



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 11 2013

Office: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:
Beneficiary: [REDACTED]

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 (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
Chief, Administrative Appeals Office

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

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

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

The petitioner’s priority date established by the petition filing date is January 6, 2012. On July 24, 2012, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on February 5, 2013. On appeal, the petitioner submits a statement with additional documentary evidence. For the reasons discussed below, the petitioner has not established his eligibility for the classification sought.

I. LAW

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

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

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

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

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

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

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

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

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

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

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. The petitioner requests on appeal that the AAO consider the totality of all of the evidence. As the petitioner did not submit qualifying evidence under at least three criteria, however, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

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

II. ANALYSIS

A. Consultant/Coach vs. Athlete

The petitioner seeks to work in the United States as a [REDACTED] as indicated on Part 6 of the Form I-140. The proposed employment letter indicated that the [REDACTED] intended to employ the petitioner as a [REDACTED]. Competitive athletics and coaching are not the same area of expertise. *See Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002). The petitioner's achievements were as a competitor rather than as a coach. As the petitioner will be a consultant and a coach, he must demonstrate that consulting and coaching are within his area of expertise, and may not rely solely on his achievements as an athlete. Section 203(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). The director raised this issue within his decision; however, the petitioner failed to address it on appeal.

B. Evidentiary Criteria²

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

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

The petitioner provided several competitive awards. The director determined that the petitioner failed to meet the requirements of this criterion, primarily focusing on the fact that the awards were youth awards, regional in nature, or were accompanied by deficient translations.

That some of the petitioner's awards were youth awards is not itself disqualifying, as youth awards can be issued for excellence. However, in order to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the field, at the national or international level, must recognize such awards.

National and international recognition results, not from the entity that issued the prize or the award or the national or international pool of competitors, but through the awareness of the accolade in the eyes of the field nationally or internationally. A petitioner must document such recognition, for example, through media coverage. Unsupported conclusory letters from those in the petitioner's field are not sufficient evidence that a particular prize or award is nationally or internationally recognized.

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

The petitioner initially submitted several awards but failed to provide evidence to establish that any of the awards were nationally or internationally recognized. In response to the RFE the petitioner submitted additional awards, English translations, and online media coverage. The only media coverage that was accompanied by evidence relating to the nature of the media was in the [REDACTED]

Regarding the published material that appeared in the [REDACTED] the petitioner initially submitted a summary translation of an article from this publication supported by website printouts from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.³ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Therefore, this documentation has no probative value. Further, as the regulation at 8 C.F.R. § 103.2(b)(3) requires the petitioner to ensure that any foreign language document is “accompanied by a full English language translation,” all articles translated as summary translations or excerpts are not probative evidence.

Within the RFE response the petitioner submitted additional evidence relating to the [REDACTED] in the form of website printouts from yelp.com, us.nysingtao.com, and admaimai.com. The evidence from yelp.com indicated that the publication “is internationally recognized as one of the world’s most widely-read Chinese dailies.” However, the website printout the petitioner submitted reflected that the “About this Business” section is “Provided by [the] business.”⁴ Information provided by the business itself is not independent information that can establish the publication is a form of major media such that coverage in that media is indicative of national or international recognition of the competition covered.

The petitioner submitted website printouts from us.nysingtao.com that claim: “[REDACTED] leads as the only Chinese newspaper with the highest global circulation with 16 overseas editions.” The preceding information from the nysingtao.com website is insufficient to demonstrate the significance of coverage of a competition in that publication. First, the complete translation of the article the petitioner submitted on appeal does not identify the company’s magazines or newspapers that featured the article

³ Online content from *Wikipedia* is subject to the following general disclaimer, “WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields. See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 12, 2013, a copy of which is incorporated into the record of proceeding.

⁴ Additionally, the yelp.com website states: Myth #9: Business owners have no voice on Yelp[.] Reality: Every local business can set up a FREE Business Owner's Account to publicly post a description of the business, message customers, add photos, track traffic on their Yelp page and more. See <http://www.yelp.com/myths>, accessed on August 12, 2013, a copy of which is incorporated into the record of proceeding.

about the competition. Further, USCIS need not rely on the general self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 F. App'x 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The evidence from admaimai.com is not accompanied by a properly certified translation and, thus, has no probative value..

In addition, the petitioner did not submit sufficient translations for all of the awards initially. For example, regarding the translation relating to the [REDACTED] [REDACTED] performed the translation accompanying the initial filing documents relating to this tournament. As evidence, the petitioner provided a photograph of a foreign language document taped to what is purported to be the translation of the foreign language within the photograph. The translation reflects that the photograph is a "Copy of the [REDACTED] [REDACTED] followed by a summary of a conference in which the petitioner claimed to have participated. The summary includes the number of participants and again indicates the petitioner's finishing placement in the competition. The purported translation appears to be a summary of an event where the foreign language document was issued rather than a full translation of the document as required under 8 C.F.R. § 103.2(b)(3). The petitioner did not resubmit this award with a complete certified translation in response to the RFE or on appeal.

Moreover, the petitioner must demonstrate eligibility as a consultant or as a coach, and may not rely solely on his achievements as a competitor. *See Lee v. Ziglar*, 237 F. Supp. 2d at 918. However, the above awards recognize achievements as a competitor, not a consultant or a coach.

Based on the foregoing, the petitioner has not demonstrated that the media coverage of the competitions where he received his awards is indicative of the national or international recognition of those awards. Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The petitioner did not claim eligibility under this criterion within the proceedings before the director. The RFE response contains a certificate indicating the petitioner is a lifetime member of the [REDACTED] [REDACTED] as of an unspecified date in 2012. The record does not establish that the petitioner was a member of this federation as of the date of filing, January 6, 2012. The petitioner must establish his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Regardless, prior counsel failed to assert within the RFE response that the petitioner's membership in this association satisfied the regulatory requirements at 8 C.F.R. § 204.5(h)(3)(ii). Instead, prior counsel asserted that this membership was evidence of the petitioner's intention to continue working in the field. Thus, prior to the appeal, the petitioner had never asserted that he meets this criterion.

The methods vary by which a petitioner can be notified of evidentiary requirements. For example, a petitioner is considered to be on notice through the specific requirements outlined within the regulations, or through various forms of communication from USCIS to a petitioner or applicant noting an evidentiary deficiency or requesting more evidence. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988). The regulation at 8 C.F.R. § 204.5(h)(3) notified the petitioner of the specific filing requirements to demonstrate eligibility under the extraordinary ability classification. In addition, the instructions to the Form I-140 petition state that the petitioner “must attach evidence with [the] petition showing that the alien has sustained national or international acclaim” and then lists the ten regulatory criteria. Therefore, the petitioner must claim every criterion that the petitioner would like to be considered before the director. In instances when the petitioner was notified of the types of evidence that are required to demonstrate eligibility and was afforded the opportunity to provide the evidence prior to the issuance of an adverse decision, new eligibility claims will not be considered on appeal. *See Matter of Soriano*, 19 I&N Dec. at 766.

If the petitioner would like for USCIS to consider claims relating to additional eligibility criteria, he must accomplish this request through the filing of a new petition. *See id.* at 766. *Cf. Matter of Jimenez*, 21 I&N Dec. 567, 570 n.2 (BIA 1996) (finding that claims of eligibility for a waiver presented for the first time on appeal are not properly before the Board of Immigration Appeals and that the Board will not issue a determination on the matter.) Although the AAO maintains *de novo* review of appellate cases and a petitioner may supplement the record in regards to previous claims, a petitioner may not raise a previously unclaimed eligibility criterion on appeal. *See Matter of Soriano*, 21 I&N Dec. at 766. Therefore, the AAO will not consider the petitioner’s appellate claim of membership in the [REDACTED] which he claimed for the first time on page 12 of his appellate statement, within the present proceedings.

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.

This criterion contains three evidentiary requirements the petitioner must satisfy. First, the published material must be about the petitioner and the contents must relate to the petitioner’s work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media (in the plural). Professional or major trade publications are intended for experts in the field or in the industry. To qualify as major media, the publication should have significant national or international distribution and be published in a predominant national language. The final requirement is that the petitioner provide each published item’s title, date, and author and if the published item is in a foreign language, the petitioner must provide a translation that complies with the requirements found at 8 C.F.R. § 103.2(b)(3). The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided numerous media reports; however, none of the reports are about him and relate to his work in the field. Most of the media coverage is about an event in which the petitioner

participated, which is not sufficient to meet the regulatory requirements for published material about the petitioner. The director determined that the petitioner failed to meet the requirements of this criterion.

The media coverage related to the 2011 [REDACTED] originated from the [REDACTED] publication. Although the director indicated within his decision that the evidence submitted in response to the RFE was sufficient to demonstrate that the article published in the [REDACTED] was a form of major media, the record does not support that conclusion for the reasons discussed above.

The director also noted that the petitioner provided a compact disc but that the disc was not accessible. On appeal the petitioner provided an alternative to the inaccessible disc in the form of Internet links to videos purportedly of him in competitions. The petitioner claims that some of the videos appear on the [REDACTED], a local New Jersey media outlet. Although the video contains a contestant wearing the same number the petitioner was assigned, he has not demonstrated that this media source is a form of major media through independent sources indicating [REDACTED] level of viewership, via the airwaves or online. More importantly, the 23 minute segment is not about the petitioner and relating to his work in the field. Rather it is a compilation of [REDACTED] events featuring numerous individuals.

The petitioner also provided a [REDACTED] article titled, [REDACTED]. The translation into English does not contain the date or the author of the published material as required by the regulation. Further, the article is not about the petitioner and relating to his work in the field; it is about the petitioner's high school and the diversity of its student population. The petitioner also failed to support his position that the [REDACTED] qualifies as a form of major media as the information related to the publication is from [REDACTED]. According to the materials the petitioner submitted, Interactive Wikipedia – Encyclopedia copyright protected the information on [REDACTED]. As stated above, information retrieved from *Wikipedia* is not reliable.

Moreover, the petitioner must demonstrate eligibility as a consultant or as a coach, and may not rely on his acclaim as a competitor. *See Lee v. Ziglar*, 237 F. Supp. 2d at 918. However, the above published material is in reference to the petitioner as a competitor, not a consultant or a coach.

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

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

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the

present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner provided several forms of evidence that demonstrate he was qualified to serve as a martial arts referee and that he was selected to serve as a referee. The director determined that the petitioner failed to meet the requirements of this criterion concluding that the evidence failed to demonstrate the petitioner actually served in the position of referee. Within the letter submitted with the initial petition from [REDACTED] stated that the petitioner had served as a referee for several competitions. Within the RFE, the director did not acknowledge [REDACTED] statement, but instead stated that no evidence was on record to establish that the petitioner had actually served as a referee. While [REDACTED] letter, in addition to the remaining evidence on record, establishes that the petitioner served as a referee, this evidence fails to demonstrate that the petitioner actually served in a judging capacity, either on a panel or individually because the evidence does not enumerate the petitioner's duties as a referee. If the petitioner simply enforced the rules of a match, then his participation as a referee cannot be said to have involved participating as a judge of the skills or qualifications of the participants. Without further evidence that he was a judge of the work of others, such as evidence that he awarded points or chose the ultimate winner, evidence regarding his officiating at a game is insufficient to meet this criterion. The burden lies with the petitioner to demonstrate his eligibility. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013); *Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988) (citing *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966)).

The record also contains several forms of evidence indicating the petitioner was invited to serve as a referee. Evidence that does not demonstrate that the petitioner has already served as a judge of the work of others will not meet the plain language requirements of this criterion.

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

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

Within the initial filing statement, counsel claims the petitioner has made original and outstanding contributions, but failed to respond to the director's RFE as it related to this regulatory requirement. As the petitioner has not raised this claim since the initial filing, it is abandoned. See *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

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

In the initial cover letter, counsel asserted that the petitioner had performed a "leading role for his team in national competitions" but did not specifically address this criterion. On appeal, the petitioner does

not contest the director's finding that the petitioner had not submitted any evidence relating to this criterion or offer additional arguments. Therefore, the petitioner has abandoned his claims under this criterion. *Sepulveda* 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

C. Summary

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

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor" and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

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

The 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.

⁵ 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).