



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 12 2015**

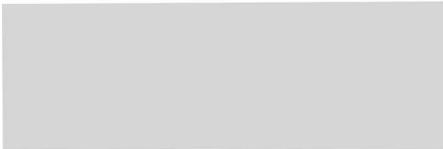
FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE: Petitioner: [REDACTED]
 Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to beneficiaries who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief and previously submitted documentary evidence. For the reasons discussed below, we agree that the petitioner has not established the beneficiary’s 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 the beneficiary is one of the small percentage who are at the very top in the field of endeavor, and that the beneficiary 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. LAW

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

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

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

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

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

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary’s sustained acclaim and the recognition of the beneficiary’s achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Previously Approved Nonimmigrant Petitions

The petitioner asserts the director did not give sufficient weight to the beneficiary’s previously approved nonimmigrant petitions. USCIS has approved O-1 and P-1 nonimmigrant visa petitions filed on behalf of the beneficiary. The director concluded that the prior P-1 approvals do not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. The director noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). The director then stated that USCIS is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm’r 1988). Finally, the director asserted that USCIS need not treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

On appeal, the petitioner characterizes the director's analysis as disingenuous given the multiple prior approvals and the director's failure to address the prior O-1 with the same petitioner. We do not read the director's decision as concluding that the prior approvals were necessarily in error. With respect to the P-1s, the prior approvals do not preclude USCIS from denying the current immigrant visa petition. The regulatory requirements for the immigrant visa classification the petitioner seeks on behalf of the beneficiary and the P-1 nonimmigrant visa are significantly different. The regulation at 8 C.F.R. § 214.2(p)(4)(i)(B) provides that "[a] person who is a member of an internationally recognized entertainment group . . . may be granted P-1 classification based on that relationship . . ." The regulation further defines "internationally recognized" to mean "having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country." 8 C.F.R. § 214.2(p)(3). The regulation relating to the immigrant classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as "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." As such, the beneficiary's approval for a nonimmigrant visa as a member of an internationally recognized entertainment group under the standard of "having a high level of achievement . . . substantially above that ordinarily encountered" is insufficient to demonstrate his individual eligibility for an "extraordinary ability" immigrant visa as a coach. While the O-1 nonimmigrant standards are more similar to the classification the petitioner now seeks on behalf of the beneficiary, we agree with the director that the prior approval of the similarly phrased nonimmigrant visa does not require us to approve the immigrant visa. See, e.g., *Q Data Consulting, Inc.*, 293 F. Supp. 2d at 25; *IKEA US*, 48 F. Supp. 2d at 22; *Fedin Brothers Co. Ltd.*, 724 F. Supp. at 1103.

B. Issues on Appeal

The issue of whether the beneficiary qualifies as an alien of extraordinary ability as either a coach or an athlete through direct or comparable evidence pursuant to 8 C.F.R. § 204.5(h)(3), (4), is a separate question from whether he seeks to work in the United States within his area of expertise pursuant to 8 C.F.R. § 204.5(h)(5). As such, our analysis will address the following questions:

- Whether the petitioner has demonstrated that the beneficiary can satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(i) through (x) as either a coach or as an athlete;
- Whether the petitioner has demonstrated that the standards at 8 C.F.R. § 204.5(h)(3)(i) through (x) do not readily apply to the beneficiary's occupation, which would enable the beneficiary to rely on comparable evidence according to 8 C.F.R. § 204.5(h)(4);
- Whether the petitioner has submitted evidence that is comparable pursuant to 8 C.F.R. § 204.5(h)(4); and
- Whether the petitioner has demonstrated that the beneficiary is coming to the United States to continue work in the area of expertise pursuant to 8 C.F.R. § 204.5(h)(5).

An athlete who is now coaching a sport is discussed within two USCIS policies. The petitioner cites to an administrative AAO decision in support of its position relating to a nexus between the beneficiary's athletic and coaching record. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are

binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Nevertheless, Chapter 22.2(i)(1)(C) of the USCIS Adjudicator's Field Manual (AFM), which pertains to an extraordinary athlete who asserts that coaching is within his area of expertise, provides similar analysis, stating:

In general, if a beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching/managing at a national level, adjudicators can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the beneficiary's area of expertise.

This passage allows that if the petitioner first demonstrates that the beneficiary is eligible as an extraordinary athlete (under 8 C.F.R. § 204.5(h)(3) or (4) with evidence indicative of recent acclaim), and the beneficiary is coaching national or international-level competitors, then USCIS may find that the beneficiary is an alien of extraordinary ability whose area of expertise includes coaching under 8 C.F.R. § 204.5(h)(5).

C. Analysis

1. Evidentiary Criteria¹

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the beneficiary is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or awards are nationally or internationally recognized.

Within the director's decision, he first noted that the beneficiary's awards were all as a competitor rather than a coach. The petitioner does not contest that finding on appeal. The director then listed the beneficiary's achievements relating to this criterion and questioned whether a second or third place finish constitutes a prize or award. The director further concluded that titles are not prizes or awards and concluded that the supporting evidence did not establish that any of the honors were nationally or internationally recognized. On appeal, the petitioner asserts that the director failed to take into account that "Russia has been widely acknowledged for decades among the world leaders and innovators in the complex sport of international gymnastics and acrobatics" and is "one of the world's largest countries, which further underscores the significance of [the beneficiary's] achievements."

We withdraw the director's implication that the beneficiary's placements in competitions do not qualify as prizes or awards, as second and third place finishes in athletic competitions generally result in a silver

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

or bronze medal. We view such achievements as potentially qualifying evidence under this criterion. With respect to the assertion on appeal, however, that the reputation and size of Russia demonstrate the significance of the beneficiary's awards, these factors do not demonstrate that every gymnastic or acrobatic award at each competition in Russia is nationally or internationally recognized. It is the petitioner's burden to demonstrate that the specific awards the beneficiary won are nationally or internationally recognized.

The petitioner does not contest that the beneficiary's Master of Sports title is not a prize or award. Several of the beneficiary's remaining certificates are from the [redacted] region or city and the State [redacted]. The record contains no evidence that these prizes are either nationally or internationally recognized. The record also contains certificates from the Armed Forces of the Russian Federation and the Championship of Russia. Finally, the petitioner submitted evidence of the beneficiary's first place team finish at the [redacted] identified as an international tournament. The petitioner submitted evidence pertaining to the Honorable Master of Sports of Russia title and the [redacted] which the [redacted], an affiliate of the [redacted], sponsors. While the beneficiary's sports title is not qualifying itself, the requirements for receiving that title are relevant to the significance of the beneficiary's awards.

The record contains a document from an unidentified source entitled [redacted]. The latter document states that the tournament "is the only international acrobatic gymnastics competition in [the] Russian Federation" and allows participants to "acquire a title of Master of Sports on the international level." As the petitioner has not provided the source of this material, it has little evidentiary value. On appeal, the petitioner submits a brief article about the [redacted] posted on [redacted] website characterizing the participants as "truly the best of the best" and noting that "[m]any World Champions and Medalists are gracing the white and red competition floor."

The regulations for granting the Honorable Master of Sport of Russia title indicate that the qualifying score is 150 points. A first place team finish in a European cup is 35 points, a first place finish at a Russian championship is 15 points, and there are no points for second and third place finishes in Russian championship events. Accordingly, the record does not establish that the beneficiary accumulated 150 points. Thus, the petitioner has not established that the beneficiary's Master of Sport of Russian Acrobatics is the same title as the one for which the petitioner provided the regulations, the Honorable Master of Sport of Russia. Without evidence that the regulations pertain to the beneficiary's title, they do not establish the significance of the beneficiary's achievements that resulted in his title.

In light of the above, the most probative evidence the petitioner has submitted to document the significance of the beneficiary's awards consists of the [redacted] coverage of the [redacted]. The record does not establish the significance of coverage on this website. For example, the petitioner has not established whether the website covers all [redacted] sanctioned competitions at any level or just a select group of elite tournaments. The broad assertions regarding the caliber of the participants in 2010 are insufficient to establish that the awards at this competition in 2002 were nationally or internationally

recognized. Accordingly, the petitioner has not established that the beneficiary meets this criterion as either a coach or an athlete.

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

The director's RFE offered the petitioner an opportunity to clarify whether it was submitting evidence relating to this criterion. The petitioner's response did not expressly address this criterion and the director's final decision did not discuss it. On appeal, the petitioner asserts only that the director did not give sufficient weight to the beneficiary's membership on the [REDACTED] or the "rigorous selection process" of [REDACTED].

This criterion contains several evidentiary elements the petitioner must satisfy. First, the petitioner must demonstrate that the beneficiary is a member of an association in his field. Second, the petitioner must demonstrate both of the following: (1) that the associations utilize nationally or internationally recognized experts to judge the achievements of prospective members to determine if the achievements are outstanding, and (2) that the associations use this outstanding determination as a condition of eligibility for prospective membership. It is insufficient for the petitioner to indicate that the beneficiary was admitted to the association because of his outstanding achievements; the petitioner must show that the association requires outstanding achievements of all prospective members. Finally, employment, even in a competitive field, is not a membership in an association.

Regarding the [REDACTED] the petitioner did not submit evidence that establishes that membership with this organization meets the plain language requirements of this criterion. First, the petitioner has not documented the beneficiary's membership on the national team. While the beneficiary did compete internationally, the petitioner did not document how many Russian athletes competed at the [REDACTED] or whether they constituted a single national team for the team event. Not every athlete who competes at an international event undergoes the type of national selection process that occurs for major international competitions such as the Olympics. Without evidence documenting the selection criteria for Russians competing at the [REDACTED] the petitioner has not established that the beneficiary was a member of a national team that requires outstanding achievements of its members.

Regarding the beneficiary's employment with [REDACTED] within the RFE, the director informed the petitioner that employment does not constitute membership in an organization. The petitioner did not offer any rebuttal to this determination by the director within the RFE response or on appeal. The evidence the petitioner submitted is an unsigned employment letter the petitioner filed with the petition, a second letter in response to the RFE, and media related documents from [REDACTED].

The unsigned May 17, 2012 lists the dates of the beneficiary's positions within the organization. The August 29, 2014 letter from [REDACTED], Artistic Director at [REDACTED] asserts that recruiters search for exceptional artists to employ, but does not discuss any level of membership within the

company. As stated above, employment with an organization, even a distinguished, competitive one, does not constitute membership in accordance with the regulation at 8 C.F.R. § 204.5(h)(3)(ii). As such, the petitioner has not established a qualifying membership with [REDACTED].

In light of the above, the petitioner has not satisfied this criterion's requirements through the beneficiary's accomplishments as a coach or an athlete.

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

This criterion contains multiple evidentiary requirements the petitioner must satisfy. First, the published material must be about the beneficiary and the contents must relate to the beneficiary's work in the field under which he seeks classification as an immigrant. The published material must also appear in professional or major trade publications or other major media. Professional or major trade publications are intended for experts in the field or in the industry. To qualify as other major media, the publication should have significant national or international distribution and be published in a predominant national language.

The director found that the petitioner did not satisfy this criterion. The published material on record relating to the beneficiary's work as a coach appears in the [REDACTED] newspaper and on its website. The director noted that the petitioner has not submitted evidence to establish the newspaper's circulation statistics are high relative to other similar forms of media; nor did it submit evidence demonstrating high levels of Internet traffic associated with the publication's website as compared to other forms of web-based news outlets. The petitioner does not specifically contest this conclusion on appeal and the record supports the director's determination.

With respect to the beneficiary's achievements as an athlete, on appeal, the petitioner references the beneficiary's appearances as a member of [REDACTED] performers on [REDACTED] and on the [REDACTED]. The record lacks evidence demonstrating that an appearance on either of these venues was about the beneficiary and related to his work. Instead, the evidence reflects that these appearances were about [REDACTED]. See generally *Negro-Plumpe v. Okin*, 2008 WL 10697512, *3 (D. Nev. 2008) (upholding a finding that articles about a show are not about the actor).

In light of the above, the petitioner has not documented that the beneficiary meets this criterion either as a coach or an athlete.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. Qualifying contributions must be original and have already been realized rather than being

potential, future contributions. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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). Contributions of major significance connotes that the beneficiary’s work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136.

The petitioner initially asserted that the evidence of the accomplishments of the beneficiary’s students and reference letters were sufficient to meet this criterion. The director’s RFE requested that the petitioner provide more detailed evidence to demonstrate that the beneficiary meets the requirements of this criterion. The petitioner’s response discussed the beneficiary’s achievements as a coach and athlete but did specifically assert that those achievements constitute contributions of major significance; rather, the petitioner focused on how the letters established the beneficiary’s stature within the gymnastics community. The director determined that the petitioner did not meet the requirements of this criterion concluding that the letters focused on the beneficiary’s various roles rather than explaining how his work has been either original or of major significance in the field.

On appeal, the petitioner states that the beneficiary “has a sustained record of significant contributions in his field throughout his lengthy career in the U.S. and internationally as a competitive athlete, coach, and performer on behalf of major prestigious organizations.” While the petitioner indicates the performance of the beneficiary’s students both in his home country and in the United States constitutes a “record of significant contributions in his field,” he has not explained how the performance of those the beneficiary has coached has made a significant impact in the field as a whole. Regardless of the field, the plain language of the phrase “contributions of major significance in the field” requires evidence of an impact beyond one’s employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (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). We will discuss the accomplishments of the beneficiary’s students in this context.

Initially, the petitioner submitted letters from three Russian athletes who discuss the beneficiary’s role in their accomplishments. [REDACTED] explains that he won junior and senior division Russian Championships in [REDACTED] and [REDACTED], a European Championship in [REDACTED] the [REDACTED] and a prize at the [REDACTED] World Games. [REDACTED] explains that the beneficiary competed with him and served as his assistant coach in [REDACTED]. The petitioner submits [REDACTED] results for a [REDACTED] event, when he was not under the beneficiary’s tutelage.

[REDACTED] indicates that he won junior and adult Russian championships in [REDACTED] and [REDACTED] a European Championship in [REDACTED] the [REDACTED] Russian prizes in [REDACTED] and was runner up at the [REDACTED] World Games. [REDACTED] affirms that the beneficiary was the assistant coach of [REDACTED] entire team in [REDACTED]. The petitioner submitted [REDACTED] results for [REDACTED] after the beneficiary’s time as assistant coach.

The third athlete, [REDACTED] explains that the beneficiary was his partner and a sportsman instructor acting in the role of trainer. [REDACTED] lists similar awards to those [REDACTED] and [REDACTED] include in their letters, including the Russian Championship in [REDACTED]. The petitioner did not provide any results for [REDACTED].

The petitioner did not provide evidence of the actual [REDACTED] awards received while working with the beneficiary. While the petitioner did submit the beneficiary's [REDACTED] team award, it does not list his teammates. Moreover, the beneficiary's work record book reflects that he worked as sportsman-instructor starting in [REDACTED] and as a coach as of September [REDACTED]. Accordingly, the petitioner has not established that the beneficiary's students won awards in [REDACTED] or that he was their principal coach leading up to the [REDACTED] tournament.

Relating to the beneficiary's work in the United States, the petitioner provides photographs of the prizes or awards of the beneficiary's students. At issue is whether the petitioner demonstrated the awards of the beneficiary's students are at a level such that coaching students to reach that level may be considered a contribution of major significance in the field as a whole. The petitioner submitted photographs and materials from its own website reflecting second place level five finishes for the petitioner's team at the state level and a third place finish at a regional event. One of the beneficiary's students, [REDACTED] ranked first in a state meet in [REDACTED] and another student, [REDACTED] ranked fourth. This evidence demonstrates that the petitioner's level five team is successful and the beneficiary is a successful coach of young gymnasts. The petitioner has not, however, established that coaching 10 and 11 year old students to succeed at the state and regional level is original or of major significance in the field of coaching.

The petitioner also indicates that the letters from leading gymnastics coaches and professionals confirm his sustained international standing as an athlete of extraordinary ability and attest to his original contributions to gymnastics. The letter from [REDACTED] Vice President of Program at [REDACTED] does not describe how the beneficiary's coaching accomplishments are original or how he has impacted the field. Instead, she indicates the beneficiary is an asset to their program and explains how admitting the beneficiary as a permanent resident would benefit the United States.

In response to the director's RFE, the petitioner submitted new letters for consideration under this criterion. The letter from [REDACTED] Assistant Coach of Men's Gymnastics at the [REDACTED] indicates that there is a shortage of professional men's gymnastics coaches in the United States, which negatively impacts the United States' ability to compete at a high level internationally. Assuming the beneficiary's coaching skills are unique, the issue properly falls under the jurisdiction of the Department of Labor through the employment certification process. Section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A); 22 C.F.R. § 656.1(a)(1). It is not enough to be skillful and knowledgeable and to have others attest to those talents. The petitioner must demonstrate the beneficiary's impact in his field in order to meet this regulatory criterion. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. [REDACTED] however, does not describe the manner in which the beneficiary has already contributed to the field such that he has influenced the field as a whole. Although the petitioner also submitted letters from an Olympic gold medalist and a

correspondent for an international gymnastics magazine, neither letter identifies the beneficiary's contributions in the field that are of major significance.

It is not sufficient for the beneficiary to coach a well-trained team, or have mastered the methodologies in developing young athletes. To meet this criterion, the petitioner must show that the beneficiary has made a significant impact within the field. The record lacks evidence of such an impact, such as documentation that the beneficiary has developed new training methods, or new gymnastics maneuvers that have propelled his students in the national or international rankings.

Vague, solicited letters from local colleagues that do not specifically identify 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 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion that "letters from physics professors attesting to [the beneficiary's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); *see also Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. at 1136.

The opinions of experts in the field are not without weight and have been considered. While such letters can provide important details about the beneficiary's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS is ultimately responsible for making the final determination regarding the beneficiary's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the beneficiary's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also 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)). *See also Visinscaia*, 4 F.Supp.3d at 134-35 (concluding that USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field was not arbitrary and capricious).

For the reasons discussed above, the petitioner has not demonstrated that the beneficiary's accomplishments are original or that they have impacted the field at a level consistent with a

contribution of major significance. Consequently, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

A leading role should be apparent by its position in the overall organizational hierarchy and the role's matching duties. A critical role is one where the beneficiary has notably impacted the activities of the organization or establishment. The beneficiary's performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster's online dictionary defines distinguished as, "marked by eminence, distinction, or excellence."² Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893).

Regarding the beneficiary's leading or critical roles as a coach, the petitioner relies on the beneficiary's work with the [REDACTED]

[REDACTED] where the beneficiary was a student, a sportsman-instructor, and, subsequently, a coach from September 2002 to June 2003. The petitioner initially submitted a foreign language letter and English translation from this organization's Director, [REDACTED]. [REDACTED] indicates the requirements for a coach are: (1) an outstanding career as an athlete; (2) a title of Master of Sports of Russia; (3) an advanced degree in sports education; and (4) a minimum of three years of experience. While [REDACTED] asserts that the staff was "delighted" when the beneficiary accepted a position at the school, [REDACTED] does not explain where the beneficiary fit within the entity's overall hierarchy or how, during the nine months he worked as a coach, he impacted the school. As discussed above, the petitioner has not demonstrated that the beneficiary was the coach for a Russian athlete who competed successfully at the national level while primarily under the beneficiary's tutelage.

The petitioner also asserted the beneficiary's eligibility based on his coaching at the [REDACTED]. The only evidence relating to this institution is a mention of it in the petitioner's letter submitted with the petition and in the beneficiary's official work record. Neither form of evidence establishes the nature of the role the beneficiary performed for this institution beyond providing the title, "Coach - Teacher." As the record does not document the number of coaches at the organization, how the beneficiary fit within the company's overall hierarchy, or his ultimate impact while there, the petitioner has not satisfied the plain language requirements of this criterion with respect to [REDACTED].

On appeal, the petitioner asserts that the beneficiary's athletic leading or critical roles include his position with [REDACTED], the [REDACTED],

² See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on August 11, 2015, and incorporated into the record of proceeding.

in addition to mentioning the Master of Sport designation and the significance of the [REDACTED]. The petitioner does not explain how the beneficiary's title and performance at a tournament demonstrate a specific leading or critical role for an organization or establishment.

[REDACTED] indicates the beneficiary started attending the municipal institution at the age of six and performed for many years at the national and international level. [REDACTED] does not further describe the role the beneficiary performed for this organization as an athlete. Successfully competing as one of several student athletes while attending a sports school that routinely prepares students for national and international competitions is not a leading or critical role for the school.

Regarding the beneficiary's role at [REDACTED], the petitioner initially submitted an employment history letter dated May 17, 2012 that lists the jobs the beneficiary has held with the company and does not discuss any leading or critical role the beneficiary performed for the organization. The petitioner also provided evidence relating to the beneficiary's nonimmigrant petitions approved on behalf of [REDACTED], in addition to the organization's advertising materials containing general information about the beneficiary, and other information associated with this organization. The petitioner responded to the director's RFE with the letter from [REDACTED] the Artistic Director at [REDACTED]. [REDACTED] discusses the competitive standards to be hired to work for [REDACTED], and describes the beneficiary's role as part of the opening and closing act. He also confirms the skills and experience needed to perform in the beneficiary's positions of a charivari and teeterboard member of the troupe. [REDACTED] does not explain how the beneficiary's role differentiated him from the numerous other performers working for [REDACTED]. [REDACTED] concludes the beneficiary is passionate about transferring his knowledge to others. [REDACTED] does not, however, indicate how the beneficiary fit within the overall hierarchy of his [REDACTED] troupe or the beneficiary's impact on the organization.

In light of the above, the petitioner has not satisfied the requirements of this criterion through the beneficiary's achievements as a coach or as an athlete.

Summary

The petitioner has not satisfied the antecedent regulatory requirement of meeting three of the criteria as a coach or an athlete.

2. Comparable Evidence

Within the initial filing brief, the petitioner indicates "the awards won by him are the medals won by the athletes he coached . . ." Within the RFE response, the petitioner describes the awards won by those the beneficiary coached as "comparable to a prize awarding national or international recognition." On appeal, the petitioner states that the director failed to consider such awards under the comparable evidence provision at 8 C.F.R. § 204.5(h)(4). Although the RFE response does allude to a coach being credited with his athlete's awards as comparable evidence, the director did not address this issue within his decision.

The petitioner asserts that evidence relating to the beneficiary as a coach, based on his student's achievements, is qualifying comparable evidence. The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i) – (x) do not readily apply to his occupation and states: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." Further, the Adjudicator's Field Manual (AFM) at Chapter 22.2(i)(1)(A) provides in pertinent part:

The petitioner should explain clearly why it has not submitted evidence that would satisfy at least three of the criteria set forth in 8 CFR 204.5(h)(3) as well as why the evidence it has submitted is "comparable" to that required under 8 CFR 204.5(h)(3).

It is the petitioner's burden to explain why certain regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x). As the petitioner has not attempted to demonstrate that certain regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x) do not readily apply to the beneficiary's occupation, the petitioner may not rely on comparable evidence to qualify for this immigrant classification.

Regardless, if the petitioner had demonstrated the eligibility to rely on comparable evidence, it would still not satisfy the prizes or awards criterion with comparable evidence. For the petitioner to establish the awards of the beneficiary's students are comparable to the prizes or awards criterion at 8 C.F.R. § 204.5(h)(3)(i), it must also document that the student awards are nationally or internationally recognized and that the students won the awards while primarily under the beneficiary's tutelage. For the reasons discussed above under the contributions criterion, the petitioner has not demonstrated that the beneficiary's students have won nationally or internationally recognized prizes or awards while primarily under his tutelage.

3. Continuing in the Area of Expertise

The petitioner indicates that the beneficiary should be able to claim coaching as his area of expertise based partly on his achievements as a competitor, and partly on the performance of those he coaches. In order to reach the issue of whether the beneficiary has satisfied the requirements at 8 C.F.R. § 204.5(h)(5), the petitioner must demonstrate either (1) that the beneficiary qualifies under the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) as a coach, or (2) that he qualifies with recent acclaim as an athlete or as a competitor and coaches at the national level. *See* AFM Chapter 22.2(i)(1)(C). The petitioner, however, did not submit probative evidence that the beneficiary qualifies for the classification as a coach or as a competitor. Consequently, we do not need to reach the issue of whether the beneficiary is coaching at the national level. Nevertheless, the beneficiary is coaching level five students that have competed regionally. The petitioner has not demonstrated that the beneficiary's students have competed at the national level while primarily under his tutelage.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the beneficiary has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her 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. As the petitioner has not done so, the proper conclusion is that the petitioner has not satisfied the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.³

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. at 128. Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

³ 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).