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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 04 2009**
LIN 07 265 52537

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)

ON BEHALF OF PETITIONER:

[REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, while we find that the petitioner has demonstrated that he performed a leading or critical role for a distinguished organization pursuant to 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has not overcome the director’s ultimate conclusion that the petitioner has not established his eligibility for the classification claimed.

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* 56 Fed. Reg. 60897, 60898-9 (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 seeks to classify the petitioner as an alien with extraordinary ability as a martial arts instructor, although the evidence submitted on appeal indicates that he also continues to compete. 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.

At the outset, we note that counsel implies on appeal that the director erred by requiring that the evidence for each criterion demonstrate international acclaim. Counsel cites non-precedent decisions by this office and federal district court decisions for the principle that the alien need only show national acclaim; thus, no acclaim outside of Nepal is required in this matter. The director, however, repeatedly stated that the petitioner had not provided evidence consistent with "national *or* international acclaim." (Emphasis added.) Thus, we are not persuaded that the director held the petitioner to a higher standard than the statutory standard for the classification sought.

Counsel also asserts that the petitioner need not demonstrate sustained acclaim under each criterion, citing *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) and *Muni v. INS*, 891 F. Supp. 440 (1995). In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. We note, however, that the court in *Buletini* acknowledged that "the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria." *Buletini*, 860 F. Supp. at 1234.

Consistent with the above, we find that if the statutory standard of national or international acclaim is to have any meaning, the evidence submitted to meet a given criterion must be indicative of or consistent with such acclaim in that field. *Accord Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006); *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

Counsel's remaining concerns will be addressed under the regulatory criteria to which they relate. The petitioner has submitted evidence that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).¹

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

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

The petitioner submitted the following Nepali certificates: gymnastics awards from the 1980s, a 1984 first position certificate from the Second National Martial Arts Competition, an undated second position certificate from the Free Style Open Karate Competition organized by Shito-Ryu Karate Do and a 1984 second position certificate from the First Sagarmatha Tae Kwon Do Competition. The petitioner also submitted a 2003 "Hall of Fame" certificate recognizing the petitioner's "dedication to the martial arts" from the World United Martial Arts Federation (WUMA). In support of the significance of the Hall of Fame certificate, the petitioner submitted a list of 2003 awardees from WUMA's website, www.wuma.uk.com. The petitioner was one of 67 individuals to receive this recognition. The awards were issued in various categories, including several "dedication" awards, some to martial arts in general, some to an individual club, one to the awardee's students and one to "the arts." The list includes three "Kung Fu Instructor of the Year" awards, two "Long Serving Student" awards and several merely in a "Dan" (black belt category) level.

On June 11, 2008, the director issued a Request for Evidence (RFE) advising that the gymnastic awards were not evidence of acclaim as a martial artist and requesting evidence of the significance, scope and criteria for the awards documented. In response, the petitioner asserts that gymnastics and Wushu martial arts are "two sides of a coin." The petitioner supported this assertion with materials about Wushu indicating that it included gymnastics as part of the training. The petitioner further asserts that his 1984 martial arts awards were national in scope. The petitioner submitted a letter from [REDACTED] "World President" of WUMA, asserting that the Hall of Fame award was issued in recognition of the petitioner's "many successful years within the Martial Arts."

The director concluded that the letter from [REDACTED] did not establish the significance of the Hall of Fame award, that the petitioner had not documented the significance of his martial arts awards, which are over 20 years old and cannot demonstrate sustained acclaim, and had not sufficiently established that gymnastics and martial arts are the same field. As with the martial arts awards, the director also noted that the gymnastics awards were over 20 years old.

On appeal, counsel does not address the director's concerns directly. Rather, counsel simply reviews the evidence that was submitted and asserts that the martial arts and gymnastics awards were national in scope. The petitioner submits a new letter from [REDACTED] stating the following requirements for the Hall of Fame award:

1. Martial Artist must be a member of WUMA family.
2. Refereed must be national/International tournaments.
3. Must be hold [sic] Black best 1st Dan and above.

4. Must have made contribution to the Nation as a coach, referee or an official.
5. Dedication to the Martial Arts for the lifetime must have studied at least 10 years actively in Martial arts any style Full-Semi-Light Contact and also Kata/Forms and Self-defence.

letter includes WUMA's website address. Moreover, the petitioner previously submitted materials from WUMA's website. As stated above, the website materials list 67 awardees, some of whom are only students. This information is not entirely consistent with assessment of the award on appeal. By presenting evidence from WUMA's website, the petitioner has introduced the website into the record of proceeding for consideration. Thus, we have reviewed the site at www.wuma.uk.com. The website includes an online nomination form for the Hall of Fame award at www.wuma.uk.com/old/HOF/HOF%20Nomination%20Details.htm (accessed July 28, 2009 and incorporated into the record). The nomination form indicates that the awards were initiated by Mr. ██████████ to reward instructors "with their own appreciative students nominating them." Significantly, the form also contradicts the letter provided by ██████████ on appeal, stating:

The nominees need not be in WUMA, this award is for ALL MARTIAL ARTISTS. You can use this form to nominate outstanding martial artists who have trained hard with no acclaim. Instructors who have worked hard teaching you with no acclaim, a fellow student who you feel is worthy, etc. Don't miss this one off [sic] chance to at last reward your Instructor or Student with what they deserve.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The record does not resolve the discrepancies between the website materials, some of which were submitted by the petitioner, and assertions on appeal. Moreover, doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

While Wushu martial arts may incorporate some gymnastics techniques, we concur with the director that gymnastics is a separate field and that awards in gymnastics are no indication of acclaim in the martial arts. Moreover, as stated by the director, awards predating the filing of the petition by 20 years cannot demonstrate *sustained* national or international acclaim.

The petitioner's own attestation cannot establish the significance of his 1984 martial arts awards. Specifically, 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)). Similarly, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*,

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). While the 1984 awards may have a national pool of candidates, the awards must be nationally *recognized*. On appeal, the petitioner submits a letter from ██████████ President of the Nepal Shito-Ryu Karate Do Association, National Sports Council, asserting that the Free Style Open Karate Competition took place at the National Stadium and was a “National Level Tournament.” Objective evidence of this award’s significance, such as evidence that the competitions are covered in the major media or garner any media attention, would have bolstered ██████████’s statement. Regardless, the awards predate the petition by over 20 years and, thus, are not evidence of *sustained* acclaim.

As stated above, the petitioner has not presented consistent, credible evidence of the significance of his Hall of Fame award. Thus, this award cannot serve to meet this criterion.

For the first time on appeal, the petitioner submits a 2003 certificate from the Sports Authority of India recognizing the petitioner’s “active dedication and service in Martial Arts.” The petitioner submitted no evidence that this award is a nationally or internationally recognized award or prize for excellence in the field.

The petitioner also submitted 2008 U.S. award certificates from competitions that appear from the photographs to have taken place in hotel conference rooms rather than stadiums. These certificates, however, postdate the filing of the petition and cannot be considered evidence of the petitioner’s eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l. Comm’r. 1971).

Finally, some references, including ██████████ whose credibility is seriously diminished, assert that the petitioner has coached successful students who won awards under his tutelage. Even if we considered the awards of an alien’s students to be comparable evidence to meet this criterion pursuant to 8 C.F.R. § 204.5(h)(4), a claim not raised by the petitioner, the record does not contain the awards or evidence of their national significance.

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.

Initially, the petitioner claimed to be a “Life Member” of WUMA. The petitioner initially submitted official certificates documenting his full membership in the World Board of Black Belts (WBOB) of WUMA. The petitioner also submitted a letter certifying that the petitioner is the Director of the International Body Guard Union, Nepal (IBU – Nepal). In his RFE, the director requested evidence of the petitioner’s life membership in WUMA and the membership requirements for any association of which the petitioner is a member. In response, the petitioner submitted a card documenting his WUMA

life membership and a letter from [REDACTED] affirming the petitioner's life membership but providing no information as to the requirements for that membership. Regardless, for the reasons stated above, credibility is seriously diminished.

The director noted that the petitioner had failed to respond to the request for evidence of the membership requirements for the associations of which he is a member. Counsel's appellate brief does not address this criterion and the petitioner submitted no new evidence addressing the membership criteria for the above associations.

The membership criteria are an essential element of this criterion according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). Despite the director's specific request, the petitioner has not documented the membership criteria of WUMA, WBOB or the IBU-Nepal. In light of the above, the petitioner has not provided the required initial evidence to meet 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.

Initially the petitioner submitted pictures of himself available at www.nepalhorizons.com and undated articles about himself appearing in *Sahashrabdi* and *Naba Yuba*. The petitioner also submitted brief mentions of himself appearing in 2002 and 2003 in *Nepal Samacharpatra*, *Space Time*, *The Himalayan Times*, *The Himalayan New Service*, *Rajdhani* and *Kantipur Mangsir*. The petitioner also submitted an article about [REDACTED] that mentions the petitioner in an unidentified publication.

In his RFE, the director requested evidence of the significance of the above publications, such as circulation and distribution data. In response, the petitioner personally attests to the circulation and distribution of the publications, sometimes vaguely referencing them as "popular and read in Nepal" and sometimes citing www.wikipedia.org or www.newsofnepal.com/factsheet/samachar.htm. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.² See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909

² Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

(8th Cir. 2008). As such, we will not give significant weight to claims for which *Wikipedia* is the only cited source. We reviewed www.newsofnepal.com/factsheet/samachar.htm (accessed July 29, 2009 and incorporated into the record of proceeding), which confirms that *Nepal Samacharpatra* is a “vernacular national daily” with a circulation of 800,000, making it the “second highest circulated daily” in Nepal. The petitioner submitted a 2001 article quoting him in *Khel Sansar*.

The director concluded that much of the material only briefly mentioned the petitioner and that the petitioner had not provided the necessary evidence to demonstrate that any of the publications constitute major media. Counsel does not address this criterion on appeal but the petitioner submits information about www.nepalhorizons.com, indicating it averages 10,000 visits daily and features videos, online radio, community pictures, blogs, news and interviews. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director. Regardless, the petitioner has not demonstrated that the posting of his video of his performance on a website that includes “community pictures” constitutes published material about him or is indicative of or consistent with national or international acclaim.

While we are satisfied that *Nepal Samacharpatra* is major media, the brief mention of the petitioner in this publication cannot be said to be published material “about” the petitioner. Despite the director’s request, the petitioner has not submitted circulation, distribution or other data that might establish that the publications that did carry articles about the petitioner, *Sahashrabdi* and *Naba Yuba* are professional or major trade journals or other major media.

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

The petitioner submitted evidence that he is a qualified referee and has refereed competitions. The record contains no evidence that referees do more than enforce the rules. The petitioner also served on the jury of or as a judge for the Second Inter School Wushu Championship in an unknown year, the First Inter School Wushu Championships in 1994, the Fourth “Panathlon” International High School Karate and Kick Boxing Championship in Kathmandu in 1997, the First International Invitational Semi Contact Karate and Full Contact Kick Boxing Championship in Kathmandu in 2001, the First WUMA Goju – Kai – Karate (Woko) League Championship in 2002 and the First WUMA Wushu Championship in 2002.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 17, 2009, a copy of which is incorporated into the record of proceeding.

In his RFE, the director requested evidence of the selection criteria for these positions and the duties and responsibilities for these positions. In response, the petitioner submitted a letter from [REDACTED] asserting that the petitioner passed an exam to qualify as an A Class Referee, which allows him to participate as a worldwide referee at WUMA events. [REDACTED] asserts that A Class is an international referee, B Class is a national referee and C Class is a judge. As discussed above, the credibility of [REDACTED] is seriously diminished.

The director concluded that the petitioner had not submitted the evidence requested and that obtaining certification and performing “common” duties inherent to that certification cannot serve to meet this criterion. On appeal, counsel appears to be asserting that the director engaged in the “circular” reasoning that concerned the court in *Buletini*, 860 F. Supp. at 1231. Counsel states (grammar as it appears in original):

The [director’s] requirement that Petitioner has not garnered any recognition consistent with national or international acclaim as a result of providing these services (Judge, Referee) nor is there any indication that this places him among the small percentage who have risen to the very top of the field of endeavor and therefore in the absence of such evidence, petitioner does not meet this criterion plainly gross misinterpretation of the law.

First, as stated above, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. at 715. The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Second, the *Buletini* court found that requiring a petitioner to demonstrate that a particular judging responsibility required extraordinary ability was circular. To avoid *any* analysis of the judging duties, however, would be to equate local, low-level judges in the judges’ own community with national level judges. Obviously, most judging falls between the two extremes and must be evaluated on a case-by-case basis. Such evaluation considers not whether the position requires extraordinary ability, the concept rejected by the *Buletini* court, but whether the judging position is indicative of or consistent with national or international acclaim. *Accord Yasar*, 2006 WL 778623 at *9; *All Pro Cleaning Services*, 2005 WL 4045866 at *11. Those who are sought as judges by national entities or, on a case-by-case basis, local entities outside their communities have a stronger claim than those who serve on local panels.

The petitioner’s judging services in 2001 and 2002 appear to have been above the school level. That said, they were all the “first” of their kind and their reputation is undocumented. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). The petitioner’s failure to provide evidence

regarding the significance of these events, such as media coverage of these events or programs listing the number, age and status of competitors, precludes a finding that the petitioner meets this criterion. Moreover, the record lacks evidence of the petitioner's service as a judge after 2002. Thus, the evidence is not indicative of sustained acclaim in 2007 when the petition was filed.

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

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

Initially, the petitioner submitted letters from other martial artists supporting the petition. Bina Khadkalama, a martial arts instructor in Virginia and the petitioner's former fellow team member, broadly affirms the petitioner's "great influence" in the field. [REDACTED] Secretary and Coach of the Nepal Tai Chi Chuan Federation, asserts that he has "learned with" the petitioner. Mr. [REDACTED] lists his own accomplishments and asserts that he is "really proud" of his teacher, the petitioner. The director's RFE requested examples of specific original contributions and objective evidence of their significance in the field. In response, the petitioner relies on his length of time in the field, his leading roles for martial arts associations and his Hall of Fame Award.

The director concluded that the petitioner had not identified original contributions or demonstrated the impact of those contributions. On appeal, counsel does not address this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be both original and of major significance. The petitioner has not demonstrated that accruing lengthy experience or the mere act of serving in a leading role is original. We note that the regulations already include a criterion addressing an alien's leading or critical role, 8 C.F.R. § 204.5(h)(3)(viii), which will be discussed below. We are not persuaded that evidence submitted to meet that criterion must also meet this criterion. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three criteria. For the reasons discussed above, the petitioner has not established the significance of his Hall of Fame Award.

Without evidence of specific original contributions that have demonstrably impacted the field of Wushu, the petitioner cannot demonstrate 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 has documented that he has served as the Director of WUMA Nepal, the Nepali Branch Chief and Representative of the All Japan Karatedo Goju-Kai Association, Director of IBU-Nepal and Secretary General of the Nepal Wushu Association. The Nepal Wushu Association is affiliated with the International Olympic Committee. The petitioner is quoted in the Nepali media pursuant to his role with the Nepal Wushu Association. While not materials "about" the petitioner such that these quotes can serve to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii), the coverage is probative

evidence of both the nature of the petitioner's role with the Nepal Wushu Association and the reputation of the association itself.

The director concluded that the petitioner had not established the reputation of the above organizations and had not submitted evidence "that distinguishes him from all other martial artists, officers, and key employees in the organizations."

On appeal, counsel asserts that the above roles demonstrate that the petitioner "is one of the very few recognized in Nepal as [*sic*] top of his field." We are persuaded that the Nepal Wushu Association enjoys a distinguished reputation and that the role of Secretary General is a leading or critical role for that association. Thus, the petitioner has established that he meet this single criterion.

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

The petitioner initially submitted a letter from B.S. and Company Registered Auditors in Nepal asserting that, "according to the appointment/contract letters," the petitioner receives the equivalent of \$300 from WUMA Nepal, \$230 from Nepal Goju-Kai Karate-Do Association, \$200 from the Nepal Wushu Association and \$300 from Universal Body Guard and Security Service Pvt., Ltd. for a total of \$1,000 per month. The letter further states that the average salary for a martial artist in Nepal is \$300 monthly. In his RFE, the director requested tax documents, wage statements or similar evidence of income and evidence that the petitioner's income is significantly high in relation to others in the field. The petitioner's response did not address this criterion.

On appeal, counsel notes that the court in *Buletini*, 860 F. Supp. at 1232, n. 12, found that the appropriate comparison was with others in the field in that country rather than with members of the field in the United States or internationally. We do not contest this principle. It is still the petitioner's burden, however, to demonstrate that that his wages compare with the most renowned and experienced members of his field in Nepal.

First, the petitioner did not comply with the director's request for the primary evidence of his remuneration. Even assuming that tax documents or wage statements do not exist or are not available,³ the B.S. and Company letter submitted by the petitioner references "appointment/contract letters." The petitioner did not submit those letters. Second, the letter from B.S. and Company does not explain where it obtained information about the "average" martial artist salary in Nepal. Regardless, it is insufficient to document that the petitioner earns more than the average salary in his field. Rather, he must earn a "significantly high" salary. The record does not document top-level salaries for martial artists in Nepal.

³ The unavailability or non-existence of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2). When relying on secondary evidence, the petitioner must provide documentary evidence that the primary evidence is either unavailable or does not exist. *Id.* When relying on an affidavit, the petitioner must demonstrate that both primary and secondary evidence are unavailable. *Id.*

Finally, the petitioner only earned higher than average remuneration by combining four salaries. It is unknown how many hours the petitioner worked for each employer. We cannot conclude that collecting higher than average wages by working more hours than average is indicative of or consistent with national or international acclaim.

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

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 have 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 a martial arts instructor 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 arts instructor, 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.