] the article, as its name suggests, is about Portuguese lace that the petitioner's mother was making at the time, not about the petitioner, relating to her work. The petitioner has also failed to provide evidence that [REDACTED] is a professional or major trade publication or constitutes other major media. The petitioner has provided evidence showing that the [REDACTED] published a color photograph of her with her mother and U.S. Congressman [REDACTED] in December 2011, and [REDACTED] published a color photograph of her with her mother and two other people. The petitioner, however, has provided no evidence showing that the publications are about her, relating to her work, or that they are professional or major trade publications or constitute other major media.

Accordingly, the petitioner has not presented evidence of published material about her in professional or major trade publications or other major media, relating to her work in the field for which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

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. 8 C.F.R. § 204.5(h)(3)(iv).

In his October 10, 2011 decision, the director concluded that the petitioner has met this criterion. The AAO disagrees. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). According to a January 23, 2012 letter from [REDACTED] Fellow and Certified Consultant of [REDACTED] at the University of [REDACTED] the petitioner "was a student representative for [REDACTED] and enthusiastically participated in committee discussions and activities (conference abstract reviews, etc)." According to an [REDACTED] document entitled "[REDACTED]" the petitioner was a student member of [REDACTED]. It is unclear from Professor [REDACTED] letter, the [REDACTED] document or any other evidence in the record what exactly the petitioner did as an [REDACTED] student member or if her duties as a student member included participation as a judge of others' work. Similarly, although the record includes a February 11, 2012 letter from [REDACTED] Professor at the [REDACTED] Department of Kinesiology, stating that the petitioner "has been a reviewer for several organizations and journals in the field, such as [REDACTED] and [REDACTED]" neither the letter nor any other evidence in the record indicates the basis of Professor [REDACTED] knowledge. In addition, although a March 2004 newsletter from [REDACTED] indicates that the

petitioner was an applied coordinator, it fails to specify that the petitioner participated as a judge of others' work.

Accordingly, the petitioner has not presented evidence of her 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 has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iv).

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On appeal, relying primarily on reference/expert letters, the petitioner asserts that she meets this criterion. The petitioner's references include [REDACTED], [REDACTED] Sales Representative in Portugal; [REDACTED] Provost and Executive Vice Chancellor of the [REDACTED]; [REDACTED] Professor [REDACTED]; [REDACTED] Former President; [REDACTED] Former Director of Athletics at the [REDACTED]; [REDACTED] Director of [REDACTED] and Mr. [REDACTED]. These letters refer to the petitioner's work in sport psychology as "pioneer[ing]," "unique[er]," and "original." According to Mr. [REDACTED] the petitioner "has demonstrated her expertise as an applied sport psychology professional and is considered an international scholar on sport psychology and coaching tennis." Notwithstanding these claims, the petitioner has not shown that she meets this criterion.³

First, although the petitioner has shown her dissertation work to be original, she has not shown that it constitutes a contribution of major significance in the field of exercise and sport psychology. According to a February 10, 2012 letter from Mr. [REDACTED] the petitioner "developed and implemented, as part of her doctoral dissertation, an original intervention which fostered hope, athletic, and academic performances of [REDACTED] student-athletes." The petitioner "disseminated the findings of [her] projects by presenting in local, national, and international conferences, and by publishing articles in several books and journals of recognized reputation in her field." According to Mr. [REDACTED] subsequent letter, dated August 23, 2012, the petitioner's dissertation work "resulted in improved performance both in academics and athletics." Mr. [REDACTED] stated in his February 2, 2012 letter that the petitioner's dissertation work resulted in "the student-athletes [having] significant improvements in their performances and well-being, yielding higher retention rates . . . [and] her intervention instrument became a standard of excellence the academic side appreciated." [REDACTED], Head Women's Tennis Coach at the [REDACTED]

³ The petitioner has also provided an undated letter from [REDACTED], President of the Executive Board of [REDACTED]. This letter has no evidentiary value and will not be considered because the petitioner has not provided a certified translation of the foreign language document, as required under the regulation at 8 C.F.R. § 103.2(b)(3). Although the record contains what appears to be a translation certificate, the translation certificate is in a foreign language and it has not been properly translated.

stated in his February 20, 2012 letter that the petitioner's "doctoral dissertation focused on developing and implementing an original intervention which contributed to foster hope, athletic and academic performance in university student-athletes." None of these letters or any other evidence in the record, however, show that the petitioner's dissertation work constitutes contributions of major significance in the field. The mere claim that the petitioner's doctoral dissertation improved student-athletes' performance both in academics and athletics, or that the petitioner's methods were effective for student-athletes in one university in the United States, is insufficient to show that her work or methods constitute contributions of major significance in the entire field of exercise and sport psychology.

In addition, Mr. statement that the petitioner's dissertation "is currently available in [the university's] library where many professionals from diverse part of the globe have requested it, downloaded and used her work as a base for their own projects" is not supported by the evidence in the record. Specifically, according to what appears to be an undated email from of , the petitioner's dissertation was "checked [out] four times," between 2005 and 2012; and her work has been cited in 20 articles. The petitioner has provided insufficient evidence showing that these numbers show her work has been widely accepted and adopted in the field or that her work is significant, let alone constitutes major significance, in the field of exercise and sport psychology as a whole.

According to an August 14, 2012 letter from a senior lecturer at Department of Sport Science, he accessed the petitioner's Ph.D. dissertation and is "currently implementing a similar project among 113 first-year (freshmen) Student-Athletes of the ." Associate Professor at Graduate School of Education and former fellow student with the petitioner, stated in her August 23, 2012 letter that "[b]ased on [the petitioner's] successful results [relating to her dissertation] in improving hope, academic and athletic performance of student-athletes, [Professor implemented a similar project at , called which was funded by the US Department of Education for two years. helped 50 African American high school dropouts to learn important life skills using basketball." The letters from two professors, one of whom attended the same Ph.D. program as the petitioner, who have relied on the petitioner's work in their work are insufficient to show that the petitioner's work constitutes contributions of major significance in the field as a whole.

Second, evidence relating to the petitioner's presentations in conferences, workshops or clinics and evidence relating to the publication of the petitioner's work is insufficient to demonstrate that her work constitutes contributions of major significance in the field of exercise and sport psychology as a whole. The petitioner has provided a certificate of presentation, indicating that she presented a paper entitled " at the in 2005. According to a September 7, 2012 letter from Professor the petitioner's "articles were published in well-known, high-reputation professional publications in [the] field." Professor vague statement that "[m]any of the resources [the petitioner] conceived and published . . . are currently being

implemented across the U.S. as well as in other parts of the globe” is, however, not supported by the evidence in the record. The statement by Mr. [REDACTED] that the petitioner’s book is “widely spread” is also not supported by the evidence in the record.

Specifically, the record contains two letters from [REDACTED] top 100 players: [REDACTED]. According to an undated letter from Mr. [REDACTED] a former [REDACTED], he “still use[s the petitioner’s] service and [he] believe[s her] professionalism and expert knowledge have provided [him] with a[] unique opportunity to develop as a human been [sic] as well as an athlete.” The letter further states that the petitioner has “played a crucial role in [his] development and helped [him] reach [his] goals in life as in [his] professional career as a tennis player.” Similarly, according to an undated letter from Mr. [REDACTED] a former [REDACTED] the petitioner has “worked with [him] to assist to enhance [his] performance by the use of [her] unique and original methodology.” These are the only two specific examples of the world’s top 100 tennis players attesting to the effectiveness of the petitioner’s work and methodologies. These two specific examples of client athletes, however, are insufficient to show that the petitioner’s work and methodologies are being widely accepted in her occupation and implemented, such that they constitute contributions of major significance in her field of exercise and sport psychology as a whole.

Third, evidence relating to the petitioner’s involvement in the [REDACTED] the [REDACTED], [REDACTED] and [REDACTED] is insufficient to demonstrate that her work constitutes contributions of major significance in the field of exercise and sports psychology as a whole. According to a February 11, 2012 letter from Professor [REDACTED]:

[The petitioner a]s a member of the [REDACTED], . . . coordinated the project on Mexican athletes and coaches who participated in the [REDACTED], and she was also involved in the [REDACTED] grant on [REDACTED] and coaches. [The petitioner] was part of the [REDACTED] grant project developing the Coaching Academy Program curriculum, which resulted in the publication of the [REDACTED].” Additionally, [she] was involved in the [REDACTED] research grant examining the role of parents in junior tennis success, which resulted in the publication of the “[REDACTED]” in 2010.

According to a February 20, 2012 letter from Mr. [REDACTED] the petitioner “worked on a [REDACTED] grant project examining the role parents play in tennis success and failure, which resulted in the publication in 2010 of the ‘[REDACTED]’ in which [the petitioner] co-authored two chapters.”

The petitioner, however, has failed to provide evidence showing that her involvement with these organizations is indicative that her work in the field of exercise and sport psychology constitutes

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contributions of major significance in the field. Indeed, according to [REDACTED] Former [REDACTED] Director, the petitioner's involvement with [REDACTED] was because, at least in part, of her ability to read and speak Spanish. In addition, Professor [REDACTED] vague statement made in her September 7, 2012 letter that "[m]any of the resources [the petitioner] conceived and published . . . are currently being implemented across the U.S. as well as in other parts of the globe" is not supported by the evidence in the record. Similarly, the statement from Mr. [REDACTED] that the petitioner's book "was accepted by a wide variety of people" is also not supported by the evidence in the record. As discussed, the record contains letters from two APT top 100 tennis players who are clients, not members of her field, and only two professors who have used her work to produce promising results.

Fourth, evidence relating to the petitioner's work being copyrighted is not sufficient to show that her work constitutes contributions of major significance in the field. The petitioner has provided a document from the U.S. Register of Copyrights indicating that the petitioner's August 11, 2004 publication "[REDACTED]" is copyrighted. A copyrighted material is similar to a patent, which the AAO has held does not necessarily constitute evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep't of Transp.*, 22 I&N Dec. 215, 221 n.7 (Assoc. Comm'r 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* A copyrighted material or a patent recognizes the originality of a writing or an idea, respectively, but it does not demonstrate that the petitioner has made a contribution of major significance in the field through her development of this writing or idea.

Moreover, the Board of Immigration Appeals (the Board) has held 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 cases). The Board has also held, however, "[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* 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 colleagues or associates 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).⁴ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron Int'l*, 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, as this decision has done above, 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

⁴ 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" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Matter of Caron Int'l*, 19 I&N Dec. at 795; see also *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)).

The reference/expert letters in the record, including those not specifically mentioned above, primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. See *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*, No. 95 Civ. 10729, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990). The petitioner has also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference/expert letters.

Significantly, at least two of the reference/expert letters contain virtually the same language, including the same typographical error, when discussing the petitioner’s role in a [REDACTED] project, suggesting that the language in the reference/expert letters is not the authors’ own. See *Surinder Singh*, 438 F.3d at 148; *Mei Chai Ye*, 489 F.3d 517 at 519. [REDACTED] stated in her undated letter:

. . . [The petitioner] had a leading and critical role in the [REDACTED] [REDACTED] conducted in 2002/2004 at the [REDACTED] Sport Psychology Laboratory, USA.

[The petitioner] performed her duties as a coordinator of the research team with excellence during the diverse phases of the project (validation of the Spanish version of the questionnaires, data entry, data analysis and write up) until the dissemination of the project results. [The petitioner]’s ability to read and speak Spanish was unique within her research team and was critical *to make* [sic] this project possible.

The results of the [REDACTED] were disseminated in an Olympic conference in Mexico City, in which [the petitioner] presented two lectures: “[REDACTED] and [REDACTED]

Taking advantage of [the petitioner]’s versatility in speaking diverse languages, she was asked to present the results in Spanish. This fact was critical for the audience composed of Olympic coaches and athletes to understand and capture all the information conveyed, especially the strategies that were found to contribute the most for Olympic success.

Professor and Director at the [REDACTED] for the [REDACTED], stated in his September 3, 2012 letter:

. . . [The petitioner] had a leading and critical role in the [REDACTED] project: [REDACTED] by performing her duties as coordinator and research team member with excellence during all the diverse phases of the project that include study design, data collection and the dissemination of the project results. [The petitioner]'s ability to read and speak Spanish was unique with her research team and was critical *to make* [sic] this project possible, as it allowed [the petitioner] to verify the accuracy of the Spanish version of the questionnaire, made possible the analysis of the qualitative information, as well as the presentation of the results in the native language of the target audience. The results of the [REDACTED] were disseminated in an Olympic conference in Mexico City, in which [the petitioner] presented two lectures: "[REDACTED] and "[REDACTED]" in Spanish, to ensure the audience composed of Olympic coaches and athletes would understand and capture the information conveyed, especially regarding the strategies that were found to contribute the most for Olympic success.

In addition, at least two reference/expert letters contain the same language, including the same typographic error. Mr. [REDACTED] undated letter concludes with "I trust I have provided *the information* the necessary information. Should you need additional information feel free to contact me." (Emphasis Added.) Ms. [REDACTED] undated letter similarly concludes with "I trust I have provided *the information* the necessary information. Should you need additional information feel free to contact me." (Emphasis Added.) In short, the record contains evidence suggesting the language in the reference/expert letters is not the authors' own.

Accordingly, the petitioner has not presented evidence of her original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field of exercise and sport psychology. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media. 8 C.F.R. § 204.5(h)(3)(vi).

In his October 10, 2012 decision, the director concluded that the petitioner has met this criterion. The record includes evidence that the petitioner has published a number of scholarly articles, a handbook, a playbook and a book. Accordingly, the petitioner has presented evidence of her authorship of scholarly articles in the field, in professional or major trade publications or other major media. The petitioner has met this criterion. See 8 C.F.R. § 204.5(h)(3)(vi).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

In his October 10, 2012 decision, the director concluded that the petitioner failed to establish she met this criterion. On appeal, the petitioner has not specifically challenged the director's finding. Indeed, according to her statement on appeal, this criterion is not applicable to her occupation. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the petitioner asserts that she meets this criterion based on her involvement in the [REDACTED]. None of the evidence in the record, however, establishes that the petitioner has performed in a leading or critical role for these organizations or establishments. Rather, the evidence shows, at most, that the petitioner has performed in a leading or critical role for projects sponsored by these organizations or establishments.

As supporting evidence, the petitioner has provided a February 20, 2012 letter from Professor [REDACTED] stating that the petitioner's "ability to speak and read Spanish granted [her] the opportunity to help coordinate the *grant project* for the [REDACTED], [REDACTED] which culminated with the presentation of the findings at the [REDACTED] conference in Mexico City." (Emphasis added.) The letter also discusses the petitioner's involvement with the [REDACTED] as relating to projects the petitioner completed for these organizations or establishments. The letter concludes that "[t]he information provided illustrated that [the petitioner] has performed a leading or critical role [in] *projects* conducted for established organizations that have distinguished reputation" (Emphasis added.) According to a subsequent letter from Professor [REDACTED] dated September 3, 2012, the petitioner "has performed in a critical role *in the work* [] conducted for institutions with distinguished reputations, such as [REDACTED]" The letter further provides that the petitioner "played a critical role in proposing, organizing and conducting the [REDACTED] at the [REDACTED] pre-conference workshop." None of Professor [REDACTED] letters or any other evidence in the record demonstrate that the petitioner has performed in a leading or critical role for any of the organizations or establishments as a whole.

Similarly, according to a September 4, 2012 letter from Ms. [REDACTED] the petitioner "had a leading and critical role in [REDACTED]: [REDACTED]" (Emphasis added.) Specifically, the letter states that the petitioner "performed her duties as coordinator of the research team with excellence during the diverse phases of the *project* . . . until the dissemination of the *project* results." (Emphasis added.)

In addition, “[t]he results of the [redacted] were disseminated in an Olympic conference in Mexico City, in which [the petitioner] presented two lectures.” (Emphasis added.) According to a September 6, 2012 letter from [redacted] Director of [redacted] [redacted] the petitioner “has performed in a leading or critical role in several *projects* conducted by Dr. [redacted] and his research team, for [redacted], such as the [redacted] the [redacted] book, and in helping conduct a [redacted].” (Emphasis added.)

None of the above reference/expert letters or any other evidence in the record establish that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, as required under the plain language of the criterion. 8 C.F.R. § 204.5(h)(3)(viii). Rather, the evidence, at best, shows the petitioner’s role in projects sponsored by these organizations or establishments, which regularly sponsored an unspecified number of projects. The evidence in the record is not indicative of the petitioner’s role or impact for any of the organization or establishment as a whole.

Accordingly, the petitioner has not presented evidence that she has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

In his October 10, 2012 decision, the director concluded that the petitioner failed to establish she met this criterion. On appeal, the petitioner has not specifically challenged the director’s finding. Indeed, according to her statement on appeal, this criterion is not applicable to her occupation. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales. 8 C.F.R. § 204.5(h)(3)(x).

In his October 10, 2012 decision, the director concluded that the petitioner failed to establish she met this criterion. On appeal, the petitioner has not specifically challenged the director’s finding. Indeed, according to her statement on appeal, this criterion is not applicable to her occupation. As such, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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.

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 field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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

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

ORDER: The appeal is dismissed.

⁵ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 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* INA §§ 103(a)(1), 204(b); 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).