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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: WAC 01 132 53231 Office: California Service Center

Date: **SEP 23 2002**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in business. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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(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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means 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. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner seeks employment as president of a firm that provides "executive consulting and coaching to corporate leaders."

Counsel describes the petitioner's work:

[The petitioner's] professional career demonstrates his entrepreneurial business experience, which includes creating and developing several successful businesses

including marketing consultancy, corporate training and coaching and other service oriented businesses. . . .

[The petitioner] is an executive leadership consultant and he provides personal one-on-one executive leadership coaching and consultancy to company presidents, chief executive officers, [and] executive vice-presidents of major corporations. He teaches them leadership and life principles, thus inspiring his clients to fulfill and realize their potential and increased productivity and prosperity.

The petitioner submits copies of several magazine articles, to illustrate "the Value of Coaching." These articles do not appear to mention the petitioner. Such articles serve as background evidence regarding the petitioner's occupation, but they cannot serve in any way to show that the petitioner is among the most highly acclaimed figures in his field. Similarly, evidence such as surveys regarding coaching are not specific to this petitioner and thus cannot show how the petitioner stands above others in the field.

The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Counsel repeatedly states that the petitioner has met "four (4)" of the ten criteria, but then lists five specific criteria that the petitioner claims to have satisfied.

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.

Counsel states the petitioner "is a member of the International Coaching Federation,¹ the only professional national and international association of repute. He is also a member of the Association of North American Businesses." The petitioner's initial submission contains no documentation of either of these memberships, nor any evidence that either association requires outstanding achievements of their members. The Association of North American Businesses, from its name, appears to accept businesses, rather than individuals, as members.

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

¹ Subsequent documents show that the name of the association is actually the International Coach Federation, but even after obtaining and submitting those documents, counsel continues to use the incorrect term "International Coaching Federation."

Counsel states:

[W]hile he was President of M&B Wright Enterprises in Adelaide, Australia [the petitioner] created and developed a consultancy business where he worked with over two hundred people which led to them profitably establishing their own business.

Through extensive research, development and preparation of coaching and training materials, [the petitioner] created an environment which caused people's performance to be elevated to a higher level. He also spoke by invitation as a keynote speaker and presenter for hundreds of audiences on this topic.

[The petitioner] through this work has had [sic] and continues to judge critically the work of others in his field.

Counsel fails to explain how the above tasks represent judging the work of others. While the petitioner may have enhanced the performance of his clients, this is arguably a fundamental duty of any competent coach or consultant. The petitioner submits no evidence to show that only a very small percentage of top coaches and consultants are able to produce positive effects for their clients. The petitioner has not submitted anything to show that he has acted as a judge in any manner that is not fundamental and intrinsic to the nature of all coaching and consulting work (e.g., evaluating a client's strengths and weaknesses and gauging the client's progress).

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

The petitioner submits copies of materials prepared for various training classes and presentations. These materials are not *prima facie* evidence of contributions of major significance, because anyone working in the petitioner's field would be expected to produce training materials of this kind.

The petitioner also submits letters from several clients. A representative example of these letters is from [REDACTED] CEO of the Phoenix-based "management and customer consultants" firm of [REDACTED] Mr. [REDACTED] states:

[The petitioner's] proven ability and experience in the field of business coaching adds value to top corporate leadership. With his global experience, he is able to teach corporate leaders how to grow themselves holistically—in mind, body and spirit. With his people skills, he is able to help others to communicate a power of presence and command. With his spiritual skills, he is able to help America's leaders develop their spiritual and moral life to a higher level.

My relationship with [the petitioner] is both professional and personal. On the professional side, he acts as my business coach to help me continue to see the "big picture" and to put global business in perspective. On the personal side, he has

become a friend who has made a significant impact on my life through his example of how to live life morally, spiritually and ethically.

Clearly Mr. [REDACTED] has a high opinion of the petitioner's abilities, but his letter contains no specific information that would identify any particular contribution of major significance. The assertion that the petitioner possesses the potential to make a major difference does not establish national or international acclaim. The other witnesses, like Mr. Faranda, are executives of businesses in Arizona or southern California who state that the petitioner has provided valuable services to them and to their companies. Most of these executives are, themselves, involved in providing coaching and consulting services to other businesses. Some of these individuals have won some form of recognition (such as prizes or media attention) for their coaching and consulting work, indicating that they have achieved more recognition and acclaim as coach/consultants than the petitioner himself has claimed. None of the letters contains any specific information to show how the petitioner has had a national or international effect on his field. Assertions to the effect that the petitioner is "gifted" and "talented" do not place the petitioner at the top of the field or show that he is among the best-known figures in his field. Client satisfaction is not a contribution of major significance; it is a sign of professional competence rather than extraordinary ability. Furthermore, because all of these clients are in the same geographic area, the letters are not evidence that the petitioner has earned a significant reputation (and client base) outside of Arizona.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

Counsel asserts that the petitioner has enjoyed "commercial successes" and "is in demand as an executive coach internationally." The "commercial success" criterion is expressly limited to the performing arts. Counsel's omission of the reference to the performing arts does not alter the regulation. Nevertheless, we can consider evidence of the petitioner's success as a business figure under 8 C.F.R. 204.5(h)(4).

Tax documents show that the petitioner's consulting business has reported a gross income (i.e. before expenses) of less than \$200,000 per year. After expenses, the company's net income has been roughly \$40,000. The burden is on the petitioner to establish that his company is among the most successful executive coaching/consulting firms in the United States.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel states that the petitioner's "salary is in the six figures. He is able to charge ten to twenty thousand dollars per individual per six month contract." As evidence of his financial situation, the petitioner submits copies of his Form W-2 Wage and Tax Statement from 1998. This document indicates that the petitioner earned \$25,000 in that year.

An uncertified "Profit and Loss" statement shows that the petitioner's company took in \$144,177.59 in income during 1999. While this amount is "in the six figures," the income of a

corporation of which the petitioner is part owner is not equivalent to the petitioner's own salary or remuneration for services. Even if his company's income were identical to his own earnings, the "Profit and Loss" statement indicates that only \$72,630.00, roughly half of the above figure, was in the form of consulting fees charged by the petitioner. Another \$65,533.55 represents marketing fees and reimbursements attributed to the petitioner's spouse (as indicated by her initials next to those figures). Thus, the work performed by the petitioner himself did not bring in "six figures" during 1999. Income generated by another official of the petitioner's company cannot, in any reasonable sense, be considered as the petitioner's salary or remuneration. The document lists \$64,500 in "Officer Salary" during 1999. Other documents indicate that the petitioner and his spouse (the only other officer) are paid equally. Thus, this document places the petitioner's 1999 salary at \$32,500, a figure consistent with quarterly wage statements in the record.

The petitioner claims, on his resume, to be an independent agent of Infinity, a "health, well-being & nutritional company," but this work is at best peripherally related to his work as an executive leadership coach/consultant, and any income he derives through the sale of health care products is irrelevant. Income from any source other than his work as an executive coach has no bearing on his abilities or acclaim as an executive coach.

For the above reasons, the record is entirely devoid of evidence that the petitioner's "salary is in the six figures" as counsel contends, and it contains compelling evidence in the form of tax records that the petitioner's salary is closer to \$30,000 per year. Given this major discrepancy between the actual documentation and counsel's unsubstantiated claims, we cannot consider counsel to be a reliable or credible source of material information in this matter. This matter must be decided on the merits of the actual evidence presented, rather than on counsel's interpretation of that evidence. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaighena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

On June 5, 2001, the director instructed the petitioner to submit additional evidence because the initial submission was not sufficient to establish the petitioner's eligibility. In response, counsel requested "a two week extension" because the petitioner "is in the process of gathering the additional evidence required." With regards to requests for evidence, 8 C.F.R. 103.2(b)(8) does not give any Service official discretion to grant such extensions. Rather, the regulation expressly states "[a]dditional time may not be granted," and neither states nor implies the existence of any exception to this flatly stated rule.

The director denied the petition, repeating the deficiencies listed in the request for evidence and observing that the Service has no authority to grant the extension requested by counsel. Among the deficiencies listed in the decision are the absence of evidence showing the membership requirements of the associations to which the petitioner belongs, and the petitioner's failure to establish the significance of his contributions. On appeal, counsel asserts that the petitioner has submitted "overwhelming evidence" of eligibility.

The record shows that counsel submitted an untimely response to the director's request for evidence. We will consider this evidence in the context of the appeal, but we emphasize that the director did not err in failing to consider this material when rendering the decision. Rather, given the specific injunction against extending the response time, the director would have erred by considering the untimely submission.

The petitioner submits evidence of his membership in the International Coach Federation ("ICF"), as well as several federation documents describing the size and goals of the federation. Despite counsel's claim that these documents include "criteria for membership," the documents do not specify the requirements for admission as a member.² A letter from the federation's executive director states "[w]e hope every coach becomes a member of the global coaching community through ICF." An association that hopes to have "every coach" as a member clearly does not represent only the elite members of the field. The documentation also indicates that "ICF currently has 4,076 members," and "we estimate that there are currently 10,000 part-time and full-time coaches worldwide." Judging from these figures, two out of every five coaches in the world is an ICF member, a ratio that is not indicative of an exclusive organization accepting only the top coaches.

The petitioner submits documentation relating to his "[i]nvitation to join the Philosophical Society of Arizona." Counsel states "[I]n the course of the twentieth century, over 200 members of the Society have received the Nobel Prize." The documentation consists of a photocopied invitation to attend "the first annual symposium of the Philosophical Society of Arizona." Thomas Faranda states, in a new letter dated August 2, 2001, "I have nominated [the petitioner] to be one of the few, hand-selected members of the Philosophical Society of Arizona of which I am one of the founders. This membership is by invitation only and all members must be nominated and then voted in by the executive committee. Only very worthy, very worldly applicants are nominated. Only unique applicants who can add original talents are voted in as members." There is no clear assertion that the petitioner is in fact a member of the Philosophical Society of Arizona. This membership was not mentioned with the petitioner's initial filing. Only after the director requested additional evidence of memberships did the petitioner submit material showing his nomination for membership. The timing of this evidence is consistent with the invitation having been made in

² The documentation provides the address of the federation's web site, www.coachfederation.org. The bylaws of the federation are publicly available through this site. Article III of the bylaws, headed "Membership," states in pertinent part:

A. Qualification

Membership in ICF shall be composed primarily of professionals engaged in business or personal coaching or similar occupations. Any such person who (1) agrees to be bound by the requirements of these Bylaws, and any rules and regulations which the Board of Directors may from time to time adopt; (2) completes a membership application form and submits it to the Board of Directors; and (3) has paid all the applicable dues, is eligible and qualified for membership in this association.

It is plain from the above that the ICF will accept every dues-paying applicant who agrees to adhere to ICF bylaws and policies. The federation does not, in fact, require outstanding achievements of its members, and the petitioner's membership in the ICF does not satisfy the criterion at 8 C.F.R. 204.5(h)(3)(ii).

response to the request for evidence. If the petitioner was not already a member as of the petition's filing date, then it cannot under any circumstances contribute to a finding of eligibility. See *Matter of Katighak*, 14 I&N Dec. 45 (Reg. Comm. 1971), in which the Service held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Furthermore, the newly-formed association has a statewide rather than national or international base; society documentation indicates that "[t]he membership of the Society will be drawn from men and women from all areas of Arizona's diverse population." The petitioner has not shown that the officials who choose new members are recognized national or international experts as the regulation requires. The record shows only that the petitioner was invited to join by a co-founder who had already identified himself as a close friend of the petitioner.

The petitioner has submitted several more client letters, again mostly from clients in Arizona. As with the earlier letters, these letters show that the petitioner's clients are very happy with the petitioner's work on their behalf, but it remains that client satisfaction is not national acclaim. A small number of the clients are located outside of Arizona; these clients were not mentioned in any way prior to the director's request for evidence that the petitioner's reputation was national in scope.

The Philosophical Society of Arizona documentation is followed by documentation regarding the American Philosophical Society ("APS"), which is not the same organization as the Philosophical Society of Arizona. There is no evidence that the Arizona society is affiliated in any way with the APS. The APS documentation states "Election to the APS honors extraordinary accomplishments in all fields. Presently there are over 700 members around the world, though 85% of the membership resides in the United States. In the course of the twentieth century, over 200 members of the Society have received the Nobel Prize." Counsel's assertion that this last claim pertains to the Philosophical Society of Arizona, rather than the APS, raises still more questions regarding counsel's reliability when interpreting the evidence submitted. In any event, the documentation about the American Philosophical Society carries absolutely no weight because there is nothing in the record to show that the petitioner is a member of that organization. All of the APS documentation in the record consists of background material rather than confirmation of the petitioner's membership. If the petitioner is not, in fact, a member of APS, then it is at the very least grossly misleading for the petitioner, through counsel, to have submitted this material. Among the APS materials submitted are printouts from the APS web site. One page from the site has a prominent link labeled "Search for Current and Past Members," although the petitioner did not submit the results of a search for his name.³

Also submitted, combined with the APS documentation, is documentation pertaining to the Philosophical Society of Texas. There is no evidence that the petitioner is a member of this organization either. Membership is limited to natives and residents of Texas, and there is no evidence that the petitioner has ever resided in Texas, let alone that he is or ever has been a

³ A search of www.oldcity.dca.net/amphilsoc/searchform.cfm revealed that the petitioner is not a member of the APS. The search shows that only 11 persons with the petitioner's surname have joined the APS since 1774, and none of them are the petitioner.

member of that organization. Finally, there is a page of information about the Southwestern Philosophical Society. Once again, this background information does not state or imply that the petitioner is a member of this or any philosophical society.

To establish the petitioner's work as a judge, the petitioner submits copies of leadership evaluations he has prepared on behalf of clients. Because these evaluations are confidential, the petitioner has removed the identifying information. These evaluations were compiled through survey results, indicating that the individuals completing the survey questionnaires conducted the actual evaluation. From the available evidence, evaluations of this kind appear to be a routine part of the petitioner's occupation rather than a sign that the petitioner has, as a result of his standing in the field, earned special judging responsibilities.

The petitioner submits new letters, mostly from the individuals who had previously provided letters on his behalf. In these new letters, the witnesses declare that the petitioner has judged their work. Once again, the "judging" described in the letters appears to be what one would expect from any coach/consultant. It is difficult to imagine how any coach could be effective without evaluating the work of his or her clients. As one witness states, "I chose to appoint [the petitioner] as my professional coach to review, judge and make suggestions on my work." Judging that is inherent in the occupation itself is not a sign of extraordinary ability. To find otherwise would require the absurd conclusion that every coach is one of the very top coaches.

As "evidence that [the petitioner] commands a high salary," the petitioner submits background evidence that, according to counsel, shows that "an Executive Coach charges about \$100 to \$150 per hour." The petitioner submits invoices which, according to counsel, show that the petitioner charges \$530 per hour, significantly higher than the claimed average. The actual materials submitted to support these claims indicate "an average Personal Coach charges between \$250 and \$400 per month per client," whereas "Corporate Coaches can charge a much larger fee and, depending on the contract negotiated, can earn \$1000 to \$1500 per day for on-site coaching of multiple clients provided by the corporation." Another document states that, while some coaches charge "about \$100 to \$150 per hour . . . corporate coaching or programs is more, often running \$1,000 to \$10,000 per month." The petitioner's invoices reflect amounts such as \$16,000 for a six-month contract, well within the range for corporate coaching. In any event, the record amply establishes that the fees charged by the petitioner's company are not reflected in the petitioner's own salary of roughly \$30,000 per year. The petitioner's level of personal remuneration does not appear to be consistent with extraordinary ability in business, and the regulation at 8 C.F.R. 204.5(h)(3)(ix) clearly refers to the alien's own personal "salary or other . . . remuneration," rather than fees paid to a corporation.

The above discussion pertains to the petitioner's untimely response to the director's request for evidence, rather than the appeal itself. On appeal, counsel cites a court case in which the court "held that a minimum of the meeting of the criteria is sufficient to prove that the alien is extraordinary." As shown above, the petitioner has not even minimally satisfied at least three of the criteria. The petitioner's claim of membership in a qualifying association, for instance, is based on a confusing assortment of documents from four different associations, none of which have

expressly confirmed the petitioner's membership. On appeal, counsel further confuses the issue of the petitioner's memberships, stating that the petitioner is a member of "The Philosophical Society/Arizona Chapter," and that "[m]embership [in] the Philosophical Society is by invitation only and is limited to 200 persons of distinction whose life and character exemplify extraordinary accomplishment in all fields." This last phrase is taken directly from materials pertaining not to the Philosophical Society of Arizona, but the Philosophical Society of Texas (the same page refers to the requirement that only natives, residents, and former residents of Texas are eligible for membership). Counsel's reference to "The Philosophical Society/Arizona Chapter" presumes an affiliation between the Philosophical Society of Arizona and some larger parent organization. The record, however, contains no evidence of such a relationship.

Counsel states, on appeal, that the American Philosophical Society is divided into five membership classes, and that the petitioner "is included in class 5 as a professional," but there is no evidence from the APS itself to show that the petitioner is or ever was a member. If counsel has no evidence of the petitioner's claimed APS membership, then counsel is in no position to assert that the petitioner is a member.

Regarding the petitioner's remuneration, counsel states "[t]he Economic Research Institute's Geographic Assessor for Consultant evidences that the salary range is from 31,970 dollars to 59,613 dollars per annum, with the overall mean salary being 50,398 per annum." Counsel then cites the earnings of the petitioner's corporation in excess of \$150,000. As we have already noted, counsel improperly compares individual salaries with corporate gross income. The petitioner's actual documented salary of \$32,500 is very close to the minimum end of the salary range quoted on appeal. The petitioner's claim that he supplements his income by selling health products is consistent with a finding that his coaching income is relatively low.

Counsel asserts that the petitioner "meets the definition" of extraordinary ability not merely through the regulatory criteria, but by maintaining a standard of excellence in his work. Counsel once again cites previously submitted witness letters to demonstrate that the petitioner's clients consider him to be the best at what he does. It remains that the statute demands "extensive documentation" that the alien has earned sustained national or international acclaim, and letters from witnesses selected by the petitioner do not constitute extensive documentation. The enthusiasm expressed in these letters is duly noted, but the petitioner can hardly be expected to submit unfavorable letters from dissatisfied clients. It remains that these letters indicate that the petitioner has only very recently expanded his business outside of Arizona, and they do not and cannot show that the petitioner is among the most highly acclaimed figures in his field at a national or international level. The statutory and regulatory requirements for documentary evidence exist because objective documentation is a more reliable indicator than subjective assessments of a given alien's ability.

On appeal, counsel states:

This is the real foundation of [the petitioner's] work. He causes the individual to change how he thinks and in so doing, creates new behavioral patterns and habits to be congruent and in alignment with his new level of thinking. This causes people to

increase their integrity and moral substance. In fact, we have recently seen the loss of this integrity in the failure of the Enron corporation and Arthur Andersen corporation. Perhaps had Enron hired [the petitioner] and a strong moral fiber had been developed, the corporation may still be alive and well today.

Leaving aside counsel's wholly unfounded speculation that the petitioner would have single-handedly prevented the collapse of Enron in late 2001, we note that, in the statement accompanying the initial submission of the petition, counsel discussed the petitioner's prior work with TimeMax Corporation. That statement was written before Enron's financial difficulties became public knowledge. Counsel stated that the petitioner's "clients while with TimeMax include . . . Arthur Anderson [sic] Consulting." Arthur Andersen (as counsel observes on appeal) is the accounting/consulting firm that has been indicted for obstruction of justice relating to the Enron collapse. The petitioner's previously claimed employment with Arthur Andersen obviously did not prevent that firm's alleged involvement in criminal acts. Therefore, there is clearly no reason to believe that the petitioner's hypothetical work with Enron would have prevented the labyrinthine accounting procedures which concealed enormous losses and led to the bankruptcy of the corporation.

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 the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as an executive coach 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. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.