(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

DATE: JUL 19 2013 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

Discussion: The Director, Texas Service Center, denied the employment-based immigrant visa petition on January 25, 2013. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on February 27, 2013. The appeal will be dismissed.

The petitioner seeks classification as an "alien of extraordinary ability" in the athletics, specifically, as a Chinese martial artist, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

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, counsel submits a Notice of Appeal or Motion, Form I-290B, and online printouts relating to the which counsel previously filed in response to the director's Request for Evidence (RFE). Noting the director concluded that the petitioner meets the nationally or internationally recognized prizes or awards criterion under 8 C.F.R. § 204.5(h)(3)(i) and the participation as a judge of the work of others criterion under 8 C.F.R. § 204.5(h)(3)(iv), counsel asserts that the petitioner also meets the membership in associations which require outstanding achievements of their members criterion under 8 C.F.R. § 204.5(h)(3)(ii). Counsel does not challenge any other aspects of the director's adverse decision.

For the reasons discussed below, the petitioner has not established his 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 he is one of the small percentage who are at the very top of the field and he has not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h)(2), (3). Accordingly, the AAO will 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.

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)).

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

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 at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and he has not demonstrated that he is one of the small percentage who are at the very top of the field or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his 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 his September 6, 2011 letter, initially filed in support of the petition, and in his July 25, 2012 letter, filed in response to the director's RFE, counsel asserted that the petitioner's 2006 first place finish in long fist at the qualifies as his receipt of a major, internationally recognized award. In his January 25, 2013 decision, however, the director concluded that the evidence in the record does not support counsel's assertion.

On appeal, counsel does not specifically challenge the director's adverse finding as relating to the petitioner's receipt of a major, internationally recognized award. *See* 8 C.F.R. § 204.5(h)(3). Instead, counsel only challenges the director's adverse finding as relating to the membership in associations which require outstanding achievements of their members criterion under 8 C.F.R. § 204.5(h)(3)(ii). Accordingly, the petitioner has abandoned this issue, as he has failed to raise it timely 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). 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 January 25, 2013 decision, the director concluded that the petitioner has met this criterion. The AAO disagrees. The AAO conducts appellate review on a *de novo* basis and may deny a petition that fails to comply with the technical requirements of the law. *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).

[2] The petitioner does not claim that he meets the regulatory categories of evidence not discussed in this decision.

The record contains a number of award certificates issued to the petitioner, including: (1) a 2006 first place finish in long fist at the (2) a 2008 second place finish in broadsword at the (3) a 2007 second place finish in weapons at the (4) a 2007 first place finish in "Stuff" at the (5) a 2006 first place finish in sparring sets at the (6) a 2006 first place finish in men's group long fist at the (7) a 2006 first place finish in men's group weapons at the (8) a 2005 first place finish in men's group traditional fist at the (9) a first place finish in long fist at the (10) a 2002 first place finish in fist Group at the (11) a 2002 second place finish in weapons group at the a 2002 first place finish in "Monkey Fist, 54kg level" at the (13) a 2002 first place finish in all-around at the (14) a first place finish in men's youth group broadsword at the ; and (15) a second place finish in men's group C drunken fist and a first place finish in men's group C broadsword at the

As an overall concern, the translator did not individually certify each translation; rather, the translator provided a blanket certification that did not list each translation the translator was certifying. Thus, the petitioner has not established that each translation is certified pursuant to 8 C.F.R. § 103.2(b)(3). It is noted that the translation of the petitioner's first place finish at the lists a different date (August 30, 2006) than the original foreign language document (September 11, 2005).

Regardless, the petitioner has provided insufficient evidence showing that any of the above awards constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor. First, the petitioner has not shown that his first place finish in long fist at the constitutes his receipt of a nationally or internationally recognized prize or award for excellence. According to counsel's July 25, 2012 letter, "the is one of the most important and largest martial arts events in the world; it also represents the highest level of martial arts competitions in the world." Even assuming the second championship where the petitioner won his awards enjoyed the same recognition as the third championship, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Indeed, the record contains no evidence relating to who could enter the who decided the placements of the competitors or under what criteria the competitors were judged in the long fist event.

The petitioner has provided online printouts relating to the The printouts do not specifically mention that long fist was an event. In addition, the petitioner submitted search results for the words "world," "traditional," "Wushu" and "championships" from www.google.com. While the documents show 1,210,000 results, the petitioner did not provide the complete content for any result; thus, the petitioner has not established the context of the webpages that include the above words to establish that they demonstrate that the field nationally or internationally recognizes awards in long fist from the Moreover, several results are from YouTube. The petitioner has not established that the posting of videos on this website is indicative of recognition in the field. Finally, as the petitioner searched for the words rather than the phrase, not all results pertain to this event. Accordingly, the petitioner has not provided sufficient evidence showing that placing first in long fist in this particular event constitutes a nationally or internationally recognized prize or award for excellence. Regardless, this award is one award. The regulation requires evidence of qualifying awards in the plural.

Second, the petitioner has provided insufficient evidence showing that any of his other awards constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Counsel made the following assertions in his July 25, 2012 letter: (1) " is one of the most important and largest martial arts competitions in China, if not in the world . . . . This tournament represents the highest level of martial arts competition in China"; (2) the "attracted martial [artists] around the world from nearly 30 countries and regions . . . . Representatives of about 280 teams participated in this festival"; (3) the ' was organized by the . . . . The carnival was attended by more than 800 professional martial artists representing 32 teams"; and (4) the . . . is probably the most prestigious sports event at the local level in China . . . . Even though it is only a regional, rather than a national event, it still represents a relatively high level competition in Chinese martial arts." In his letter, counsel did not point to specific evidence in the record to support his assertions. As noted, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The petitioner did not submit any evidence in support of the above assertions.

The record contains no evidence relating to who could enter any of these competitions, who decided the placements of the competitors in these competitions or under what criteria the competitors were judged in these competitions. Furthermore, even accepting counsel's assertions, the fact that the attracted a high number of competitors does not establish that the petitioner's accomplishments at these competitions constitute nationally or internationally recognized prizes or awards for excellence. At issue is not whether the pool of competitors was national or international but whether the field recognizes the awards at the national or international level. In addition, as counsel conceded that the is a regional

competition, counsel has failed to show that the petitioner's accomplishments at this regional competition constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor, as required by the plain language of the criterion.

Ultimately, the petitioner has not demonstrated that his accomplishments at any of the competitions are recognized beyond the entities that organized the competitions through objective or independent evidence such as, but not limited to, media coverage of the competitions.

Accordingly, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *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 January 25, 2013 decision, the director concluded that the petitioner has not met this criterion. On appeal, counsel contends that the petitioner meets this criterion because he "was selected as a member of the " Although in his September 6, 2011 letter, counsel mentioned a membership certificate, the record lacks a copy of such membership certificate. As such, the petitioner has not provided sufficient evidence showing that he is a member. Moreover, according to the online printouts filed in response to the director's RFE and on appeal, "is a national non-governmental, nonprofit organization based in Beijing. It is the only legal organization that manages the sport of Wushu (martial arts) on a national scale. It consists of local marital arts associations in each province, autonomous region and major municipalities [sic] in China. It is also a member of the " Neither these printouts nor any other evidence in the record specify membership requirements. In other words, assuming *arguendo* that the petitioner is a member, the record contains no evidence demonstrating that the requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields, as required by the plain language of the criterion.

In part 3 of the Form I-290B, counsel makes the following assertions:

> . . . members are highly selected professional martial artists throughout the nation in all fields of martial arts. The requires outstanding achievement in an area of martial arts as an essential condition for admission to membership. Membership in the is extremely selective, requiring members possess outstanding achievements in its field. The minimum requirements for membership are: at least 10 years of experience in the martial arts field and at least 3 medals at national or international martial arts competitions . . . .

Counsel has not pointed to any specific evidence in the record to support his assertions. As noted, without documentary evidence to support the claim, the assertions of counsel will not satisfy the

petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. In addition, 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 *1, 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, 17 (D.C. Dist. 1990).

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in qualifying associations, in the plural, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. As such, even if the petitioner's membership in CWA constitutes membership in one qualifying association, on appeal, counsel has not asserted or pointed to any evidence in the record showing that the petitioner is a member of a second qualifying association. *See* 8 C.F.R. § 204.5(h)(3)(ii). Although counsel stated in his September 6, 2011 and July 25, 2012 letters that the petitioner's certification as a fifth degree black belt from the International Wushu Sanshou Dao Association (IWSD) constitutes evidence of his membership in a second qualifying association, on appeal, counsel has not continued to make this assertion. As such, the petitioner has abandoned this issue, as he has failed to raise it timely on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the petitioner has not presented documentation of his 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 has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

> *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 January 25, 2013 decision, the director concluded that the petitioner has met this criterion. The record includes the following supporting evidence: (1) an April 11, 2009 [redacted] (2) a [redacted] and (3) a June 12, 2010 [redacted] Accordingly, the petitioner has presented evidence of his 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 met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iv).

> *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 January 25, 2013 decision, the director concluded that the petitioner has not met this criterion. On appeal, counsel has not specifically challenged the director's adverse finding as relating to this criterion. Accordingly, the petitioner has abandoned this issue, as he has failed to raise it timely on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

B. The Petitioner's Field

The petitioner has provided some evidence, including letters from martial arts practitioners, relating to the petitioner's abilities as a martial arts instructor or coach. A martial artist and a martial arts instructor or coach, while they certainly share some similar knowledge, 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. INS*, 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, [the petitioner'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. In this case, the petitioner has not shown that he meets the regulatory requirements through achievements as a martial artist and has not claimed that he has submitted the required initial evidence as a martial arts instructor or coach.

C. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence in the field of endeavor, as required under the regulation at 8 C.F.R. § 204.5(h)(3).

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 [] achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.[3] Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

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[3] The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. 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).