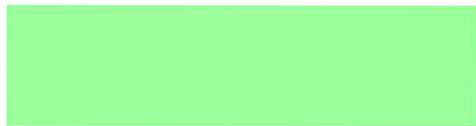




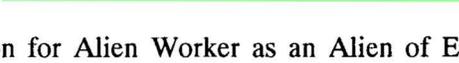
U.S. Citizenship
and Immigration
Services

(b)(6)



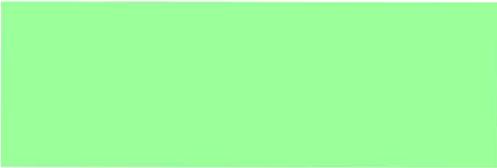
DATE: **OCT 29 2014** OFFICE: TEXAS SERVICE CENTER

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:



INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

Discussion: The Director, Texas Service Center, denied the employment-based immigrant visa petition on June 2, 2014. The petitioner, who is also the beneficiary, appealed the decision with the Administrative Appeals Office (AAO) on July 3, 2014. The appeal will be dismissed.

According to the petition and the accompanying documents, filed on July 26, 2013, the petitioner seeks classification as an alien of extraordinary ability in the athletics, specifically, as a mixed martial arts (MMA) fighter and trainer, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established his sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

On appeal, the petitioner files additional supporting documents, including online materials. For the reasons discussed below, the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3) or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. See 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

I. THE LAW

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

1. Priority workers. – Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
 - (A) Aliens with extraordinary ability. – An alien is described in this subparagraph if –
 - (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

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

The court stated that 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 the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this case, the petitioner has not satisfied the antecedent regulatory requirement of presenting at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, or that he has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

¹ 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 (vi).

II. ANALYSIS

A. Extraordinary Ability as a Trainer/Coach

According to the petition, the petitioner seeks classification as an alien of extraordinary ability as both an MMA fighter/athlete and an MMA trainer/coach. On appeal, the petitioner continues to assert that he “has an extraordinary ability in MMA fighting” and “is also an excellent fight instructor.” As the petitioner claims extraordinary ability in two areas – as an MMA fighter/athlete and an MMA trainer/coach, to meet the basic eligibility requirements, the petitioner must present at least three types of qualifying evidence for at least one of the two areas. *See Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (upholding a finding that competitive athletics and coaching are not within the same area of expertise). According to the petitioner’s initial filing, specifically, the July 25, 2013 letter, the petitioner “desires to continue working as a professional MMA fighter” in the United States. The petitioner has not submitted evidence showing that he seeks to enter the United States to work as an MMA trainer/coach. *See* section 203(b)(1)(A)(ii) of the Act. The petitioner has also not presented at least three types of qualifying evidence relating to his ability as an MMA trainer/coach. Accordingly, the petitioner has not established his eligibility for the exclusive classification sought as an MMA trainer/coach. We will address below whether the petitioner has shown his eligibility for the exclusive classification sought as an MMA fighter/athlete.

B. Translation

In support of his petition, the petitioner has submitted a number of foreign language documents. The petitioner, however, has not submitted English translations that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). The regulation provides, “Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” Although the petitioner has submitted documents purported to be English translations, the petitioner has not submitted a certification from the translator, certifying that the translations are complete or accurate or that the translator is competent to translate the foreign language documents into English. As such, the foreign language documents and their purported English translations do not have any evidentiary weight.

C. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of his one-time achievement that is a major, internationally recognized award at a level similar to that of an Olympic medal or the Nobel Prize. The director concluded that the petitioner has not submitted evidence showing the petitioner’s receipt of a qualifying “one-time achievement.”

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

On appeal, the appellate brief asserts that the petitioner submitted proof of a one-time achievement but does not explain how the [REDACTED] produce a major internationally recognized award.³ 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) citing *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir.1979). As the petitioner has not established that received a major, nationally recognized award, to meet the basic eligibility requirements, as initial evidence, he must present at least three types of qualifying evidence under the regulations as relating to his ability as an MMA fighter/athlete.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On appeal, the petitioner asserts that he meets this criterion because in May and September of 2012, he won the [REDACTED]⁴ and after the filing of the petition, he competed in two fighting events – [REDACTED]

[REDACTED] The petitioner has not shown that he meets this criterion.

First, the petitioner's competitions that postdate the filing of his petition in July 2013 do not establish that he met this criterion at the time of filing. It is well established that the petitioner must demonstrate eligibility for the visa petition at the time of filing. See 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In other words, the petitioner cannot secure a priority date based on the anticipation of future receipt of qualifying awards or prizes under this criterion. See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l Comm'r 1977); *Matter of Izummi*, 22 I&N Dec. 169, 175-76 (Assoc. Comm'r 1998) (adopting *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition.") Moreover, although the evidence the petitioner has submitted on appeal shows that the petitioner won one match in each of the two competitions, the evidence does not show that the petitioner received any prizes or awards as the result of his wins.

Furthermore, the petitioner has not submitted information relating to the reputation or prestige of these two competitions that shows that the petitioner's wins were recognized at either the national or international level, as required under the criterion. For example, the petitioner did not demonstrate that the websites that reported the results of this competition constitute major trade websites that only report the results of nationally recognized matches or that other trade or general media covered the competitions. The [REDACTED] website reports that it is the [REDACTED]

³ Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The selection of Nobel Laureates is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could constitute a one-time achievement without meeting all of those elements, it is apparent from the example Congress provided that the field at the international level must recognize the award as one of the top awards in that field.

⁴ On appeal, the petitioner asserts that he participated in the [REDACTED]. The evidence in the record indicates that he participated in the [REDACTED]

USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). While the website also provides more specific details, such as the number of unique visitors per month (over 9.5 million), the petitioner has not demonstrated that this site reports only the results of nationally recognized matches rather than serving as a comprehensive source for results in all professional matches. The website pages that the petitioner submitted contain links to [REDACTED] suggesting the website is a comprehensive one that covers a multitude of levels of competitions. While [REDACTED] reports on its own site that it receives 1,316 unique visitors per day (far fewer than [REDACTED]), this number says nothing about whether the website limits its listings of results to nationally recognized events.

Second, the petitioner has submitted an uncertified English translation to show he won a match at the May [REDACTED]. As discussed, this English translation has no evidentiary weight because the petitioner has not provided a translation certificate that meets the regulatory requirements under 8 C.F.R. 103.2(b)(3). Moreover, even if we were to consider this English translation, it does not establish that the petitioner has received a qualifying award or prize under this criterion. The English translation provides that the event had a total of 13 matches, and 13 winners, one for each match. The petitioner was one of the 13 winners because he won one of the matches. The petitioner has not submitted evidence showing that he, or the other winners, received any awards or prizes as the result of their win. Furthermore, the petitioner has submitted minimal information about this competition. The uncertified English translation provides, "[REDACTED] stopped to watch the fighting [REDACTED] the public en masse and packed the stands at the [REDACTED]. The fans were a differential of the event, they cheered every blow applied in the Octagon." This description of the event, which lacks information relating to the reputation or prestige of the event, is insufficient to show that the petitioner's win of one match is recognized beyond the event organizer or that it is recognized at the nationally or internationally level.

Similarly, the evidence does not establish that the petitioner's win of one match at the September [REDACTED] constitutes his receipt of a qualifying award or prize under the criterion. The event had a total of eight matches, including a main event match, in which the petitioner did not participate. The event had eight winners, one from each match. The petitioner has not presented evidence that he or any of the other seven winners received any awards or prizes as the result of their win. The petitioner has also not presented sufficient evidence relating to the event's reputation or prestige to show that his win of one match is recognized beyond the event organizer or that it is recognized at the national or international level. According to an uncertified English translation of materials from radarnoticias.com, which has no evidentiary value, "[t]he [REDACTED] will hold its fourth edition in [REDACTED] the event will take place on September 15, 2012, at the [REDACTED] ace [sic] 19 hours, and with the participation of Brazilian and foreign athletes who compete in terms of K1 and MMA." At issue is not that the pool of athletes included Brazilians and non-Brazilians. At issue is whether the petitioner's win of one match in this event is recognized at the national or international level. The petitioner has not made such a showing. Notably, the first

occurred in 2011. The petitioner has not established that the event rose to the level of a nationally or internationally recognized event for all matches by the third and fourth competition.

Finally, the record includes photographs of individuals participating in and promotional materials relating to fighting events and competitions. The petitioner appears to be in at least some of the photographs and promotional materials. The record also includes an uncertified English translation of a competition called indicating that a fighter with the last name won a main event match.⁵ On appeal, the petitioner has not asserted that these photographs, promotional materials, and the win at establish that he meets this criterion. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir.2005); *See Hristov v. Roark*, No. 09-CV-2731, 2011 WL 4711885 at *9 (E.D. N.Y. Sept. 30, 2011).

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

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. 8 C.F.R. § 204.5(h)(3)(ii).

In his decision, the director concluded that the petitioner did not meet this criterion. On appeal, the petitioner has not specifically challenged the director's finding as relating to this criterion. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *See Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner asserts that he meets this criterion because he has submitted materials posted on internet sites and videos posted on . The petitioner asserts that and constitute major media. Specific to , the petitioner asserts it is a major outlet for MMA. The petitioner has not shown that he meets this criterion.

⁵ is not one of the names the petitioner lists on the petition, the Form I-485 Application to Register Permanent Residence or Adjust Status, or the Form G-325A, Biographic Information, which specifically instructs an applicant to list all other names used. The only evidence in the record that the petitioner and Mr. are one and the same is the petitioner's profile on which lists as his fighting name.

First, the petitioner has not shown that materials posted on [REDACTED] and [REDACTED] constitutes published material about the petitioner in major media as relating to his work in field. The petitioner has submitted a [REDACTED] printout entitled "Statistics" as evidence that [REDACTED] constitutes major media. The statistics relate to [REDACTED] as a whole. Videos on this website can be uploaded by anyone who has internet access, and the level of viewership of each video uploaded ranges dramatically. The petitioner has not shown that this website, with these unique characteristics, constitutes "major media," as the term is used in the criterion. Furthermore, the petitioner has not shown that two [REDACTED] links to videos of fights that the petitioner purportedly participated in, without any additional information about the petitioner or his work, constitute "published material about [the petitioner] . . . , relating to [his] work," as the phrase is used in the criterion.

Similarly, the petitioner has not shown that [REDACTED] constitutes major media. As discussed above, according to materials from [REDACTED] the website "receives about 1,316 unique visitors and 24,750 (18.80 per visitor) page views [a] day." The materials further provide that the website's traffic is ranked 211,148 in the world and its google page rank is 0. The petitioner has not shown that these figures are indicative of the website's status as major media. Moreover, the petitioner has not submitted certified English translations for the materials posted on the website. As discussed, the uncertified English translations do not have any evidentiary weight. Furthermore, even if we were to consider the uncertified English translations, they are not materials about the petitioner as relating to his work in the field. Rather, the uncertified English translations describe the [REDACTED] and list the petitioner as one of the event participants.

Second, the petitioner has not shown that [REDACTED] constitutes a professional or major trade publication or other major media. As discussed above, the vague, self-promotional claims on the organization's own website has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10. Moreover, the petitioner has not shown that his profile, posted on the website, is published material about him, relating to his work. The profile includes information relating to the petitioner's physical attributes and his competitive history. The profile does not include information on the author or the date of the profile, which is required under the criterion. Furthermore, materials from this website do not constitute materials about the petitioner as relating to his work in the field. Rather, the information contained in the online materials relate to MMA events, in which the petitioner is listed as one of the many participating fighters. The materials do not provide information relating to the petitioner or his work, other than listing him as an event participant who has won a match. These materials are about the events, not the petitioner. Materials that merely list one's name as an event participant who has won a match are not published materials about the petitioner as relating to his work in the field, as required under the plain language of the criterion.

Finally, the record includes materials from [REDACTED]. On appeal, the petitioner has not asserted that these materials establish that he meets this criterion. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011, 2011 WL 4711885 at *9. Moreover, the materials are posted on a blog and list the petitioner as a competitor in an MMA event without providing additional information about the

petitioner or his work. The petitioner has not shown that the materials from this blog meet this criterion.

Accordingly, the petitioner has not presented published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii).

In his decision, the director concluded that the petitioner did not meet this criterion. On appeal, the petitioner has not specifically challenged the director's finding that this criterion is limited to artistic exhibitions or showcases. Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228; *Hristov*, 2011 WL 4711885 at *9.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, the petitioner asserts that he meets this criterion because he performs a leading or critical role for [REDACTED] a training facility in [REDACTED] Florida. He further asserts that he is a member of the [REDACTED] fighting team, "a phenomenal sparring/training partner" for other MMA fighters and "an excellent fight instructor within the academy." As discussed above, the petitioner has expressed his intention to enter the United States to continue his work as an MMA fighter, not as an MMA trainer/coach.⁶

First, although the petitioner has presented evidence that he is a member of the [REDACTED] fighting team, the petitioner has not presented sufficient evidence relating to the role he has performed for the team, other than being a member, or establishing that his role is critical or leading to the [REDACTED] Academy or to the team. According to [REDACTED] Chief Executive Officer (CEO) and President of the [REDACTED] who has written two letters in support of the petitioner, the petitioner is a competitive MMA fighter and all-around athlete, and he "has dedicated himself to training daily and evolving at [the [REDACTED]]." According to [REDACTED] CEO and President of [REDACTED] the petitioner is "an extremely gifted martial artist." Neither Mr. [REDACTED] nor Mr. [REDACTED] discusses the petitioner's role in the fighting team or provides details on how his role is either leading or critical to the team or to the [REDACTED]. Evidence that the petitioner is a skilled and experienced MMA fighter, without more, is not sufficient to show he meets this criterion. According to [REDACTED] a professional MMA fighter, the petitioner is "a huge part to the professional fight team." Ms. [REDACTED]

⁶ Even if the petitioner has expressed his desire to enter the United States to work as an MMA trainer/coach, he has not established his eligibility for the exclusive classification sought. Specifically, he has not alleged or presented evidence showing that as a MMA trainer/coach, he meets at least three types of qualifying evidence. See 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not shown his eligibility as relating to his ability as an MMA trainer/coach.

does not provide the bases upon which she makes this conclusory statement. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Moreover, 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).

Second, the petitioner has not provided sufficient evidence showing that the [REDACTED] or its fighting team constitutes an organization or establishment that has a distinguished reputation. According to Mr. [REDACTED] the [REDACTED] is "one of the best Mixed Martial Arts academies in the country" and that it "is well-known for its high-profile MMA fighters, such as [REDACTED] who is [the] number one contender for the belt in [the] featherweight division in the [REDACTED], the biggest MMA event in the world. Another world-renowned fighter at [REDACTED] the first Brazilian woman to be contracted by the UFC." The evidence submitted to show that [REDACTED] or its fighting team has a distinguished reputation is from individuals associated with the training facilities and team. Such self-promotional evidence has minimal evidentiary value. *See Braga*, No. CV 06-5105 SJO at 10. The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the training facility or fighting team in major trade publications or major media with a national or international circulation.

Third, the petitioner's other supporting evidence establishes that he is a skilled fighter and an able trainer, but does not establish he meets this criterion. According to Ms. [REDACTED] the petitioner is "a very talented fighter and one of [her] best training partners." According to [REDACTED] a professional MMA fighter, the petitioner "possesses skills that not many Americans possess. [The petitioner] is a black belt in Brazilian Jiu Jitsu and Judo. T[hese are t]wo accomplishments that could take decades to obtain." Mr. [REDACTED] further states that the petitioner has helped him improve as a fighter and that he owes much of his success to having the petitioner as a training partner. According to [REDACTED] a professional MMA fighter, the petitioner "is an extraordinary athlete and has helped [Mr. [REDACTED]] very much with [his] training and to prepare for [his] last fight." According to [REDACTED] CEO of [REDACTED] an amateur MMA organization in Florida, the petitioner is "someone that carries himself with the confidence that only someone who had dedicated their [sic] whole lives to a martial art could." Mr. [REDACTED] further provides that the petitioner "is often the first one in the gym and the last one to leave, making sure to help in any way he can in the meantime, whether it is instructing new students, helping clean the mats and cage, or working on his English with new friends." Although these letters shows that the petitioner is a skilled and experienced MMA fighter who has also helped in the training of other MMA fighters, they do not show that the petitioner, as an MMA fighter, has performed a leading or critical role for [REDACTED] or its fighting team.

Fourth, at least two of the letters provided on the petitioner's behalf contain identical language or virtually the same language when describing the petitioner's achievements and abilities, suggesting

the language in the letters is not the authors' own. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge's adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. United States Dep't of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Mr. [REDACTED] provides in his March 20, 2013 letter:

I have known [the petitioner] for some time now and he has dedicated himself to training daily and evolving at our academy. Every time he comes to train I am taken aback by how humble and hardworking [the petitioner] is, despite all of his accomplishments. Not only is [the petitioner] a successful material artist, he is also friendly, responsible and smart. [The petitioner] is an asset to the community, bringing not only his talent, but also his dedication, his patience, and his kind-hearted nature.

Mr. [REDACTED] provides in his October 30, 2013 letter:

I have known [the petitioner] for some time now. He has dedicated himself to daily and vigorous training at my academy. Every day that he comes to train I am take [sic] aback by how humble and hardworking [the petitioner] is, despite all of him [sic] accomplishments. Not only is [the petitioner] a successful martial artist, he is also friendly, responsible and intelligent. [The petitioner] is an asset to the community, bringing not only him [sic] talent, but also him [sic] dedication, him [sic] patience and him [sic] Kind-hearted nature.

The virtually identical language in both of these letters suggests that the language in the letters is not the authors' own.

Accordingly, the petitioner has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. 8 C.F.R. § 204.5(h)(3)(viii).

D. Summary

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

III. CONCLUSION

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

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor,” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While 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.⁷ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁷ We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep’t of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).