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

(b)(6)

[redacted]

DATE: MAR 2 8 2013 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen 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 "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A) as a long distance runner. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her 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, counsel asserts that the petitioner meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) – (iii) and (v). Counsel also asserts that the petitioner has submitted comparable evidence of her extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). 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

> (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*, 580 F.3d 1030 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

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

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

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

II. ANALYSIS

A. Evidentiary Criteria[2]

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

The petitioner submitted documentation of race results and awards that she received at various international running competitions. The AAO affirms the director's finding that the petitioner's evidence meets 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 AAO withdraws the director's finding that the petitioner meets all the elements of this regulatory criterion. The petitioner submitted evidence indicating that she was a member of the [redacted] team. While the AAO affirms the director's determination that the petitioner's membership on the [redacted] team constitutes membership in an association requiring outstanding achievements of its members, as judged by recognized national or international experts, 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). As the petitioner has failed to demonstrate membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts, she does not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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

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

> *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.*

In general, in order for published material to meet this criterion, it must be about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. The director concluded that the articles submitted were either not primarily about the petitioner or did not appear in professional or major trade publications or other major media. Specifically, the director's decision stated:

> The regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material "about the alien." As explained in the RFE [request for evidence], the articles submitted are about particular events, the results of competitions, etc. The fact that the beneficiary is quoted or briefly mentioned in an article, among numerous other athletes, events, etc., does not make the article an article "about the alien," as required in the regulation. It is not reasonable to conclude that a sentence or two, or even an entire paragraph, in an article that may identify, briefly mention or quote the beneficiary constitutes published material about the alien; the beneficiary and his/her work must be the subject of the article itself.

On appeal, counsel states: "It is true that the articles discuss events and other athletes as well but there is nothing in the regulations that requires the published material to be exclusively about the beneficiary." 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 [redacted] posted at http://adventure-marathon.com that list the petitioner as placing second in 2008. The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." The extensive list of men and women's results does not meet the preceding requirements. Further, there is no documentary evidence showing that http://adventure-marathon.com qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a [redacted] website at http://www.coolrunning.com, but the author of the preceding articles was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the articles are about the [redacted] and only briefly mention the petitioner. The petitioner also submitted information about

Cool Running from its own website, but USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). There is no objective readership data showing that the Cool Running website qualifies as a major trade publication or some other form of major media.

The petitioner submitted a in *Dong-A Ilbo*. While the article briefly mentions the petitioner, the article is not about her. Instead, the article is about the and its field of multiple women competitors. The petitioner also submitted information about *Dong-A Ilbo* from its own website. As previously discussed, USCIS need not rely on self-promotional material. There is no objective evidence showing the distribution of *Dong-A Ilbo* relative to other newspapers to demonstrate that the submitted article was published in a form of "major" media.

The petitioner submitted a *The Herald* (Scotland). The petitioner also submitted a article in *Evening Times* (Scotland) entitled The preceding articles are about the in general and only briefly mention the petitioner. The petitioner also submitted information about *The Herald* and *Evening Times* from their publisher's website, but once again, USCIS need not rely on self-promotional material. There is no objective documentary evidence showing that the preceding newspapers qualify as major media.

The petitioner submitted an posted on the website of All-Athletics.com. While the article includes two sentences mentioning the petitioner, the article is primarily about the Further, there is no objective readership data showing that All-Athletics.com qualifies as a major trade publication or some other form of major media.

The petitioner submitted a in *The Straits Times* entitled While the article includes a few sentences mentioning the petitioner, the article is primarily about the The petitioner also submitted promotional material about *The Straits Times* from the newspaper's own website and from its publisher. As previously discussed, USCIS need not rely on self-promotional material. There is no objective circulation evidence showing that *The Straits Times* is a form of major media.

The petitioner submitted documentation indicating that the was also posted at www.live2run.com, but there is no documentary evidence demonstrating that this website qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted an article entitled posted at http://www.takethemagicstep.com, but the petitioner submitted only the first and fifth

pages of the seven-page article. Further, the date the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the article is not about the petitioner and only briefly lists her name among numerous other runners. Moreover, there is no objective readership data showing that http://www.takethemagicstep.com qualifies as a major trade publication or some other form of major media.

The petitioner submitted an article entitled ' posted at http://www.timesocket.com, but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the article is not about the petitioner and only briefly mentions her as finishing second in the women's race. Moreover, there is no documentary evidence showing that http://www.timesocket.com is a major trade publication or some other form of major media.

The petitioner submitted an article entitled posted on the website of the International Association of Athletics Federations (IAAF), but the petitioner submitted only "Page 3 of 4" of the article. In addition, the date the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the article is about the in general and only briefly mentions the petitioner among multiple other participants. Moreover, there is no objective readership data showing that the IAFF's website qualifies as a major trade publication or some other form of major media.

The petitioner submitted pages 1 and 3 of an posted on the website of the Association of International Marathons and Distance Races (AIMS), but the petitioner failed to submit page 2 of the article. Further, the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the article is about the marathon in general and only mentions the petitioner in passing. The petitioner also submitted information about the AIMS from its own website, but once again, USCIS need not rely on self-promotional material. There is no objective readership data showing that the AIMS' website qualifies as a major trade publication or some other form of major media.

The petitioner submitted an posted on the "Running Network" website at http://www.runningnetwork.com, but the author of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the article is about the and only briefly mentions the petitioner. Moreover, there is no objective readership data showing that the Running Network's website qualifies as a major trade publication or some other form of major media.

The petitioner submitted an article entitled posted on the website of the *North County Times* (California), but the date of the article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the article is about the

in general and only briefly mentions the petitioner. Further, there is no documentary evidence showing that the *North County Times*' website is a form of major media.

The petitioner submitted a posted on the website of the *Seattle Times* entitled The petitioner also submitted objective circulation data compiled by the Associated Press indicating that the *Seattle Times* is a form of major media. Regardless, the author of the *Seattle Times* article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the article includes only one sentence mentioning the petitioner.

The petitioner submitted a posted on the website of the *Chicago Tribune*. The petitioner also submitted objective circulation data compiled by the Associated Press indicating that the *Chicago Tribune* is a form of major media. Regardless, the author of the *Chicago Tribune* article was not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the article is not about the petitioner and only mentions her in passing.

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

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance* in the field." [Emphasis added.] Here, the evidence must be reviewed to see whether it rises to the level of original athletic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted a "Certeficate of Appreciation" [sic] that states: "Acknowledging the outstanding contribution you have shown at the has awarded this certificate with admiration and gratefulness." The preceding certificate does not specifically identify the result achieved by the petitioner at the but the record includes a letter from the listing the petitioner's "Foreign Achievements" and stating that she ranked 3rd i The submitted evidence fails to demonstrate how placing 3rd is an "original" athletic contribution or how her specific achievement was majorly significant in the field of long distance running. The petitioner also submitted race results indicating that she placed first at the The AAO notes that the petitioner won the subsequent to the petition's September 2, 2011 filing date. Eligibility, however, 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. Accordingly, the AAO will not consider awards received by the petitioner after September 2, 2011 as evidence to establish her eligibility. In addition, the petitioner submitted race results indicating that she placed Once again, the submitted evidence fails to demonstrate how the petitioner's competitive results equate to "original" athletic contributions or how her specific achievements were majorly significant in the field of long distance running. Further, the AAO notes that the race results and awards submitted by the petitioner have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The petitioner submitted a certificate from the The preceding certificate does not specifically identify the "immense contribution" made by the petitioner at the The submitted evidence also fails to demonstrate how participating for an is an "original" athletic contribution or how her achievement was majorly significant in the field of long distance running. Further, the AAO notes that the petitioner's membership on the team has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii). As separate criteria exist for memberships and original contributions of major significance, USCIS clearly does not view the two as being interchangeable.

In addition to the preceding evidence, the petitioner submitted letters of support discussing her various athletic accomplishments.

, states:

> Athlete [the petitioner] had served for 13 years and we have attached herewith this letter the achievements she scored in athletics competition during her stay in this club. As indicated under the table annexed herewith Athlete [the petitioner] had taken part on different domestic, Africa and international competitions and she had scored significant achievements for our club and country. This athlete is one of several famous and celebrity athletes produced by Ethiopia and she had finished numerous local and international competitions standing 1 first on more than ten times and she had been rewarded Gold Medals and Cups. Victories achieved by Athlete [the

petitioner] have not only helped her to become international fame and celebrity but also they have enabled our country to take special position in athletics in the world.

The victories Athlete [the petitioner] achieved and the medals and cups she won are special witnesses that she is one of few athletes who have special and high skill in the world.

comments that the petitioner has made significant achievements for the and her country, but does not provide specific examples of how the petitioner's original athletic contributions have significantly impacted the field of long distance running or otherwise equate to original contributions of major significance in the field. It is not enough to be highly skillful and competitively successful and to have others attest to those talents. An alien must have demonstrably impacted her field in order to meet this regulatory criterion. Vague, solicited letters from colleagues that do not specifically identify original contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian*, 580 F.3d at 1036. 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." *Kazarian*, 596 F.3d at 1122. The record lacks documentary evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted others in the field.

Ethiopia, states:

I feel confident to give this expert testimony on [the petitioner's] athletic abilities and achievements. I have closely followed and reviewed [the petitioner's] track record in long-distance running and have come to the conclusion that she is an athlete of exceptional and extraordinary ability. Her stellar athletic credentials place her in a special place among the elite athletes of the world. A brief overview of her achievements shows that she has taken part in over winning many of them. Among her wins are included the She has been dubbed Ethiopia's due to her continued athletic prowess.

While comments on the petitioner's competitive results at national and international races, fails to provide specific examples of how the petitioner's specific achievements have impacted the field of long distance running as a whole or otherwise constitute original athletic contributions of major significance in the field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of "major significance" in the field. Once again, the submitted evidence fails to demonstrate how the petitioner's competitive results equate to "original" athletic contributions or how her specific achievements were majorly significant in the sport of long distance running. Further, the AAO again notes that the race results and awards submitted by the petitioner have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

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states:

> [The petitioner], a fabled , has, for over a decade, been one of the most talented and finest long distance runners in the world, deftly competing in the most prominent international road races with remarkable success including victories in a multitude of countries in many long distance venues throughout . She has become so famous in her native country, Ethiopia, that she is widely called the by fans and sports journalists alike.
>
> The name of [the petitioner] has become legendary among her peers. She was born in and leaped to fame in the international running community when she, then garnered a respectable position in the followed by a spectacular the first of many full marathons where she achieved
>
> After her international breakthroughs in long distance running, [the petitioner] has been a sought after athlete by race directors all over the world. In and commenced a string of superb results annually in the where she finished 2nd several times and never outside of the which placed her among the world's most elite marathoners. Based upon that result she was selected to compete in the
>
> At the highly competitive [the petitioner] had another breakthrough with her Personal Best 2nd place marathon finish in a time of . She returned to Paris in 2009 with two stunning finishes in distances of 25 and 30 kilometers. With a constant success list of triumphs in Europe, (more recently in Germany in and an extremely busy schedule of top level competitions worldwide, [the petitioner] also found time to compete with success in the United States, specifically in the in and also in the the results of which bolstered her reputation as a superb competitor.
>
> It is fascinating to note that [the petitioner] has devoted much of her running career to the most grueling and punishing distances from 15 kilometers to the full marathon of 26.2 miles. This indicates her total dedication to hard work, extensive and unrelenting training which illustrates her ethic that consistently good results only come from toil in the purest sense of training and sport. She is well known among her colleagues for her sportsmanship and graciousness in victory or in defeat.

comments on the petitioner's long distance race results, but he does not specify how the petitioner's personal competitive achievements equate to "original" athletic contributions of major significance in the field. also asserts that the petitioner

is who "has become so famous in her native country," but he fails to provide specific examples of how the petitioner's original contributions have significantly influenced the field at large or otherwise constitute athletic contributions of major significance in the field of long distance running. The fact that the petitioner has enjoyed success in international running competitions does not demonstrate that she has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other long distance runners, nor does it show that the field has significantly changed as a result of her work so as to demonstrate the major significance of her original athletic contributions.

a professional race director and running coach, states:

> Having reviewed [the petitioner's] credentials, I conclude that [the petitioner] is a woman of sterling athletic accomplishments and an athlete of extraordinary abilities.
>
> * * *
>
> An athlete of [the petitioner's] caliber is quite rare.
>
> [The petitioner's] accomplishments: [The petitioner] has been running and winning long-distance races since She has devoted herself to the most rigorous of long-distance races: the marathon. She has won over including the prestigious
>
> My conclusions: I conclude that [the petitioner] is a highly-capable athlete with rare abilities and outstanding accomplishments who earned international recognition as a first-class long-distance runner. She is one of the few extraordinary aliens who should be granted permanent residence in the United States, where she will be a great contributor in the field of athletics. I give her my highest accolades and recommendations, and I have confidence she will be successful in her continued athletic endeavors.

asserts that the petitioner is an "athlete of extraordinary abilities," but merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.). While lists various long distance races won by the petitioner, he fails to provide specific examples of how the petitioner's original contributions were majorly significant to the field at large. The record does not show how the petitioner has changed or affected her

sport in an original way that other runners have not already done.[3] There is no documentary evidence showing that the petitioner's original contributions have had a majorly significant impact in the field of long distance running, have significantly influenced other competitive runners in her sport, or otherwise equate to original athletic contributions of major significance in the field.

The opinions of the petitioner's references 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 International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Thus, the content of the references' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence that one would expect of a long distance runner who has made original contributions of major significance in the field. Without additional, specific evidence showing that the petitioner's original contributions have been unusually influential, have substantially impacted her sport, or have otherwise risen to the level of athletic contributions of major significance in the field, the AAO cannot conclude that she meets this regulatory criterion.

B. Summary

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

C. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel asserts that the petitioner submitted comparable evidence in the form of expert opinion letters from The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner submitted evidence that specifically addresses four of the

[3] For example, the petitioner submitted a biography for

categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. Counsel's appellate brief does not explain why the regulatory criteria are not readily applicable to the petitioner's specific occupation. For instance, the published material submitted by the petitioner indicates that international marathon runners such as the petitioner receive prize money for winning their races and, therefore, the remuneration criterion at 8 C.F.R. § 204.5(h)(3)(ix) would appear to be applicable to the petitioner's occupation. Moreover, counsel fails to explain how the expert opinion letters submitted by the petitioner are "comparable" to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x).

Regarding the four expert opinion letters submitted by the petitioner, the AAO notes that they were considered under the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) and (v). As previously discussed, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* While such letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from references selected by the petitioner.

III. CONCLUSION

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

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

not explain that conclusion in a final merits determination.[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 AAO may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. *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. DOJ*, at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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).