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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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Office: NEBRASKA SERVICE CENTER

Date: JUL 08 2009

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.

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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The petition 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. 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel for the petitioner argues that the petitioner meets the statutory requirements and at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

U.S. Citizenship and Immigration Services (USCIS) and the 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 has 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 December 5, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a designer. 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 of the criteria outlined in 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 that, he claims, meets the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

*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 copies of the following: certificates indicating that he received a Pratt Circle Award for Academic Achievement issued by the Pratt Institute in 1998 and 2000; certificates indicating that *Graphic Design USA* presented him with an American Graphic Design Award in 2001, 2005 and 2006; a certificate indicating that he was a member of a team that received a 2002 Award of Excellence at the 43<sup>rd</sup> Annual Exhibition of Communication Arts; a 2005 "Certificate of Design Excellence" issued by *Digital Design Annual*; and certificates indicating that he received two American Inhouse Design Awards presented by *Graphic Design USA*. The petitioner also submitted a certificate indicating that the Museum of Modern Art (MoMA) was recognized with honorable mention at the 2003 Museum Publications Design Competition sponsored by the American Association of Museums (AAM). Although the certificate indicates that it included the Department of Graphic Design, the petitioner is not named on the certificate.

The petitioner submitted no documentation to indicate that any of these awards are nationally or internationally recognized as awards of excellence in his field. The Pratt Circle Awards indicate that they are for academic achievement. Academic study is not a field of endeavor, but training

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

for a future field of endeavor. As such, academic scholarships and student awards cannot be considered prizes or awards in the petitioner's field of endeavor.

Further, with regard to awards won by the petitioner in student level competitions, we cannot conclude that such awards indicate that he "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). USCIS 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.<sup>2</sup> Likewise, it does not follow that the petitioner who had success in a competition restricted to students rather than his field at large 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."

In response to a request for evidence (RFE) issued by the director on March 6, 2008, the petitioner submitted a letter dated April 14, 2008 from [REDACTED] Awards Director for *Graphic Design USA*. [REDACTED] stated that *Graphic Design USA* is "the premier news magazine for graphic designers and other creative professionals" and confirmed that the petitioner had received awards from the organization in 2001, 2005, 2006 and 2008. The petitioner submitted a copy of a letter from The American Inhouse Design Awards notifying him that he had been selected as a winner in the 2008 awards. However, awards received after the filing date of the petition cannot be used to establish the petitioner's eligibility under this regulatory criterion. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Accordingly, this award will not be considered in this proceeding.

In her letter, [REDACTED] stated:

The American Inhouse Design Awards is the leading showcase for outstanding work by in-house designers. Each year our judges . . . review hundreds of

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<sup>2</sup> While we acknowledge that a district court's decision is not binding precedent, 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 USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

submissions from Graphic Designers and other creative professionals from corporations, publishing houses, non-profit organizations, universities and government agencies. These designers create original work within the limitations of their industries and provide significant contributions to the design world.

The petitioner submitted no documentation to confirm [REDACTED] assessment of the impact of the design awards, such as evidence of media coverage or similar documentation, to establish that these awards are nationally or internationally recognized as awards of excellence in the petitioner's field of endeavor.

The petitioner provided a copy of an April 15, 2008 "advisory opinion" from [REDACTED] Executive Editor of *Communication Arts* magazine, which she stated "is a professional journal for designers, art directors, copywriters, design firms, corporate design departments, advertising agencies and everyone involved in visual communication." [REDACTED] further stated that the 8<sup>th</sup> Interactive Annual attracted over 2,000 entries of which only 47 were accepted, and that the petitioner's work "was selected by the distinguished 2002 jury based on creative excellence and quality of execution." Nonetheless, the petitioner submitted no documentation to establish that an award from *Communication Arts* is recognized nationally or internationally as an award of excellence in the petitioner's field.

In an April 15, 2008 letter, [REDACTED] from the AAM, who identified herself as Editor-in-Chief, stated that the AAM's Museum Publications Design Competition is the "only national, juried competition of its kind." However, being the only event of its kind does not automatically mean that awards granted by the organization are recognized nationally or internationally as awards of excellence.

On appeal, counsel states "the percentage chosen for an award versus the number of entries . . . shows that only those who are at the top of their field [like the petitioner] are given these awards." Counsel's argument however is not supported by the evidence of record. Merely because a given percentage of entries are selected for recognition does not automatically mean that the competitions attract entries from the very top of the field. Further, the criterion requires the petitioner to establish that the award or prize given is recognized on a national or international level as an award of excellence in the field. Therefore, the number of entries and the percentage selected for recognition are not necessarily synonymous with excellence.

In this instance, while we do not dispute the petitioner's receipt of various design awards, he has failed to establish that any of the awards are recognized beyond the awarding entity itself. The documentary evidence is not sufficient to establish the national or international recognition, if any, associated with the awards received by the petitioner.

The petitioner has failed to establish 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.*

To demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner claims to meet this criterion through his membership in the Art Directors Club (ADC), the Type Directors Club (TDC) and the American Institute of Graphic Art (AIGA). However, the petitioner submitted no documentation of his membership in these organizations with his petition. In response to the RFE, the petitioner submitted a September 19, 2005 welcome letter from [REDACTED], Executive Director of the ADC, acknowledging the petitioner as a new member into the club. The petitioner also submitted a copy of a card indicating that he had been a member of the AIGA since 1997, and a copy of a September 28, 2005 letter notifying him that he had been elected to regular membership in the TDC. The petitioner submitted no documentation about the membership requirements of the ADC or the AIGA.

The petitioner submitted a copy of the bylaws of the TDC, which recognizes six classes of membership. According to the bylaws:

Regular Members shall be those individuals of an acceptable level of professional competence who are actively engaged in the selection, specification, design or creative use of typography. Acceptance is subject to approval by the Board.

The bylaws also recognize associate members, who are non-professionals with an interest in the fields of typography, design or graphic arts; student members, who are those engaged in undergraduate or post graduate studies; life members are those with 20 years or more consecutive membership who have "made outstanding contributions to the fields of typography, typographic design or graphic arts and who are retiring from active employment; sustaining members are businesses, organizations or individuals who give financial support to the TDC; and honorary members, those "individuals who have made outstanding contributions to the fields of typography, typographic design or the graphic arts."

Therefore, according to its bylaws, TDC does not require outstanding achievements of its members. Those who have outstanding contributions may be honorary or life members; however, regular membership, such as that held by the petitioner, does not require outstanding achievement.

On appeal, the petitioner submits a June 20, 2008 letter from George Fernandez, director of membership of AIGA, who identified only one requirement for membership in the organization: that the individual is a professional working in the field of design.

The petitioner also submitted a copy of a July 31, 2006 letter acknowledging his membership in D&AD and accompanying material that indicates the term “member” is reserved for those creatives who have had work featured in the D&AD Annual. The material further indicates that “associate membership is open to all non-creatives” who are “a client, marketing director or . . . promote creativity in business.” The membership requirements of D&AD do not indicate that outstanding achievements are required of its members.

The evidence submitted does not indicate that any of the organizations for which the petitioner claims membership requires outstanding achievements of its members as judged by national or international experts in the field. Accordingly, the petitioner has failed to establish 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.*

In order to meet this criterion, published material must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted a copy of his portfolio and copies of his designs that appeared in publications such as *CMYK*, *Print*, *Interactive Annual 2002*, *Communication Arts*, *Graphic Design*, *Experimenta*, *Open Ends* and the MoMA staff newsletter. However, none of these published photographs of the petitioner’s work is accompanied by the documentation required by this criterion. This criterion specifically requires the material to be *about* the alien and to include an author, title, and any needed translation. Those specific requirements reference published *written* work instead of visual work such as photographs of the petitioner’s graphic designs. As such, these photographs do not qualify the petitioner under this criterion.

Further, the petitioner has not established that any of the publications in which photographs of his work appeared is a professional or major trade publication or constitutes other major media. We note that [REDACTED] stated that *Communication Arts* magazine is a professional journal, and Ms. [REDACTED] stated that *Graphic Design USA* is “the premier news magazine for graphic designers and other creative professionals.” However, the petitioner submitted no objective documentation to confirm either of these statements.

On appeal, the petitioner submits documentation indicating that *Print* is a “general-interest magazine” published bimonthly and is a “three-time winner” of the National Magazine Award for Excellence (Circulation of under 100,000). Documentation regarding *CMYK* and *Communication Arts* indicate that those publications also have circulations of less than 100,000. Nothing in the record, particularly these circulation numbers, indicate that these publications are considered professional or major trade publications or other major media. Counsel also asserts that the petitioner’s work has been viewed on the MoMA website. In today’s world, many printed materials, regardless of size and distribution, are posted on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. We are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication or website is “major media.” The petitioner must still provide evidence, such as, a widespread distribution, readership, or overall interest in the publication in order to demonstrate that the MoMA website as well as the other claimed publications can be considered a professional or major trade publication or can be considered other major media.

The petitioner has failed to establish 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.*

The petitioner claims to meet this criterion based on his position of senior designer at MoMA. In her December 1, 2006 letter accompanying the petition, counsel states that “elemental” to the petitioner’s responsibilities in his current job, he “must evaluate and assess the work of others.” However, nothing in the letter of [REDACTED] Design Director for MoMA, and the petitioner’s direct supervisor, [REDACTED] indicated that the petitioner had any duties that involved evaluating or assessing the work of others.

In response to the RFE, the petitioner submitted a copy of an April 16, 2008 letter from Ms. [REDACTED], who stated that she was the assistant design director, and the petitioner’s direct supervisor. According to [REDACTED], in his job, the petitioner “regularly evaluates the professional work of others including both our design employees and outside vendors used in the production of MoMA design work.” [REDACTED], a professional designer, stated that the petitioner supervised and evaluated her work and other professional designers hired on a project basis. However, 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.

In this instance, pursuant to his job responsibilities the petitioner was required to review the work of his subordinates and coworkers. The record lacks evidence that the petitioner performed as judge of others outside of his employment responsibilities, such as judging design contests or judging applicants for membership in design associations. We find the routine duties performed

by the petitioner insufficient to meet this criterion and inconsistent with the level of acclaim required for this highly restrictive classification.

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.*

As evidence that he meets this criterion, the petitioner submitted a copy of his portfolio and several letters of reference and recommendation. A review of the petitioner's portfolio does not confirm that he has made a contribution of major significance to his field of endeavor. Further, while the petitioner's references describe him as innovative, with outstanding artistic talents and technical abilities, they do not specify any contributions of major significance that he has made to the field.

Those submitting letters about the petitioner's original contributions to the field include [REDACTED], the associate creative director at Ogilvy Interactive Worldwide, who stated that he and the petitioner were students together and collaborated on group projects. [REDACTED] and [REDACTED], a graphic designer at The Metropolitan Museum of Art, state that the petitioner "has always produced designs of the highest quality and is responsible for many original contributions to the field." [REDACTED] co-founder and partner of Dresser Johnson, LLC also stated that the petitioner "was responsible for many original contributions to the field." However, none describe those contributions or assert that they were of major significance to the petitioner's field.

[REDACTED], editor and president of the *Esopus*, a twice-yearly arts magazine, stated that he served as one of the petitioner's thesis project advisors at the School of Visual Arts. He stated that the petitioner "is responsible for original contributions of major significance to business inherent in the duties of" his position at MoMA. [REDACTED] did not specify the contributions that the petitioner had made nor did he specify how these contributions were of significance to the field.

Counsel asserted in her December 1, 2006 letter that the petitioner's work has resulted in the creation of new media and "increased international recognition and revenues for [MoMA] as well as for other clients for whom he has designed." However, the evidence of record does not support counsel's statement. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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).

In order to stay competitive, the petitioner, as with all designers and businesses, must continually develop original and innovative ideas. However, all original or innovative ideas are not contributions of major significance to the field. The petitioner has submitted no documentation to demonstrate, for instance, that his work has been implemented, copied, or otherwise adopted by

other designers to the extent that it can be said that it is of major significance to his field of endeavor.

The petitioner has failed to establish that he meets this criterion.

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

The petitioner claims for the first time on appeal that he meets this criterion. The wording of this criterion indicates it is intended for those in the visual arts such as sculptors and painters. Counsel asserts that the petitioner's work with curators is to design materials for artistic exhibits and that his "designs are displayed as an important part in exhibitions at one of the leading contemporary art and design museums." In an August 29, 2006 letter, ██████████ the acting chief curator at MoMA, stated that the petitioner worked closely with him and other curators "to design, prepare and install exhibition design viewed by an estimated 2.5 million visitors per year," with others viewing via the museum's website. ██████████ stated that the petitioner's designs included the staff newsletter, the website, brochures, letterhead and business cards, signage, posters and exhibitions. Thus, it is clear that the petitioner's works are not the focus of the exhibition but a means of calling attention to the work of other artists. Further, as discussed previously, duties or activities that nominally fall within a given criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent to the occupation itself. The record does not contain sufficient evidence to establish that specific designs of the petitioner were featured or exhibited at MoMA or any other artistic venue or showcase.

The petitioner has failed to establish 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.*

To meet this criterion, the petitioner must show that he performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation. We concur with the director that MoMA is an organization with a distinguished reputation. However, the petitioner must also establish that his position as a senior designer was in a leading or critical role for MoMA.

In his undated letter submitted with the petition, ██████████ stated that he was the Design Director in MoMA's Department of Graphic Design and the petitioner's direct supervisor. He further stated that in his position of senior designer:

[The petitioner] is responsible for designing and managing MoMA's graphical identity for internal and external use. He plays a leading role at our distinguished organization. Not only is the graphic or corporate identity key to any business, but in an organization such as ours, which is devoted to being a leader in art and design, [the petitioner's] work is critical to MoMA's place in the arts

environment. [The petitioner] works closely with the museum's curators to design, prepare and install exhibition graphic design.

In her April 16, 2008 letter, submitted in response to the RFE, [REDACTED] stated that she was the assistant design director at MoMA and served as the petitioner's direct supervisor. She repeated [REDACTED] assessment of the petitioner's work at MoMA and stated that the petitioner's "continued presence at MoMA is key to the successful operation of the Museum."

The record indicates that at least two people are senior to the petitioner within the Department of Graphics Design with MoMA. Further, MoMA apparently has a number of curators and other designers who are responsible for obtaining and displaying the work of artists. Although the evidence reflects that the petitioner's designs have garnered some recognition and assisted MoMA in the promotion of its exhibitions, the petitioner submitted no evidence showing that he is responsible for MoMA's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim at the very top of his field.

The petitioner stated that he was the graphic and website designer for Wang Investment Associates of New York. In a March 14, 2006 letter, [REDACTED], who worked with the petitioner at Wang Investment Associates, Inc., stated that as graphic and website designer, the petitioner played a key role in the company, and that his "designs resulted in successful marketing promotions."

The petitioner submitted no documentation to confirm [REDACTED] statement's regarding the petitioner's role in the company or any documentation to establish that Wang Investment Associates is an organization or establishment with a distinguished reputation.

The petitioner has failed to establish that he meets this criterion.

The regulation at 8 C.F.R. § 204.5(h)(4) states: "*If the above standards do not readily apply to the beneficiary's occupation*, the petitioner may submit comparable evidence to establish the p eligibility." [Emphasis added]. The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. However, we will briefly address counsel's argument under this provision.

Counsel states on appeal:

[The petitioner's] unique design talent and his ability to consistently create effective original artwork, particularly in business communications and corporate branding for one of the leading art museums in the world deserve weight and consideration when determining eligibility for extraordinary ability.

The petitioner, however, submits no additional documentation for consideration under 8 C.F.R. § 204.5(h)(4). Furthermore, the evidence submitted by the petitioner does not establish that his talent and his ability alone are so unique that they establish that he is an alien of extraordinary

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