



U.S. Citizenship
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[REDACTED]

FILE: [REDACTED]
SRC 08 160 51641

Office: TEXAS SERVICE CENTER Date:

MAR 27 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:

[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).

JF Grissom
John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Counsel contends on appeal that the director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the petition. The cited regulation requires the director to request additional evidence in instances “where there is no evidence of ineligibility, and initial evidence or eligibility information is missing.” *Id.* The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. The director did not deny the petition based on insufficient evidence of eligibility.

Furthermore, even if the director had committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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.

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 April 21, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a martial arts coach. The statute and regulations require that the petitioner seek to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he intends to continue his work in the United States. The petitioner submitted no letters from prospective employers, contracts, or other information detailing his plans in the United States as a coach. The petitioner did, however, submit a document that purportedly is a “certificate of coach” from the Qingdao Wushu Association and a “letter of appointment” indicating that the petitioner was appointed as a coach for imitation Mantis boxing at the Oriental Wushu School in 1998. The translation accompanying the “certificate of coach” does not identify the petitioner as the person to whom the certificate was issued. Moreover, the translation accompanying both of these documents fails to comply with the requirements of 8 C.F.R. § 103.2(b)(3) as it failed to identify the translator and did not contain a certification that the translation was complete and accurate, and that the translator is competent to translate from Chinese to English. The petitioner here has provided insufficient evidence to establish that he will pursue martial arts as a coach in the United States.

Moreover, although the petitioner appears to have had a moderately successful career as a competitive martial artist through 2006 and continued to “participate” in martial arts through August 2007, because it is his intent to come to the U.S. as a coach rather than a competitor, he cannot rely solely on prior success as a competitive athlete to meet this classification. While a competitive martial artist and an instructor certainly share knowledge of the sport, the two rely on a different set of basic skills. Thus, competing and instructing are not the same area of expertise.¹

¹ While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee’s extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or instructor.

Although a nexus exists between competing in and coaching or instructing a given sport, to assume that every athlete's area of expertise includes instruction would be too speculative. To resolve this issue, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or instruction at a national or international level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as a coach. A coach who has established a successful history of instructing athletes who compete regularly at the national level has a credible claim; an instructor of novices does not. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached.

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.²

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 what he claims are the following awards or prizes:

1. Certificates of award from the Chinese Wushu Association indicating that at the National Traditional Wushu Grand Competition, the petitioner won ██████████ in the men's Chāquán (Cha boxing) AA, the men's Jianshu (Double-Edged Swordmanship [sic]) C, the men's Tanglang Quan (Mantis Boxing) C on August 8, 2004, and on August 9, 2004, he won ██████████ in the men's Cha Qiang (Cha Spear) AA.

² Only those criteria claimed to be applicable by the petitioner will be discussed, because neither the petitioner nor counsel claim to meet any of the remaining criteria and the record contains no evidence relevant to those criteria.

2. Certificates of award from the Shandong Wushu Sports Association dated September 3, 2004, indicating that the petitioner won [REDACTED] in the Men's Other Boxing C, the Men's Other Weapons C, and Mantis Boxing C at the 2004 Wu Xie cup at the traditional Wushu Tournament in Shandong, China.
3. Certificates indicating a [REDACTED] in the Mantis Sword, Ditang/Xiangxing, and sparring/push hands, and [REDACTED] in "other weapons" categories at the Hong Kong International Wushu Festival held in Hong Kong from March 11 to March 13, 2005. Another document indicates a second place finish in the "other weapons" category. The names of the winners are in Chinese and the petitioner failed to submit translations of the documents.
4. Certificates of award from the Qingdao Wushu Association indicating that the petitioner [REDACTED] in the men's Shaolin Boxing A, the men's Tanglang Boxing A, and the men's Tanglang Sword A at the 2005 Qingdao International Mantis Boxing Competition.
5. Certificates indicating a [REDACTED] in the sparring, Xiangxing and the Chen Style Taiji Boxing categories at the 2006 Hong Kong Wushu International Festival. The name of the winner is in Chinese and the petitioner did not submit a translation of the document. One certificate indicates a "Group Six First Place" award and another indicates it was for placing second; however the categories on the certificates are unclear. The winner's name on both of these certificates is in Chinese and the petitioner failed to submit certified translations of the documents.
6. Certificates of award indicating that the petitioner won [REDACTED] in the men's Shuang Dao (double broadsword) M5, the men's Pu Dao Jin Qiang Pu Sword Jin Qiang, and the men's Xiangxing Quan (imitation boxing) M5 at the 2006 Macau International Traditional Wushu Invitational Competition
7. Certificates indicating a first place finish in the men's Ditang/Xiangxing, the men's Shaolin boxing, the men's face to face/sword and spear, and the men's "other weapon and long weapon" categories in the "Reunification Cup" at the at the 5th Hong Kong Wushu International Festival. Although the latter three documents contain a photograph, presumably of the petitioner, the winner's name on these certificates is in Chinese and the petitioner failed to submit certified translations of the documents. The date of the festival is not shown.
8. A certificate of appreciation from the United States Traditional Kung Fu Wushu Federation. The certificate, dated August 11, 2007, recognizes the petitioner's "support and participation in the 2nd International Traditional Kung Fu Wushu Tournament & Masters Exhibition."
9. Three undated certificates indicating that the petitioner had "participated in the 2nd International Traditional Kung Fu Wushu Tournament & Masters Exhibition." The

certificates indicated that the petitioner won first place; however, any specific category is in Chinese and the petitioner provided no certified translation of any of the documents.

We note that with the exception of the certificates outlined at numbers 8 and 9, none of the above documentation is accompanied by a translation as required by 8 C.F.R. § 103.2(b)(3). Specifically, the translations did not identify the translator and were not accompanied by a certification that the translations were complete and accurate, and that the translator is competent to translate from Chinese into English. In fact, several of the documents are partially in Chinese and the petitioner failed to provide any translations of those documents. Accordingly, none of these documents are of probative value in this proceeding.

In denying the petition, the director determined that the record did not contain an explanation of the significance of the awards received by the petitioner. On appeal, the petitioner submits a copy of a December 29, 2008 letter from [REDACTED] the executive secretary of the organizing committee of the Hong Kong Wushu International Festival. Mr. [REDACTED] confirmed the petitioner's awards in the various festivals and stated that the festival began in 2003 and "has gained the recognition and support from the fellow *Wushu* critics all over the world." He further stated that the festival has nearly 20,000 participants from more than 20 countries and regions, and that the festival invites "internationally well-known referees and *Wushu* elites to serve as judges of the competitions."

The petitioner also submitted a copy of a December 20, 2008 letter from [REDACTED], who identified himself as the Secretary-General of the Qingdao Wushu Association, a senior member of the Chinese Wushu Association and a judge of the Hong Kong International Wushu Festival and stated that he is one of the authorities in Wushu in China. Mr. [REDACTED] enumerated the awards received by the petitioner as shown by the certificates discussed above. Mr. [REDACTED] stated that the 2004 National Traditional Wushu Exchange Grand Competition involved 632 participants "from 28 provinces, various self governed municipalities and autonomous regions throughout China." He also stated that he has served as the "official judge of the Hong Kong International Wushu Festival on a frequent and consecutive basis." He stated that the competition draws participants from throughout China and 20 other nations and that:

[A]ll of those competitions are very influential and significant within the International Wushu community. The fact that [the petitioner] won such a high number of awards in these competitions reflects on his extraordinary skill and demonstrates that his ability is either higher than or on equal level with the nation's top standard. Secondly, in each of those events, [the petitioner] competed his way through the hierarchy of competition matches and ultimately won the gold medal in the final. Fourthly, these competitions are all national and international scaled competitions. Particularly, the Hong Kong International Wushu Festival is one of the largest Wushu event[s] in the world, and being able to compete in this event is the wishes of tens of thousands Wushu athletes. Finally, only outstanding Wushu athletes may qualify to compete in this event.

In a separate undated letter written on behalf of the Organizing Committee of the Hong Kong Wushu Festival, [REDACTED] certified that the petitioner participated in the 2005, 2006 and 2007 festivals and won gold medals in several events. Mr. [REDACTED] stated that the 2005 festival consisted of more than 1,000 competitors from 27 countries and regions and was covered by “30 media companies with more than 50 journalists from Hong Kong, Mainland China and other countries and regions.” He further stated that the 2006 festival featured over 1,500 competitors from more than 20 countries and regions and was covered by several television networks “and more than 30 local and international media companies,” and that the 2007 festival enjoyed similar media attention.

Nonetheless, the petitioner submitted no documentation, such as news media coverage or similar evidence, to corroborate any of the statements in the letters of [REDACTED] and [REDACTED]. 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)). No other documentation in the record establishes that first place finishes at the Hong Kong Wushu International Festival are nationally or internationally recognized prizes or awards of excellence in the petitioner’s field of endeavor.

[REDACTED] who identifies himself as a Grandmaster and a Supermaster, in a December 18, 2008 letter, also enumerated the petitioner’s awards, and stated that the “competitions are significant because they all have gained recognitions by wushu experts and organizations throughout the world.” Mr. [REDACTED] stated that he was “more directly involved” in the “organization and judging” of the Second International Kung Fu/Wushu Tournament & Masters Exhibition in 2007. He further stated:

First, the competitions at the International Kung Fu/Wushu Tournament & Masters Exhibition are among the most important competitions of their kind in the world. The Tournament is well recognized among wushu masters, sifus, coaches, schools, and students throughout the nation and abroad. The Tournament is the second largest and most important event in wushu competitions in the United States. It is held only every three years. Winning an award at this competition has been the dream of tens of hundreds of outstanding wushu masters throughout the world. It is increasingly gaining popularity and recognition both in the United States and elsewhere.

indicates that the tournament is “well recognized” and that winning an award at the competition “has been the dream of tens of hundreds.” However, we note that the 2007 competition was only the second one held. Further, [REDACTED] stated that the competition was “increasingly gaining popularity and recognition” in the United States and elsewhere. Neither of these facts is indicative that an award at the tournament is nationally or internationally recognized as an award of excellence in the field. The record contains no other documentary evidence to corroborate the significance of the tournament or its awards.

More importantly, even if the petitioner were able to demonstrate his receipt of nationally or internationally recognized awards as a martial arts competitor, which he has not, as previously indicated, the petitioner does not seek classification as a competitor but rather as a coach. The record, however, contains no evidence that the petitioner has received awards as a coach. While we may consider the level at which the petitioner has acted as an instructor as evidence that he has sustained acclaim, in this instance, the petitioner has not submitted any evidence to demonstrate that he has coached students at the national or international level or that any of his students have won nationally or internationally recognized prizes or awards such that the petitioner's prior success as a competitive martial artist can be said to have been sustained through his success as a coach. Accordingly, the petitioner has failed to establish his receipt of lesser national or internationally recognized prizes or awards in his field as a martial arts competitor and as a coach.

The petitioner failed to establish that he meets this criterion either as a competitor or as a coach.

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.

With the petition, the petitioner submitted copies of documents indicating they were issued by the Chinese Wushu Association, the Qingdao Wushu Association, and the China Qingdao Shi Bel District Wu Shu Association. Except for the names of the associations, the documents are in Chinese, and were not accompanied by English translations as required by 8 C.F.R. § 103.2(b)(3). The petitioner submitted no other documentation regarding the associations and their membership requirements. The director determined that the petitioner had not submitted evidence of this criterion.

On appeal, counsel asserts that the director "erred in failing to recognize, or at least failing to request, the evidence, inter alia, that the Petitioner is a member of the prestigious Chinese Wushu Association . . . which requires outstanding achievements of its members." The petitioner submits a "letter of certification" purportedly from the Vice President, [REDACTED], in which he outlined the membership requirements of the Chinese Wushu Association. The translation accompanying the document, however, does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) in that it does not identify the translator, it does not contain a certification that the translations are complete and accurate, and that the translator is competent to translate from Chinese into English. Accordingly, the document is of

no probative value. Further, even if the proper translations were submitted, it appears that [REDACTED] provided only a synopsis of the membership requirements and the articles of organization, rather than the entire document. In addition, we note that the articles of organization, as outlined in the letter, provide at least eight different ways of becoming a member, including teaching and coaching at an intermediate level or above, Wushu practitioners at Level Dan or higher, national and international judges and level 1 judges “who have made significant contributions,” Samurai athletes who have reached the Wuying or first class level, and others “who have made outstanding contributions to the course of marshal [sic] arts.” Thus, this document, even if probative, does not establish that the Chinese Wushu Association requires outstanding achievements of its members as judged by national or international experts.

[REDACTED] asserted in his letter that:

[The China Wushu Association (CWA)] only accepts accomplished individuals working in the field of marshal [sic] arts. In judging whether an applicant has outstanding accomplishments, the association looks at factors such as the number and significance of awards received in wushu competitions, and/or whether the applicant has served as a judge of the work of others.

As noted above, however, the petitioner submitted no documentation to support these statements by [REDACTED] regarding the requirements to become a member of CWA. 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 at 165. Further, the statements appear inconsistent with those allegedly made by [REDACTED] regarding eligibility for membership in the association.

The petitioner failed to establish that he meets this criterion either as a competitor or as a coach.

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.

With the petition, the petitioner submitted a copy of a June 2007 letter addressed to “Master/Sifu” inviting the individual to participate as a judge/official at the Second International Traditional Kung fu Wushu Tournament & Master Exhibition. However, without evidence to demonstrate that the petitioner actually served as a judge at this tournament, the petitioner has failed to establish that this *invitation* to participate is sufficient to meet this criterion. The petitioner’s name has been added to the letter by hand, and it is unclear who added it or when. Therefore, it is not clear that the letter was addressed to or intended for the petitioner. The petitioner also submitted copies of documents indicating that he was appointed as a competition judge at the national level and a level III social sports (public sports) evaluator in China. The translations accompanying the documents do not identify the translator, the translator did not certify that the translations were complete and accurate, and did not certify that he or she is competent to translate from the Chinese into English, as required by 8 C.F.R. § 103.2(b)(3). The

petitioner submitted no documentation with the petition that he had actually participated as a judge or evaluator.

In his December 20, 2008 letter submitted on appeal, [REDACTED] stated that the petitioner serves as a national level three judge certified by the Chinese Wushu Association and has judged and assessed the performances of Wushu athletes “in a number of national Wushu competitions.” [REDACTED] further stated, “Only an outstanding Wushu talent such as [the petitioner] could qualify to be invited by the national or international Wushu associations to serve as a judge of performances of others.”

In his December 18, 2008 letter, [REDACTED] stated:

[The petitioner] has been certified by the State Administration of Sports in China as a national Level III competition Judge because of his outstanding achievements.

Based on [his] remarkable achievements and recommendations by other wushu experts, the Organizing Committee of The Second International Traditional Kung Fu/Wushu Tournament & Masters Exhibition selected [the petitioner] to serve as one of the judges at the Tournament. He performed the role of judging the quarter-finals, semi-finals and final in the competition events of Tanglang Boxing, Imitation Boxing and Sparrig [sic].

The significance of the 2007 Tournament has been stated . . . I wish to emphasize that it is because of [his] sustained national and international acclaim in wushu that led to his selection as a judge at this internationally significant tournament.

The evidence indicates that the petitioner was certified to act as a judge by the State Administration of Sports. The petitioner submitted no documentation from the State Administration of Sports that outlines the criteria for certification as judge or evaluator by the State. Additionally, other than the statement by [REDACTED] that the petitioner “judged and assessed the performances of Wushu athletes “in a number of national Wushu competitions,” the petitioner submitted no documentation to confirm that he participated as a judge pursuant to the State’s certification.

The petitioner has failed to establish that he meets this criterion either as a competitor or as a coach.

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

With the petition, the petitioner submitted copies of documents that purport to be an April 14, 2005 "Certificate of Honor" from the Qingdao University of Technology, recognizing the petitioner's "special contribution to 'The Spirit of Chinese Wushu' – The 2nd Wushu Demonstration and Competition of Qingdao University of Technology" The translation does not identify what the petitioner "demonstrated" or the nature of his "special contribution." Further, the translation does not comply with the requirements of 8 C.F.R. § 103.2(b)(3), in that it does not identify the translator, does not certify that the translations were complete and accurate, and does not certify that the translator is competent to translate from the Chinese into English.

The petitioner also submitted a copy of a "Certificate of Honor" from the Laoshan Culture Society in Qingdao recognizing his "extraordinary contributions to the study of Wushu culture" and his "outstanding achievements in national competitions in 2003 and 2004." The translation accompanying the document suffers from the same deficiencies as that discussed immediately above. Additionally, the certificate, as translated, does not identify the petitioner's contributions to the study of Wushu and how they are of major significance to his field.

On appeal, [REDACTED] states that "To both practice Wushu traditionally and still be innovative is an extremely challenging task. That, however, was exactly what [the petitioner] did." [REDACTED] further stated:

First of all, [the petitioner's] many Wushu forms and styles derived from original ideas of his own creativity.

Secondly, [his] noble, elegant, vivid natural, creative, inspiring and impressive Wushu style to some extent influenced many of his domestic peers, encouraging them to not limit their Wushu styles to simple techniques and skills.

Moreover, many peers considered [the petitioner] as their role models with regards to their Wushu styles.

In addition, [the petitioner] has received wide national and international acclaims from peers and audiences.

[The petitioner] created a unique style that quickly became the favorite of Wushu enthusiasts throughout the world, and thus he became known to the Wushu community as the "Traditional Wushu Revolutionist".

Nonetheless, while the petitioner may have been creative and inspired others, [REDACTED] fails to specifically identify, for instance, the techniques or skills that the petitioner has developed or modified to demonstrate how his contributions are original and how they are of major

signification to his field. Although [REDACTED] claims that the petitioner has been “influential,” he his statement lacks probative details regarding the petitioner’s specific contributions.

Accordingly, the petitioner has failed to establish that he meets this criterion either as a competitor or as a coach.

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

With the petition, the petitioner submitted copies of photographs that he stated depicted him “showcasing” at various Wushu competitions. The director did not address this criterion in his decision.

The wording of this criterion indicates that it is intended for those in the visual arts such as sculptors and painters rather than for martial arts competitions in which the petitioner has competed. In his December 18, 2008 letter submitted on appeal, [REDACTED] states that he is “of the opinion that [the petitioner] has maintained a very solid record of having his work displayed or showcased at numerous national and international competitions and exhibitions for the arts of wushu.” [REDACTED] further states:

I understand that for some, wushu may not be a conventional discipline of “visual arts” as these words are understood in its traditional sense, but for those of us working in the field of creative marshal [sic] arts, wushu is and should be as much a kind of “visual art” as, e.g., painting or sculpting. That is why we proudly call our work “marshal arts [sic].”

Nonetheless, the martial arts are not visual arts such as painting or sculpting. Further, the petitioner alleges only that his work was “showcased” in competitions. He neither alleged nor submitted documentation that his work was the subject of a specific display or was the focus of these competitions.

The petitioner has failed to establish that he meets this criterion either as a competitor or as a coach.

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 beneficiary’s eligibility.” [Emphasis added].

Counsel asserts on appeal:

It is Petitioner’s position that the regulatory language on other comparable evidence need not to be resorted to because there is no indication that his eligibility for visa preference in the category of extraordinary ability alien cannot be established by three of the ten criteria specified by the regulation. However, regardless of whether or not at least three of the ten criteria have been satisfied, it

is arguable that the abundance of petitioner's supporting material attesting to his excellence and extraordinariness at least qualifies as "other comparable evidence" to support his petition.

Counsel admits that the ten regulatory criteria are applicable to the petitioner's field of endeavor. The regulatory language therefore precludes the consideration of comparable evidence in this case. Further, the regulation makes no provision for a petitioner to establish eligibility for this visa petition by an overall "abundance" of evidence when it is insufficient to meet the enumerated criteria.

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 in the martial arts 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 is a skilled and successful Wushu competitor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field either as a competitor or as a coach. The petitioner has not established that he has coached at any level of competition. 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.