

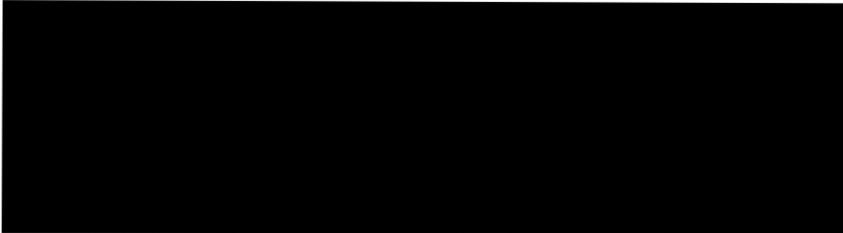
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY



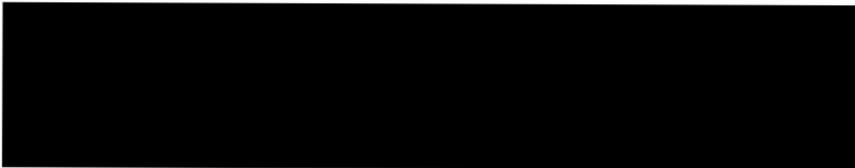
B92

FILE: LIN 06 273 53429 Office: NEBRASKA SERVICE CENTER Date: JUN 04 2009

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:



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, 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 the arts. The director determined that 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 argues that the petitioner meets three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Counsel indicated on the Form I-290B, Notice of Appeal or Motion, that a brief and/or additional evidence would be submitted to the AAO within 30 days. The appeal was filed on April 30, 2008. As of this date, more than thirteen months later, the AAO has received nothing further.

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, 60898-99 (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 September 26, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a producer. At the time of filing, the petitioner was working as a writer and producer for HBO Latin America. In March 2007, the petitioner began working as a creative producer for Totuma Communications and Design.

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.<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.*

In a letter accompanying the petition, counsel states that the petitioner received several Promax/Broadcaster Design Association (BDA) awards while working for HBO Latin America. The record, however, does not include evidence of the awards from Promax/BDA to support counsel's assertions. 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).

In response to the director's request for evidence, the petitioner submitted a January 7, 2008 letter from [REDACTED] Vice President of Creative Services, HBO & Cinemax Latin America, stating that the petitioner "was in charge of large number of key On-Air Campaigns" that were recognized by Promax/BDA:

Promax & BDA World Gold International 2005.  
Bronze: Art Direction and Design: Topical Promo Campaign  
Entry Title: The Lord of the Rings Campaign  
Original Concept. Creative Producer. Writer: [REDACTED]

Promax & BDA Latin America 2004.

---

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

Gold: Documentary Promo

Entry Title: Bowling for Columbine

Original Concept. Creative Producer. Writer: [REDACTED]

Promax & BDA Latin America 2004.

Silver: Music Program Promo

Entry Title: No Doubt: Rock Steady Live

Original Concept. Creative Producer. Writer: [REDACTED]

Promax & BDA Latin America 2004.

Silver: Promo Not Using Program Footage

Entry Title: Gollum: The Lord of the Rings: The Two Towers

Original Concept. Creative Producer. Writer: [REDACTED]

Promax & BDA Latin America 2004.

Silver: Sound Design

Entry Title: Gollum: The Lord of the Rings: The Two Towers

Original Concept. Creative Producer. Writer: [REDACTED]

Promax & BDA Latin America 2004.

Silver: Editing

Entry Title: The Matrix Reloaded

Original Concept. Creative Producer. Writer: [REDACTED]

Promax & BDA Latin America 2002.

Silver: Best On Air Program Campaign

Entry Title: The Mind of the Married Man

Original Concept. Creative Producer. Writer: [REDACTED]

In addressing [REDACTED] letter, the director's decision stated: "[T]he record lacks any objective documentation of these awards. A third-party statement claiming that the petitioner received awards is not sufficient. The record lacks any documentation from Promax & BDA documenting or verifying these awards." We concur with the director's findings. Rather than submitting primary evidence of the awards from the Promax/BDA competition organizers, the petitioner instead submitted a letter from his immediate supervisor claiming that his campaigns received bronze, silver, and gold awards. 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. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, there is no evidence showing that the preceding awards were received by the petitioner.

Even if the petitioner were to demonstrate that he was a Promax/BDA award recipient, he has not established that the preceding awards are nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner submitted general information about Promax/BDA from its internet site and from its “souvenir book of the 2007 Promax/BDA Award winners,” but the self-serving nature of this material is not sufficient to demonstrate that Promax/BDA’s awards are nationally or internationally recognized. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* and it is his burden to establish every element of this criterion. In this case, the petitioner has not shown that the awards specified in [REDACTED] letter had a significant level of recognition beyond the presenting organization. Further, while it is unclear whether Gold, Silver, and Bronze awards are presented for each of the scores of categories available in Promax/DBA’s annual competition, it is apparent that the number of awards annually conferred is substantial.<sup>2</sup> Finally, we cannot ignore that the individuals and companies participating in the Promax/DBA competition can self-nominate and must pay an entry fee to Promax/DBA.<sup>3</sup> True awards for excellence in the field are generally not contingent upon payment of a fee.

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.*

The petitioner submitted certificates from July and November 2005 reflecting his participation as a judge for the “2005 PROMAX & BDA Awards Competition” and the “2005 PROMAX/BDA Latin America Awards competition.” The petitioner also submitted letters dated November 22, 2004 and April 18, 2005 thanking him “for volunteering as a judge” for the “PROMAX & BDA 2004 Latin America Awards” and the “2005 PROMAX & BDA WORLD GOLD Awards.” The November 22, 2004 letter requests that the petitioner submit his “scores for the preliminary round on-line.” The record does not indicate the total number of rounds for the competition or whether the petitioner judged the final round. In addressing this evidence, the director’s decision stated: “Both of the letters indicate that the petitioner volunteered to act as a judge. It is not clear who is eligible to volunteer or what the criteria are for selection as a judge. If anyone can volunteer to act as a judge, this participation would not be commensurate with sustained acclaim in the field.” We concur with the director’s observations.

---

<sup>2</sup> For example, according to the “Promax/DBA Design Awards 2008” listing, there were more than 560 award recipients. See [http://www.promaxbda.org/media/site/pdf/BDA\\_Design\\_Awards\\_winners.pdf](http://www.promaxbda.org/media/site/pdf/BDA_Design_Awards_winners.pdf), accessed on May 29, 2009, copy incorporated into the record of proceeding.

<sup>3</sup> The “2009 PROMAX/DBA DESIGN AWARDS NORTH AMERICA CATEGORIES” announcement states: “In the event that any individual category attracts fewer than 5 entries or less than 3 submitting companies, the organizer reserves the right to withdraw that category from the competition. In this event, the participating companies will receive a credit towards future entry fees. No cash refund will be given.” See <http://www.promaxbda.org/PromaxBDA%20Design%20categories2009F.pdf>, accessed on May 29, 2009, copy incorporated into the record of proceeding.

In response to the director's request for evidence, the petitioner submitted the souvenir book of the 2007 Promax/BDA Award winners that lists him among the hundreds of judges who participated in that year's event. The petitioner's participation as a judge for the 2007 awards occurred 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)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider his participation in the 2007 Promax/BDA Awards in this proceeding.

In this case, there is no evidence demonstrating that serving as an online judge for the Promax/BDA Awards is indicative of or consistent with sustained national or international acclaim in the petitioner's field.<sup>4</sup> Nor has it been established that being among the hundreds of volunteer judges involved with the event elevates the petitioner to "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). Further, there is no evidence showing the specific work judged by the petitioner, the names of the individuals whose work he evaluated, their level of expertise, or documentation of his assessments. Without evidence showing, for example, that the petitioner has judged experienced professionals in a manner consistent with sustained national or international acclaim at the very top of his field, we cannot conclude 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.*

We acknowledge the petitioner's submission of recommendation letters praising his talents as a producer and writer and discussing his activities in the field. Talent and employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

The petitioner submitted an April 24, 2006 letter from \_\_\_\_\_ stating:

[The petitioner] worked under my direct supervision at HBO Latin America Caracas regional office for a period of nine years ending in September 2003 when I relocated to HBO Latin America Group in Coral Gables, Florida. During that period, I had the great pleasure of seeing Pedro successfully meet his responsibilities as a Creative Writer/Producer, which included of all On-Air promotional spots and campaigns for HBO Channels.

---

<sup>4</sup> There is no evidence showing that Promax/BDA is particularly selective in accepting volunteer judges for its annual awards competition. Instructional material from Promax/BDA states: "If you are a professional with a minimum of 3 years of experience in the fields of Promotion Marketing or Design, and are interested in participating, register to judge at: [http://promax.tv/awards\\_becomejudge.asp](http://promax.tv/awards_becomejudge.asp) or submit a copy of your resume or CV via email . . . ." See <http://www.promaxanz.tv/anz08/Frequently%20asked%20questions%20-%20ANZ%2008.pdf>, accessed on June 1, 2009, copy incorporated into the record of proceeding.

[The petitioner] is a hard-working extraordinary and talented artist, who invariably understands exactly what a project entails, and how to get it done quickly, effectively and who can use today's technologies to create diverse promotions and network brand campaign. I cannot remember an instance in which he missed a major deadline. He often brought projects in below budget, and a few were even completed ahead of schedule.

[The petitioner] is a resourceful, creative, and solution-oriented person who was frequently able to come up with new and innovative approaches to his assigned projects. He functioned well as a team leader and he also worked effectively as a team member.

██████████ Creative Director, Totuma Communications & Design, states:

The following is to certify that I've known [the petitioner] since nearly 10 years ago, when we worked together for the HBO Latin American Group in Caracas, Venezuela. Since then, we have maintained a courteous personal and professional relation.

During the time we worked together, I could repeatedly prove his commitment and extraordinary professional and human qualities. He has worked in depth as a writer, producer and creative director for numerous activities in the Industry. Proven to be an incredible professional individual, he has not only been the creator of multiple international award winning pieces, but also has participated as a concept director and producer for the newly design of various channels (HBO plus, HBO family and HBO Latinamerica). . . . He has also been always able to take into happy ending very difficult projects, showing an amazing capability to keep focused and calm under the most stressful production conditions.

██████████, Art Director, Warner Channel Latin America, states:

This letter will serve to confirm that I have known [the petitioner] in a professional capacity for over six years. [The petitioner] is a well known and respected Venezuelan Creative Writer/Producer whom I have had the pleasure of working with in several occasions.

\* \* \*

I must add that [the petitioner] has greatly demonstrated all his abilities skill to a top level. He has worked in depth as a writer, producer and creative director for numerous activities in the Industry. Proven to be an incredible professional individual, he has not only been the creator of multiple international award winning pieces, but also has participated as a concept director and producer for the newly design of various channels.

The preceding letters do not specify exactly what the petitioner's original contributions in the television industry have been, nor is there an explanation indicating how any such contributions were of major significance in his field. 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 has earned the admiration of his superior and colleagues, there is no evidence establishing that specific work attributable to him is tantamount to original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other television producers and writers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the recommendation letters submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS 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 writers' 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 television producer or writer who has **sustained national or international acclaim at the very top of the field**. 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.*

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

An April 24, 2006 letter from [REDACTED] states:

One of the most valuable assets [the petitioner] brings to HBO is his ability to do HBO ON-AIR PUBLISHING. He is an extraordinary and talented artist, and an experienced creative writer producer, who can use today's technologies into creating diverse Promotions and Network Image Packaging. This means that audiences in their homes see images that are products of his creative genius. [The petitioner's] work has been a signature of unique promotions in HBO through all these years.

[REDACTED] On-Air Manager, Cinemax Latin America, states:

I have known [the petitioner] for nearly 9 years, during which time he had served as a Senior Copy/Producer for HBO Latin America. I appreciated the invaluable skills he has as a

broadcast creative, giving HBO LA the most delicate and yet some of the most effective On-Air spots we had during this period.

Thanks to [the petitioner's] support, expertise and teamwork HBO experimented [sic] a substantial growth despite limited resources. He managed to create invaluable on-air products, playing a key role during the launching of HBO's new image. He met all deadlines and easily achieved and exceeded the goals set for him. He has a thorough knowledge of new trends in both music and Cinema.

[REDACTED], On Air Manager, HBO, states:

This letter will serve to confirm that I have known [the petitioner] in a professional capacity for over nine years. [The petitioner] is a well known and respected Venezuelan Creative Writer Producer who I have the pleasure to work with in several occasions.

\* \* \*

Since 2000 I am the On Air Manager for HBO, HBO Plus and HBO Family, handle a team of 16 people (9 copy-producers and 7 announcers). My work consists in the creation and direction of the on-Air of these channels, including carrying out a large number of promotional campaigns, image campaigns, spots, trailers, sales video and HBO ads.

\* \* \*

[The petitioner] is part of this team, he's our Senior Copy producer with more experience, talented and an excellent creative.

\* \* \*

His day to day duties includes creation and production of HBO's Monthly and Seasonal Campaigns, special spots, marketing special events and he was the On Air Coordinator for the relaunch of HBO, HBO Plus & HBO Family new graphic packages. He accomplished [sic] all these responsibilities [sic] with great professionalism [sic] and met all the deadlines set for this [sic] duties.

Art Director, HBO Latin America Group, states:

[The petitioner] is an Incredible Producer and Experienced Communicator, someone that you can count on to create great projects, handle very tight deadlines, coordinate all production budgets and post-production footage and materials.

For a few years we have been working in campaigns creating for them the most daring and bold pieces, also Creating New Graphic packages using and experimenting the newest technologies and techniques. [The petitioner] played an incalculable support to the

successful achievement of all the projects, therefore his work helps achieve great impact, [the petitioner's] Creative Montages and Production Experience are requested to be applied in many projects.

Now we are working again with Marketing Campaigns, his knowledge of the medium continues to amaze us, enriching the quality of the projects.

Thanks to the exceptional creativity of [the petitioner], HBO Latin America has been producing extraordinary Programs and Interstitials. The experience and talent of [the petitioner] has been instrumental in the success of all our projects and Networks.

In response to the director's request for evidence, the petitioner submitted a letter from [REDACTED] Director, Totuma Communications and Design, stating:

[The petitioner] works for our company Totuma Communications & Design since March 2007 as a creative producer.

During this relatively short period of time, [the petitioner] has been a fundamental piece in the development of our company, heading projects for our most important clients as HBO, Discovery and Nickelodeon Latinamerica. His vast experience in Latinamerican market and his incredible capacity of creative response has allowed our company to undertake challenges thought impossible until now. Also, we have as a company earned such an important client as HBO, due to HBO's complete trust in [the petitioner's] work, and we have been able to establish a continuous dynamic of work.

On the other hand, [the petitioner] has created a new department dedicated to the making of music videos. The first project undertook through this department was the musical video "Libelula" with music by Latinsizer (synthetic project from the known Mexican musical producer Pepe Mogt, founding member of the Nortec collective) and whose success in the market has resulted in a huge demand of work from different musicians and Latinamerican record companies for the making of their music videos.

The petitioner's work for Totuma Communications & Design post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO is not required to consider subsequent developments in the petitioner's career in this proceeding. Nevertheless, there is no evidence showing that Totuma Communications and Design has a distinguished reputation in the television industry.

With regard to the petitioner's role for HBO Latin America Group, the director stated that "[t]he record lacks evidence indicating how his role in the organization was leading or critical for the organization as a whole." We concur with the director's finding. There is no evidence demonstrating how the petitioner's role differentiated him from the multiple producers, managers, directors, and writers working for HBO Latin America Group, let alone its senior executives. The documentation

submitted by the petitioner shows that he performed admirably on the projects assigned to him, but it does not establish that he was responsible for HBO Latin America Group's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that 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 national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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 a 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.