

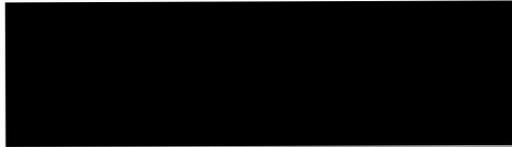
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FILE: LIN 06 133 53589 Office: NEBRASKA SERVICE CENTER Date: NOV 29 2007

IN RE: Petitioner:
Beneficiary:



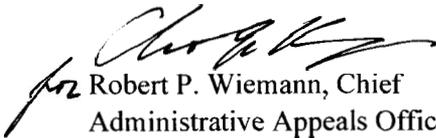
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


for Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 athletics. 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.

On appeal, counsel states: “The [petitioner] has met at least three regulatory criteria, and has, therefore, demonstrated sustained national or international acclaim and recognition of his achievements in the field.”

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.

Citizenship and Immigration Services (CIS) 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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 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.

This petition, filed on April 3, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a tennis coach. At the time of filing, the petitioner was working for Vineyard Youth Tennis on [REDACTED]

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "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 petitioner has submitted evidence pertaining to the following criteria.

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

In a March 31, 2006 letter accompanying the petition, counsel asserts that the petitioner "has achieved numerous awards as former #1 junior player in Argentina and the Barcelona Open Champion in 1989 and Grand Prix Obras Champion in 1990." The record, however, includes no evidence that the petitioner was "the Barcelona Open Champion in 1989" as claimed by counsel. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In response to the director's request for evidence, the petitioner submitted an April 18, 2002 letter from Secretary, Argentina Tennis Association, stating:

[The petitioner] was . . . a top-ranked tennis player – winning the Grand Prix Open in 1990 and the Bariloche Open in 1989. He was nationally ranked #1 in Argentina as a junior player and was selected to represent Argentina on its National Team which reached the finals of the World Team Tournament against Israel in Barcelona, Spain.

The record, however, includes no primary evidence of the petitioner's receipt of a prize or award at the preceding events. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). Rather than submitting contemporaneous first-hand evidence documenting his receipt of prizes or awards at the above tournaments, the petitioner instead submitted a letter from Roberto Fernandez issued more than a decade later claiming that the petitioner won at the above tournaments. The record also lacks substantive information about the 1990 Grand Prix Open and the 1989 Bariloche Open to establish that winning at these tennis tournaments constituted the petitioner's receipt of "nationally or internationally recognized prizes or awards." While the petitioner submitted two articles in the Spanish-language publications *Tennis Tie Break* and *Clarín* that appear to discuss the 1989 "Grand Prix Argentino" in Bariloche, the English language translations accompanying these articles were incomplete. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that 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

summary translations submitted by the petitioner do not meet the requirements of the regulation. Without full English language translations, the significance of the tournament cannot be determined from the articles.

Regarding the petitioner's participation on Argentina's "Juvenile" or "junior" national team that competed in Barcelona, Spain and the evidence of his top junior ranking as a tennis player,¹ such success is not an indication that the petitioner "is one of that small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.² Likewise, it does not follow that a tennis player or coach who has had past success competing or coaching at the junior level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Even if the petitioner were to establish that his victories at the Grand Prix Open in 1990 and the Bariloche Open in 1989 were consistent with national or international acclaim at the very top of his field, we note that these competitive achievements preceded the petition's filing date by more than 15 years. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been *sustained*. The record reflects that the petitioner has been coaching for several years since he stopped competing in the early 1990s. There is no evidence showing that the petitioner, age 38 at the time of filing, remains active at the national or international level as a competitive tennis player. In such a situation, where the petitioner has had ample time to establish a reputation as a tennis coach, he must show that he has sustained national or international acclaim based on his achievements as a coach rather than his prior competitive achievements as a player. Further, the statute and regulation require the beneficiary to seek entry into the United States to continue work in the area of extraordinary ability and expertise. Section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). As discussed by counsel and as indicated under Part 6 of the I-140 petition, playing

¹ Newspaper clippings submitted by the petitioner show his "Metropolitan" ranking among "infantiles" and "minors" rather than professional tennis players.

² While we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that CIS's interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

competitive tennis is not the area of expertise in which the petitioner seeks to continue working in the United States. In this country, the petitioner clearly intends to work as a coach. While a competitive tennis player and a tennis coach certainly 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. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002) (“[C]ontinuing work in one’s ‘area of extraordinary ability’” means “working in the same profession in which one has extraordinary ability.”) Thus, while the petitioner’s accomplishments as a tennis player are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulatory criteria through his achievements as a tennis coach. As such, the petitioner’s awards demonstrating his past record of purported success as a tennis player cannot serve to meet this criterion.

Nationally or internationally recognized prizes or awards won by individual players or doubles teams coached directly by the petitioner, however, can be considered for this criterion. In response to the director’s request for evidence, the petitioner submitted United States Tennis Association rankings for the New England region showing that Chase Urban, a youth player currently coached by the petitioner at Vineyard Youth Tennis, ranked 4th in the region among Boys 12-year-old Singles players as of March 14, 2006. The petitioner also submitted six local newspaper clippings discussing Chase Urban’s victories at various regional tournaments. One of these articles, entitled “Chase is Champ Again,” states:

Chase Urban, 11, of Vineyard Haven, won yet another U.S. Tennis Ass[ociation] sanctioned tournament last weekend at Longmeadow, claiming the title and the trophy at the Grande Meadows Junior 12 Challenger.

* * *

Chase is a student of Vineyard Youth Tennis executive director [REDACTED] and VYT head tennis pro [REDACTED]

Even if we were to accept that Chase Urban’s more recent success is specifically attributable to the petitioner, this youth’s competitive success is reflective of regional recognition rather than national or international recognition. Moreover, as discussed previously, we cannot conclude that coaching success at the “junior” level is an indication that the petitioner “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 petitioner also submitted letters of support from various tennis professionals, but there is no evidence that players under his direct tutelage have won nationally or internationally recognized prizes or awards.

[REDACTED] who ranked as high as 71st in the Association of Tennis Professionals (ATP) singles rankings as of June 14, 1999, states:

I picked [the petitioner] up to check my game and improve my hard court surface game in order to gain confidence in that regard. The results were excellent and I made a terrific move forward! Since then I still call him often to work on my game. I asked him to be my personal coach on the world tour but he was really busy with the juniors’ tennis players.

who ranked as high as 114th in the ATP singles rankings as of June 16, 1997, states:

My clay court game was developed and polished in large part to the coaching I received from [the petitioner] and Andres Schneider.

[M]y work with [the petitioner] resulted in my being named to Argentina's Davis Cup team, and also my advancing to the second round of the 2000 French Open, where I lost to the eventual

[REDACTED] While under the petitioner's tutelage, I learned new methods to increase my court speed, as well as to better mentally prepare my game in terms of shot selection and overall strategy. [The petitioner] was also responsible for my overall court fitness, while Andres was what has become known as, my swing coach.

[REDACTED] who ranked as high as 153rd in the ATP singles rankings as of May 15, 2000, states:

The times I have been working under [the petitioner's] coaching auspices I have learned not only different methods of training skills but also how to become a great professional in this sport. . . . [The petitioner] has coached other great professional players such as [REDACTED] (currently #9 on the professional tour), [REDACTED] Hood, etc. (all professional[] tour players).

[REDACTED] who ranked as high as 11th in the ATP singles rankings as of September 10, 2001, states: "I am the touring pro at CopperWynd Resort and Club and I am looking forward to having [the petitioner] here so he can practice with me and help me with my tennis."³ The record, however, includes no statement from [REDACTED] indicating that the petitioner actually served as her principal coach or accompanied her on the ATP tour in such a capacity.

None of the preceding witnesses identify the specific dates of their tutelage or the competitions that the petitioner attended as their official coach. For example, there is no evidence that the petitioner was coaching [REDACTED] when he advanced to the second round at the 2000 French Open and was subsequently defeated. Regarding the petitioner's record of success as a coach, there is no evidence that players for which he has served as principal coach have won nationally or internationally recognized prizes or awards while under his direct tutelage.

In light of the above, the petitioner has not established that he meets this 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.

³ Counsel states that the letter of support from [REDACTED] "was drafted in 2001" in support of the petitioner's O-1 nonimmigrant petition and that they worked together while employed by the CopperWynd Resort.

The petitioner submitted a January 14, 2004 letter as evidence of his Professional Tennis Registry (PTR) membership. The letter states: "Welcome, and thank you for joining the PROFESSIONAL TENNIS REGISTRY, the largest international organization of tennis teachers and coaches in the world. You are now one of our more than 10,500 in 122 countries." The petitioner also submitted information printed from PTR's internet website stating: "PTR membership is all inclusive. There are no barriers that would prevent anyone from joining the PTR." As such, it has not been established that the PTR requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's or an allied field. The petitioner's initial submission also included his PTR certifications based on the completion of "tests and examinations." There is no evidence demonstrating that receipt of the preceding certifications required "outstanding achievements" in tennis coaching rather than simply the completion of PTR's educational programs that furthered the participant's knowledge or experience in coaching. Further, the plain language of the regulatory criterion requires "membership in associations in the field." A single association membership does not meet the plain language of this criterion.

In light of the above, the petitioner has not established that he meets this 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 petitioner submitted several articles appearing in Spanish language publications, but these articles were unaccompanied by a full English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3).⁴ Further, there is no evidence (such as circulation statistics) showing that these publications qualify as "professional or major trade publications or other major media." Nor were the date and author of the majority of these articles provided as required by this regulatory criterion. Finally, we cannot conclude that articles discussing the petitioner's competitive standing as a junior tennis player in the 1980s are indicative of his sustained national or international acclaim as a tennis coach.

The petitioner also submitted two articles printed in the *Vineyard Gazette*, a local newspaper serving the island of Martha's Vineyard. The December 15, 2005 article, entitled "Tennis for kids – It's free," states: "The head pro at Vineyard Youth Tennis (VYT) is [the petitioner], a 38-year-old Argentinian who lives in Vineyard Haven On Island, his students range in age from three through high school." The June 23, 2006 article submitted in response to the director's request for evidence was published subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Commr. 1971). Accordingly, the AAO will not consider the latter article in this proceeding. Nevertheless, the latter article is not primarily about the petitioner and there is no evidence that the *Vineyard Gazette* qualifies as a professional or major trade publication or form of other major media.

The petitioner's response to the director's request for evidence included a video about the Vineyard Youth Tennis Center that aired on MVTV, a local public broadcast station serving Martha's Vineyard. A July 26, 2006 e-mail from [REDACTED] Training and Operations Manager, Martha's Vineyard Community Television, states that

⁴ As discussed previously, the incomplete translations submitted by the petitioner do not meet the requirements of the regulation.

the 23 minute video aired 38 times from April 16, 2007 to July 21, 2007. This video was broadcast subsequent to the petitioner's filing date and cannot be considered in this proceeding. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. at 49. Nevertheless, there is no evidence that a local MVTV broadcast is a form of major media.

In light of the above, the petitioner has not established that he meets this 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.

On appeal, counsel states: [REDACTED] and [REDACTED] testified that [the petitioner] has a significant impact on their careers as a result of his analyzing their games, judge [sic] what was lacking and work [sic] with them to improve that area. Therefore, we submit that [the petitioner's] coaching satisfies 8 C.F.R. § 204.5(h)(3)(iv)." The preceding activities are not tantamount to the petitioner's participation, either individually or on a panel, as a judge of the work of others in his sport. A tennis coach trains athletes for competition by holding practice sessions to perform drills and to improve the athlete's skills and conditioning. Evaluation of players under one's tutelage is an inherent duty of tennis coaches at all levels of the sport. We do not find that evaluating one's tennis players in this manner is consistent with sustained national or international acclaim at the very top of the field. There is no evidence that the petitioner judged the work of others in his or an allied field in a manner significantly outside the general duties of his coaching position and consistent with sustained national or international acclaim. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. As such, the petitioner's involvement in coaching various tennis players does not fulfill this criterion.

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

On appeal, counsel states: "In the original petition, the petitioner submitted letters of recommendation that established the athletic contributions he has made to the sport of tennis through his coaching." These letters, however, do not specify exactly what the petitioner's original contributions have been, nor is there an explanation indicating how any such contributions were of major significance to the sport of tennis. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner may have helped various players with their skills and conditioning, there is nothing in their letters to suggest that the petitioner developed original training techniques, as opposed to methodologies passed down from his own tutelage in the sport. Further, even if the techniques taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in the field. For example, there is no evidence to indicate that the petitioner's techniques have been widely adopted throughout the sport or have influenced the way tennis is played. While the petitioner may have improved the skills of the players under his tutelage, this does not demonstrate original contributions of major significance in the field consistent with sustained national or international acclaim.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a tennis coach who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted a letter of support from [REDACTED] Vineyard Youth Tennis, stating:

I was looking for a tennis pro to come work on the island as part of our free tennis program for kids. The individual I was looking for had to have not only exceptional tennis ability, but also a knack for working with children and his own methodology and training program for the children to buy into.

* * *

Of all the certified teaching tennis pro's I interviewed, only [the petitioner] had an explainable program for training kids to build the bodies and their game. In addition, he had a manner of talking to our young players that clicked with them. Our growth over the last three years confirms this. We have seen an incredible increase in the number of kids participating in our program, and we are now running a 400 kids program, and looking to expand our facilities to handle the increase. This is largely attributed to [the petitioner].

But of course in this results orientated society, the kids would not continue to come, if they were not succeeding on the court. This is where [the petitioner's] impact is most easily seen. Our kids have increased their match play winning percentage significantly since he first came on board. And while they have yet to break into Junior level circuit, some have improved to the point where they are now on their high school tennis team and potentially being considered for tennis scholarships at colleges across the country.

On appeal, counsel asserts that the petitioner meets this criterion through his work as a tennis pro for Vineyard Youth Tennis. The record, however, includes no evidence that this organization, which has "yet to break into

Junior level circuit,” is an organization with a distinguished reputation. For example, there are no competitive statistics or other evidence establishing that the Vineyard Youth Tennis program is known for producing top-ranked national players. While this tennis program enjoys a local reputation on [REDACTED] there is nothing in the record to show that it has earned a distinguished reputation in the sport at the national or international level. Thus, the petitioner has not established that he has performed in a leading or critical role for a distinguished organization in a manner consistent with sustained national or international acclaim.

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

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

While CIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. In publishing the proposed rule, legacy INS specifically distinguished the O-1 nonimmigrant category from the high standard set for the immigrant visa extraordinary ability category. *See* 56 Fed. Reg. 30703, 30704 (July 5, 1991).

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. 1988). It would be absurd to suggest that CIS 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 had approved the nonimmigrant petitions on behalf of the beneficiary, 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).

Review of the record 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 is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.