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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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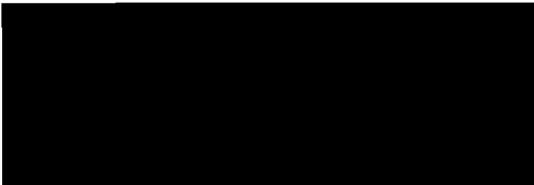
Date:

MAR 23 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)

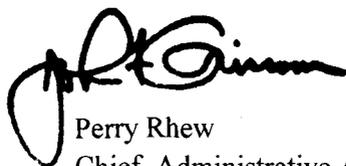
ON BEHALF OF PETITIONER:



**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).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas 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 athletics. 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 at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he submitted comparable evidence of his extraordinary ability (in the form of reference letters) pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). Counsel also contends on appeal that "no request for evidence was ever made and, as a consequence, appellant believes that affording him an opportunity to supplement the record would permit him to establish the significance of his achievements in his field of expertise." The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. With regard to counsel's concern, 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.

For the reasons discussed below, we uphold the director's decision.

## **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.

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 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, international recognized award). Barring the alien's receipt of such an award, the regulation outlines the following 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.

(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 procedure for evaluating evidence submitted to meet a given evidentiary criterion. 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 approach 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

### A. Evidentiary Criteria at 8 C.F.R. § 204.5(h)(3)

This petition, filed on February 24, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a "Fencing Coach." The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>1</sup>

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

The petitioner submitted a July 15, 2002 letter from the Secretary General of the Egyptian Fencing Federation listing the petitioner's competitive results in thirty fencing tournaments from 1979 to 1985 as member of the Egyptian National Team. Rather than submitting primary evidence of his "prizes or awards" from the tournament organizers, the petitioner instead submitted a third-party letter summarizing his results. The July 15, 2002 letter does not include any information about the listed tournaments or the significance of the fencing awards won by the petitioner. 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). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that primary evidence of his tournament awards does not exist or cannot be obtained. Further, the July 15, 2002 letter does not equate to secondary evidence or an affidavit.

The petitioner submitted a 1999 Special Olympics of Egypt "Coaching Excellence Award" in "recognition and appreciation of outstanding contribution toward Athletics for the Intellectual & Physical Disabilities." The record does not include information from the presenting organization indicating the significance of this award or its evaluation criteria. There is no evidence showing that this award equates to a nationally or internationally recognized award for excellence in fencing, rather than simply an acknowledgment of the petitioner's voluntary participation in the Egyptian Special Olympics.

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

The petitioner submitted a certificate issued to him in 2000 by the Sydney Organizing Committee for the Olympic Games and the International Olympic Committee stating: "In recognition of and appreciation for your contribution to the success of the Games of the XXVII Olympiad." There is no evidence showing that this certificate equates to a nationally or internationally recognized award for excellence in fencing, rather than simply an acknowledgment of the petitioner's and the Egyptian fencing team's participation in the Summer Olympic Games in Sydney. We note that the July 15, 2002 letter from the Secretary General of the Egyptian Fencing Federation does not list any results pertaining to the petitioner's athletes' achievements in the 2000 Olympic Games.

The petitioner submitted a "Good Work Award" certificate from the Cairo Fencing Committee "in recognition of a job well done . . . in Training Course" from June 28<sup>th</sup> – July 12<sup>th</sup>, 2001. The petitioner has not established that this certificate was presented for excellence in the field rather than for his successful completion of a training course. Moreover, there is no evidence showing that completion of this training course is recognized beyond the presenting organization or that it is in any way commensurate with a nationally or internationally recognized prize or award.

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

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

The petitioner submitted a November 12, 1995 letter from [REDACTED] of the International Federation of Sports Medicine, stating that the petitioner was "a tenured member of the International Federation of Sports Medicine and Latin and Mediterranean Group of Sports Medicine." Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that 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. The English language translation accompanying the preceding letter was not certified by the translator as required by the regulation. Further, the record does not include evidence (such as membership rules or bylaws) showing the official admission requirements for the preceding organizations. There is no evidence showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Moreover, the "field for which classification is sought" in the present matter is coaching fencing rather than sports medicine.

The petitioner submitted a December 20, 2005 letter from [REDACTED], Division of Pulmonary/Critical Care, New York Medical College, stating: "As reward of his outstanding work in Sports Medicine & Traumatology, [the petitioner] has been elected as a member of the Medical Committee of the international fencing federation in Lausanne, Switzerland for the period of 2000-2004." On appeal, the petitioner submits an August 25, 2009 letter from Ahmed Ismail, President of the Egyptian Fencing Federation, stating: "In 2000 [the petitioner] was selected to represent Egypt for the International Fencing Federation Medical committee . . . ." There is no evidence showing that either of the preceding individuals are officers or official representatives

of the International Fencing Federation Medical Committee. Without documentation of the petitioner's membership on the Medical Committee originating from the International Fencing Federation itself, the petitioner has not established that he was a member and his dates of involvement. As stated previously, 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). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that primary evidence of his membership on the International Fencing Federation Medical Committee does not exist or cannot be obtained. Further, the preceding letters do not equate to secondary evidence or affidavits. Regardless, there is no evidence showing that this organization requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

The August 25, 2009 letter from [REDACTED] further states: "[The petitioner] served two times as Egypt Fencing Olympic coach: 1992, Barcelona and 2000, Sydney." We note that an athletic team is not an "association" and that the petitioner was a coach rather than a team member. The petitioner's role as coach for the Egyptian national team at the Summer Olympics relates to the "leading or critical role" criterion at 8 C.F.R. § 204.5(h)(3)(viii) rather than "membership" in an "association" in the field. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for membership in associations and performing "in a leading or critical role for organizations . . . that have a distinguished reputation," USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

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.*

On appeal, counsel states: "[The petitioner] has frequently been asked to judge fencing competitions. This work is noted in the letter from a coach of [REDACTED] [REDACTED]" The November 20, 2007 letter from [REDACTED] submitted by the petitioner, however, contains no statement that the petitioner "has frequently been asked to judge fencing competitions" or any other information regarding his having participated as a judge at fencing competitions. The petitioner's initial submission included a July 23, 2007 letter from [REDACTED] of the International Fencing Federation and former President of the Egyptian Fencing Federation, asserting that the petitioner is an "active international fencing referee." The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Rather

than submitting evidence of his participation from the fencing tournament organizers (such as an event program listing his name as a referee or a referee credential, for example), the petitioner instead submitted a one-sentence assertion from ██████████ attesting to his involvement. As stated previously, 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. 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). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that primary evidence of his participation as an international fencing referee does not exist or cannot be obtained. Further, the preceding letter from ██████████ does not equate to secondary evidence or an affidavit. Regardless, the record lacks official competition rules showing that serving as a "referee" in fencing equates to participating as a "judge" of the work of others. The duties of a referee are not to assess the work or expertise of the individuals involved in the competition. Rather, the responsibility of the referee is to ensure that rules and procedures are being followed and that the bout is safe and fair. The referee does not evaluate or judge the skills or qualifications of the participants. Moreover, there is no evidence indicating the specific tournaments refereed by the petitioner, the names of the athletes involved, their level of expertise, and the dates of his participation.

The petitioner submitted a "Good Work Award" certificate from the Cairo Fencing Committee "in recognition of a job well done . . . in Training Course" from June 28<sup>th</sup> – July 12<sup>th</sup>, 2001. Counsel discusses this certificate on appeal stating: "[The petitioner] has . . . been asked to teach and evaluate other fencing coaches at the national and international level, including a training course on behalf of the [I]nternational Olympic Committee in the summer of 2001, held in Cairo, Egypt." None of the information on the preceding certificate corroborates counsel's assertion that the petitioner evaluated "other fencing coaches at the national and international level" or that the course was taught by the petitioner "on behalf of the International Olympic Committee." Without documentary evidence to support these two claims, the assertions of counsel will not satisfy the petitioner's burden of proof. 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). The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others in the same or an allied field of specification." We cannot conclude that teaching a training course is tantamount to judging the work of others in the field. While the petitioner's status as an instructor demonstrates his knowledge and competency in fencing, he has not established that such a position meets the plain language of this regulatory criterion.

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

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

The petitioner submitted several letters of recommendation in support of the petition.

█ states: "[The petitioner] is well known for his skills in preventing fencing injuries and he did some important original contributions in this field." █ does not specifically identify what the petitioner did to prevent fencing injuries, nor is there evidence showing how the petitioner's contributions have significantly influenced or impacted his field.

█ states: "[The petitioner] has made significant contributions to the advancement of fencing training. He has authored a number of publications that included original investigative work into the prevention of fencing injuries." Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for authorship of scholarly articles and original contributions of major significance, USCIS clearly does not view the two as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. We will fully address the petitioner's published work under the next criterion.

In the same manner as █ and █ Club, Kentucky, mentions the petitioner's work in "developing new techniques to minimize and prevent sport's injuries." The letters from █ and █ do not specifically identify the petitioner's original training contributions and injury prevention techniques or provide specific examples of how they have influenced the field. With regard to the petitioner's contributions to the advancement of fencing training, there is nothing in the recommendation letters indicating that he has developed original fencing techniques, as opposed to methodologies passed down from his own tutelage in the sport. Moreover, even if the injury prevention techniques recommended by the petitioner were found to be original, there is no evidence demonstrating that these techniques are of major significance in his sport.

█ states: "[The petitioner's] original work [ ] in Sports Trauma in Nice University, France ... is considered to be a reference in sport's traumatology and technopathy related to fencing. His contribution helped in advancement of this field and found to be of great help for many fencers and specialist worldwide till now." Similarly, █ Federation, states:

In 1989 at the world championship in Lyon, France [the petitioner] represent his original work of fencing injuries that was done in Nice University to obtain his degree in Sport traumatology.

His work in fencing injuries is considered to date to be as a one [sic] of the remarkable reference and many federations worldwide are having benefits of this work.

The record, however, does not include a copy of the petitioner's "original work" from Nice University and there are no specific examples of how this work has influenced the field. As stated previously, 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.

states: "[The petitioner] was able to gather and disseminate information on fencing injury data, and scientific training related to fencing, and to conduct research, his original epidemiological study of fencing injury on 1989 still considered one of he [sic] most important contribution on that field worldwide." With regard to the petitioner's research contributions, the reference letters do not specify exactly what his original contributions have been, nor is there a detailed 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 respect and admiration of those individuals offering letters of support, the documentation submitted by him does not establish that he has demonstrably impacted his field. For example, the record does not indicate the extent of the petitioner's influence on other fencing coaches nationally or internationally, nor does it show that the field has somehow changed as a result of his work so as to demonstrate the petitioner's significant contribution to his field.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. USCIS may, in its discretion, use as advisory opinions 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 from experts supporting the petition 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 a fencing coach who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted a resume with an attachment listing his "publications." The self-serving claims in the petitioner's resume and attachment are not sufficient to meet the burden of proof for this regulatory criterion. In his letter of support, ██████████ asserted that the petitioner "produced a good deal of publications in highly specialized journals." Further, ██████████ letter claimed that the petitioner "authored a number of publications that included original investigative work into the prevention of fencing injuries." Finally, ██████████ letter asserted that the petitioner has

authored "several original publications." The record, however, does not include copies of any of these publications. As stated previously, 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. 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). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The petitioner has not established that copies of his published articles do not exist or cannot be obtained. Further, his resume and the recommendation letters do not equate to secondary evidence or affidavits. In this case, there is no evidence showing that the petitioner has authored scholarly articles in the field or that they were published "in professional or major trade publications or other major media." 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.*

states in his letter that the petitioner "served two times as Egypt Fencing Olympic coach: 1992, Barcelona and 2000, Sydney." The record includes adequate supporting evidence corroborating statement and demonstrating the distinguished reputation of the Egyptian fencing team. Accordingly, the petitioner's evidence 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).

***B. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)***

On appeal, counsel states that the letters of support submitted by the petitioner should be considered as comparable evidence of his extraordinary ability in fencing. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel's appellate submission and the petitioner's initial submission specifically address several of the preceding regulatory criteria. Where an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, there is no evidence showing that the documentation the petitioner requests reevaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. We note that the petitioner's letters of support have already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3). While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. 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 commentary for the proposed regulations implementing the statute 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). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals selected by the petitioner.

### ***C. Final Merits Determination***

Thus, 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." 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 2010 WL 725317 at \*3.

As discussed previously, the petitioner seeks classification as an alien with extraordinary ability as a "fencing coach." The petitioner's initial submission included a July 15, 2002 letter from the Secretary General of the Egyptian Fencing Federation listing the petitioner's competitive results in thirty fencing tournaments from 1979 to 1985 as a member of the Egyptian National Team. The preceding athletic achievements occurred more than two decades prior to the filing date of the petition. Thus, the petitioner's results as a fencing competitor are not evidence of his sustained national or international acclaim as a fencing coach. Subsequent to the conclusion of his competitive career in the 1980s, there is no evidence indicating that the petitioner remained active as a competitor in national or international fencing tournaments. Further, Part 6 of the Form I-140 petition, "Basic information about the proposed employment," and various reference letters submitted by the petitioner do not indicate that he intends to compete in the United States. The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a competitive fencer and a fencing coach may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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 coach.

*Id.* at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a fencing competitor since the conclusion of his athletic career in the 1980s. Further, the petitioner states that he intends to work as a fencing coach in New Jersey. While the petitioner's competitive accomplishments as a fencer are not completely irrelevant and have been given some consideration, ultimately he must demonstrate sustained national or international acclaim as a coach.

In this context, with regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), the petitioner's tournament results as a fencing competitor from 1979 to 1985 cannot be considered evidence of his national or international acclaim as a coach. There is no evidence indicating that the petitioner has received any nationally or internationally recognized prizes or awards in competition since the 1980s or that he intends to continue competing as a fencer in the United States. As discussed previously, the statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). Accordingly, the petitioner's tournament results demonstrating his past success as a competitor cannot serve to demonstrate his sustained national or international acclaim as a coach.

While nationally or internationally recognized prizes or awards won by individual fencing competitors or teams coached primarily by the petitioner do not meet the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), such prizes and awards may be relevant to the final merits determination of whether a coach has sustained national or international acclaim at the very top of his field. In that regard, the petitioner submitted a July 15, 2002 letter from the Secretary General of the Egyptian Fencing Federation stating: "[The petitioner] has been the coach of the Egyptian National Team for both Men and Women from January 1, 1999 till July 2002." The letter lists results achieved by Egyptian fencers in various international tournaments during the preceding period. The petitioner also submitted a May 22, 1988 letter from the Secretary General of the Egyptian Fencing Club stating that the petitioner "trained the club team which won the Egyptian National Tournament 1986." The petitioner's initial submission also included a May 5, 2008 letter from the Chairwoman of the Fencing Board of the Gezira Sporting Club stating: "[The petitioner] was the head coach and a trainer in the Gezira Sporting Club since 1999. . . . [The petitioner] built the fencing sport in our club and within t[h]ree year[s] we won the national competition and took the 2<sup>nd</sup> place in the Arab competition . . . ." Rather than submitting primary evidence of his fencers' "prizes or awards" from the fencing tournament organizers, the petitioner instead submitted three third-party letters briefly mentioning his athletes' competitive results. The July 15, 2002; May 22, 1988; and

May 5, 2008 letters do not include any information about the listed tournaments or the significance of the fencing awards won by those whom the petitioner coached. As stated previously, 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.

Even if the petitioner were to submit evidence establishing that he or athletes coached primarily by him received nationally or internationally recognized awards during the period from 1979 to 2002, there is no evidence of any awards received by him or athletes under his direct tutelage during the six years immediately preceding the filing date of this petition. According to the petitioner's Form G-325A, Biographic Information, multiple approved H1-B non-immigrant visa petitions filed in his behalf, and recent Form W-2 Wage and Tax Statements from his employer (SI Paradigm Diagnostic Informatics), the petitioner has worked as an "Administrator" in the healthcare field since coming to the United States in November 2002. Without evidence of qualifying prizes or awards received in the six-year period before the petition's filing date, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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 documentation submitted for 8 C.F.R. § 204.5(h)(3)(i) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's more recent national or international acclaim as a coach or an athlete.

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii), none of the submitted documentation indicates that the petitioner has held membership in an association requiring outstanding achievements of its members as judged by recognized national or international experts subsequent to 2004. Without evidence showing that the petitioner has held qualifying association memberships in the four years immediately preceding the petition's filing date, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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 memberships claimed by the petitioner under 8 C.F.R. § 204.5(h)(3)(ii) are not consistent with sustained national or international acclaim as of the date of filing of this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's more recent national or international acclaim as a fencing coach.

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), none of the submitted documentation indicates that the petitioner has participated as a judge of the work of others in his field or an allied one in the years immediately preceding the petition's filing date. Accordingly, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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 documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's more recent national or international acclaim as a coach.

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(v), the petitioner has not submitted evidence of any original contributions of major significance in his sport in

the decade preceding the petition's filing date. Accordingly, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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 documentation submitted for 8 C.F.R. § 204.5(h)(3)(v) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's more recent national or international acclaim as a coach.

With regard to the evidence submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vi), the petitioner has not submitted evidence showing that he has authored scholarly articles in major publications in the decade preceding the petition's filing date. Thus, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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 documentation submitted for 8 C.F.R. § 204.5(h)(3)(vi) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's more recent national or international acclaim in fencing.

Although the petitioner's evidence meets the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii), there is no evidence showing that the petitioner has coached for the Egyptian fencing team or any other team having a distinguished reputation since 2002. Accordingly, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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 documentation submitted for 8 C.F.R. § 204.5(h)(3)(viii) is not consistent with sustained national or international acclaim as of the date of filing this petition and there is no further evidence under this criterion or the other criteria documenting the petitioner's more recent national or international acclaim in fencing.

In this case, the petitioner has not submitted evidence of nationally or internationally acclaimed achievements and recognition in his field subsequent to his entry into the United States in 2002. Accordingly, the petitioner has not demonstrated that his national or international acclaim in the sport of fencing has been *sustained*. 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).

***D. The Regulation at 8 C.F.R. § 204.5(h)(5)***

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. 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 or she intends to continue his or her work in the United States." In support of his petition, the petitioner submitted a statement of intent stating:

For the past six years I have been lawfully employed in H1B1 status as a medical Administrator, a position for which I qualified based on my medical education and

experience. During this period I have maintained my connection with the sport of fencing through donating a *part of my non-working hours* to advising fencing academies on establishing schools and/or developing programs for coaches and students.

[Emphasis added.]

The record, however, does not include supporting evidence documenting the petitioner's specific activities as a fencing academy advisor or developer of programs for coaches and students subsequent to his arrival in the United States in 2002. Moreover, the petitioner's full-time work as a medical administrator since 2002 for companies such as Uptown Healthcare Management, Accord Medical Associates, and SI Paradigm Diagnostic Informatics does not constitute "clear evidence" that he is coming to the United States to continue work as a fencing coach.

The petitioner further states:

It is my intention to advance the sport of fencing in the United States by working full time as a Fencing Coach. I intend to work in the following area of expertise: (1) develop fencing clubs in New Jersey; (2) coach individual fencers throughout the United States to attain Olympic level standards; (3) lecture and train new fencing coaches in collaboration with the United States Coach Fencing Association (USCFA); (4) lecture coaches, physicians and fencers on methods to prevent fencing injuries; (5) develop fencing program and drills for individuals with variety of intellectual and physical disabilities.

I have an offer of employment from [REDACTED] of Fort Lee, NJ. This initial offer is for a salary of \$80,000. Based on my knowledge of the market I expect to earn an annual income of no less than \$100,000.

The record, however, lacks "clear evidence" showing that the petitioner has positioned himself to achieve his stated goals in this country. For example, since his arrival in the United States in 2002, there is no evidence showing that the petitioner has been primarily responsible for the development of fencing clubs in this country; that he has coached individual fencers throughout the United States to attain Olympic-level standards; that he has lectured and trained new fencing coaches in collaboration with the USCFA; that he has lectured coaches, physicians and fencers on methods to prevent fencing injuries; or that he has developed fencing programs and drills for individuals with a variety of intellectual and physical disabilities. Moreover, the record does not include evidence to support the petitioner's claim that he received an offer of employment from [REDACTED] for a salary of \$80,000. In this case, the petitioner's full-time work as a medical administrator and lack of recent achievements as a fencing coach during his last six years in the United States contradicts his statement of intent. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the petitioner's employment record in the United States since 2002 casts doubt on the

validity of his claims in his statement of intent. Thus, the evidence submitted is not clear that the petitioner will continue to work in his area of expertise in the United States.

### **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 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. Moreover, the evidence is not clear that the petitioner will continue to work in his area of expertise in the United States. Therefore, the petitioner has not established eligibility pursuant to sections 203(b)(1)(A)(i) and (ii) 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.