



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUL 31 2014** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
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:

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 immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics.¹ The director determined that the petitioner had not met the requisite criteria for classification as an alien extraordinary ability.

On appeal, the petitioner submits a brief and additional evidence.

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).

¹ According to information in the petitioner's passport from the People's Republic of China, the petitioner was last admitted to the United States on February 20, 2013 as a B-2 nonimmigrant visitor.

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 our decision to deny the petition, the court took issue with our evaluation of evidence submitted to meet a given evidentiary criterion.² With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that our 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 we 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 we 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, we 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.*

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

The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). On the Form I-140, Immigrant Petition for Alien Worker, the petitioner left blank her "Occupation" in Part 5 and her "Job Title" in Part 6, "Basic Information About the Proposed Employment."

In a May 20, 2013 letter accompanying the petition, the petitioner stated:

[The petitioner] won [a] [redacted] competed in the [redacted] on behalf of [redacted] and ranked within [the] top [redacted]. . . . After retiring from [redacted] she devoted herself to coaching youth athletes in figure skating.

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

* * *

[The petitioner] has been serving as a coach at the prestigious [REDACTED]

In addition, the petitioner submitted a March 8, 2013 certification stating “that she worked at [the] [REDACTED] during the term from 2001 to the beginning of 2013.” The petitioner also submitted documentation indicating that she coached for the [REDACTED] during the 1990s. In response to the director’s request for evidence, the petitioner submitted an August 1, 2013 letter from counsel asserting that the petitioner “is an alien of extraordinary ability intending to work as a figure skating coach.” Lastly, the petitioner maintains throughout the appellate brief that she qualifies for the classification sought as a figure skating coach.

Although the petitioner submitted documentation of her athletic accomplishments as an ice dancer from the mid-1980s to the early 1990s, there is no documentary evidence showing that the petitioner has competed nationally or internationally as an ice dancer or figure skater since that time period. Although a figure skating coach and a competitive ice dancer may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. The petitioner presently works as a figure skating coach, and there is no documentary evidence demonstrating that she intends to compete regularly as an ice dancer or figure skater in sporting events in the United States. It is possible for an individual to have extraordinary ability in more than one field, such as a figure skating coach and an ice dancing competitor, but the petitioner must demonstrate “by clear evidence that the alien is coming to the United States to continue work in the area of expertise.” *See* 8 C.F.R. § 204.5(h)(5). In this matter, there is no evidence establishing that the petitioner intends to continue working in the United States as a competitive ice dancer or figure skater. Accordingly, the petitioner must satisfy the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulatory requirements at 8 C.F.R. § 204.5(h)(2) and (3) through her achievements as a coach.

The petitioner asserts on appeal that USCIS failed “to distinguish the instant case from *Lee v. I.N.S.*, and thus applied the wrong standard in the instant case.” The petitioner points out that Lee was a baseball catcher who participated in a team sport, whereas the petitioner competed in the “individual” sport of figure skating. The petitioner further states:

In individual sports, the coach and athlete share the same goal and set of skills to hone [sic] the athlete’s skills in said sports. There is no responsibility on the coach to take the team into account. The coach’s role is to help the athlete reflect on his/her moves and improve. The

athlete's role is also to improve the moves and excel. They rely on the same set of basic skills, namely understanding the difficulties of different moves and how to execute them successfully.

The petitioner's evidence, however, does not show that she competed in an individual sport. Instead, the submitted awards and published material from the petitioner's career as an ice dancer show that she competed with a male skating partner named [REDACTED]. Moreover, the petitioner has not established that the coaching skills which she points to above are unique to individual sports. For instance, the petitioner has not shown that baseball, football, basketball, soccer, or hockey coaches do not help their players "reflect on [their] moves and improve." Additionally, the petitioner has not established that "understanding the difficulties of different moves and how to execute them successfully" are skill sets that differentiate coaches of individual sports from those who coach team sports.

The petitioner has failed to demonstrate that a figure skating coach and a competitive ice dancer are the same area of expertise.

The petitioner contends that "[f]rom previous USCIS decisions, it is clear that athletes in individual sports are treated differently from athletes in team sports." The petitioner's appellate brief points to three non-precedent decisions from the 1990s in which USCIS approved petitions for athletes who became coaches in the "individual" sports of martial arts, fencing, and diving. The petitioner then points to two non-precedent decisions from the 1990s in which the AAO dismissed appeals for athletes who became coaches in the team sports of soccer and baseball. The petitioner, however, has not established that the success she achieved as an ice skating competitor was in an individual sport (rather than as part of an ice dancing pair) or that the facts of the instant petition are similar to those in the three unpublished favorable decisions. Each petition is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, USCIS is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). Although AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. *See* 8 C.F.R. § 103.3(c). Moreover, there is no statute, regulation, case law, or USCIS policy for coaches seeking extraordinary ability classification that differentiates between individual sports and team sports in determining eligibility for the classification sought.

The petitioner further states that the present matter is distinguishable from *Lee v. I.N.S.* in that she "has years of experience coaching at high levels while Lee did not have any experience as a coach before seeking entry as a coach." While there exists a nexus between competing and coaching in a given sport, to assume that every extraordinary athlete's area of expertise includes coaching, would be too speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence of record. Specifically, in a case where an individual has achieved *recent* national or international acclaim as a competitive athlete and has sustained that acclaim in training top competitors at a national level, the totality of the evidence is probative of establishing an overall pattern of sustained acclaim and extraordinary ability such that the petitioner can demonstrate that coaching is within her area of expertise. However, as the petitioner in the present matter has had an extended period of time lasting more than two decades to establish her reputation as a figure skating coach beyond the years in which she last competed as an ice dancer in the early 1990s, the petitioner

must meet the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) based on her accomplishments as a coach.

The regulation at 8 C.F.R. § 204.5(h)(5) states, in part:

Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

The petitioner has not submitted any of the preceding types of evidence required by the regulation at 8 C.F.R. § 204.5(h)(5). For this reason alone, the petitioner has not established her eligibility for the benefit sought and the petition must be denied.

III. ANALYSIS

A. Evidentiary Criteria³

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

The petitioner submitted documentation indicating that she received nationally and internationally recognized awards for excellence in competitive ice dancing during the 1990s. As previously discussed, the petitioner retired from ice dancing competition in the early 1990s and has coached since that time. The petitioner's "field of endeavor" for which classification is sought, therefore, is coaching. There is no evidence demonstrating that the petitioner seeks to work in the United States as a competitive ice dancer. Awards resulting from the petitioner's success as a competitive athlete cannot be considered evidence of her national or international recognition as a coach. Again, the statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act,; 8 C.F.R. § 204.5(h)(5). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, awards won by the petitioner as a competitive athlete in the 1980s and early 1990s do not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a coach.

On appeal, the petitioner states: "There exists no special award for figure skating coaching. The way for coaches to receive nationally or internationally recognized prizes or awards is through their students in competition." USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney*

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, we have not considered whether the petitioner meets the remaining categories of evidence.

General of the United States, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The petitioner has not established that awards for figure skating coaches do not exist.⁴

The petitioner submitted a "Recommendation Letter" from [REDACTED] stating the petitioner was her coach and [REDACTED] and her partner won third place in the [REDACTED] after two years of training with the petitioner. The letter from Ms. [REDACTED] does not include an address, a telephone number, or any other information through which she can be contacted. The lack of proper contact information as a means for verifying Ms. [REDACTED] claims diminishes the reliability of her letter. In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] District Manager of the [REDACTED] asserting that the petitioner's students have won "first, second, and third places in the national or provisional [sic] level of competitions." The petitioner, however, failed to submit evidence showing Ms. [REDACTED] third place award or the petitioner's [REDACTED] students' first, second, and third place awards in national or provincial competitions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Absent documentation that primary and secondary evidence of the awards are either not available or nonexistent, the preceding letters are not probative as evidence. 8 C.F.R. § 103.2(b)(2).

Regardless, awards received by the petitioner's skaters in various athletic competitions do not constitute her receipt of those awards. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires documentation of "the alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. Prizes or awards individuals other than the petitioner herself have received do not meet the plain language requirements of the regulation. Nevertheless, as this decision discusses below, awards received by a petitioner's students are probative evidence under the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii). As there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in coaching, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. When an appellant fails to offer an argument on an issue, that issue is abandoned. *Sepulveda v. U.S. 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

⁴ For example, "[e]very year, U.S. Figure Skating and the Professional Skaters Association (PSA) recognize exceptional coaching achievement through the annual coaching awards. This is a function of the U.S. Figure Skating Coaches Committee and the PSA Board of Directors." See <http://www.usfsa.org/content/Award%20Criteria.pdf>, accessed on April 17, 2014, copy incorporated into the record of proceedings.

(E.D.N.Y. Sept. 30, 2011) (plaintiff's claims abandoned when not raised on appeal to the AAO). Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The petitioner, therefore, has abandoned this issue. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

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

The director determined that the petitioner established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence 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.” A review of the petitioner’s evidence, however, does not reflect that she submitted documentation that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) for the reasons outlined below.

The petitioner submitted a March 8, 2013 certification stating “that she worked at [REDACTED] during the term from 2001 to the beginning of 2013.” In addition, the petitioner submitted a webpage for the [REDACTED] showing photographs of the coaching staff and stating that the club’s coaches hold titles in national, Asian, international, and world championships. The petitioner also submitted a “Recommendation Letter” from [REDACTED] stating: “[The petitioner] has been a diligent and responsible coach to me. She would show me almost each move by doing it herself, and judge and critique my moves.” Again, the lack of proper contact information for Ms. [REDACTED] diminishes the reliability of her letter.

Along with Ms. [REDACTED] letter, the petitioner submitted an [REDACTED] roster identifying Ms. [REDACTED] as one of nine ice dancing “Judges” for the competition. The petitioner’s name, however, does not appear on the roster of official judges. There is no documentary evidence showing that the petitioner has participated as a judge of the work of others in the same manner as Ms. [REDACTED]. Serving as a coach where part of one’s job duties includes evaluating skaters does not equate to participation as a judge of the work of others in the field. Providing instruction and training to athletes is not tantamount to deciding the outcome of a contest or competition. The phrase “a judge” implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Informal instances of evaluating one’s own athletes as a coach do not meet the elements of this criterion.

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] District Manager of the [REDACTED] stating:

[The petitioner] has been the Figure Skating Professional Head Coach of our [REDACTED]. During her employment, she is mainly responsible for coaching members, giving professional advice, design [sic] moves for competition, supervising competition teams, etc. She also manages, supervises, coaches, examines and reviews the figure skating coach staff.

Supervising and internally reviewing the performance of club members and coaching staff at [REDACTED] does not equate to participation as a judge of the work of others in the field. Again, the phrase "participation . . . as a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of evaluating club members or others on the same coaching staff. Furthermore, the plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Rather than submitting copies of staff reviews showing the petitioner's assessments of the other coaches, the petitioner instead submitted a letter from Mr. [REDACTED] briefly mentioning the petitioner's various job duties. There is no documentary evidence showing the petitioner's specific assessments and the names of those she evaluated. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Moreover, if testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In this instance, the record does not include primary evidence demonstrating the petitioner's participation as a judge. Absent documentation that primary and secondary evidence of the petitioner's judging is either not available or nonexistent, the preceding letter cannot be relied upon as evidence. 8 C.F.R. § 103.2(b)(2).

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 director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The petitioner, therefore, abandoned this issue. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at *9. Accordingly, the petitioner has not established that she meets this regulatory criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner submitted a news report and photographs from her ice skating demonstrations and competitions in the 1980s. There is no evidence demonstrating, however, that the petitioner seeks to work in the United States as an ice dancer or figure skater. Again, the statute and regulations require

that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's ice skating performances and demonstrations from the 1980s do not meet this regulatory criterion for purposes of establishing her extraordinary ability as a coach.

On appeal, the petitioner states:

[redacted] co-hosted the popular TV show [redacted] with [redacted] in 2007. . . . The show invited [redacted] to join the show.

* * *

As head coach at [redacted] the petitioner participated in showcases by supervising the staff coaches.

The petitioner points to the letter from [redacted] which states that the petitioner "is responsible for coaching members, giving professional advice, design [sic] moves for competition, supervising competition teams, etc. She also manages, supervises, coaches, examines and reviews the figure skating coach staff." The preceding duties, however, do not constitute display of the petitioner's work in the field at artistic exhibitions or showcases.

In addition, the petitioner submits photographs that she alleges are from the [redacted] television show, but the petitioner is not identified as a participant in any of the photographs. Moreover, there is no documentary evidence showing that the petitioner was among the [redacted] who received an invitation to join the show. The petitioner also submits a [redacted] webpage and an accompanying English language translation that states: [redacted] made the reality show [redacted] together with [redacted] Twenty-four top coaches from [redacted] and twenty-four hot stars joined [the] show and competed for six months." Although the translator of the [redacted] webpage states that the English language translation of the webpage's content "is an accurate translation of the text on the [redacted] website," there is no supporting documentary evidence demonstrating that [redacted] is part of the [redacted] falls under the petitioner's coaching supervision. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

Even if the petitioner were to submit evidence establishing that [redacted] is part of [redacted] the plain language of this regulatory criterion requires "evidence of the display of the alien's work in the field at artistic exhibitions or showcases." The petitioner's field, however, is in athletics rather than the arts. Further, although the ice skaters who appeared on the [redacted] show performed their work, there is no evidence demonstrating that the petitioner's work was on display. Regardless, the interpretation that 8 C.F.R. § 204.5(h)(3)(vii) is limited to the visual arts is longstanding and has been upheld by a federal district court. *See Negro-*

Plumpe v. Okin, 2:07-CV-820-ECR-RJJ at *1, *7 (D. Nev. Sept. 8, 2008) (upholding an interpretation that performances by a performing artist do not fall under 8 C.F.R. § 204.5(h)(3)(vii)). As the petitioner is not a visual artist and has not created tangible pieces of art that were on display at exhibitions or showcases, she has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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

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

In general, a leading role is demonstrated by evidence of where the petitioner fits within the hierarchy and duties of an organization or establishment while a critical role is demonstrated by evidence of the petitioner's contributions to the organization or establishment.

Although the petitioner previously relied on her roles as a skater, on appeal, the petitioner focuses on her role for the [REDACTED]. The petitioner points to the letter from [REDACTED] describing the petitioner's responsibilities as head coach and asserting that the petitioner's students have won "first, second, and third places in the national or provisional [sic] level of competitions." The petitioner, however, did not submit evidence of the petitioner's [REDACTED] students' first, second, and third place awards in national or provincial competitions. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Regardless, the letter from [REDACTED] is sufficient to demonstrate that the petitioner has performed in a leading role as head coach for the [REDACTED].

With regard to the reputation of [REDACTED] and the [REDACTED], the petitioner points to the letter from [REDACTED] who states:

I am [REDACTED] the District Manager of [REDACTED] Ltd, which is a professional skating management company. Its subsidiary companies included [REDACTED] other skating-related organizations. They aim to advertise and promote skating, to discover and coach extraordinary talented skaters, and they have created motivations from people. The top skating ice rink operated by our subsidiary is the most influential and competitive ice-rink facility in the country. Since the development in 1999, the company has its branches in fourteen cities, including [REDACTED].

In addition, the petitioner submitted a webpage for the [REDACTED] stating that the club's coaches hold titles in national, Asian, international, and world championships. The promotional assertions from the club's website and its District Manager, however, are not sufficient to demonstrate that the [REDACTED] has a distinguished reputation. USCIS need not rely on self-promotional material. *Cf. Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed.

Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The petitioner's appellate submission includes photographs from the [REDACTED] but there is no objective documentary evidence showing that the club has earned a distinguished reputation.

Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for distinguished "organizations or establishments" 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 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, we 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); *Snapshot.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner were to submit objective documentary evidence demonstrating that [REDACTED] has a distinguished reputation, which she has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence of a leading or critical role for more than one distinguished organization or establishment.

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

B. Summary

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

IV. CONCLUSION

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

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

§§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. Although we conclude 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, we 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 categories of evidence. *Id.* at 1122.

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

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d at 741; *Soltane v. DOJ*, 381 F.3d at 145; *Dor v. INS*, 891 F.2d at 1002 n. 9.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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 Appellate review for employment-based petitions is on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). In any future proceeding, the jurisdiction to conduct a final merits determination is the office that made this decision, the most recent 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).