identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

B2

[redacted]

DATE: JUL 3 0 2012 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 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, 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, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel provides a statement and submits additional evidence. For the reasons discussed below, upon review of the entire record, including the evidence submitted on appeal, the AAO upholds the director's conclusion that the petitioner has not established eligibility for the exclusive classification sought. The AAO notes that the filing date of the original petition was November 16, 2010. Therefore, none of the evidence the petitioner submitted on appeal and in response to the director's request for evidence regarding fights and/or matches in which the petitioner participated after the date of filing may be considered here. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

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) 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, international 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).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the 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 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.*

II. 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 found that "[t]his criterion has been met since you have received lesser national and international awards." Based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion. The record does not contain any primary evidence, such as copies of the awards, to support the petitioner's receipt of the awards claimed. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The AAO notes that the petitioner did submit copies of fight cards for a few of the fights, but these cards only demonstrate that the petitioner was scheduled to fight, not that he received any prizes or awards.

The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that evidence, such as copies of the certificates or photographs of the trophies, relating to the awards does not exist or cannot be obtained. Further, his self-serving statements do not equate to secondary evidence or affidavits.

The petitioner also failed to submit evidence that the field, nationally or internationally, recognizes any of his awards. It remains the petitioner's burden to submit evidence addressing every element of a given criterion, including that a prize or award is nationally or internationally recognized.

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

---

[2] The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

> *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.*

Although the director found that "[t]his criterion has been met," based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion. The plain language of the regulation requires that the published material "include the title, date, and author of the material, and any necessary translation." 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.

The translations of the submitted publications are uncertified and do not include the author's name. Therefore, the publications do not comply with the terms of the regulations at 8 C.F.R. § 103.2(b)(3) and 8 C.F.R. § 204.5(h)(3)(iii) and cannot be considered here.

The petitioner also submitted a copy of a photograph marked "Interview National Television (Sport TV)," along with a letter from [redacted]. The letter fails to mention the television interview. Furthermore, the petitioner failed to submit any additional evidence to establish that the interview aired, that the interview was about the petitioner or how the interview qualifies as major media.

In response to the director's request for evidence, the petitioner submitted an article from the January 2004 edition of [redacted] along with a certified translation. The petitioner submitted a letter from the editor of [redacted] magazine with the original petition which states that the magazine is "one of the most circulate[d] magazine[s] specializ[ing] in the sport of martial arts." The self-serving nature of this information from the magazine's editor is not sufficient to demonstrate that the publication is a form of major media. *See Braga v. Poulos,* No. CV 06 5105 SJO (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). The AAO also notes that the letter was not written for the petitioner, but rather for another martial arts fighter.

The petitioner also submitted an online article from [redacted] entitled [redacted] – results and main pics-" which simply lists the petitioner's name. Articles about competitions are not "about" each athlete referenced in the articles. *See generally Negro-Plumpe v. Okin,* 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Finally, consistent with the statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the material about the alien to appear in publications. Significantly, not all of

the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

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

The director found that the petitioner met this criterion based upon the submitted evidence. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence of the alien's participation...as a judge of the work of others." Based on a review of the record of proceeding, the AAO must withdraw the findings of the director for this criterion.

In the initial filing, counsel stated that the petitioner "participated as a referee in several recognized events." As evidence, the petitioner submitted two similar letters from [redacted] the promoter of [redacted], stating that the petitioner "had participated as a referee in our events in [redacted]." In response to the director's request for evidence, counsel stated that the petitioner "has performed as a judge..., judging the performance of other fighters." The petitioner submitted two additional letters from [redacted] and a letter from [redacted] With regard to the letters from [redacted] the letters assert that the petitioner "participated as a judge in a large fighting event on April 1, 2004" and that he "was elected to participate as a referee (judge) in our event [o]n April 1, 2004, because of his outstanding knowledge of the sport, its techniques and rules." [redacted]' letter states that the petitioner "performed as a referee (judge)" for two events, the [redacted] in 2006 and the [redacted]" in 2007, "judging the techniques and rules of other[] fighters."

Mr. [redacted] letters in response to the director's request for evidence fail to explain why the events from 2002 and 2003 are no longer referenced and why the term "referee" was replaced with "judge." Counsel also fails to explain the change from "referee" to "judge" in her letters. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing

to where the truth lies. *Id.* Furthermore, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Beyond these letters, the petitioner did not submit additional evidence, such as the names of the athletes evaluated or paperwork documenting his assessments. The submitted documentation does not establish that serving as a referee in the above instances equates to participating as a judge of the work of others. There is no evidence demonstrating that the petitioner actually judged the work of competitors, such as assigning points or determining winners, rather than merely enforcing the rules and maintaining a sense of fair play. The absence of evidence of the beneficiary's participation (such as judging slips, event programs identifying the beneficiary as a judge, or a judge's credential from the events) is a significant omission from the record. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

In light of the above, the petitioner has not established that he meets the plain language requirements of 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 submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Notably, the petitioner also failed to provide additional evidence relating to this criterion in response to the director's request for evidence for this criterion, which did not conclude that the petitioner had already met three. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005), citing *United States v. Cunningham*, 161 F.3d 1343, 1344 (11th Cir. 1998); *see also Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). *See also Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988).

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

In response to the director's request for evidence, counsel asserts that "[t]he beneficiary's occupation is

not in the artistic field, therefore comparable evidence to the field of athletics can be submitted and should be considered for evaluation by the Service."

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." Thus, it is the petitioner's burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien's occupation and how the evidence submitted is "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). Several of the criteria are written in broadly applicable terms. 56 Fed. Reg. 60897. 60898 (Nov. 29, 1991).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that a sufficient number of the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the petitioner's occupation. In fact, the petitioner submitted evidence with the original Form I-140 that specifically addresses five of the ten categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3), in addition to the display at artistic exhibitions category. Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The director discussed the submitted evidence and found that the petitioner failed to establish that the evidence was qualifying. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. Notably, the petitioner also failed to provide additional evidence relating to this criterion in response to the director's request for evidence for this criterion, which did not conclude that the petitioner had already met three. The AAO, therefore, considers this issue to be abandoned. *Sepulveda*, 401 F.3d 1228 n. 2, *Hristov*, 2011 WL 4711885 at *9 (plaintiff's claims were abandoned as he failed to raise them on appeal to the AAO). *See also Matter of Soriano*, 19 I&N Dec. at 766; *Matter of Obaigbena*, 19 I&N Dec. at 537.

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

The record contains printouts from the internet showing that a DVD of the [redacted] is available for sale. However, no evidence was submitted to show the commercial success of this DVD.

In light of the above, the petitioner has not established that he meets the plain language requirements of this regulatory criterion.

B. Continue to work in the area of extraordinary ability

This is an employment-based classification that requires that the alien seek to enter the United States to continue working in his area of expertise. Section 203(b)(1)(A)(ii) of the Act. It is "by virtue of such work" that aliens under this classification will substantially benefit prospectively the United States as envisioned under section 203(b)(1)(A)(iii) of the Act. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Congress did not intend for aliens of extraordinary ability to immigrate to the United States and remain idle. 56 Fed. Reg. 30703, 30704 (July 5, 1991). While neither the statute nor the regulations specify that the employment must be full-time, minimal hours of employment as a hobby or incidental to the alien's primary source of income does not substantially benefit prospectively the United States.

The regulation at 8 C.F.R. § 204.5(h)(5) provides:

> *No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.

While the record does contain evidence that the petitioner has participated in a few matches since his arrival in the United States, the petitioner did not provide clear evidence regarding his intentions to continue to work in the United States. The petitioner did not submit a letter from a prospective employer, evidence of prearranged commitments, or even a personal statement. Therefore, as an additional issue, the AAO finds that the petitioner has not submitted qualifying evidence under 8 C.F.R. § 204.5(h)(5). *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (the AAO maintains de novo review of all questions of fact and law).

C. Prior P-1

The AAO notes that the petitioner has been in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." *See* section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184 (c)(4)(A). While USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior

nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

C. Summary

As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. Nevertheless, the AAO will review the evidence in the aggregate as part of our final merits determination.

D. Final Merits Determination

In accordance with the *Kazarian* opinion, the next step is 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[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); 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)(3). *See Kazarian*, 596 F.3d at 1119-20.

The director reviewed all of the evidence in the record and provided a detailed discussion of her findings in the final merits determination. After careful review of the record, the AAO affirms the director's findings. The classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

As the petitioner failed to satisfy even a single criterion, the AAO cannot find that petitioner is one of the small percentage who has risen to the top of his field or that the petitioner has sustained national or international acclaim, as required by 8 C.F.R. §§ 204.5(h)(2) and (3). Even assuming that the petitioner won the awards referenced in the record for which the petitioner submitted no primary evidence, the awards that predate the filing of the petition all date from 2006 or earlier and do not rise to the level of a major internationally recognized award. As such, they cannot by themselves establish eligibility. 8 C.F.R. § 204.5(h)(3). They are also not indicative of or consistent with sustained national or international acclaim in November 2010 when the petitioner filed the petition.

The published material does not meet the requirements set forth at 8 C.F.R. § 204.5(h)(3)(iii) and is not indicative of or consistent with national or international acclaim. Specifically, the record is not supported by multiple articles in national publications and there is no evidence that major newspapers have referenced him as being at the top of his field. *See Matter of Price*, 20 I&N Dec. 953, 955-55 (Act. Assoc. Comm'r 1994).

The evidence relating to judging in 2004 and 2006 is inconsistent and cannot serve as probative evidence indicative of sustained national or international acclaim in November 2010 when the petitioner filed the petition.

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 the field of endeavor.

Review of the record, however, does not establish that the petitioner 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. The evidence indicates that the petitioner shows talent as a martial artist, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. 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.