(b)(6)

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

U.S. Citizenship and Immigration Services

[redacted]

DATE: FEB 25 2015 Office: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an alien of extraordinary ability in athletics, as a mountain climber, 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. 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 asserts that she meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (ii) and (iii). The petitioner further asserts that her entry into the United States will substantially benefit prospectively the United States. For the reasons discussed below, we agree with the director that the petitioner has not established her 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 she is one of the small percentage who is at the very top in the field of endeavor, and that she has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. LAW

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

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

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

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

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

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

II. ANALYSIS

A. Evidentiary Criteria[1]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through her evidence that she is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial evidence, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

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

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

On appeal, the petitioner asserts that she meets this criterion because in she received a first place award in the lead category of the National Open Climbing Competition organized by the

As supporting evidence, the petitioner has submitted an award certificate, noting that she "secur[ed] 1st position in Lead category of National Open Climbing Competition." The competition rules reflect that there are two categories, lead and speed. According to Chief Administrative Officer, all interested candidates may participate in the competition. The petitioner has not shown that her first place award in the lead category is nationally or internationally recognized for excellence in the field of mountain climbing or that members of the field generally, beyond the competition organizer, recognize the award. The evidence submitted to show the recognition of the petitioner's award is from the entity that issued the award. Such self-promotional evidence has limited evidentiary value in establishing recognition beyond that entity. *See Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not supported the self-promotional evidence with more independent evidence, such as, but not limited to, independent journalistic coverage of the competition, or the petitioner's first place finish in the lead category, in nationally or internationally circulated trade publications or major media.

Moreover, the petitioner has not demonstrated the competitiveness of the lead category in the competition. According to President of the the competition is held annually with 50 participants. The petitioner, however, has not provided information on how many of the 50 individuals participated in her category in

Finally, the record includes a number of certificates relating to the petitioner's other achievements in the field. On appeal, however, the petitioner has not asserted that these certificates constitute nationally or internationally recognized awards or prizes for excellence. Accordingly, the petitioner has abandoned this issue, as she did not timely raise it on appeal. *Sepulveda v. United States 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. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal). In addition, with the exception of the petitioner's first position finish in the National Open Climbing Competition in , these certificates certify the petitioner's climbing training and experience. They are not prizes or awards. The petitioner has also not shown that the certificates, including the one from the National Open Climbing Competition, are nationally or internationally recognized. The record also includes evidence that the petitioner received a U.S. National Outdoor Leadership School

(NOLS) scholarship in In general, scholarships do not meet this criterion, because they are awarded to allow a recipient to further her studies in a particular field. Scholarships are not generally awards or prizes for excellence in the field. Rather, they are given to recipients who have shown potential to advance in the field. The petitioner has also not shown that the NOLS scholarship is nationally or internationally recognized.

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

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

On appeal, the petitioner asserts that she meets this criterion because she is a member of the She also notes that she is an instructor with the association. She further asserts that there "are structured criteria for membership" and "membership is voted upon by an executive committee of the organization." The petitioner has not shown that she meets this criterion.

First, the petitioner has not shown that she is a member of the She submitted a March 3, 2013 letter from stating that the petitioner is registered as a Senior Support Climber with the association. The petitioner has also submitted a Identity Card stating that she is registered as a Senior Support Climber by the The petitioner has not shown that being registered as a Senior Support Climber makes her a member of the association. According to Chapter 3 of the association's constitution, there are five membership types – general member, company member, associated member, lifetime member and honorary member. The petitioner has not submitted any evidence from the association stating that she holds one of the five types of membership.

Second, in response to the director's request for evidence (RFE), the petitioner asserted that she is a general member of the Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Regardless, the petitioner has not shown that the association requires outstanding achievements from its general members. Chapter 3, Articles 3 and 9, of the association's constitution provide certain membership requirements, and note that someone who has "been active regularly for five years in the sector of mountaineering tourism," or someone who has "completed the training on high mountaineering and been active in the mountaineering tourism" meets the general membership qualification. The petitioner has not shown that these requirements, which relate to training and experience in mountaineering, constitute outstanding achievements. In addition, although Chapter 3, Article 12, of the association's constitution provides that the associations' central executive committee or the

executive committee of the concerned branch has the authority to grant general membership status, the petitioner has not shown that individuals on either committee are recognized national or international experts in their disciplines or fields, as required by the plain language of the criterion.

Finally, although the petitioner has presented evidence of her qualification as an instructor, she has not presented evidence showing that there is a separate and distinct membership category for instructors in the [redacted] Licensure or certification to work as an instructor is relevant for a lesser classification, aliens of exceptional ability under section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(C). The petitioner has not demonstrated that licensure or certification is equally relevant to the classification sought in this proceeding. Regardless, the petitioner has not shown that the association requires outstanding achievements for certification as an instructor, as judged by recognized national or international experts in their disciplines or fields, as required by the plain language of the criterion.

Accordingly, the petitioner has not submitted documentation of her 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 petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ii).

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

The director concluded in his decision that the petitioner met this criterion based on an article in [redacted] The evidence in the record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis). The petitioner asserts that she meets this criterion because "[a]rticles about [the petitioner] have appeared in major media in [redacted]" As supporting evidence, the petitioner points to a [redacted] article entitled '[redacted] The petitioner has not shown that she meets this criterion.

First, the petitioner has not shown that [redacted] is a professional or major trade publication or major media. According to a March 21, 2014 letter from [redacted] Editorial Manager of [redacted] is a pioneering media house with more than 12 years in the lifestyle journalism publication business. With 9 publications covering themes such as culture, Adventure Sports, lifestyle to fashion and entrepreneurship, each of [redacted]' various monthly and weekly publications has a minimum print count of 20,000 copies." The petitioner has not provided any additional information relating to this magazine. The petitioner has not shown that the focus or

nature of the [redacted] such that it constitutes a professional or a trade publication. The petitioner has also not shown that a print volume of 20,000 copies in an unspecified time period, i.e., in a month or in a week, qualifies the magazine either as a major trade publication or major media. As such, although the article '[redacted] is about the petitioner, relating to her work, the petitioner has not shown that the material is published in a professional or major trade publication or major media.

Second, as part of her initial filing, the petitioner submitted other material that she asserted met this criterion. In the RFE, the director concluded that the article in [redacted] was not about the petitioner. The petitioner has not contested that conclusion in response to the RFE or on appeal and the record supports the director's conclusion. Moreover, the petitioner has not submitted evidence showing that this material has been published in professional or major trade publications or other major media. In addition, the petitioner has not submitted a translator's certification as required under the regulation at 8 C.F.R. § 103.2(b)(3) for any foreign language material.[2]

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

B. Summary

The petitioner has submitted a number of reference letters in support of her petition. Although the reference letters discuss the petitioner's character and confirm her skills and abilities as a mountain climber, they do not specifically address any of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). 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. Having reached this conclusion, we need not review the director's finding that the petitioner's entry into the United States would not substantially benefit prospectively the United States.

III. CONCLUSION

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

[2] The regulation at 8 C.F.R. § 103.2(b)(3) provides, "Translations. 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."

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 on which the petitioner relies on appeal in the aggregate, a single award, one membership and one article, supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, 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).