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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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U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE: [REDACTED]
LIN 08 211 51239

Office: NEBRASKA SERVICE CENTER

Date: APR 28 2010

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:

SELF-REPRESENTED

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 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).

WDeadndk
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on June 25, 2009, and is now before the Administrative Appeals Office 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 as a boxer. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the basic eligibility requirements.

On appeal, the petitioner claims that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten criteria.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

¹ Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

A. Evidentiary Criteria

This petition, filed on July 21, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a boxer. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).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 claims eligibility for this criterion based on the following documentation:

1. Diploma for third prize at the international boxing tournament dedicated to the memory of M-S. I. Umakhanov;
2. Participation at the Boxing CISM Klitschko Tournament as a member of an official mission Ukraine from April 15 – 21, 2007;
3. Diploma for second place at the International Boxing Tournament from December 20 – 23, 2001;
4. Diploma for second place from the Great Silk Road Connective Continents at the 1st International Boxing Tournament from March 27 – 31, 2007;
5. Diploma for second place at the XXXV Centure de Aurinternational Tournament from June 7 – 10, 2006;
6. Diploma for third place at the 2nd Boxing International Tournament dedicated to the memory of Edward Aristakesyan on September 5, 2007;
7. Diploma for first place at the National Boxing Championship of Georgia from November 8 – 11, 2006;
8. Diploma for first place at the Boxing Championship of Georgia from May 11 – 15, 2005;
9. Diploma for first place at the Boxing Championship of Georgia in 2007;
10. Diploma for first place from the City Service of Georgia of Tbilisi Municipality on January 20, 2006;
11. Diploma for first place at the Sport Club Named After Giorgi Kandelaki on an unspecified date;
12. Diploma for first place for a competition among youngsters in Boxing of Georgia for the region Kuemo Kartli from July 11-15, 2001;
13. Diploma for first place in open competition in boxing among sportsmen (born on 1983-1984) at the Physical Training and Tourism Outdoor School from September 25 - 27, 2001; and
14. Diploma for second place at the Seventh Junior Boxing International Tournament Brandenburg Cup in 2002.

On appeal, the petitioner stated:

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

All above mentioned tournament are A-class international tournaments. The service decided that they [do not] have proof of [the] importance of above-mentioned tournaments. Does the term “International” mean[s] something for service officer or does the term “A-class” means something for service officer. My friend – Olympic champion told me that when he submitted the petition for extraordinary abilities category, the Service required the explanation and a proof of an importance of The Olympic Games.

We are not persuaded by the petitioner’s statements. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor, and it is his burden to establish every element of this criterion. However, an award with “International,” “National,” or “Continental” in the title does not automatically elevate the award to an internationally or nationally recognized award. Without documentary evidence regarding the actual competitions themselves, such as the level of those who participated or evidence of the selection criteria, we cannot conclude based on the name of the competition alone, that the competition or tournament is national or international, and therefore that its awards are recognized beyond the awarding entities as a national or international award. In this case, the petitioner failed to submit any documentation regarding any of these tournaments to warrant a favorable finding under the plain language of the regulation for this criterion. We note that some of the awards appear to be from the local or regional level such as items 10 – 13.

Accordingly, the petitioner has not established that he meets this criterion.

Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The director indicated in his decision that the record did not show that the petitioner was a member of any associations requiring outstanding achievements of its members. However, on appeal, the petitioner stated:

I submitted the reference from The Boxing Federation of Georgia that I am the member of National Team in Boxing. I believe and many immigration experts believes so, that for sportsmen the membership of National team is that “which require outstanding achievements of their members.”

In response to the director’s request for evidence pursuant to 8 C.F.R. § 103.2(b)(8), the petitioner claimed:

I am the member of Georgia’s National team in boxing. As a member of Georgia’s National team I took [sic] participate[d] in World Championship 2007

Chicago, U.S.A. Unfortunately, at this tournament my result was not so much successful, but I hope at next world championship I will become a champion.

In addition, the petitioner submitted a letter, dated July 2, 2008, from [REDACTED] of Boxing Club in Educational Field, and [REDACTED] of Boxing Club, who stated that “[o]n 2008y [the petitioner] has been entered the member of team of Georgia.”

Besides the petitioner’s own assertions, the petitioner failed to submit any documentation establishing that he competed at the 2007 World Championship in Chicago, Illinois as a member of the Georgia National team. 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)).

In addition, we are not persuaded that the letter from [REDACTED] and [REDACTED] establishes the petitioner’s membership with the Georgia National team. The letter is vague and generally indicates that the petitioner is a “member of [the] team of Georgia” and does not reflect that the petitioner is a member of the Georgia National team. Furthermore, the letter fails to reflect that [REDACTED] or [REDACTED] is in a position to confirm the petitioner’s membership with the Georgia National team. The letter indicates that [REDACTED] is the “director of boxing club in educational field” and [REDACTED] is the “director of boxing club.” We would be more persuaded, for example, by a letter from the President of the Georgia National or Olympic team than a letter from a “boxing club.”

Finally, even if we would accept the letter as evidence of the petitioner’s membership with the Georgia National team, which we clearly do not, we note that the petitioner’s assertion contradicts the letter from [REDACTED] and [REDACTED]. The record is unclear how the petitioner competed at the 2007 World Championship as part of the Georgia National team when the letter indicates that the petitioner became a member of the team in 2008.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires *documentation* of the alien’s membership. In this case, for the reasons stated above, the petitioner failed to submit sufficient documentation establishing that he is a member of the Georgia National team or any other association that requires outstanding achievements as judged by recognized national or international experts in their disciplines or fields.

Accordingly, the petitioner has not established that he meets this criterion.

Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The petitioner claims eligibility for this criterion based on the following documentation:

- 1.
- 2.

At the onset, the regulation at 8 C.F.R. § 103.2(b)(3) requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” Instead of submitting full English language translations of both articles, the petitioner submitted extract translations. In addition, 8 C.F.R. § 204.5(h)(3)(iii) requires “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.” However, the petitioner failed to provide the author for item 2.

Nonetheless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner relating to his work. In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.³

Regarding item 1, it appears that the petitioner only submitted the extract translation that related to the author’s interview portion of the petitioner. As such, we are unable to determine if the article is primarily about the petitioner. Regarding item 2, it appears from the extract translation that the article is primarily about the Championship of Georgia in which the petitioner is mentioned one time as winning first place among boys in the weight class of 48 kg. As the petitioner failed to establish that the two articles are *about* him, the petitioner failed to establish that he meets the plain language of the regulation for this criterion.

In addition, the petitioner claimed on appeal:

I submitted the paper from major Georgian sporting daily newspaper “Lelo.” This newspaper is nationally distributed and was established more than 90 years ago. Maybe there is [a] problem of [the] number of daily distributed copies. I dare to mention that Georgia is [a] small country with [a] population little above of [sic] 5 million. The average number of daily distributed copies is around 60,000. It means that approximately 1 copy is distributed on 80 Georgian citizens. The same number for nationally distributed New York Times is 1 copy on 300 American citizens.

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

However, the petitioner failed to submit any documentation regarding any of his assertions above. 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. The petitioner failed to establish that Lelo or Azoti of Rustavia is a professional or major trade publication or other major media.

Accordingly, the petitioner has failed to establish 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.

The petitioner claims eligibility for this criterion based on the submission of several recommendation letters from the following individuals:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.

A review of the recommendation letters indicate that they highly praise the petitioner for his work ethic, dedication, and accomplishments as a boxer. For example, [REDACTED] stated that “[the petitioner] is very devoted and hard working young boxer, who will use all effort and time to succeed. His manners, positive character and sense of responsibility distinguish him among many others.” In addition, [REDACTED] stated that “[the petitioner] is very noble, hardworking, energetic and kind young.” Further, [REDACTED] stated that “[the petitioner] is friendly, warm, kind, calm and courteous young.”

While the letters highly praise the petitioner for his character and dedication, they fail to establish that he has made contributions of major significance in his field. In evaluating the reference letters, they do not specifically identify what he originally contributed to boxing, and how those original contributions have influenced 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. Without extensive documentation showing that the petitioner's work has been unusually influential or widely accepted throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established that he meets this criterion.

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

A review of the director's decision reflects that he found that this criterion applied to visual artists and not boxers. On appeal, the petitioner stated:

This sentence is very disputed. First I believe that for sportsman the participat[ion] in the tournaments is Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Let me see this criteria's another side. There are 10 criteria for persons with extraordinary abilities. So it comes out that if the person is artist her or she have to satisfied to at least three of them. But for sportsman there are just 8 criteria (all except criteria vi and vii). It is very discriminatory regard to sportsman.

We agree with the finding of the director for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) indicates that it is intended for visual artists (such as sculptors and painters) rather than for boxers such as the petitioner. In athletics, competing in tournaments and championships and most competitions take place in a public forum. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's participation in competitions and tournaments has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). The petitioner failed to establish that his participation at tournaments is evidence of his work at artistic exhibitions or showcases.

Accordingly, the petitioner has not established 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.

On appeal, the petitioner stated:

I dare to mention that I am [a] member of [the] Georgian national team. In [any] given moment there are around 10,000 acti[ve] member-boxer[s] of the Georgian Boxing Federation. Just 18-20 of them are the [sic] member[s] of the National team. Besides this in many submitted references letters many leading professionals and expert consider me as one of best boxer[s] nationally. So I have a leading role for [the] whole Georgian Boxing.

The petitioner's alleged membership with the Georgia National team has previously been addressed under the membership criterion at 8 C.F.R. § 204.5(h)(3)(ii). Even if we found that the petitioner had established his membership on the national team, which we do not, such a finding would not also establish his satisfaction of this criterion. The regulatory criteria under 8 C.F.R. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to

meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

Notwithstanding, we are not persuaded by the petitioner's claim that membership on a national team also demonstrates that he has performed in a leading or critical role for that team. We do not find that merely being a member on a team or being considered one of the best boxers in the country by one's peers is sufficient to establish eligibility for this criterion. Instead, we would be more persuaded, for example, by evidence that demonstrates the petitioner's roles on a team compared to other team members, and how those roles contributed to the success of the team as a whole. In this case, the documentation submitted by the petitioner does not establish his position or standing to a degree consistent with the meaning of "leading or critical role" pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Regardless, the petitioner failed to submit any documentation regarding his assertion that there are 10,000 active boxers in Georgia and only "18-20 of them" are members of the national team. 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.

Accordingly, the petitioner has not established that he meets this criterion.

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

A review of the director's decision reflects that he concluded that the evidence submitted by the petitioner failed to establish that he commanded a salary significantly higher than other boxers. We note that the petitioner failed to address this criterion on appeal.

A review of the record reflects that the petitioner submitted a previously mentioned letter from [REDACTED] and [REDACTED] who stated that "[t]he club was paying to [the petitioner] 500 (Five hundred) USA dollar[s] every month." The petitioner failed to submit any other documentation regarding his salary or remuneration.

The plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no evidence establishing that the petitioner has earned a level of compensation that places him among the highest paid boxers in his field.

Accordingly, the petitioner has not established that he meets this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen

to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 WL 725317 at *3. The petitioner failed to establish eligibility for any of the criteria, in which three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Notwithstanding the fact the petitioner failed to submit documentation establishing that his awards were nationally or internationally recognized pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner submitted documentation reflecting a moderate degree of success in boxing tournaments. However, the petitioner has not demonstrated a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). We note that some of the petitioner’s awards were won in tournaments reserved for “youths” and “juniors.” We are not persuaded that the petitioner’s competition in age restricted tournaments demonstrates that the petitioner “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). 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 60899.⁴ Likewise, it does not follow that a boxer, such as the petitioner, should necessarily qualify for an extraordinary ability employment-based immigrant visa compared to a boxer at the professional level. 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 addition, even though the petitioner failed to demonstrate eligibility for the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we also cannot ignore that the statute requires the petitioner to submit “extensive documentation” of sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section

⁴ 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.

203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even if we would find that the articles submitted by the petitioner meet this regulatory criterion, which we clearly do not, we do not find two articles are sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Finally, while the petitioner failed to establish eligibility for original contributions of major significance pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner claims eligibility for this criterion based entirely on recommendation letters, which are not sufficient to meet this highly restrictive classification. We note that the letters were all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements 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 any immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

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. 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 the field of endeavor.

III. Conclusion

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 and 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) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.