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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 0 6 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

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

On appeal, the petitioner submits a May 17, 2014 letter contesting the director's decision. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(i) and (ii), and submits additional evidence pertaining to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). In addition, the petitioner submits a May 5, 2014 letter of support from Level 5 coach of the stating that he coached the petitioner at and that the petitioner served as a positive role model for others on the team. The petitioner also submits swim results for the in Michigan showing that he placed tenth in the competition.

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

I. 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

[1] According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on July 7, 2013 as a B-2 nonimmigrant visitor for pleasure.

> demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

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

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

II. INTENT TO CONTINUE WORK IN THE AREA OF EXPERTISE IN THE U.S.

The statute and regulations require that the petitioner seek to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). On the Form I-140 petition, the petitioner left blank his "Occupation" in Part 5 and his "Job Title" and description in Part 6, "Basic Information About the Proposed Employment."

In a February 12, 2014 letter submitted in response to the director's request for evidence (RFE), the petitioner stated:

> I will seek employment as an [redacted]; putting my talent and knowledge to benefit aspiring young athletes in the field of swimming for this wonderful country.
>
> I have experience in teaching of professional techniques, physical and mental preparation of athletes from different levels, beginners, intermediate, advanced and professional. I would like to emphasize my personal experience as a student-athlete and use it as a role model to motivate talented young people to develop the sport and use it as a tool for development in life.

In his May 17, 2014 letter submitted on appeal, the petitioner further states: "My intention in migrating to United States is to seek employment as a swimming coach for a university, or school to develop champions that will represent the United States in future competitive swimming events."

As evidence of his eligibility for at least three of the categories of evidence at 8 C.F.R. § 204.5(h)(3), the petitioner submitted documentation of his athletic accomplishments as a competitive swimmer from the [redacted] Although a swimming coach and a competitive swimmer may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in federal court. 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, Lee's 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. In this matter, there is no evidence establishing that the petitioner intends to continue working in the United States as a competitive swimmer. Moreover, the petitioner's statements are clear that he intends to work as a swimming coach. Accordingly, the petitioner must satisfy the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulatory requirements at 8 C.F.R. § 204.5(h)(2) and (3) through his achievements as a coach.

III. ANALYSIS

A. Evidentiary Criteria[2]

> *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 did not establish eligibility for this regulatory criterion. The petitioner submitted documentation showing that he received internationally recognized awards as a competitive swimmer. For example, the petitioner won a gold medal as a competitor in the 200

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

meter butterfly event at the As previously discussed, the field of endeavor in which the petitioner intends to work in the United States is coaching. There is no evidence demonstrating that the petitioner seeks to work in the United States as a competitive swimmer. Awards resulting from the petitioner's success as a competitive athlete cannot be considered evidence of his national or international recognition as a coach. Again, the statute and regulations require that the petitioner seek to continue work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, awards won by the petitioner as a competitive swimmer in the do not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

As there is no evidence demonstrating that the petitioner has received nationally or internationally recognized prizes or awards for excellence in coaching, 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 established eligibility for this regulatory 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 we withdraw the director's determination on this issue. The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d 736, 741 (7th Cir. 2012); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petitioner submitted evidence showing that he competed as member of the team at the In addition, the petitioner submitted letters from the General Secretary of the and the President of the stating that he swam for the national team. The petitioner, however, did not submit documentary evidence showing that membership on the national swim team required outstanding achievements, as judged by recognized national or international experts. Regardless, the plain language of this regulatory criterion requires evidence of the "alien's membership in associations in the field for which classification is sought." In this case, the field for which classification is sought is coaching. There is no evidence showing that the petitioner seeks to continue work in the United States as a competitive swimmer. As previously discussed, the statute and regulations require that the petitioner seek to continue to work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's team memberships that were based on his athletic achievements as a competitive swimmer do not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

In light of the above, 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.

The director determined that the petitioner did not establish eligibility for this regulatory criterion. The petitioner submitted articles in the Spanish language in and uncertified English language translations of the articles. The regulation at 8 C.F.R. § 103.2(b)(3) provides in pertinent part: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English."

In addition, the petitioner submitted a May 19, 2014 "INTERPRETER CERTIFICATION" from stating: "As the interpreter, I certify that I am fluent in English and the following language: Spanish. I further certify that I have accurately and completely translated all documents presented for the purpose of this application." Although the record contains the preceding "INTERPRETER CERTIFICATION," it is unclear which of the submitted articles, if any, to which the translation certification pertains. The submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Because the petitioner failed to submit certified translations for each article, we cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Furthermore, there is no circulation evidence showing that are major media. Moreover, the plain language of this regulatory criterion requires "published material about the alien . . . in the field for which classification is sought." In this case, the field for which classification is sought is coaching. While the submitted articles appear to be about the petitioner and his competitive swimming accomplishments, there is no evidence indicating that the petitioner seeks to continue work in the United States as a swimmer. None of the articles appear to be about the petitioner relating to his work as a coach. Again, the statute and regulations require that the petitioner seek to continue to work in his area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act; 8 C.F.R. § 204.5(h)(5). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, published material solely about the petitioner's athletic achievements as a competitive swimmer does not meet the elements of this regulatory criterion for purposes of establishing his extraordinary ability as a coach.

In light of the above, 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.

The director discussed the evidence submitted for this regulatory criterion and found that the petitioner failed to establish his eligibility. On appeal, the petitioner does not contest the director's

findings for this criterion or offer additional arguments. When an appellant fails to offer argument on an issue, that issue is abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 2011) (plaintiff's claims abandoned when not raised on appeal). Accordingly, the petitioner has not established that he meets this regulatory criterion.

B. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

IV. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of 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) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[3]

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

ORDER: The appeal is dismissed.

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