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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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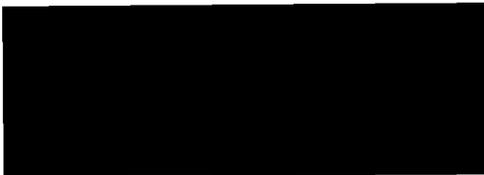
FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

SEP 30 2010

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

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(O)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(O)(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner filed this nonimmigrant petition seeking to classify the beneficiary as an O-1 nonimmigrant pursuant to section 101(a)(15)(O)(i) of the Immigration and Nationality Act (the Act), as an alien with extraordinary ability in athletics. The petitioner, a martial arts school, seeks to employ the beneficiary as an assistant instructor for a period of three years.

The director denied the petition, finding that the petitioner failed to establish that the beneficiary has achieved sustained national or international acclaim in his field or that he is one of the small percentage of athletes who have risen to the very top of the sport of taekwondo. The director found that the evidence submitted failed to satisfy the criterion set forth at 8 C.F.R. § 214.2(o)(3)(iii)(A) or three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B).

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO for review. On appeal, counsel for the petitioner asserts that the director improperly imposed evidentiary standards that are not included in the regulations, which caused her to reject or give improper weight to the petitioner's evidence. Counsel further contends that the director applied a higher evidentiary standard than the preponderance of the evidence standard, and substituted her limited knowledge of the sport for the opinions of experts in the field, whose testimonial letters were not mentioned in the decision. Counsel asserts that the petitioner submitted evidence that meets four of the eight evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B) and requests that the petition be approved. Counsel submits a brief and additional evidence in support of the appeal.

For the reasons discussed below, we concur with the director's determination that the petitioner has not demonstrated that the beneficiary has the necessary sustained national or international acclaim as a taekwondo athlete to qualify as an alien of extraordinary ability.

#### **I. The Law**

Section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), provides for the classification of a qualified alien who:

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, and seeks to enter the United States to continue work in the area of extraordinary ability . . .

The extraordinary ability provisions of this visa classification are intended to be highly restrictive for aliens in the fields of business, education, athletics, and the sciences. *See* 59 FR 41818, 41819 (August 15, 1994); 137 Cong. Rec. S18242, 18247 (daily ed., Nov. 26, 1991) (comparing and discussing the lower standard for the arts). In a policy memorandum, the legacy Immigration and Naturalization Service emphasized: "It must be remembered that

the standards for O-1 aliens in the fields of business, education, athletics, and the sciences are extremely high. The O-1 classification should be reserved only for those aliens who have reached the very top of their occupation or profession." Memorandum, Lawrence Weinig, Acting Asst. Comm'r., Immigration and Naturalization Service, "Policy Guidelines for the Adjudication of O and P Petitions" (June 25, 1992).

The regulation at 8 C.F.R. § 214.2(o)(3)(ii) defines, in pertinent part:

*Extraordinary ability in the field of science, education, business, or athletics* means a level of expertise indicating that the person is one of the small percentage who have arisen to the very top of the field of endeavor.

The regulation at 8 C.F.R. § 214.2(o)(3)(iii) states, in pertinent part:

*Evidentiary criteria for an O-1 alien of extraordinary ability in the fields of science, education, business or athletics.* An alien of extraordinary ability in the fields of science, education, business, or athletics must demonstrate sustained national or international acclaim and recognition for achievements in the field of expertise by providing evidence of:

- (A) Receipt of a major, internationally recognized award, such as the Nobel Prize; or
- (B) At least three of the following forms of documentation:
  - (1) Documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
  - (2) 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 or international experts in their disciplines or fields;
  - (3) Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation;
  - (4) Evidence of the alien's participation on a panel, or individually as a judge of the work of others in the same or in an allied field of specialization to that for which classification is sought;
  - (5) Evidence of the alien's original scientific, scholarly, or business-related contributions of major significance in the field;

- (6) Evidence of the alien's authorship of scholarly articles in the field, in professional journals, or other major media;
  - (7) Evidence that the alien has been employed in a critical or essential capacity for organizations and establishments that have a distinguished reputation;
  - (8) Evidence that alien has either commanded a high salary or will command a high salary or other remuneration for services, evidenced by contracts or other reliable evidence.
- (C) If the criteria in paragraph (o)(3)(iii) of this section do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence in order to establish the beneficiary's eligibility.

The decision of U.S. Citizenship and Immigration Services (USCIS) in a particular case is dependent upon the quality of the evidence submitted by the petitioner, not just the quantity of the evidence. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for O-1 classification. 59 Fed Reg at 41820.

In determining the beneficiary's eligibility under these criteria, the AAO will follow a two-part approach set forth in a 2010 decision issued by the U.S. Court of Appeals for the Ninth Circuit. *Kazarian v. USCIS*, 2010 [REDACTED] (9<sup>th</sup> Cir. March 4, 2010). Similar to the regulations governing this nonimmigrant classification, the regulations reviewed by the *Kazarian* court require the petitioner to submit evidence pertaining to at least three out of ten alternative criteria in order to establish a beneficiary's eligibility as an alien with extraordinary ability. *Cf.* 8 C.F.R. § 204.5(h)(3).

Specifically, the *Kazarian* 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)." *Id.* at \*6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "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)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at \*3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under at least three criteria, considered in the context of a final merits determination. The final merits determination analyzes whether the evidence is consistent with the statutory requirement of "extensive documentation" and the regulatory definition of "extraordinary ability" as "one of that small percentage who have risen to the very top of the field of endeavor."

The AAO finds the *Kazarian* court's two-part approach to be appropriate for evaluating the regulatory criteria set forth for O-1 nonimmigrant petitions for aliens of extraordinary ability at 8 C.F.R. § 214.2(o)(3)(iii), (iv) and (v). Therefore, in reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

In the present matter, the petitioner has submitted evidence pertaining to five of the evidentiary criteria, but has not established that the beneficiary has risen to the very top of his field or that he has sustained national or international acclaim and recognition. 8 C.F.R. §§ 214.2(o)(3)(ii) and (iii).

## II. Analysis

The record consists of a petition with supporting documentation, a request for additional evidence ("RFE") and the petitioner's reply, the director's decision, an appeal and brief, and additional evidence supporting the appeal. The beneficiary in this case is a 25-year-old native and citizen of Nigeria. The beneficiary holds a [REDACTED] belt in [REDACTED]. The petitioner indicates that the beneficiary has competed "professionally" in the sport since 1993. The beneficiary's resume includes a [REDACTED]. The other achievements listed in the beneficiary's resume appear to be club-based awards the beneficiary received between 1993 and 1996 when he was nine to twelve years old. The beneficiary earned his first [REDACTED] in 2000 and his second [REDACTED] in 2004.

As a preliminary matter, the AAO will address counsel's argument on appeal that the director should have issued a second request for evidence or a notice of intent to deny before adjudicating the petition. Counsel notes that in the RFE issued on December 21, 2009, the director identified the beneficiary's field of extraordinary ability as [REDACTED] rather than competitive [REDACTED]. As such, counsel claims that the issue of the beneficiary's extraordinary ability as a [REDACTED] was not raised, and the petitioner was not afforded the opportunity to address the director's doubts regarding the significance of the evidence relating to the beneficiary's extraordinary ability in [REDACTED] competition.

Counsel's assertions are not persuasive. Although the director referred to the beneficiary's field of extraordinary ability as [REDACTED] instruction in the RFE, the petitioner submitted evidence to clarify that the

beneficiary's field should be considered [REDACTED] and not merely coaching.<sup>1</sup> All evidence submitted in response to the RFE was submitted with the purpose of establishing the beneficiary's extraordinary ability as a [REDACTED] and the petitioner did not attempt to establish that the beneficiary possesses extraordinary ability specifically as an instructor. The petitioner had ample opportunity to submit documentary evidence in support of its claims, and it is unclear what further evidence the petitioner would have submitted in response to a second RFE. The director ultimately accepted and evaluated the petitioner's evidence related to the beneficiary's career as a competitive athlete. Therefore, counsel's assertions that the director erred by not issuing a second RFE or a notice of intent to deny are not persuasive.

#### *A. Evidentiary Criteria*

At the outset, it is critical to reiterate that simply submitting evidence to satisfy the evidentiary criteria will not automatically establish eligibility for this visa classification. The mere fact that the petitioner has submitted evidence relating to three of the criteria as required by the regulation does not necessarily establish that the alien is eligible for [REDACTED] 59 Fed Reg. 41818, 41820 (August 15, 1994).

If the petitioner establishes through the submission of documentary evidence that the beneficiary has received a major, internationally recognized award pursuant to 8 C.F.R. § 214.2(o)(3)(iii)(A), then it will meet its burden of proof with respect to the beneficiary's eligibility for O-1 classification. The petitioner does not claim that the beneficiary qualifies for [REDACTED] on the basis of his receipt of a major, internationally recognized award.

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<sup>1</sup> The statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that the beneficiary continue to work in his area of expertise in the United States. See section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i), and 8 C.F.R. § 214.2(1)(ii)(A)(1). In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

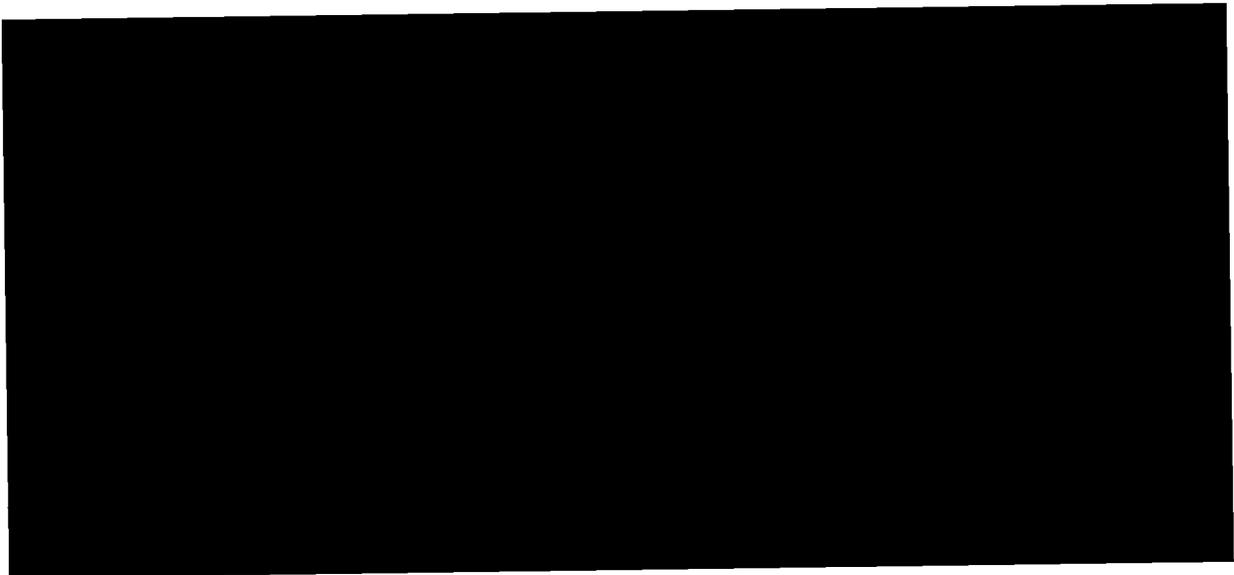
*Id.* at 918. The court noted a consistent history in this area. Generally, while an instructor and competitor share knowledge of the sport, the two occupations may rely on very different sets of basic skills. The petitioner acknowledged that the beneficiary's accomplishments are principally as a competitor, but submitted testimonial evidence noting that "the distinction between competition and coaching which exists in most western sports is immaterial in light of the philosophies which guide the martial arts." [REDACTED] notes that "it is common practice for taekwondo athletes who are actively engaged in competition to participate in the instruction of lower ranking athletes," and indicates that "many of our [REDACTED] are also active as high level coaches."

Accordingly, the petitioner must establish the beneficiary's eligibility under at least three of the eight criteria set forth at 8 C.F.R. § 214.2(o)(3)(iii)(B). The petitioner has indicated that the beneficiary meets the criteria at 8 C.F.R. §§ 214.2(o)(3)(iii)(B)(1), (2), (3), and (4) and submits documentation relevant to these criteria only. As such, the remaining four criteria will not be addressed in this decision.

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

To meet criterion number one, the petitioner must submit documentation of the alien's receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 214.2(o)(3)(iii)(B)(1).

In a letter dated September 15, 2009, the petitioner stated that the beneficiary, as a [REDACTED] is considered one of the best [REDACTED]. The petitioner stated that the beneficiary "has placed in international competitions throughout the world and in national contests in [REDACTED]. The petitioner further noted that the beneficiary has [REDACTED]. In support of the petition, the petitioner provided documentation of the following awards:



The petitioner also submitted photo identification confirming that the beneficiary participated in the [REDACTED] but did not provide documentation of his results in the games. The beneficiary indicates in his resume that he placed fourth in this competition. The beneficiary listed other gold, silver and bronze awards in other competitions in his resume, but the corroborating documentation was limited to the evidence listed above.

In a request for evidence ("RFE") issued on December 21, 2009, the director requested additional evidence to establish the significance of the beneficiary's national and international awards, including evidence to establish the

origin, purpose, significance, and scope of each award and the criteria used to judge the award winners. The director also requested that the petitioner provide evidence to identify the previous winners of the awards.

In a response dated January 28, 2010, the petitioner specified that the beneficiary's international awards include his

[REDACTED]

In response to the director's specific inquiries, the petitioner indicated that "each award originates from the club or association issuing the award," and that "the purpose of the award is to recognize the winner of the corresponding competition." With respect to the "scope and significance" of the awards, the petitioner indicated that "the awards signify superiority to ones competitors and mastery of [REDACTED]. The petitioner stated that "generally speaking, a first place (or gold) award indicated that [the beneficiary] is the best in the nation or among the competing nations in the particular weight class and event." The petitioner noted that all competitors are judged according to the [REDACTED] rules and regulations, a copy of which was submitted.

Finally, the petitioner noted that previous winners of each award are maintained by the issuing club or association sponsoring the championship. The petitioner provided a letter from [REDACTED], the host of the [REDACTED] identifying the winners in the beneficiary's category for the last five years. The petitioner stated that for all national and international competitions in [REDACTED] [REDACTED] is responsible for maintaining records. The petitioner provided an unsigned letter from [REDACTED] which indicates that the organization lost its database containing the national registry of [REDACTED]

The record also contains an advisory opinion letter from [REDACTED]. The petitioner indicated that it provided [REDACTED] with the beneficiary's resume and the same copies of his prizes and awards as those submitted with the petition. [REDACTED]

[The beneficiary] is a [REDACTED]. [The beneficiary] has competed professionally since 1993 and won and placed in international competitions throughout the [REDACTED]. . . His accomplishments include but are not limited to [REDACTED]

[REDACTED] goes on to list the beneficiary's [REDACTED] which we presume, based on the petitioner's statements, was derived from the beneficiary's resume. [REDACTED] are listed. As noted above, the petitioner has submitted corroborating documents for only those awards listed above.

states that the beneficiary and, since 2004, has competed as a member of a state team. He notes that "in order to represent the state team in the national championships, [the beneficiary] had to place in his weight class in division meets." indicates that the beneficiary has represented three different states, and in 2007, took as a member of the . In addition, he states that the beneficiary is "the only competitor in

The petitioner submitted a similar letter from . He incorporates the same "championship record" and explicitly states that it was derived from the beneficiary's resume. Much of the letter is very similar in content when compared to the letter provided by . also notes that the beneficiary is the only competitor in

The director determined that the evidence submitted was insufficient to establish that the beneficiary's awards can be considered nationally or internationally recognized prizes. The director noted that "although each club or association may describe its particular competition as being a national or international event, the evidence fails to show that the stated prizes and awards the alien has won are actually nationally or internationally recognized." As an example, the director noted that the sponsor of the to be affiliated with the California Unified and uses the California State Competitor Ranking System, and as such appears to be a regional competition. The director named an Olympic medal as a prize that would be considered as nationally or internationally recognized in Taekwondo.

On appeal, counsel states that the director's comments regarding the beneficiary's awards "appear to misconstrue and regulation and confuse the issue of hosting with recognition." Counsel further asserts:

We submit that these are not the same; a competition or event can be nationally or international recognized, as required by the regulation, regardless of who is hosting it. For example, the Boston marathon is the oldest and arguably the most prestigious marathon in the U.S. Inarguably, it is recognized as a legitimate event throughout the world; and yet, it is hosted by the Boston Athletic Association (BAA), a private non-profit organization. To conclude based on its host alone, that the winner of the Boston Marathon has not won a nationally or internationally recognized award/prize would be a grave error.

Here, too, the significance of the awards is not based on the hosts of the competitions, but rather the recognition of those competitions within the national and international taekwondo community.

Turning again to the example given by the Director, we submit that the is an internationally recognized competition specifically because taekwondo athletes travel from around the world to participate in the event. The recognition of this award is also established by its citation in the consultation letter from USA

██████████ the highest authority for the sport in the United States. . . . We contend that reference to the award in the letter constitutes recognition of the award.

Further, the Director does not consider or comment on the most compelling evidence submitted under this prong, namely the beneficiary's prizes from wins at the ██████████ ██████████

Upon review, the AAO concurs with the director that the petitioner submitted insufficient evidence to demonstrate the significance and magnitude of the competitive events won by the beneficiary. For instance, there is no evidence of the official results from the preceding competitions indicating the number of entrants in the beneficiary's competitive category or weight division. Moreover, a 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 is "nationally or internationally recognized." The petitioner has not provided evidence of the entry requirements to any of these competitions. The burden is on the petitioner to demonstrate the level of recognition and achievement associated with the beneficiary's awards.

The AAO acknowledges counsel's example of the ██████████ as an internationally recognized event, however, it is the petitioner's burden to establish the events at which the beneficiary won awards enjoy a similar national or international reputation within the beneficiary's sport. For example, the AAO would expect ██████████ events to appear on the calendar of the ██████████

While the director erred by providing an Olympic medal as the type of award needed to satisfy the criterion, the AAO notes that national championships, continental championships and world championships are examples of the types of awards that would clearly qualify under this criterion without supporting evidence beyond copies of the awards themselves. The beneficiary has received awards at competitions billed as "national championships," however, the AAO cannot conclude based on the evidence submitted that such awards gave the beneficiary the distinction of being considered the ██████████ class. ██████████

██████████ Typically, the national championship event in any sport is held only once annually. While both ██████████ mention that the beneficiary had to defeat a specific number of competitors at division meets in order to qualify to compete in the national championships, as noted above, the petitioner has not submitted results or entry criteria for these events. Furthermore, given the petitioner's statements that ██████████ state that they reviewed only the beneficiary's resume and copies of some of the awards listed therein, it is unclear where they derived specific information regarding the number of competitors that the beneficiary faced at divisional meets and it appears that this information was simply derived from the petitioner's initial support letter. Similarly, it is not clear how they concluded based on the resume and copies of only some of the beneficiary's awards that the beneficiary is the only ██████████ or that ██████████

The regulation at 8 C.F.R. § 214.2(o)(iii) provides that affidavits written by recognized experts certifying to the recognition and extraordinary ability shall specifically describe the alien's recognition and ability in factual terms and set forth the expertise of the affiant and the manner in which the affiant acquired such information.

8 C.F.R. § 214.2(o)(iii)(B). Both advisory opinion letters mention multiple awards for which there is no corroborating documentary evidence. [REDACTED] also make statements about the beneficiary's achievements that go beyond the scope of the information the petitioner states it provided to them. Neither [REDACTED] state where they acquired this additional information regarding the beneficiary. Contrary to counsel's assertions, mere mention of an award in an advisory opinion letter is insufficient to establish that the award is nationally or internationally recognized. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony in visa proceedings. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Where the regulations require specific, objective evidence in support of a petition, the petitioner's burden of proof is not satisfied by submitting unsupported expert testimony. 8 C.F.R. § 103.2(b)(1).

On appeal, the petitioner submits a statement from [REDACTED] national coordinator of [REDACTED]. The statement is titled "Brief on Guidelines by National Sports [REDACTED] Championships are part of the "sanctioned national sports calendar" and "open to individual practitioners, affiliated clubs to attend." This evidence is insufficient to clarify the entrance requirements for this competition and appears to contradict other statements in the record that competitors in these events participate as members of state teams after winning divisional meets.

On appeal, counsel suggests that the beneficiary's awards at the [REDACTED] [REDACTED] are the beneficiary's most important, internationally recognized awards. According to the beneficiary's resume, he finished in [REDACTED] in [REDACTED]. The record contains evidence of his participation at this event, but no evidence of the official results of the event. Regardless, the AAO cannot find that a fourth place finish, just outside the medal standings, is considered a prize or award.

With respect to the [REDACTED] the AAO is unable to determine that "[REDACTED] International" which appears to be the sponsor of the event, is actually a recognized [REDACTED] organization, or that the competition itself was a significant internationally-recognized event. The beneficiary's certificates states on its face that [REDACTED] is "affiliated to" The [REDACTED]. It appears to be a [REDACTED] organization, rather than an international body. The [REDACTED] the international governing body for the sport, recognizes the [REDACTED] Union as the continental body for the sport in [REDACTED].<sup>2</sup> Absent additional information regarding the scope and significance of the award, the AAO cannot find that the beneficiary's gold medal at a [REDACTED] event qualifies under this criterion. While the petitioner appeared to have difficulty responding to the director's request for evidence regarding the scope and significance of the beneficiary's awards, the AAO notes that the [REDACTED] and USA [REDACTED] maintain calendars of significant competitions on their websites. If, for example, the Pan African [REDACTED] competition is an internationally-recognized event in the sport, the petitioner could provide evidence that it is included on the WTF calendar. Going on record without supporting documentary

<sup>2</sup> [http://www.wtf.org/wtf\\_eng/site/about\\_wtf/member\\_main.html](http://www.wtf.org/wtf_eng/site/about_wtf/member_main.html) (accessed on September 23, 2010)

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

For the foregoing reasons, the AAO finds the evidence submitted insufficient to meet the criterion at 8 C.F.R. 214.2(o)(3)(iii)(B)(1).

***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***

In order to establish that the beneficiary meets the second criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(2), the petitioner must document 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. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner indicates that the beneficiary qualifies under this criterion based on his membership in the [REDACTED]. The petitioner further states that the beneficiary was a member of "multiple state teams, specifically a member of the [REDACTED] Association, [REDACTED] Association." The petitioner indicated that "in order to represent the state team in the national championships, [the beneficiary] had to place [at] the top of his weight class in division meets."

In the request for evidence issued on December 21, 2009, the director had specifically requested evidence of the current number of members, the existence of national or international experts who make determinations about membership in the associations, and any other conditions or requirements of membership. The petitioner responded that such evidence is not available due to loss of records by the [REDACTED].

The petitioner has submitted a photocopy of the beneficiary's credentials for the [REDACTED] Association," but has neither submitted any evidence of the membership or eligibility requirements for this association, nor provided evidence that prospective members in the association are judged by recognized national or international experts in the field. Accordingly, the AAO has no basis on which to conclude that membership in this association qualifies under the second criterion.

We acknowledge that membership on an [REDACTED] or a major national team such as a [REDACTED] may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that the beneficiary meets every element of this criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. Here, the petitioner indicates that the

beneficiary participated in national competition for various state teams as a result of winning competitions at the divisional level. The petitioner has not provided evidence that any of these state teams require outstanding achievements from their members as judged by recognized national or international experts in the sport. Furthermore, the beneficiary's membership in state-level teams has not been adequately documented in the record. The submitted evidence does not satisfy this evidentiary criterion.

***Published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought***

To meet the third criterion, the petitioner must submit published material in professional or major trade publications or major media about the alien, relating to the alien's work in the field for which classification is sought, which shall include the title, date, and author of such published material, and any necessary translation. 8 C.F.R. § 214.2(o)(3)(iii)(B)(3). In general, in order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local or regional publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>3</sup>

At the time of filing, the petitioner stated that the beneficiary, "as the [REDACTED]" has earned national acclaim in major trade publications. Specifically, the petitioner stated that the beneficiary has received "widespread coverage in the [REDACTED] a leading newspaper which caters to the interest of the common people, and [REDACTED]"

The petitioner submitted copies of two articles. [REDACTED] and was published on [REDACTED]. It is unclear whether the petitioner claims that this article appeared in the [REDACTED]. The name of the publication is not included in the photocopied portion of the newspaper. The article mentions that the beneficiary was the [REDACTED], and indicates that he was "named a member of the [REDACTED] scheduled to be held in the United States in June 2009. The article notes that the beneficiary "had performed impressively at the open trial held last month," and that the beneficiary said that competing at the upcoming festival would "give his career a new lease of life." The second article was published on the same date, with the headline [REDACTED] makes California team" and also discusses the beneficiary's qualification for the California State team scheduled to compete at the [REDACTED]. The article mentions the beneficiary's appearance for [REDACTED] the [REDACTED] and contains quotes from grandmaster [REDACTED] coordinator for [REDACTED]. As with the other article, the petitioner did not include the title of the newspaper in its photocopy of the article.

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<sup>3</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

In the RFE, the director requested that the petitioner provide evidence to establish the significance of the published material about the beneficiary. The director specifically instructed the petitioner to provide additional information regarding the publications including each publication's name, how often they are printed, and the number of copies printed.

In its response, the petitioner reiterated that the beneficiary has received widespread press coverage in the [REDACTED]. The petitioner stated that both are nationally circulated daily newspapers and referred to the website for each newspaper.

Upon review, the petitioner has not established that the submitted articles were published in major trade publications. The names of the publications are not included in the photocopies of the articles, and the petitioner failed to provide evidence to support its assertions that the claimed publications are major national daily newspapers by providing the requested circulation figures. It is not USCIS' burden to search for that information on the newspapers' websites. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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

At the time of filing, the petitioner stated that the beneficiary meets this criterion, at 8 C.F.R. § 214.2(o)(3)(iii)(B)(4), based on his participation in the [REDACTED]

[REDACTED] The petitioner provided a copy of a certificate issued by [REDACTED] to the beneficiary, indicating that he served as an official at this event.

The director requested that the petitioner provide evidence to establish the significance of the work judged by the beneficiary and the criteria used to choose him as a judge. The director also asked that the petitioner explain how and why the beneficiary was invited to judge the work of others in his field. The petitioner responded that the director's request "doesn't really make sense for our petition since the judging in question was at an athletic competition." The petitioner submitted the [REDACTED] rules and regulations "for further clarification about the role of judges at [REDACTED]"

The attached [REDACTED] are applicable "to all the competitions to be promoted and/or organized by the [REDACTED]" According to the official competition rules, each match has a referee and four judges. Qualifying referees must be "holders in International Referee Certificate registered by the WTF." The referee has control over the match and its rules, while the judges award points. The referee may break a tie if the judges do not agree on whether a point should be awarded.

The director determined that the petitioner failed to establish that the beneficiary meets this criterion based on his role as an official at the [REDACTED] noting that the petitioner did not demonstrate the significance of acting as a judge at this event.

On appeal, the petitioner asserts that the director relied on extra-regulatory standards in requiring that the petitioner demonstrate the significance of the event at which the beneficiary judged or the criterion for his being selected as a judge.

Upon review, the AAO finds that the evidence submitted meets the plain language of this regulatory criterion. The weight to be given to the beneficiary's experience as an official will be considered below in our final merits determination.

In light of the foregoing, the petitioner has submitted evidence that satisfies the plain language of one of the evidentiary criteria at 8 C.F.R. § 214.2(o)(3)(iii)(B).

***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) that the beneficiary has achieved a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor pursuant to 8 C.F.R. § 214.2(o)(3)(ii); and (2) that the beneficiary has sustained national or international acclaim and that his achievements have been recognized in the field of expertise, pursuant to 8 C.F.R. § 214.2(o)(3)(iii) and section 101(a)(15)(O)(i) of the Act, 8 U.S.C. § 1101(a)(15)(O)(i). *See Kazarian*, 2010 WL 725317 at \*3. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 at 8 C.F.R. § 214.2(o)(3)(iii)(B).

Regardless, we will highlight some of the petitioner's claims of eligibility as they pertain to a final merits determination. The petitioner has submitted documentation of the beneficiary's receipt of awards described as [REDACTED]. However, the petitioner did not provide supporting evidence necessary to establish that such awards are nationally or internationally recognized within the sport. The AAO notes that [REDACTED] with a well-defined structure for national, continental, and international competition. If these competitions are nationally or internationally-recognized in the sport, it should not be difficult to provide evidence that they are publicized within this structure. Furthermore, with respect to the [REDACTED] the record contains conflicting information regarding the nature of these events. The petitioner, [REDACTED] indicate that these competitions involve state teams competing against one another within a defined championship structure, while [REDACTED] indicates that these are open competitions in which individual practitioners and affiliated clubs may attend. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

While the beneficiary did compete in an international event, the [REDACTED] the petitioner also indicates that he finished in fourth place in his weight class. While this finish is a notable achievement, it does not rise to the level of an internationally-recognized award. Furthermore, as discussed above, many of the beneficiary's claimed prizes and awards have simply not been documented in the record.

With respect to the petitioner's submission of published articles, the AAO again emphasizes that even if the petitioner had submitted photocopies of the articles that clearly identified the name of the publications and submitted evidence to establish that the publications qualify as major newspapers, the evidence would offer little support to the petitioner's claim that the beneficiary has a record of sustained national or international acclaim. The petitioner submitted two articles both published on the same date in 2009. Contrary to the petitioner's claims this evidence does not establish that the beneficiary has received widespread media coverage and is not in line with the statutory requirement that the petitioner establish the beneficiary's eligibility through submission of "extensive evidence." It is reasonable to expect that an athlete at the very top of an Olympic sport such as taekwondo would garner more consistent and widespread attention in the sports media.

With respect to the criterion at 8 C.F.R. § 214.2(o)(3)(iii)(B)(7), the AAO acknowledges that the beneficiary served as an official at the [REDACTED]. While the certificate confirming the beneficiary's officiating role at this event was sufficient to meet the plain language of the regulation, the AAO does not concur with counsel that the additional background information requested by the director was irrelevant. USCIS must weigh the amount and type of evidence to determine whether it supports a finding that the beneficiary has enjoyed sustained national or international acclaim and whether the evidence is consistent with a conclusion that the beneficiary is more likely than not an athlete at the very top of the field. Therefore, inquiries into such factors as the criteria used for choosing officials and the level of competition judged, are frequently necessary when evaluating this criterion. The evidence submitted by the petitioner indicates that [REDACTED] competitions sanctioned by the [REDACTED] require referees to have an [REDACTED]. The petitioner has neither claimed nor provided evidence that the beneficiary has this certificate and it remains unclear on what basis he came to be an "official" at the [REDACTED] event. Furthermore, the petitioner has only provided evidence that the beneficiary served as an official at a single event in 2008. As such, the evidence does not support a finding that the beneficiary has the requisite sustained national or international acclaim.

The conclusion we reach by considering each evidentiary criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The petitioner relies mainly on the beneficiary's awards, two recent newspaper articles, and one instance of officiating experience to establish his eligibility. While the beneficiary is clearly a talented athlete, the AAO cannot conclude that he has reached the very highest levels of achievement in the sport of taekwondo.

The extraordinary ability provisions of this visa classification are intended to be highly restrictive. *See* 137 Cong. Rec. S18247 (daily ed., Nov. 16, 1991). In order to establish eligibility for O-1 classification, the petitioner must establish that the beneficiary is "at the very top" of his field of endeavor. 8 C.F.R. § 214.2(o)(3)(ii). The beneficiary's achievements have not yet risen to this level. Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. Therefore, the petitioner has not established eligibility pursuant to section 101(a)(15)(O)(i) of the Act and the petition may not be approved.

This denial does not preclude the petitioner from filing a new immigrant or nonimmigrant visa petition, supported by the required evidence. As always, the burden remains with the petitioner to establish eligibility for the requested visa classification.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.