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DATE: **JAN 10 2012** Office: TEXAS SERVICE CENTER FILE: [REDACTED]

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:

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 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.¹ The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim. The director also determined that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

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 argues that the petitioner meets the regulatory categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), and (viii). For the reasons discussed below, the AAO will 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

¹ According to information on the Form I-140, Immigrant Petition for Alien Worker, the petitioner was last admitted to the United States on July 2, 2007 as a B-2 nonimmigrant visitor for pleasure.

(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 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.² 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." 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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th 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).

² 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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on July 2, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a soccer player. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).³

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 an April 21, 2008 letter from [REDACTED] of the Georgian Combined Team, Georgian Professional Football League, stating that “[f]rom 1998 [the petitioner] was participated in Georgian National Championship. During these years, [the petitioner] was playing in several club and was leader of team and he was acknowledged as the best footballer.” [REDACTED] comments that the petitioner “was acknowledged as the best footballer,” but there is no documentary evidence showing that the petitioner received a nationally or internationally recognized *prize* or *award* for excellence.

The petitioner submitted an April 21, 2008 letter from [REDACTED] Secretary, Georgian Professional Football League, stating: “On 2004-05, in football season, [the petitioner] was called as the best goalkeeper” [REDACTED] asserts that the petitioner was called the best goalkeeper in the 2004 – 2005 season, but again there is no documentary evidence showing that the petitioner received a nationally or internationally recognized *prize* or *award* for excellence.

The petitioner submitted a June 18, 2008 letter from [REDACTED] a reporter for [REDACTED], stating: “In 2003-06 years during playing in [REDACTED] [the petitioner] severally was named in symbolic combined team of Georgian national championship. As the result of inquiry by newspaper *Olimpi* he was named among the three best goalkeepers.” The record, however, does not include documentary evidence from the presenting organizations showing that the petitioner received a prize or an award for the preceding honors.

The petitioner submitted a June 18, 2008 letter from [REDACTED], stating that the newspaper *Sarbieli* named the petitioner “the best goalkeeper of the first range of the championship of the year 2005.” [REDACTED] letter does not indicate that she ever worked for [REDACTED] and there is no supporting documentary evidence originating from the preceding newspaper showing that the petitioner received a prize or an award for his achievement.

The petitioner submitted a June 19, 2008 letter from [REDACTED] who identifies himself as a “Member of veteran’s council,” stating: “During playing in ‘MTSKHETA’ and ‘KAKHETI’

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

of Telavi, in 2003-2006 yy [the petitioner] was severally named in the symbol team of the Georgian National Championship. In 2003-2004 yy season in newspaper *Olimpus* after the inquiries he was named the best goalkeeper between the three national championship goalkeepers." The record, however, does not include documentary evidence from the presenting organizations showing that the petitioner received a prize or an award for the preceding honors.

The petitioner submitted a June 19, 2008 letter from [REDACTED] who also identifies himself as a "Member of veteran's council," stating that the newspaper *Sarbieli* named the petitioner "the best goalkeeper of the first circle championship." [REDACTED] letter does not indicate that he ever worked for *Sarbieli* and there is no supporting documentary evidence originating from the preceding newspaper showing that the petitioner received a prize or an award for his achievement.

The director found that the petitioner had failed to submit evidence showing that he received nationally or internationally recognized prizes or awards for excellence in the field of endeavor. On appeal, counsel argues that the preceding recommendation letters show that the petitioner "was named the best football player in the Georgian National Championship in 1998, the best goalkeeper of the championship in 2005, the best prospected goalkeeper and a symbol of the Georgian National Championship team in 2003-2006." Rather than submitting primary evidence of his prizes and awards originating from the competition's organizers or the aforementioned newspapers, the petitioner instead submitted third-party recommendation letters attesting to their existence. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 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 third-party recommendation letters submitted by the petitioner do not comply with the preceding regulatory requirements.

In addition to the petitioner's failure to submit primary evidence of his awards, the petitioner did not submit evidence of the national or international *recognition* of the awards purportedly received by him. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically 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. In this instance, there is no documentary evidence demonstrating that the awards claimed by the petitioner were recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Accordingly, the petitioner has not established that he meets this regulatory 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.

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.⁴

The petitioner submitted a September 30, 2003 article in *Sarbieli* entitled [REDACTED] but the article is about a soccer game in which the petitioner played rather than the petitioner himself. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor). The petitioner also submitted an April 19, 2004 article in *Sport* entitled [REDACTED] Debut in Tbilisi," but the article is about [REDACTED] and only mentions the petitioner in passing. The petitioner's initial evidence also included an April 27, 2004 article in *Daily Sport Newspaper* entitled "[The petitioner] will be watched in Poti," but the author of the article was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted a September 25, 2003 article in *Sport* entitled "Championship of this year found [the petitioner]," an October 18, 2003 article in *Sarbieli* entitled [REDACTED] and [REDACTED] [the petitioner's] Image," and an April 27, 2004 article in *Sport* entitled "Where would [the petitioner] continue his career in Russia or Ukraine?" which all include interviews of the petitioner. The petitioner failed to submit circulation evidence showing that the preceding newspapers qualify as major media.

In response to the director's request for evidence, the petitioner submitted five additional articles entitled [REDACTED]

[REDACTED] The preceding articles are about soccer games in which the petitioner's team competed and the articles only briefly mention him along with the other participating players. Further, the five additional articles were deficient in that they did not include a date, an author, the name of the publication, and circulation evidence demonstrating that they were published in major media.

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

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

⁴ 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.

The petitioner submitted more than a dozen recommendation letters discussing his soccer experience and talent as a goalkeeper, but they do not specify exactly what his original contributions in the sport of soccer have been, nor is there an explanation indicating how any such contributions were of major significance in his field. The AAO cites representative examples here.

[REDACTED], states that the petitioner “was regarded as successful and perspective footballer, he was disciplined, considerable and diligent youth.”

[REDACTED] of #35 Secondary Public School Tbilisi, states: “[The petitioner] . . . played as a goalkeeper in the school combined team. . . . [The petitioner] was in good relation with members of his team, earned trainers respect. He was diligent and assiduous . . . was perspective footballer. He could play according to European standard.”

[REDACTED] states that the petitioner “played in National Championship of Georgia and was always regarded as the best goalkeeper of the country championship.”

[REDACTED], a reporter for [REDACTED] states: “We can easily name [the petitioner] among talented Georgian goalkeepers generation. He stood out for his fast reactions and helpfulness. I made several reporting about his good plays. He was in symbolic combined team.”

It is not enough to be a talented player and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. 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” in the field. The phrase “major significance” is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). While the petitioner has earned the admiration of his references, there is no evidence demonstrating that he has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner’s influence on other players throughout the sport, nor does it show the field as a whole has specifically changed as a result of his work.

The reference letters submitted by the petitioner 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 (Commr. 1988). 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 795-796; *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”). Thus, the content of the experts’ 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 that one would expect of a soccer player who has made original contributions of "major significance." Without extensive documentation showing that the petitioner's work equates to original contributions of major significance in his field, the AAO cannot conclude that he meets this regulatory criterion.

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

The reference letters submitted by the petitioner indicate that he performed in a leading or critical role for his soccer teams as a goalkeeper and captain, but the submitted evidence is not sufficient to demonstrate that any of his teams had a distinguished reputation in the sport during his tenure as player. For instance, the petitioner failed to submit official competitive results (such as comprehensive team rankings) distinguishing his team from other successful soccer teams. USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). Further, as previously discussed, 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 regulatory criterion.

Summary

The AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

The AAO will 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), and (viii).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted documentation fails to demonstrate that the petitioner is the recipient of nationally or internationally recognized awards for excellence in the field. Further, there is no evidence indicating that the petitioner has received any awards in soccer subsequent to 2006. The statute and regulations, however, require

the petitioner to demonstrate that his national or international acclaim 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 the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the petition's July 2, 2008 filing date.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including a date or an author, not being about the petitioner, or not being accompanied by evidence that they were published in major media. Moreover, there is no evidence indicating that the petitioner has been the subject of published material subsequent to 2004. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim 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 the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), there is no documentary evidence demonstrating that the petitioner's work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner's failure to submit evidence demonstrating that he has made original artistic contributions of major significance in the field, the AAO notes that the petitioner's claim is based on recommendation letters. While such letters can provide important details about the petitioner's experience and activities, 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 personal and professional contacts. 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 section 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). The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, the petitioner has not established that he has performed in a leading or critical role for teams that have a distinguished reputation in the sport of soccer. Moreover, the AAO notes that there is no documentary evidence establishing that the petitioner has performed in a leading or critical role for any distinguished soccer teams subsequent to 2006. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a player 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 the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

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. For instance, the petitioner submitted information about soccer player [REDACTED] stating that he won a Major League Soccer (MLS) Cup with D.C. United, that he was selected to the MLS All-Star team twice, and that he represented the United States in World Cup competition. The petitioner also submitted information about [REDACTED] stating that he is "the all-time leading scorer of the Brazil national football team and is the only footballer to be a part of three World Cup-winning teams."

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained. The petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a soccer player, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

III. Continuing work in the area of expertise in the United States

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how he intends to continue his work in the United States. The petitioner has not submitted letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a personal statement detailing plans on how he intends to continue working in the United States. Accordingly, the director found that the petitioner failed to submit "clear evidence" that he would continue to work in his area of expertise in the United States as required by the regulation at 8 C.F.R. § 204.5(h)(5). On appeal, counsel does not contest the director's finding on this issue or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO).

IV. 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 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. Further, the petitioner has not submitted clear evidence demonstrating that he will continue to work in his area of expertise in the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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 at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.