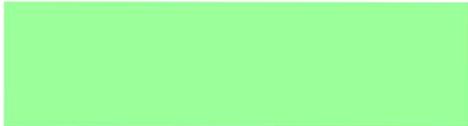
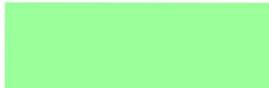


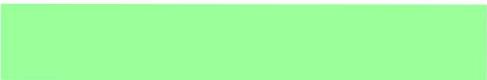


U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **NOV 18 2014** Office: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner: 
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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 on appeal. We will dismiss the appeal.

The petitioner, a triathlete, 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 of extraordinary ability.

On appeal, the petitioner submits an April 21, 2014 letter contesting the director's decision and additional evidence. In her letter, the petitioner asserts that she meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) - (v), (vii), and (viii).

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 the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on August 29, 2013 as a B-2 nonimmigrant visitor for pleasure.

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

² Specifically, the court stated that we 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).

³ On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision. Therefore, no determination has been made regarding whether the petitioner meets the remaining categories of evidence.

The director determined that the petitioner failed to establish eligibility for this regulatory criterion. In a November 11, 2013 letter, [REDACTED] General Secretary, [REDACTED] stated: “[The petitioner] was in the [REDACTED] to prepare for the summer Games in [REDACTED].” The petitioner submitted a list of 2009 “candidates” preparing for the [REDACTED] issued by the [REDACTED] Family and Sports. The petitioner, however, failed to submit evidence that she competed as a member of the [REDACTED] or documentation from the [REDACTED] Committee confirming her membership on the [REDACTED].

The petitioner submitted evidence of her membership on the [REDACTED] and documentation showing that the team requires outstanding achievements of its members. The requirements include, for example, that an athlete must “win regularly at the National Championship competitions” and attain high rankings as demonstrated by results from European and World Championship triathlon competitions. In addition, the submitted evidence shows that national team members’ achievements are judged by recognized national or international experts.

The plain language of the regulation, however, 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 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. *Cf. Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 2008 WL 9398947, *1, *6 (D.D.C. Mar. 2008); *Snapnames.com Inc. v. Chertoff*, No. CV06-65, 2006 WL 3491005, at *1, *10 (D. Or. Nov. 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, although the petitioner’s membership on the [REDACTED] Team appears to meet the elements of this regulatory criterion, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of the petitioner’s membership in more than one association requiring outstanding achievements of its members, as judged by recognized national or international experts.

In light of the above, the petitioner has not established that she meets the plain language requirements of 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 determined that the petitioner failed to establish eligibility for this regulatory criterion. The director’s decision provided a thorough discussion of the petitioner’s evidence and

specifically addressed the deficiencies in the submitted documentation. The director found that the submitted articles and online material did not meet all of the requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). For example, the director noted that the articles were deficient in that they did not include a date or an author, they were not about the petitioner, or they lacked objective circulation evidence that they were published in major media.

On appeal, the petitioner states only: “Please consider the materials submitted for the answer to USCIS request for evidence [RFE] in my cover letter from March 10, 2014.” The director’s decision, however, included a detailed discussion of the deficiencies in the evidence submitted in response to the RFE. The petitioner’s statement does not contest the director’s analyses of the submitted material, or point to specific evidence that demonstrates her eligibility for this criterion. A passing reference without substantive arguments is insufficient to raise that ground on appeal. *Desravines v. U.S. Atty. Gen.*, 343 Fed. Appx. 433, 435 (11th Cir. 2009). Without arguments or evidence to overcome the director’s specific findings, 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 did not establish eligibility for this criterion. A review of the record of proceeding, however, reflects that the petitioner submitted sufficient documentary evidence establishing that she meets the plain language requirements of this regulatory criterion. On appeal, the petitioner points to a November 15, 2013 letter from [REDACTED], President of the [REDACTED], stating that the petitioner “served as a representative of the [REDACTED]” from 2008 – 2012 and participated “in the selection of the [REDACTED] team members and helped to determine the European and the World Championship team roster.” In addition, the petitioner submitted a November 11, 2013 letter from [REDACTED] stating that she participated in “the selection of members of the team to participate in the team competition.” Accordingly, the petitioner has 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 determined that the petitioner failed to establish eligibility for this regulatory criterion. The director stated that the letters of recommendation, the petitioner’s award certificates and diplomas, two articles that she wrote, and an entry about her in the [REDACTED] failed to demonstrate that her work was 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 rise to the level of original business-related 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).

On appeal, the petitioner points to the following letters of support as evidence that she meets this regulatory criterion.

[Redacted], President of [Redacted] states:

I confirm that [the petitioner] from 01.04.2005 to 01.08.2013 worked as an athlete and sport instructor in a sports society [Redacted] and performed at national and international competitions over the years as part of [Redacted] team.

[The petitioner] received a scholarship as the best athlete of the city, and regularly awarded prizes from the [Redacted] for top-3 places in national and international competitions. For her sport achievements [the petitioner] was awarded [Redacted] of the third and second degree. Repeatedly became the winner of the competition "The best sportsman of the year" in the city [Redacted]

* * *

In 2006, at the European Championship triathlon [the petitioner] within the [Redacted] women team won the gold medal and met the standard of master of sports of international class. Total among all [Redacted] only 4 female athletes and 10 male athletes were able to meet this standard.

[The petitioner] has the record for the number of events in which [she] took part and successfully finished in 2007-2008: [Redacted]

In international rankings [Redacted] in 2008 and 2010 [the petitioner] was in the [Redacted] And in 2012 became the [Redacted] Rankings.

[The petitioner] was representative of the interests of athletes in the Federation from 2008 to 2012 and actively participated in matters of team building to participate in the championships of Europe and the world.

Ms. [Redacted] mentions the petitioner's work as a sports instructor, her competitive achievements, her prizes and awards, her service as a representative of federation athletes, and her participation in team building activities, but does not provides specific examples of the petitioner's original work or how it has influenced the sport or otherwise constitutes contributions of major significance in the field.

[Redacted] Head of the [Redacted] states:

[The petitioner has been] involved in [Redacted] in the [Redacted] since 2002. During this period reached following athletic performance: member of the [Redacted] 2 place on the [Redacted] Championship, 1 place on the [Redacted] Championship in [Redacted] 2 place on the U23 European Championship in [Redacted] 1 place on the [Redacted] Championship in team

event 6 times distance, many times awarded with medals and prize money on international competitions.

[The petitioner] always continues to improve athletic skills, actively participates in social work of the school and region. She made significant contribution to the development of sports movement.

comments on the petitioner's competitive results, the continual improvement of her athletic skills, and her active participation in social work for the school and the region, but there is no documentary evidence demonstrating that her work has influenced the field as a whole or was otherwise majorly significant to her sport. In addition, asserts that the petitioner has "made significant contribution [sic] to the development of sports movement," but does not provide specific examples of the petitioner's original work or how it has affected the triathlon sport or otherwise constitutes contributions of major significance in the field. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

In his initial letter, Founder and Head Coach, Texas, states:

I had the privilege of meeting [the petitioner] at the finish line at Texas on May where she had just competed in the grueling in very hot humid conditions. [The petitioner] finished the race in among over 690 female athletes.

* * *

An internationally recognized athlete, [the petitioner] is known as the three time European Champion in . She also held the top three positions in 2008 and 2010 in overall rankings in Europe. [The petitioner's] talent was recognized at an early age and she began racing professionally at age 19. She raced for the team from 2006-2013 where she competed and achieved many medals for the team in distance events, including fourth place in the Championship in 2008. Since coming to the United States in May of 2013, she has turned her focus to the longer distance and has competed in races in her quest to qualify for the . She has already shot up to among over 300 professional females.

The preceding letters from Ms. and Mr. mention the petitioner's awards and her competitive rankings. The petitioner's awards and rankings, however, were previously addressed under the category of evidence at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the prizes and awards criterion is not presumptive evidence that the petitioner also meets this criterion. 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

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requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

In another letter submitted at the time of filing, Mr. [REDACTED] states:

During her 2013 season, [the petitioner] raced as a professional throughout the United States and Canada at [REDACTED] she ended her race season with an impressive [REDACTED] Florida.

* * *

I consider [the petitioner] a strong candidate as an associate coach for [REDACTED] [REDACTED] She has impressive credentials as a professional triathlete, a solid knowledge base, an enthusiastic personality, and a willingness to coach youth and adults to help them achieve their goals in the sport of [REDACTED]

Mr. [REDACTED] mentions the petitioner's participation in five [REDACTED] events and her coaching qualifications, but does not explain how the petitioner's work has affected the sport of in a major way or has otherwise risen to the level of original contributions of major significance in the field.

In his letter submitted in response to the director's RFE, Mr. [REDACTED] states:

[The petitioner] would be an excellent addition to my coaching staff. She is a professional triathlete with a worldwide reputation, advanced degrees in physical fitness education from the [REDACTED] great potential, an engaging personality, and a willingness to contribute to the development of youth in the sport of [REDACTED] in the United States.

[The petitioner] is a professional who can and wants to work at the highest level, reaching the top of her career as a pro triathlete in parallel to working as a coach for youth, investing her own strength, knowledge, and outstanding skills into the future of our country.

Mr. [REDACTED] points to the petitioner's coaching potential and successful career as a professional triathlete, but he does not provide specific examples of how the petitioner's work equates to original contributions of major significance in the field.

[REDACTED], a coach with [REDACTED], states:

[REDACTED] has successfully provided triathlon coaching services for hundreds of athletes of all abilities for the past ten years. Founded by my husband, [REDACTED] we work with associate coaches to develop [REDACTED] and running skills among youth and adults in The [REDACTED] Texas area and beyond. We are the official coach for local races such as [REDACTED] [REDACTED] competitions.

We need highly skilled professionals in triathlon such as [the petitioner] to develop the skills of the next generation of American triathletes. With all her abilities, [the petitioner] is an excellent candidate and would be an asset for our company.

[The petitioner] has the desire and intention to make significant contributions to the development of sports in our community. She has the potential to make a positive impact on the development of youth triathletes who would be prepared to represent Texas and the United States.

Ms. [redacted] points the petitioner's skills and abilities as a triathlete, but it is not enough to be a talented athlete and to have others attest to that talent. An individual must have demonstrably impacted her field in order to meet this regulatory criterion. In addition, Ms. [redacted] speculation about the petitioner's "potential to make a positive impact on the development of youth triathletes" is not evidence, and cannot establish eligibility for this regulatory criterion. Eligibility 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).

In her November 19, 2013 letter, [redacted] Pro Athlete Liaison, [redacted] Florida, states:

This is letter to confirm that [the petitioner] has competed as a professional athlete in the [redacted] series since May 2013. The average number of athletes participating in [redacted] events is up to 3000. Prize money distribution varies from Top-5 to Top-8 men and women professional athletes.

[The petitioner] participated and finished 6 [redacted] in the 2013 season. In three of these events, [the petitioner] was awarded with prize money and stood on the podium during the Awards ceremony.

To qualify for the [redacted] pros need to earn points during the Qualifying year and be in top 50 by men and top 35 by women. [The petitioner] ended the 2013 Qualifying year in the position [redacted]

[The petitioner's] probability of continued competing is very good. She is a valued athlete to the [redacted] Series.

In addition, the petitioner submitted a November 12, 2013 letter from Ms. [redacted] inviting the petitioner to "compete in [redacted] Series events in the United States in 2014." Ms. [redacted] states that the petitioner was awarded prize money at three [redacted] races in the 2013 season and that she ended the 2013 Qualifying year in the 45th position. As the petitioner was [redacted] rather than among the top 35 women contenders for the 2013 season, the petitioner did not qualify to compete in the 2013 [redacted] Hawaii. Ms. [redacted] does not explain how the petitioner's failure to qualify for the 2013 [redacted] Championship is indicative of an original contribution of major significance in the field.

██████████ Author and Creator of the ██████████ website and a former ██████████, Canada, states:

[The petitioner] had just turned pro in 2013 and had very quickly realized that she would require financial and moral support if she was to reach her goal of one day qualifying for the ██████████ that take place in ██████████ Hawaii every ██████████

I had no problem engaging in a contract with her and purchasing her a bike for \$3,500 and racing gear with the IronStruck logo for a further \$1000 to help get her started on the right path and I have not regretted it for one moment.

* * *

In 2013 she competed in ██████████ Texas, ██████████ Boise, ██████████ Florida.

In a last ditch effort to qualify for the 2013 ██████████ Hawaii she raced the North American ██████████ Quebec, and ██████████ with just one week of rest in between. I have never seen such determination.

* * *

To complete two of them just seven days apart at the intense pro level is staggering to contemplate and it was an amazing display of courage, determination, athletic ability, and will. What makes it even more amazing is that she finished 12th in the ██████████ North America Championships in ██████████ against some of the best pros in the world and followed that up with a 6th place finish in Whistler just seven days later.

In her very first year she just missed qualifying for the World Championships in Kona.

On November 2, 2013 she raced in ██████████ Florida and began earning points toward the 2014 World Championship. It was her fastest ██████████ finish time by over 40 minutes.

* * *

She may not be the most famous pro triathlete in the world but she is certainly the most courageous and determined I have ever seen

Mr. ██████████ comments on the petitioner's "goal of one day qualifying for the ██████████ World Championships," the assistance that he provided to her, the petitioner's participation in the qualifying series of races, and her determination and courage, but he does not provide specific examples of how the petitioner's work has affected her sport at a level indicative of original contributions of major significance in the field.

In his letter submitted in response to the director's RFE, Mr. ██████████ states:

[The petitioner] enjoys sharing her knowledge with children and to that end will attend and help out at local [REDACTED] events whenever possible.

At a time when fitness is falling by the wayside among many North American children in their crucial formative years, pro athletes can play a huge role in inspiring them to live a fit, healthy lifestyle.

Athletes like [the petitioner] who are given the opportunity to race and train in the USA ensure the integrity and longevity of triathlon and will help perpetuate the sport for years to come and everybody involved comes out ahead.

Mr. [REDACTED] asserts that the petitioner will share her knowledge with children by attending and helping out at local triathlon events, that she will inspire children to live a fit and healthy lifestyle, and that athletes such as the petitioner “will help perpetuate the sport for years to come.” Mr. [REDACTED] however, does not provide specific examples of how the petitioner’s work has already impacted her sport in a major way or otherwise constitutes original contributions of major significance in the field. 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 v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d at 1122. In 2010, the *Kazarian* court reiterated that our conclusion that that petitioner did not meet the contributions criterion was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

[REDACTED] Owner and Director of [REDACTED], Texas, states:

[The petitioner] has extensive education in exercise physiology and has remarkable coaching experience. [The petitioner’s] expertise as a professional triathlete come[s] from her background as a member of the [REDACTED] and has exemplary international race experience which I would like to utilize for the future developments of my business. . . . She currently is placing amongst the top triathletes in the world and is continuing to show great performances at the top level. Her latest being - 1 [REDACTED] - this past November which is a fantastic result.

[The petitioner’s] experience and education working in the area of coaching and developing athletes is in the best interest of my company. We are looking for individuals that can continue to further the training and education of the membership at [REDACTED] and make my company more competitive. [The petitioner] possesses great knowledge of training and racing with international travel; experience which is in demand by the international and professional athletes that are an integral part of my business. While in her stay in the United States, she is volunteering to help me conduct educational seminars in Austin, Texas for the [REDACTED] Membership to further her English public speaking experience. Her extraordinary ability to speak about her professional level race experience will aid with programs/discussions for high level training and racing discussions at [REDACTED]

My interest in [the petitioner] is to invite her to come and work for [REDACTED] and lead the higher education in training and racing programs.

Mr. [REDACTED] comments on the petitioner's educational background, coaching experience, and expertise as a professional triathlete, but does not point to specific examples of how the petitioner's work has influenced her sport at a level indicative of original contributions of major significance in the field. In addition, Mr. [REDACTED] asserts that the petitioner is volunteering to help conduct educational seminars for [REDACTED] Membership which will "further her English public speaking experience" and "aid with programs/discussions for high level training and racing discussions at [REDACTED]". Although Mr. [REDACTED] expresses his interest in having the petitioner work for [REDACTED] as leader of its higher education in training and racing programs, there is no documentary evidence showing that her work for his company equates to original athletic contributions of major significance in the field.

[REDACTED] Senior Vice President of Sales and Marketing for [REDACTED], Texas, states:

In 2014, [the petitioner] is working to qualify for the [REDACTED] World Championships in Hawaii by the [REDACTED]. This is an incredible honor, to have this talent and to be a professional triathlete. Only 35 professional women will be chosen to compete in the 2014 World Championships.

As a business executive, I recognize that [the petitioner] represents a very small niche of elite professional athletes. Having her choose [REDACTED] Texas as her training home, brings inspiration and a tremendous amount of pride to us locally.

Mr. [REDACTED] mentions that the petitioner "is working to qualify for the [REDACTED] World Championships in Hawaii" and that she "represents a very small niche of elite professional athletes," but he does not explain how the petitioner's original work is of major significance to her sport.

[REDACTED] a member of the [REDACTED], Idaho, states:

My husband and I volunteered to house a pro athlete for the [REDACTED] in June of 2013. [The petitioner] stayed with us prior to the event and, due to weather complications in the town she was scheduled to visit next, an additional month after the race.

* * *

Her pursuit of winning even larger international [REDACTED] races are not purely a self serving or a sponsor grabbing venture. [The petitioner] has the unique potential to advance the education platform in athletics, health and science, most specifically for women, in America in a way few others could do.

Ms. [REDACTED] asserts that the petitioner "has the unique potential to advance the education platform in athletics, health and science, most specifically for women," but fails to provide specific examples of how the petitioner's work has already had major significance in the field. Again, speculation about the petitioner's "potential" for advancing the education platform in athletics, health, and science for women is not evidence, and cannot establish eligibility under this regulatory criterion. Eligibility

must be established at the time of filing. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

[REDACTED] a resident of [REDACTED] California who hosted the petitioner at his residence, states:

I have known [the petitioner] since June of 2013. I met her at a [REDACTED] meeting in [REDACTED] Idaho. . . . I agreed to help find a way to get her a competitive bicycle; she has been competing on an old clunker from Ukraine. This stated an interesting relationship.

I invited her and her coach to my home on [REDACTED] and over several weeks got to know her fairly well. [The petitioner's] attributes include strong discipline, honesty and frugality. She is also very intelligent, compassionate, focused and fun. When I asked if she would be willing to share her experiences with the local high school girls cross country team she agreed without hesitation. Thirty minutes sharing her extraordinary story as well as showing the medals she earned just this year in the USA left the team inspired and in awe! [The petitioner] also volunteered to spend a day with the local firemen; they too were truly impressed.

Mr. [REDACTED] comments on the petitioner's personal qualities and willingness to share her experiences with others, but does not point to specific examples of how the petitioner's work was majorly significant to the field.

Dr. [REDACTED] Professor in the Department of Surgery and the [REDACTED] [REDACTED] Texas, states:

I met [the petitioner] through my hobby – I am an [sic] new age group triathlete. [The petitioner] is a [sic] internationally recognized professional triathlete who came to the United States with the goal of qualifying for the [REDACTED] World Championship in Kona. In the long-term, she wishes to coach athletes who wish to achieve success in [REDACTED] and other endurance sports.

[The petitioner] is uniquely qualified to do so with her education, background, innate drive, and personal experience. First, she is an extraordinarily talented endurance [REDACTED] having completed five [REDACTED] events in the last year. . . . In her most recent race, she set a personal record of [REDACTED] minutes – a feat achieved by few in the world. This accomplishment alone speaks to her desire and work ethic. Her record as an amateur [REDACTED] is extensive with multiple top ten finishes in European Championship events.

More importantly, [the petitioner] serves as [an] inspiration to age group [REDACTED] like myself. While she is not my coach, she has shared her experiences and offered advice about training, competition, and mental preparation with me and many other [REDACTED] of all levels since being in the United States. She will make an outstanding coach.

[The petitioner] has clearly demonstrated sustained national or international acclaim in the sport of [REDACTED], with numerous achievements in the sport.

Dr. [REDACTED] comments on the petitioner's coaching qualifications and athletic accomplishments, and mentions that she serves as an inspiration to age group triathletes, but fails to provide specific examples of how the petitioner's work has affected training methodologies in her sport or was otherwise of major significance in the field. In addition, Dr. [REDACTED] asserts that the petitioner has "demonstrated sustained national or international acclaim in the sport of [REDACTED]" 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); *Ayvr Associates, Inc. v. Meissner*, No. 95 civ 10729, 1997 WL 188942 at *1, *5 (S.D.N.Y.).

[REDACTED] Owner and President of [REDACTED] Iowa, states:

I have known [the petitioner] for 4 years. In that time I have watched her develop from a focused athlete racing the world on behalf of her country to now racing professionally as an independent. The level to which she can compete remains on par with the top 1% of all endurance athletes. I can attest to her abilities having been an endurance athlete and coach for the past 11 years.

While [REDACTED] is her chosen sport and profession, she has also made sure to develop her mind. While competing on a world's stage with the elite of elite she has finished her university studies and received her college degree and is now working towards her Ph.D. [The petitioner] not only has her eyes on becoming a champion in triathlon and her profession but also preparing herself to have a future after her racing is done.

A chosen profession in athletics takes heart and desire. To be the best at the highest of levels takes sacrifice. [The petitioner] has all three. I see her abilities only getting stronger and more developed allowing for her to become one of the top triathletes in the world.

Mr. [REDACTED] asserts that petitioner is among the "top 1% of all endurance athletes," but USCIS need not accept primarily conclusory assertions. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. at 15. In addition, Mr. [REDACTED] points to the petitioner's education and competitive aspirations, but there is no documentary evidence showing that the petitioner has impacted her sport at a level indicative of original contributions of major significance in the field.

[REDACTED] Texas, states:

I first met [the petitioner] at the [REDACTED] race in [REDACTED] Texas where I was volunteering. It was her first [REDACTED] race and she finished [REDACTED] among over 600 women. . . . After [REDACTED] Texas she participated in 6 other [REDACTED] races during the season and always showed top level. She has improved her personal best by 40 minutes in the last [REDACTED] event in which she participated in November, and in just 6 month that I have known her which is a great improvement.

[The petitioner] is a well-trained, educated and high[ly] qualified professional athlete who is much needed in the U.S. and our community.

She has made and continues to make significant contributions to the sport[s] community where she lives. With her power, desire and potential she motivates me to be the best I can be as an athlete and person and I also have witnessed both athletes and non-athletes be inspired by her athletic success.

Mr. [REDACTED] mentions the petitioner's improvement as a triathlete, her athletic and educational qualifications, and her "significant contributions to the sport community where she lives," but he does not explain how the petitioner's work has influenced the sport outside of her local community or how she has inspired others at a level indicative of original contributions of major significance in the field.

[REDACTED] a British Immigration Officer from [REDACTED] England and a member of the European Technical Committee of the [REDACTED], states:

I first met [the petitioner] as an athlete when I was the Technical Delegate at a [REDACTED] race. She was one of the few who spoke good English and was of great use to me as a representative of the [REDACTED], which is the governing body of our sport.

In order to race for her country she would have undergone stringent selection and would have had to prove herself stronger, faster and fitter than many other athletes. Her pace in the bike and run is quite impressive as she showed at the European [REDACTED] Championships that were held in [REDACTED] Israel in 2012.

* * *

[The petitioner] has performed strongly in the team relay format, a format that [REDACTED] is keen to bring to the 2020 Olympic Games. Without strong performances such as hers within the team we would not now be in a position to promote this format as well as we currently can.

She was the Under 23 Silver medal winner at the European Championships for the [REDACTED] format in Debrecen in 2005 when I was the Technical Delegate and the silver medal winner in 2008 in [REDACTED] at the World Championships for the same [REDACTED] format. Between 2008 and 2010 she was placed 3rd in the European [REDACTED] rankings. [The petitioner] was a regular participant in the [REDACTED] events but dominated the national events over standard and long distances.

* * *

I have followed [the petitioner's] performances over the longer distances and note, with some degree of satisfaction, that she is posting good times and is acting as a great ambassador for the sport, especially for the participation of women.

Since opting to "go long" [the petitioner] has managed 7 top ten positions under the [REDACTED] and [REDACTED] banners. The [REDACTED] distance and [REDACTED] races do not permit "drafting" or pack riding on the bike and is a far greater demonstration of individual

ability. Her consistency as a “Pro” in the [REDACTED] races shows her talent and from her work in social media it is clear that she is good value to her sponsors.

* * *

[The petitioner] is a sportswoman of the highest calibre. A national champion who has raced internationally for many years and who is still of an age where she has lots to give to the sport and where she can act as inspiration to others. With her linguistic skills working alongside this sporting prowess she would be a great ambassador to the sport.

Mr. [REDACTED] asserts that the petitioner is fluent in English, was helpful as a representative of the [REDACTED] has performed strongly as a competitor, has won various medals, has posted fast times in her events, has served well as an ambassador for the sport, has attained high rankings in Ironman and [REDACTED] races, is valuable to her sponsors, and is a sportswoman of the highest caliber. There is no documentary evidence showing, however, that the field as a whole has somehow changed as a result of her influence or that her work otherwise constitutes athletic contributions of major significance in the field.

The petitioner submitted letters of varying probative value. Some letters are generalized, without identifying specific contributions or their impact in the field, and thus have little probative value. *See 1756, Inc. v. U.S. Att’y Gen.*, 745 F. Supp. at 17); *see also Visinscaia v. Beers*, --- F. Supp. 2d ---, 2013 WL 6571822, at *6 (D.D.C. Dec. 16, 2013) (upholding USCIS’ decision to give limited weight to uncorroborated assertions from practitioners in the field); *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988) (holding that an agency “may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony,” but is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought and “is not required to accept or may give less weight” to evidence that is “in any way questionable”). 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 petitioner’s eligibility. *Id.*

In addition, the petitioner points to the following:

1. An Honorable Award from the Department of Family, Youth, and [REDACTED] Regional State Administration “for high achievements in sport, significant personal contribution to the development of sports movement and for the [REDACTED] [REDACTED] (September 2007);
2. An Award Certificate from the [REDACTED] [REDACTED] “for conscientious work, high professionalism, for winning the [REDACTED] 2012 and for the Day of physical culture and sport”;
3. An Award Certificate from the Department of Family, Youth, and Sports of the [REDACTED] [REDACTED] “for conscientious work, high achievements in sport, and for the [REDACTED] [REDACTED] (September 2006);
4. An Award Certificate from the [REDACTED] [REDACTED] “for significant contribution to the development of physical culture and high sports results in 2006”;

5. An Award Certificate from the [REDACTED] “for high achievements in sport competitions in 2005”;
6. A Diploma from the Department of Family, Youth, and Sports of the [REDACTED] “for high achievements in sport in 2006”;
7. A Diploma from the Department of Family, Youth, and Sports of the [REDACTED] “for high achievements in sport in 2007”;
8. A Merit of the Third Degree medal and certificate from the [REDACTED] (2006);
9. An Award “for sports achievements in 2007” [REDACTED];
10. A [REDACTED] of the Year 2010 award;
11. A [REDACTED] of the Year 2011 award; and
12. A [REDACTED] of the Year 2012 award.

The preceding awards reflect regional recognition and are not sufficient to demonstrate that the petitioner’s work equates to original contributions of major of significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner’s contributions be “of major significance in the field” rather than limited to the region of [REDACTED]. See *Visinscaia*, at *4,*6 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). Furthermore, as previously mentioned, the regulations include a separate criterion for prizes and awards at 8 C.F.R. § 204.5(h)(3)(i), a criterion that the petitioner has already met.

The petitioner also submitted a one-page entry about her in [REDACTED] but the regulations include a separate criterion for published material about the alien at 8 C.F.R. § 204.5(h)(3)(iii). Regardless, the biographical entry does not point to any of the petitioner’s original contributions of major significance in the field.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

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 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 (E.D.N.Y. Sept. 30, 2011) (plaintiff’s claims abandoned when not raised on appeal). 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 director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner points to a November 13, 2013 letter from [REDACTED], Director, [REDACTED], stating: “Due to

her excellent schooling, success at national championships and international triathlon [the petitioner is] honored to be represented in the school museum, opened to the 100th anniversary of the school #6.” In addition, the petitioner submits photographs of a display case at the school that includes pictures of the petitioner and other graduates along with documentation of their achievements. The petitioner’s field, however, is in athletics, not the arts. 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. *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). The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Accordingly, the petitioner has not established that she meets the plain language requirements of this regulatory criterion.

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

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner asserts that she has performed in a leading or critical role for the [REDACTED]. The petitioner points to her international awards and letters of support from teammates, the President of the [REDACTED], the Head Coach of the [REDACTED], the General Secretary of the [REDACTED]. For example, the President of the [REDACTED] states that the petitioner “played a critical role in the selection of the [REDACTED] members.” In addition, the Head Coach of the [REDACTED] comments that the petitioner “played a key role” for the team. Although the preceding evidence sufficiently shows that the petitioner performed in a critical role for the [REDACTED], the petitioner’s awards and the letters of support are not sufficient to demonstrate that she has performed in a leading or critical role for the [REDACTED].

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. The petitioner did not provide an organizational chart or other similar evidence to establish where her role as a representative of the Athletes’ Commission fit within the overall hierarchy of the [REDACTED]. The submitted evidence does not demonstrate how the petitioner’s role set her apart from the other fourteen members of the Presidium of the Federation, let alone top [REDACTED] officers such as the President and General Secretary. The submitted documentation does not differentiate the petitioner from the [REDACTED] officers and Presidium members so as to demonstrate her leading role, and fails establish that she contributed to the federation in a way that was significant to its success or standing as an organization.

With regard to the reputation of the [REDACTED] the letter from [REDACTED] states:

The [REDACTED] which is the governing body, is strictly controlled by the [REDACTED] government and its [REDACTED] and the selection process draws upon athletes from all over the country. Not only are the performances of individual athletes scrutinized but also, in order to race at the highest level, there is a coaching selection board that will select athletes for various races around the world and fund their travel to and participation in those events.

The focus of the [REDACTED] is of course [REDACTED] medals and that leads their athletes initially to the standard distance biathlon that we see at the [REDACTED]

The petitioner also submitted a copy of the [REDACTED] bylaws. The [REDACTED] bylaws reflect rules and regulations enacted by the federation to provide a framework for its operation and management, not evidence of its distinguished reputation in athletics. In addition, the petitioner submitted information from the website of the [REDACTED] listing ‘ [REDACTED] among [REDACTED]’. The preceding information from Mr. [REDACTED] the [REDACTED] bylaws, and the [REDACTED] website is not sufficient to demonstrate that the [REDACTED] has earned a distinguished reputation.

Furthermore, there is no documentary evidence showing that the [REDACTED] has a garnered a distinguished reputation in the sport. Although the petitioner has documented her athletic accomplishments, the record lacks objective documentary evidence showing that the [REDACTED] has achieved eminence or distinction. 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)).

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

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others 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 issue, therefore, is considered abandoned. *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 commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. The director stated that this criterion was “limited to occupations within the performing arts.” On appeal, the petitioner does not contest the director’s findings for this criterion or offer additional arguments. The issue, therefore, is considered abandoned. *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.

B. Summary

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

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.

⁴ The AAO conducts appellate review 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 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).