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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**



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DATE: MAY 09 2011

Office: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). 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.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act 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 categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the director erred in evaluating rather than simply counting the evidence submitted. As explained below, the director correctly determined that the petitioner has not submitted qualifying evidence that meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Specifically, the only qualifying evidence consists of awards, most of which are at the junior level. Moreover, even the evidence in the aggregate, almost entirely awards, is not persuasive evidence of national or international acclaim. Finally, beyond the decision of the director, the only evidence of prospective employment is as a coach. The petitioner, who has documented accomplishments as an athlete, has not demonstrated that coaching is within his area of expertise.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

## **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. 723 101<sup>st</sup> 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.*; 8 C.F.R. § 204.5(h)(2).

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

(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*, 596 F.3d 1115 (9th Cir. 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.<sup>1</sup> 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.* at 1121-22.

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 1122 (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."

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<sup>1</sup> 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).

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 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then 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 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003) (recognizing the AAO’s *de novo* authority).

## II. Analysis

The petitioner listed his occupation on the petition as “wrestler” but did not complete Part 6 regarding the proposed employment. Initially, the petitioner stated he came to the United States to participate in a New York competition but does not specify his future plans. In response to the director’s request for evidence that the petitioner was coming to the United States to “continue work as a wrestler,” the petitioner submitted a letter from [REDACTED] stating that the petitioner “will be coaching an 80 member high school wrestling team.”

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” As stated above, the petitioner intends to work as a coach in the United States. While a wrestler and a wrestling coach certainly share knowledge of wrestling, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise.<sup>2</sup>

Nevertheless, there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete’s area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has achieved sustained national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, the AAO will consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that the AAO can conclude that coaching is within the petitioner’s area of expertise. Specifically, in such a case the AAO will consider the level at which the alien acts as coach. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

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<sup>2</sup> *Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002).

*A. Evidentiary Criteria*<sup>3</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 letters from [REDACTED]; and [REDACTED]. Both letters attest to the following youth awards:

1. 1999 – First Place of the Kyrgyz Republic among the youth.
2. 2001 – International tournament of Kovalev Astana (Kazakhstan), first place.
3. 2004 – First place of the Kyrgyz Republic (youth) – 1<sup>st</sup> place.

The letters also list two awards in 2000, both at the first place level, and a second place finish in 2002. The competitions are (1) the international tournament for the prize of Honored trainer Remezov A.I., (2) the international tournament for the prizes of Honored trainer Janaev R and (3) the international tournament of Rakhimov Shimkent City in Kazakhstan. While the letters do not designate these competitions as youth competitions, the petitioner was 12 years old in 2000 and 14 in 2002. The letters also list youth competitions in the United Arab Emirates and Manila in 2006 and 2007 but do not suggest that the petitioner won any awards at those competitions.

The petitioner also submitted the following awards not listed on the above letters:

1. An undated certificate for First Place at the International Tournament of Free Style Wrestling [REDACTED] 60 kg weight class, in the Kyrgyz Republic.
2. An undated certificate for First Place at the International Tournament of Free Style Wrestling in honor of the President of the Kyrgyz Republic, 74 kg weight class.
3. A 2006 certificate for First Place at the Kyrgyz Republic University Games.
4. A 2005 certificate for First Place in the Open Republican Junior Tournament of Free Wrestling [REDACTED] from the [REDACTED] on Tourism, Sport, and Youth.

<sup>3</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.



alien's occupation. It is the petitioner's burden to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3) are not readily applicable.

Even assuming that this criterion is not readily applicable to the petitioner's occupation such that the petitioner may rely on comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4), the team must require outstanding achievement of its members as judged by nationally or internationally recognized experts in order to be "comparable." It is the petitioner's burden to provide evidence establishing that the petitioner has satisfied every element of this criterion, including the membership requirements. The AAO will not presume that every national "combined" team that sends athletes to youth competitions has such requirements.

Even if the AAO accepted that the petitioner had provided evidence that the national team membership was qualifying, and the AAO makes no such determination, the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires evidence of membership in qualifying associations in the plural. This requirement is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the plural in a regulatory criterion has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.<sup>4</sup> The petitioner has not documented a second membership.

In light of the above, the petitioner has not submitted qualifying or comparable evidence that meets the plain language requirements for the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

*Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the 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. The phrase "major significance" is not superfluous and, thus, it has some meaning. To be considered a contribution of major significance in athletics, it can be expected that the accomplishment would have a demonstrable impact on the sport or set a standard to which renowned participants aspire, such as a world record.

[REDACTED], a third season assistant coach at American University and a former coach of the Kyrgyzstan National Team, asserts that the petitioner "has managed to develop an innovative free style wrestling technique that has never been implemented in the USA before." [REDACTED]

<sup>4</sup> See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

██████████ asserts that the petitioner “has already made and will continue to make substantial contributions to free style wrestling competition and training.” ██████████ lists the petitioner’s awards and states that because of this background, the petitioner “has helped to beneficially influence the American Wrestling community.” USCIS need not accept primarily conclusory assertions.<sup>5</sup>

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: “We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

██████████ solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.<sup>6</sup> The opinions of experts in the field are not without weight and have been considered above. 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 (Comm’r. 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, as the AAO has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l. Comm’r. 1972)).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without identifying specific contributions. The letters also fail to provide an explanation of how the petitioner’s technique is original in the entire field of wrestling (not just the United States). Finally, the letters do not provide specific examples of how those contributions rise to a level consistent with major significance in the field, such as examples of widespread use of the petitioner’s techniques by independent wrestling coaches. Merely repeating the language of the

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<sup>5</sup> *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

<sup>6</sup> *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9<sup>th</sup> Cir. 2009) *aff’d in part* 596 F.3d 1115 (9<sup>th</sup> Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

statute or regulations does not satisfy the petitioner's burden of proof.<sup>7</sup> The petitioner also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

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

In response to the director's request for additional evidence, counsel asserted that the petitioner's participation in international competitions "is comparable to display of the alien's work in the field" pursuant to "8 C.F.R. 240.5." The director declined to consider the petitioner's participation in competitions under this criterion. Counsel reiterates the same assertion on appeal.

The regulation at 8 C.F.R. § 204.5(h)(4) provides that if the standards at 8 C.F.R. § 204.5(h)(3) do not "readily apply" to the petitioner's occupation, the petitioner may submit "comparable" evidence. The regulation at 8 C.F.R. § 204.5(h)(3)(vii) is not readily applicable to athletes. The inapplicability of this criterion, however, does not suggest that every athletic competition is "comparable" to an artistic exhibition or showcase.

The regulation at 8 C.F.R. § 204.5(h)(4) allows USCIS to consider evidence that might be indicative of or consistent with national acclaim but does not fit under the ten criteria because they are not readily applicable to the alien's field. This decision has already considered the petitioner's prizes and awards at public competitions under 8 C.F.R. § 204.5(h)(3)(i). The AAO will not consider this same evidence as comparable under 8 C.F.R. § 204.5(h)(3)(vii). To hold otherwise would undermine the regulatory requirement that the petitioner submit evidence under three separate criteria.

Ultimately, the purpose of an athletic competition is to display a competitive event rather than the individual work of the athletes. Such competitions, inherent to competing as an athlete, are not "comparable" to artistic exhibitions or showcases of an artist's work.

In light of the above, the petitioner has not submitted qualifying evidence to the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii) or comparable evidence.

*Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.*

In response to the director's request for additional evidence and again on appeal, counsel refers to the letters from [REDACTED] and [REDACTED] as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(viii). While both letters affirm that the petitioner was a member of a national combined team, neither attest to the nature of the petitioner's role on that team. This decision has already considered the petitioner's prizes and awards above under 8 C.F.R. § 204.5(h)(3)(i). Counsel has never

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<sup>7</sup> *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at \*5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

asserted, and the record contains no evidence to suggest, that the petitioner's prizes or awards constitute a one-time achievement, defined as a major internationally recognized award. Thus, the petitioner's prizes and awards cannot serve as the sole evidence of eligibility. As prizes and awards are a separate criterion, merely competing successfully as a member of a team cannot be considered evidence of a leading or critical role for that team.

The petitioner has not documented that he was selected for a specific leading role on the team above and beyond mere membership on the team, or that he has contributed to the team at the level of a critical role, which is beyond merely competing successfully.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

#### *Summary*

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, the AAO will review the evidence in the aggregate as part of the final merits determination.

#### ***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, the next step is 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*, 596 F.3d at 1119-20.

The entire evidence of record consists of awards, primarily in junior or youth competitions, and letters. None of the awards rise to the level of a one-time achievement, namely a major internationally recognized award. Thus, the awards by themselves cannot establish eligibility as an athlete. 8 C.F.R. § 204.5(h)(3). Moreover, the awards were primarily in junior competitions where the petitioner did not compete against the most experienced and renowned members of his field. The letters are conclusory and add little information that is not already apparent from the awards or prizes.

Ultimately, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The petitioner, a successful competitor at the youth level, relies on junior prizes and awards and the praise of three assistant coaches at American University. While this evidence may distinguish him from other youth competitors, the petitioner may not narrow his field to others with his level of training and experience. [REDACTED] is a

former [REDACTED]. Thus, it appears that the highest level of the petitioner's field is far above the level he has attained.

Finally, the record contains no evidence that the petitioner has any experience as a coach, let alone experience successfully coaching athletes at the national level. The petitioner proposes to coach students at a high school. This evidence does not indicate that coaching is within the petitioner's area of expertise.

### **III. Conclusion**

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.

Review of the record, however, does not establish that the petitioner has distinguished himself as a wrestling coach 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 shows talent as a junior-level wrestler, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.