



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

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DATE: NOV. 17, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a martial arts fighter, seeks classification as an “alien of extraordinary ability” in athletics. *See* Immigration and Nationality Act (the Act) § 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). The Director, Texas Service Center, denied the petition. The Petitioner filed motions to reopen and reconsider which the Director dismissed. The matter is now before us on appeal. The appeal will be dismissed.

The classification the Petitioner seeks makes visas available to foreign nationals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. In an affidavit accompanying the petition, the Petitioner asserts that he intends to compete in kickboxing and other forms of martial arts in the United States.<sup>1</sup> 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. Although the Director found that the Petitioner had met the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) and (iv), the Director determined that the Petitioner had not met any of the remaining regulatory criteria or demonstrated a one-time achievement.

On appeal, the Petitioner submits a brief and additional evidence. In the brief, the Petitioner asserts that he submitted documentation of a one-time achievement and that he also meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii) and (v). We agree with the Petitioner that the standard of proof in this matter is “preponderance of the evidence.” The “preponderance of the evidence” standard, however, does not relieve the Petitioner from satisfying the basic evidentiary requirements of the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he or she is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. In the present matter, the documentation submitted does not demonstrate by a preponderance of the evidence that the Petitioner meets at least

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<sup>1</sup> According to information in Part 3 of the Form I-140, Immigrant Petition for Alien Worker, the Petitioner was last admitted to the United States on February 12, 2014, as a B-2 nonimmigrant visitor for pleasure.

three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), and, therefore, that he satisfies the regulatory requirement of three categories of evidence.

## I. LAW

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> 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 has 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 sustained acclaim and the recognition of his achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

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at 376 (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. One-time Achievement

The regulation at 8 C.F.R. § 204.5(h)(3) states that a petitioner may submit evidence of a one-time achievement that is a major, internationally recognized award. On appeal, the Petitioner asserts that his [REDACTED] for [REDACTED] in the middleweight division at the [REDACTED] [REDACTED] and [REDACTED] his [REDACTED] and certificate for [REDACTED] in the [REDACTED] category at the [REDACTED] [REDACTED]; his [REDACTED] and certificate issued by the [REDACTED] for [REDACTED] in the [REDACTED] category at the [REDACTED] [REDACTED] and his [REDACTED] medal and certificate for first place in the [REDACTED] contact category at the [REDACTED] [REDACTED] are major, internationally recognized awards.

With regard to the Petitioner’s [REDACTED] in the middleweight division at the [REDACTED] [REDACTED] the Petitioner initially submitted a participation certificate from the event signed by [REDACTED] [REDACTED] and [REDACTED] a photograph of himself with his medal and certificate, the Petitioner’s identification card from the event, tournament registration information from the [REDACTED] and a list of the [REDACTED] adult male tournament participants organized by weight class. The aforementioned documentation, however, does not demonstrate international import of the tournament or establish that medals from the competition are recognized beyond the participants and organizers of the [REDACTED] event at a level commensurate with major, internationally recognized awards. According to the list of tournament participants, only [REDACTED] other contenders fought in the [REDACTED] [REDACTED] in which the Petitioner competed. The Petitioner has not shown that placing [REDACTED] among a small pool of amateur division contenders is indicative of international recognition in the martial arts. For example, there is no documentary evidence showing that the contenders in the Petitioner’s division underwent a rigorous international selection process in order to compete in the tournament.

In response to the Director’s request for evidence (RFE), the Petitioner submitted information about the [REDACTED] printed from its website and *Wikipedia*, but the online material does not demonstrate the international recognition of the [REDACTED] [REDACTED] or establish the significance of its awards. In addition, the Petitioner provided information about [REDACTED] founders [REDACTED] [REDACTED] from *Wikipedia*, the [REDACTED] website, [REDACTED] [REDACTED] With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site. *See Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). *Wikipedia* is

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subject to a disclaimer explaining that the website “allows anyone with an Internet connection to alter its content” and that its content has not “necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here.” The disclaimer further explains that the “content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.” See [http://en.wikipedia.org/wiki/Wikipedia:General\\_disclaimer](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on October 23, 2015, copy incorporated into the record of proceeding. Accordingly, we will not assign weight to information for which *Wikipedia* is the source. Regardless, the information about [REDACTED] activities does not demonstrate that awards from the [REDACTED] and [REDACTED] are major, internationally recognized awards.

The Petitioner also provided hotel information from the [REDACTED] website for the [REDACTED] [REDACTED] reflecting that the organizers reserved a block of hotel rooms at the [REDACTED] in Florida. While the Petitioner submitted information about the reputation of the [REDACTED] its reputation as a desirable vacation destination does not automatically demonstrate that every sporting event it hosts is internationally recognized. The information provided states that the fighters would compete in the hotel’s [REDACTED] but there is no evidence showing that the Petitioner’s fight attracted a substantial audience, received a significant amount of international media coverage, or was otherwise internationally recognized. In addition, although the Petitioner provided the [REDACTED] “Pro” and “Amateur” title requirements from the [REDACTED] website, there is no indication that he fought in a continental, intercontinental, or world title bout at the [REDACTED]. Furthermore, even if the Petitioner had competed in an [REDACTED] title bout, there is no evidence demonstrating that such titles are major, internationally recognized awards.

Given Congress’ intent to restrict this visa category to “that small percentage of individuals who have risen to the very top of their field of endeavor,” the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. Congress’ example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, 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. Although an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the petitioner’s field as one of the top awards in that field. In the present matter, the submitted evidence does not establish that the Petitioner’s [REDACTED] in the middleweight division at the [REDACTED] [REDACTED] is a major, internationally recognized award.

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With respect to the Petitioner's [redacted] and certificate for [redacted] in the [redacted] [redacted] category at the [redacted] his medal and certificate issued by the [redacted] category at the [redacted] and his [redacted] and certificate for first place in the [redacted] the Petitioner did not provide any supporting documentary evidence demonstrating that his [redacted] are major, internationally recognized awards. Although the Petitioner submitted a list of the [redacted] European Members" from the [redacted] Europe website, there is no information about the Petitioner's award from the [redacted] Regarding the Petitioner's assertion that the aforementioned awards are major and internationally recognized, USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications).

In light of the above, the Petitioner has not demonstrated a qualifying one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

#### B. Evidentiary Criteria<sup>2</sup>

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

The Director determined that the Petitioner established eligibility for this criterion. For the reasons outlined below, a review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence showing that he meets the plain language of this criterion and the Director's determination on this issue will be withdrawn. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The evidence pertaining to the Petitioner's [redacted] in the middleweight division at the [redacted] his [redacted] and certificate for first place in the [redacted] at the [redacted] ; his [redacted] and certificate issued by the [redacted] for [redacted] in the [redacted] at the [redacted] and his [redacted] and certificate for [redacted] in the [redacted] has already been discussed in part A above. As previously mentioned, there is no documentary evidence showing that the Petitioner's awards are internationally recognized in the martial arts field. Furthermore, the Petitioner has not demonstrated that the aforementioned medals and certificates are nationally recognized awards for excellence in

<sup>2</sup> We have reviewed all of the evidence the Petitioner has submitted and will address those criteria the Petitioner asserts that he meets or for which the Petitioner has submitted relevant and probative evidence.

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the field of endeavor. A kickboxing competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize from that competition is nationally or internationally recognized. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his medals and award certificates. The submitted documentation does not establish that the Petitioner's awards had a substantial level of recognition beyond the context of the events where they were presented and were therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

In addition, the Petitioner submitted the following:

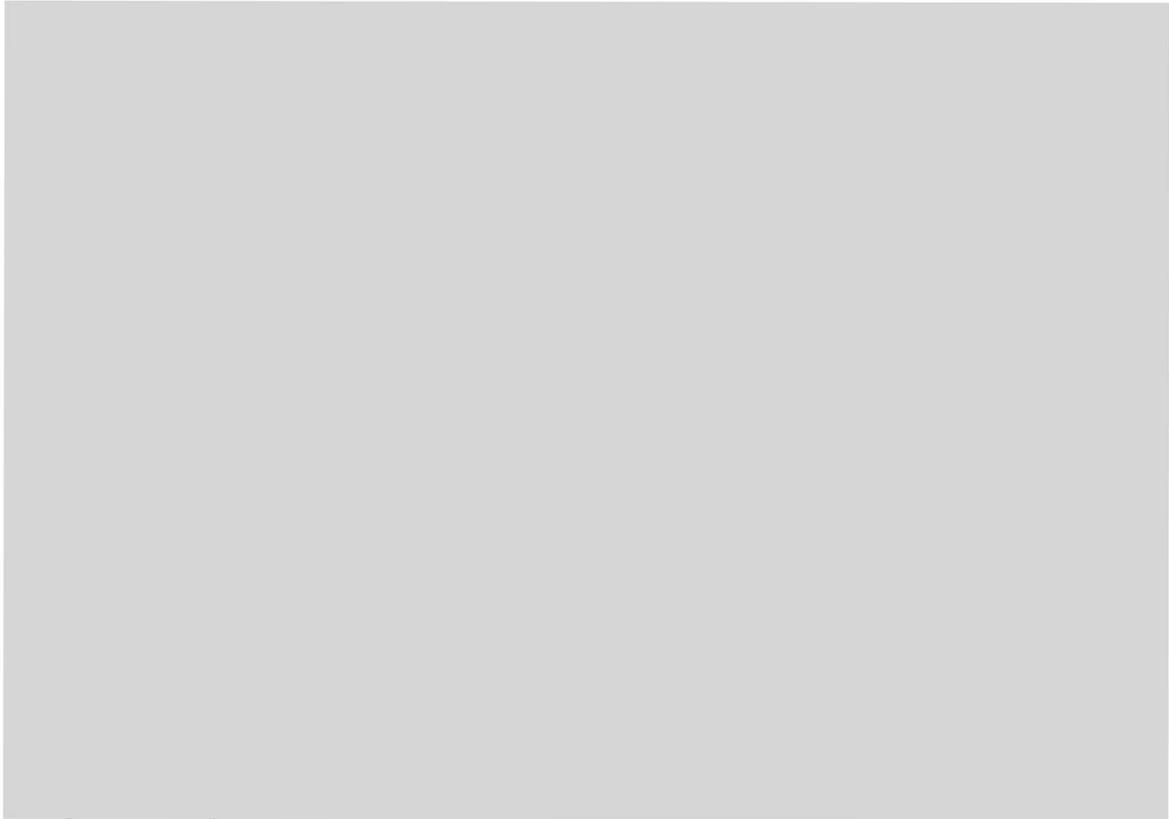
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With regard to the aforementioned awards, the Petitioner did not submit evidence demonstrating their national or international recognition in the martial arts field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally recognized in the field of endeavor and it is his burden to establish every element of this criterion. There is no documentary evidence demonstrating that the Petitioner's diploma and first, second, and third place certificates were recognized at a level commensurate with nationally or internationally recognized awards for excellence in the field.

In light of the above, the Petitioner has not established that he 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.*

The Director determined that the Petitioner had not established the eligibility for this criterion. On motion and appeal, the Petitioner did 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. 2011) (plaintiff's claims

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abandoned when not raised on appeal). Accordingly, the Petitioner has not established that he meets this regulatory criterion.

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

In response to the Director's RFE, the Petitioner submitted a July 2013 Russian language article entitled [REDACTED] that he asserts was on the website of the [REDACTED]. The submitted article, however, does not include the uniform resource locator (URL) or internet address showing that it was printed from the [REDACTED] website.<sup>3</sup> The lack of a URL for the article diminishes the reliability of the Petitioner's evidence. Although page four of the Petitioner's November 3, 2014, letter responding to the RFE and an accompanying "Table of Exhibits" both identify the article's URL as [REDACTED] we were unable to access the article using the URL provided by the Petitioner. At the conclusion of the article, the webpage claims 3,025,496 "total number of page views," but it has not been shown whether this statistic applies to the Petitioner's article, the blog, or the [REDACTED] website since its inception. Regardless, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the publication's status as major media). There is no objective documentary evidence showing that the number of visitors to [REDACTED] website or its blog elevates the newspaper to a form of major media relative to other online news sources.

The Petitioner initially submitted a digital video disc (DVD) compilation showing video from his fights, martial arts practices, stunt demonstrations, appearances on game shows and talent shows, and television interviews. In addition, the Petitioner provided various photographs of himself participating in the talent and game show contests. On appeal, the Petitioner mentions that he was interviewed on American, Ukrainian, and Russian television shows. The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." Television show interviews; fight, stunt, and practice videos; and game show and talent show appearances do not meet these requirements. In addition, the Petitioner did not submit any transcripts for the television programs demonstrating that the interviews were about him and relating to his work. Furthermore, the Petitioner did not provide certified English language translations of the interviews conducted in the Russian and Ukrainian languages as required by the regulation at 8 C.F.R. § 103.2(b)(3). Lastly, there is no documentary evidence of the viewership statistics for the specific television programs on which the interviews were broadcast.

In light of the above, the Petitioner has not established that he meets this regulatory criterion.

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<sup>3</sup> The top of the Russian language webpage bears the words "Next Blog," "Create Blog," and "Sign In."

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

The Director determined that the Petitioner established eligibility for this criterion. For the reasons outlined below, a review of the record of proceeding does not reflect that the Petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion and the Director's determination on this issue will be withdrawn. Again, we conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145.

Initially, the Petitioner did not assert eligibility for this regulatory criterion. In response to the Director's RFE, the Petitioner submitted his [REDACTED] certificate from the [REDACTED] that was issued on April 6, 2010. On the right side of the certificate, the dates when the Petitioner received certification for judging categories 1, 2, and 3 were left blank. In addition, the Petitioner provided his [REDACTED]. The "Referee Qualification" section of the [REDACTED] reflects that the Petitioner attained category III referee status on [REDACTED] 2010; category II referee status on [REDACTED] 2011; category I referee status on [REDACTED] 2012; and national category referee status in [REDACTED] 2012. Although the Petitioner received his [REDACTED] "Sport Judge" certificate and earned "Referee Qualification" certifications at various levels in his [REDACTED] there is no documentary evidence of his participation as a judge of the work of others after earning his qualifications. While the Petitioner submitted five "referee" photos showing him seated or standing at unspecified events, there is no indication that he was judging the work of others. Furthermore, although the Petitioner provided the July 2013 article in [REDACTED] which mentions that he was a participant and an "honored guest" at the [REDACTED] the article did not state that he served as a judge at the tournament.

The Petitioner's response to the RFE also included an October 2014 affidavit in which he asserts that he has "acted as a referee in kickboxing, karate, and Tae Kwon Do" in at least 15 competitions in the martial arts. In addition, the Petitioner states that in some instances he was not issued referee identification (ID) and that in other instances he "did not preserve [his] official referee ID's." With regard to the Petitioner's affidavit in which he asserts that he refereed at least 15 martial arts competitions, USCIS need not rely on unsubstantiated statements. *See 1756, Inc.*, 745 F. Supp. at 15. Without corroborating evidence from the competitions' organizers, the Petitioner has not established that he participated as a judge at the competitions.

The plain language of this regulatory criterion requires evidence of the petitioner's "participation, either individually or on a panel, as a judge of the work of others in the same or an allied field." The submitted documentation does not demonstrate the Petitioner has participated as a judge of the work of others in the martial arts field. With regard to serving as a referee, there is no evidence demonstrating that a referee actually judges the competitors' work, rather than just ensuring that rules are followed and that the kickboxing match is held in a safe and fair manner. The record lacks official competition rules from the appropriate governing body showing that serving as a referee equates to participating as "a judge" of the work of others in the same or an allied field. Without evidence

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showing that the Petitioner has participated, either individually or on a panel, as a judge of the work of others in his sport, the Director's finding that the Petitioner's evidence meets this regulatory criterion is withdrawn. Accordingly, the Petitioner has not established that he meets this regulatory criterion.

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

In response to the Director's RFE, the Petitioner asserted that his "significant contributions to the martial arts" include development of "various techniques on how to achieve flexibility for a split," "effective techniques of punching and kicking," and exercise methods for getting "six-pack abdominal muscles." The Petitioner submitted a printout from his website at [REDACTED] and photocopies of his DVDs entitled [REDACTED] and [REDACTED]. In addition, the Petitioner provided letters of support from fighters and martial arts coaches.

In his initial letter, [REDACTED], President of [REDACTED] New York, stated: "[The Petitioner], under my supervision, won three prestigious tournaments . . . . [The Petitioner] assisted me in preparing athletes and competitions, and as an actor and film director, he recorded several educational films, which helped train athletes of [REDACTED] . . ." In response to the Director's RFE, [REDACTED] asserted:

I started to implement his techniques in my training process in 2010, and I saw almost immediate positive effect on my students' achievements. Actually [the Petitioner's] training methods significantly contributed to my students' success. Because of [the Petitioner's] innovative training techniques, my students have been able to develop at a faster pace. My students who used [the Petitioner's] training techniques enjoyed significant improvement in their agility, speed, as well as punching and kicking power.

[REDACTED] indicated that the Petitioner's techniques have improved the performance of students at the center where the Petitioner trains for tournaments and assists [REDACTED] in coaching other students, but there is no documentary evidence showing that the Petitioner's techniques have affected the field in a substantial way or otherwise constitute original contributions of major significance in the martial arts. The plain language of the regulatory criterion 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" that are "of major significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original athletic 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 (3<sup>rd</sup> Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003).

[REDACTED], a former professional boxer from Russia, stated that he met the Petitioner at the [REDACTED]. [REDACTED] asserted that the Petitioner is "a fighter with extraordinary technique and skills" and "one of the few elite martial arts athletes of his generation," but did not mention any of

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the Petitioner's original techniques for training or martial arts fighting, or explain their significance in the field.

██████████ Branch Chief, ██████████ Ukraine, stated (note: errors in the original text have not been changed):

[The Petitioner] show big support in the development of martial arts in the Ukraine. For more than ten years the fruitful cooperation with [the Petitioner] we have held a number of events and training seminars in kickboxing and jiu jitsu. I noted his extraordinary and special ability in the work of [the Petitioner] and of teaching martial arts. His talent in search of new opportunities to develop and improve their own level of professionalism and improve level of internal self-fulfillment and motivation among the students.

██████████ asserted that the Petitioner has supported the development of martial arts in Ukraine through involvement in events and training seminars and through his work as a teacher, but does not provide specific examples of how the Petitioner's work was of major significance in the field. Furthermore, although ██████████ and ██████████ both mentioned the Petitioner's "extraordinary" talent as a fighter and teacher, they did not explain how the Petitioner's original training techniques have influenced the field at a level indicative of athletic contributions of major significance in the martial arts field. 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); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, 1997 WL 188942, \*1, \*5 (S.D.N.Y. Apr. 18, 1997). It is not enough to be a talented martial artist or teacher and to have others attest to that talent. An individual must have demonstrably impacted his field in order to meet this regulatory criterion.

██████████ President of the ██████████ and Representative of the ██████████ ██████████ in ██████████ stated that he taught and tested the Petitioner in jiu-jitsu and awarded him second and third dan rankings. In addition, ██████████ asserted that he uses "videos of [the Petitioner's] techniques to teach [his] students jiu-jitsu." While ██████████ indicated that he has utilized the videos of the Petitioner's techniques to teach students at his sport club, there is no documentary evidence demonstrating that the Petitioner's techniques have affected jiu-jitsu practices at a level commensurate with original contributions of major significance in the field.

██████████ President and Coach of ██████████ New York, stated:

[W]hen I implement some of [the Petitioner's] developments, such as the techniques for effective punches and, especially, [the Petitioner's] technique for developing flexibility for doing splits, I found those techniques were extremely effective and gave amazing results. My students, who used those techniques, improved dramatically and much faster than their peers in their groups. I was convinced that [the Petitioner's] methods was really effective and offered professional athletes, who

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trained in our Center, to use [the Petitioner's] techniques in their exercises. I have received excellent feedbacks from all athlete who ever tried those technique[s].

\_\_\_\_\_ asserted that he has implemented some of the Petitioner's techniques at his gym in \_\_\_\_\_ to improve students' punching effectiveness and their flexibility for doing splits, but there is no evidence demonstrating that the Petitioner's methods have had a substantial impact on martial arts training practices throughout the field, or that they otherwise constitute original contributions of major significance in the field.

\_\_\_\_\_ described himself as "a professional boxer currently residing and training in New York." \_\_\_\_\_ asserted that during his training sessions he tried some of the Petitioner's techniques and that "they were really great." \_\_\_\_\_ further stated: "[The Petitioner's] flexibility and hand blows speed exercises helped me to such extent that even my trainer was impressed. After that we started to use [the Petitioner's] tutorials for all our exercises with excellent results." While \_\_\_\_\_ indicated that he has utilized the Petitioner's techniques, there is no documentary evidence showing that the Petitioner's tutorials have been utilized at a level commensurate with contributions of major significance in the field of boxing or the martial arts.

The Petitioner submitted letters of limited probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 15. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. at 795 (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.* *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").

On motion, the Petitioner submitted two November 2014 letters from \_\_\_\_\_ Ukraine, discussing sales of the Petitioner's DVD tutorials, but the author of the letters was not identified. With regard to the Petitioner's DVDs entitled \_\_\_\_\_ and \_\_\_\_\_ the first letter indicated: "Since 2011 to November 19, 2014 – 97470 items of video tutorials were sold." The second letter from \_\_\_\_\_ stated that the Petitioner's DVDs are "consigned all over the world – for the Russian speaking community," that two additional video tutorials from the Petitioner are being readied for consignment, and that the Petitioner's "video courses are getting popular every day in the world of sport and martial arts." Not every DVD that offers exercise or martial arts instruction rises to the level of an original athletic contribution of major significance in the field. The submitted evidence does not show that the techniques taught in the Petitioner's DVDs have been unusually

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influential, have substantially impacted the field, or have otherwise risen to the level of original contributions of major significance in the martial arts.

In addition, the Petitioner submitted a sales graph showing the “quantity of the sales from 2013 to 2014.” The Petitioner also provided an “Audit Report” from [REDACTED] and [REDACTED] Ukraine, affirming that “[s]ince 2011 to November 19, 2014 – 97470 items of video tutorials were sold.” Lastly, the Petitioner submitted a November 2014 letter from [REDACTED] Ukraine, stating that his studio has produced six of the Petitioner’s video tutorials since 2011. While the sales and production information for the Petitioner’s instructional DVDs indicates that he has found a commercial market for his training techniques, the Petitioner has not demonstrated that his DVDs’ level of distribution and influence on martial arts practitioners constitute original athletic contributions of major significance in the field.

As previously mentioned, the Petitioner submitted a diploma from the organizers of the [REDACTED] [REDACTED] (2013) thanking the Petitioner for his “enormous contribution into the sport development in Ukraine.” The Petitioner’s diploma has already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Evidence relating to or even meeting the awards criterion is not presumptive evidence that the Petitioner also meets this criterion. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS does not view the two as being interchangeable. To hold otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria. Regardless, the Petitioner has not shown that his diploma from the tournament is indicative of an original contribution of major significance in the martial arts. For example, the diploma does not identify any of the Petitioner’s original athletic contributions and there is no evidence showing their major significance in the field.

The Petitioner stated that he has attracted “thousands of followers” on social media such as [REDACTED] Facebook.com, and YouTube.com. For example, the Petitioner asserted that he “has about 900 followers on [REDACTED] and about 1,000 followers on Facebook.com.” The Petitioner submitted printouts of messages sent to him from just six [REDACTED] followers. With regard to the Petitioner’s assertion that he has about 900 followers on [REDACTED] and about 1,000 on Facebook, 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 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

On appeal, the Petitioner submits a webpage reflecting that he has 28,171 subscribers to his YouTube.com channel and asserts that the volume of subscribers “shows significant public interest in [the Petitioner’s] martial arts achievements.” There is no evidence indicating the number of the Petitioner’s YouTube.com subscribers who are martial arts practitioners or who have utilized his online content as instructional material. For comparison, the Petitioner submitted webpages indicating that [REDACTED] (actor) has 26,354 subscribers, [REDACTED] (actor) has 386 subscribers, [REDACTED] (kickboxer) has 2,061 subscribers, and [REDACTED] (actor) has 31,647 subscribers. While having subscribers on YouTube shows that the Petitioner has attracted followers of his online

videos, there is no documentary evidence showing that the videos posted by the Petitioner have affected the martial arts at a level indicative of contributions of major significance in the field.

In light of the above, the Petitioner has not established that he 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 criterion and found that the Petitioner did not establish his 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 he meets this regulatory criterion.

#### C. Summary

For the reasons discussed above, we agree with the Director that the Petitioner has not submitted the requisite initial evidence, in this case, a one-time achievement or evidence that satisfies three of the ten regulatory criteria.

#### D. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" if the ten categories of evidence "do not readily apply to the beneficiary's occupation." The Director determined that the Petitioner had not demonstrated why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) were not readily applicable to his occupation. On motion and appeal, the Petitioner did not contest the Director's finding or offer additional arguments. The issue, therefore, is considered abandoned. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885, at \*9.

### III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the individual 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 failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3)

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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.<sup>4</sup>

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, the Petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

Cite as *Matter of O-L-*, ID# 14347 (AAO Nov. 17, 2015)

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<sup>4</sup> We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d at 145. 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).