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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

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[REDACTED]

DATE: **JAN 12 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:
[REDACTED]

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. The petitioner filed a motion to reopen and reconsider, which the director denied. The matter 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 requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate 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 petitioner has achieved sustained national and international acclaim and that his achievements have been recognized in his field of expertise. Counsel further states that the director disregarded comparable evidence of the petitioner's extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The AAO acknowledges that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. *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)(2) and (3). In this matter, the documentation submitted by the petitioner fails to demonstrate by a preponderance of the evidence that he has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor.

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

(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.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* 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.

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

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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on November 17, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a light middleweight professional boxer. The record reflects that the petitioner competed as a welterweight during his amateur career in Ireland and that he began his professional career in the United States in August 2005. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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

The petitioner submitted documentary evidence indicating that he received a [REDACTED]. The petitioner also submitted documentation indicating that he won national intermediate titles as an amateur boxer in Ireland and [REDACTED]. Accordingly, the petitioner has 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.³

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

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

The petitioner initially submitted an article about himself in the [REDACTED] but the date of the article was not provided as required by the plain language of this regulatory criterion. The petitioner also submitted a February 14, 2007 blog entry posted on the internet site of [REDACTED] announcing an upcoming fight for the petitioner at the [REDACTED], but the author of the article was not identified as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner's initial evidence also included an April 20, 2007 article about himself posted on the internet site of [REDACTED] “[The petitioner]: It’s all about learning.” The petitioner also submitted a [REDACTED]. The article states: “Though [the petitioner] should easily be garnering widespread attention, he is still very much in the shadow While [the petitioner], 29, has struggled to create a buzz for his career”

The petitioner's initial submission also included a November 3, 2004 article about him entitled [REDACTED] but the author of the article was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted a [REDACTED]. The petitioner's documentation also included an article entitled “[REDACTED]” [REDACTED] but the date and author of the article were not identified as required as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The article states that the petitioner “was honored as [REDACTED] at their monthly meeting at the [REDACTED] and that the Ring 8 association “has been helping indigent boxers since the 1950s.”

The petitioner also submitted his entry in *Wikipedia*, an online encyclopedia. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to material for which *Wikipedia* is the source.

⁴ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 6, 2012, copy incorporated into the record of proceedings.

In response to the director's request for evidence, the petitioner submitted a November 3, 2008 article about himself entitled [REDACTED] but the author of the article was not provided as required by the plain language of this regulatory criterion. The petitioner also submitted an October 27, 2008 article posted [REDACTED] announcing an upcoming bout between [REDACTED]. The petitioner's response also included a November 6, 2008 blog entry posted on the internet site of [REDACTED] announcing the preceding fight in Atlantic City, but the author of the article was not identified as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted an article about himself in [REDACTED] entitled [REDACTED] and an article about himself in [REDACTED] entitled [REDACTED] but the publication dates of these articles were not provided as required by the plain language of this regulatory criterion.

Aside from the preceding deficiencies, there is no circulation evidence showing that [REDACTED]

The petitioner's response to the director's request for evidence included additional articles about himself in [REDACTED]. The AAO notes that the preceding articles from [REDACTED] were published subsequent to the petition's November 17, 2008 filing date. A petitioner must demonstrate his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Accordingly, the AAO will not consider the [REDACTED] articles in this proceeding. Nevertheless, there is no circulation evidence showing that the preceding New York City-based newspapers qualify as major media in the United States or in any other country.

On motion to the director, the petitioner submitted an incomplete copy of a February 2007 article in [REDACTED]. The author of the preceding article was not identified as required by the plain language of this regulatory criterion. The petitioner also submitted a May 2008 article in [REDACTED]. As previously discussed, there is no circulation evidence showing that [REDACTED] qualifies as a form of major media. The petitioner's motion also included a captioned photograph of himself appearing in the [REDACTED]. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "published material about the alien" including "the title, date and author of the material." The captioned photograph does not meet these requirements. Further, there is no circulation evidence showing that the [REDACTED] qualifies as a form of major media. The petitioner also submitted an article entitled "[REDACTED]" but the date of the article and the name of the publication were not provided as required by the plain language of this regulatory criterion.

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

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)). Furthermore, 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). Moreover, [REDACTED] fails to provide specific examples of how the petitioner's original boxing contributions have significantly influenced the field at large or otherwise equate to original contributions of major significance in his sport.

[REDACTED] states:

We had the privilege of hosting three of [the petitioner's] professional fights here at . . . Madison Square Garden – including the [REDACTED]. The hard work and professionalism of [the petitioner] and his entire team, coupled with his extraordinary popularity among the New York fans, helped make the promotion a success.

[REDACTED] does not provide any specific information regarding the attendance for the show headlined by the petitioner at Madison Square Garden or whether or not the show was broadcast by any major networks. Further, [REDACTED] fails to explain how the petitioner's work is indicative of an original athletic contribution of major significance in the sport of boxing.

[REDACTED] states:

I met [the petitioner] four years ago, when he was working out at [REDACTED] and within 5 minutes, I realized that [the petitioner] was a very special person; bright, intelligent, warm, great sense of humor, and you have to absolutely love his brogue. On that day I was shooting a test for a full-length documentary and [the petitioner] became the focal point for my film. The title of the film is [REDACTED]. Over the years, [the petitioner] and his wife . . . became more than subjects in my film; we became good friends.

The record does not include any information about the release of the film [REDACTED], the number of people who have seen the film, or its commercial success. Moreover, [REDACTED] does not specify exactly what the petitioner's original contributions in the sport of boxing have been, nor is there an explanation indicating how any such contributions were of major significance in his field.

[REDACTED] states:

I fought [the petitioner] in an eliminator bout on [REDACTED] live on a special edition of [REDACTED]

* * *

I train in [REDACTED] and I have known him for years. [The petitioner] is of the Top Fighters in his division

The AAO notes that the petitioner's loss to [REDACTED] occurred subsequent to the petition's November 17, 2008 filing date. As previously discussed, a petitioner must demonstrate his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's [REDACTED] in this proceeding. Nevertheless, [REDACTED] does not provide specific examples of how the petitioner's work has influenced others in his sport or otherwise constitutes original athletic contributions of major significance in the field.

[REDACTED] state:

[W]e performed public relations work for professional boxer [the petitioner], who was born in Ireland but currently lives in New York, and is currently one of the top-ranked junior middleweight boxers in the world.

Colleen and I got to know [the petitioner] . . . during the time that we represented him. He is bright, articulate, and dedicated, not only to boxing, at which he excels, but also to his family and his community.

It is not enough to be a talented boxer, to have others attest to that talent, and to secure professional bouts. 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 those who met him in New York, 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 boxers 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 (Comm'r 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 professional boxer 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.

On motion to the director, the petitioner submitted material printed from the website filmmaker [REDACTED] stating:

[REDACTED] is a dance film which features the theatrical platform of a boxing ring and the intense movement of fighting. [REDACTED] exposes the brute physicality of a sport which pushes participants to their utmost limits, to the edges of physical force - one that, through its severity, captures the inexplicable will to live.

Shot on location at the world-famous [REDACTED]

Starring pro boxers [REDACTED]

Release slated for [REDACTED]

Featuring a collaboration with world-renowned dance photographer [REDACTED] whose stills from the production will be incorporated into the film.

[REDACTED] . . . are advisors on the project.

[REDACTED] received a New York City Media Arts grant from the [REDACTED]

The AAO notes that release of the preceding short film [REDACTED] As previously discussed, a petitioner must demonstrate his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Additional material submitted by the petitioner from Ms. Kaplan's website indicates that the "first edit" of [REDACTED] had [REDACTED] in February 2007 and at the [REDACTED] [REDACTED] in June 2007.

On appeal, counsel points to the above material from [REDACTED] website and the aforementioned letter from [REDACTED] stating that the petitioner "became the focal point" of [REDACTED] documentary film [REDACTED]. Counsel states: "[The petitioner] plays a leading role in a [REDACTED] and a Documentary Film [REDACTED]. The plain language of this regulatory criterion requires evidence that the petitioner "has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." The AAO is not persuaded that the short film [REDACTED] and the documentary film [REDACTED] equate to

“organizations or establishments.” Rather, these films are temporary productions. Moreover, the record does not include any information about the release of the film [REDACTED] and the information posted on [REDACTED] website states indicates that official release of [REDACTED] post-dates the filing date of the petition. Regardless, there is no documentary evidence showing that the films have earned a distinguished reputation. For instance, there is no evidence showing that the films have attracted a substantial audience, that the films earned widespread critical acclaim, or that the films enjoyed significant commercial success. Regarding the self-serving material printed from [REDACTED] website, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff’d* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine’s status as major media). The documentation submitted by the petitioner fails to demonstrate that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. Accordingly, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner initially submitted his U.S. Individual Income Tax Return for 2007 reflecting total income of \$14,790. The plain language of this regulatory criterion, however, requires the petitioner to submit evidence demonstrating he has earned a high salary or other significantly high remuneration “in relation to others in the field.” The petitioner offers no basis for comparison showing that his earnings are significantly high in relation to other professional boxers. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering professional golfer’s earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer’s salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen).

In light of the above, 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. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel states:

[T]he director overlooked or failed to recognize that the usual evidence as set forth at in the regulation at 8 C.F.R. § 204.5(h)(3) regarding extraordinary ability may not be readily applicable in the instant petition. The extraordinary ability of a professional [REDACTED]

weight boxer can be demonstrated by “comparable evidence” as set forth at 8 C.F.R. § 204.5(h)(4).

The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten categories of evidence “do not readily apply to the beneficiary’s occupation.” Thus, it is the petitioner’s burden to demonstrate why the regulatory criteria at 8 C.F.R. § 204.5(h)(3) are not readily applicable to the alien’s occupation and how the evidence submitted is “comparable” to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x).

Counsel points specifically to “the wins garnered by [the petitioner] from both national and international title bouts,” the venues where the petitioner’s fights were held, and “the expert opinion letters.” In counsel’s appellate brief, he does not explain why the categories of evidence at 8 C.F.R. § 204.5(h)(3) are not applicable to the petitioner’s occupation of professional boxer and how the evidence submitted is “comparable” to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation as a professional boxer cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, the petitioner submitted evidence that specifically addresses five of the ten categories of evidence set forth in the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to satisfy the plain language requirements of at least three categories of evidence at 8 C.F.R. § 204.5(h)(3), the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

The AAO notes that the petitioner’s boxing victories, titles, and awards from national and international competition readily apply to the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and have already been considered there. While the petitioner may have earned national titles during his amateur boxing career in Ireland, there is no documentary evidence showing that the petitioner has won any national or international boxing “titles” since turning professional in August 2005. Even if the petitioner were to establish that the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) does not readily apply to the occupation of professional boxer, which he clearly did not, the petitioner failed to establish that his victories in professional bouts were *comparable* to the regulation at 8 C.F.R. § 204.5(h)(3)(i) that requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” Under the awards criterion, the petitioner must demonstrate that he received nationally or internationally recognized *prizes or awards for excellence* in the field. Competitive success in various professional boxing fights in pursuit of a national or international title is not sufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) unless prizes or awards for excellence were garnered as a result of the petitioner’s participation. For example, a tennis player who wins his initial match and advances to the next round at Wimbledon or at the U.S. Open Tennis Championships would not meet the awards criterion unless the tennis player ultimately received an award or a prize in the finals. The documentation submitted by the petitioner fails to demonstrate that any of his sixteen professional boxing victories at the time of filing had garnered a level of national or international recognition comparable to the regulation at 8 C.F.R. § 204.5(h)(3)(i).

With regard to the venues where the petitioner's fights were held, counsel states: "The fact that [the petitioner's] fights were held at the world famous boxing arenas such as Madison Square Garden and at Atlantic City as well as in the Yankee Stadium is it and itself evidencing [sic] that he has achieved national if not international acclaim in boxing." The petitioner submitted a comprehensive list of his professional bouts printed from [REDACTED] but there is no indication that he had fought at Yankee Stadium as of the petition's filing date. On appeal, the petitioner submits a schedule printed from [REDACTED] reflecting that he was scheduled to compete at [REDACTED] before the main event featuring [REDACTED] title. The petitioner's undercard fight at Yankee Stadium post-dates the petition's filing date. As previously discussed, a petitioner must demonstrate his eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider the petitioner's June 5, 2010 undercard fight at Yankee Stadium in this proceeding.

Counsel does not explain how the documentation showing that the petitioner fought at Madison Square Garden and in Atlantic City is "comparable" to any specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). There is no documentary evidence demonstrating that the petitioner's boxing matches at Madison Square Garden and at Boardwalk Hall in Atlantic City were indicative of his national acclaim as a professional boxer as claimed by counsel. Without documentary evidence to support the claim, 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). For instance, the petitioner failed to submit supporting evidence indicating that his professional boxing matches at Madison Square Garden and at Boardwalk Hall regularly attracted a substantial audience or were heavily promoted as the main event.

Regarding the expert opinion letters submitted by the petitioner, the AAO notes that they have already been considered under the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii). Further, counsel does not explain how the reference letters submitted by the petitioner are "comparable" to the specific objective evidence required at 8 C.F.R. §§ 204.5(h)(3)(i) – (x). 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 references selected by the petitioner. Moreover, the AAO notes that references limited to those who have interacted with the petitioner in New York are not sufficient to demonstrate his reputation outside of that particular region.

C. 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 discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(iii), (v), (viii), and (ix) and in the subsequent comparable evidence discussion.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), the AAO notes that the petitioner failed to submit evidence of his receipt of nationally or internationally recognized awards in *professional* boxing. While the AAO acknowledges that the petitioner received nationally or internationally recognized awards as an *amateur* boxer in Ireland, there is no evidence showing that his amateur boxing awards are commensurate with a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field. *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. at 953, 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that a boxer who receives awards at the amateur level should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. While the AAO acknowledges that a district court’s decision is not binding precedent, the AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that USCIS’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Moreover, there is no evidence showing that the petitioner has received nationally or internationally recognized prizes or awards in boxing subsequent to his turning professional in August 2005. For instance, the petitioner’s winning of the [REDACTED] reflects regional recognition rather than a nationally or internationally recognized award in boxing. The statute and regulations 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 in professional boxing as of the November 17, 2008 filing date of the petition.

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, or not being accompanied by evidence that they were published in major media. Moreover, the articles submitted by the petitioner portray him as an up-and-coming professional fighter rather than a boxer who has sustained national or international acclaim at the very top of his field. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. The published material submitted by the petitioner 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 of endeavor.

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 athletic 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 boxing career, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have achieved "sustained national or international acclaim" necessitates evidence of recognition beyond those who have interacted with the petitioner in New York. 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 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.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), as previously discussed, there is no evidence showing that the petitioner has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not established that his film roles are 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.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), there is no evidence demonstrating that petitioner's remuneration is "significantly high" in relation to other professional boxers or that his level of compensation places him among that small percentage who have risen to the very top of the field. The documentation submitted by the petitioner 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.

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 professional boxer, 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).

D. Prior P-1 Nonimmigrant Visa Status

The AAO notes that the petitioner has been in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). While USCIS has approved a prior P-1 nonimmigrant visa petition filed on behalf of the petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis upon review of the evidence of record. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

III. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.