



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **AUG 03 2015**

FILE #: [REDACTED]

PETITION RECEIPT #: [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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter 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), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief. For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who are at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner’s appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(I) 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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the petitioner’s sustained acclaim and the recognition of the petitioner’s achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. See *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). See also *Rijal v. USCIS*, 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS’ proper application of *Kazarian*), *aff’d*, 683 F.3d 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the “truth is to be determined not by the quantity of evidence alone but by its quality” and that USCIS examines “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true”).

II. ANALYSIS

A. Previously Approved O-1 Nonimmigrant Petition

While U.S. Citizenship and Immigration Services (USCIS) has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. 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). We are 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’r 1988). Moreover, we need not 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, our 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 had approved the nonimmigrant petitions on behalf of the beneficiary, we would not be bound to follow the contradictory decision of a service

center as the law is clear that an agency is not bound to follow an earlier determination as to a visa applicant where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir.2007); *Tapis Int'l v. INS*, 94 F.Supp.2d 172, 177 (D.Mass.2000) (Dkt.10); *Louisiana Philharmonic Orchestra v. INS*, 44 F.Supp.2d 800, 803 (E.D.La.1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. Area of Expertise

On Part 6 of the Immigrant Petition for Alien Worker (Form I-140), the petitioner indicated that the job title of the proposed employment is that of a fencing instructor. The initial filing brief reflects that his expertise in fencing is as an athlete, a coach, and as a referee and that he seeks this immigrant classification in the field of fencing. The director's request for evidence (RFE) characterized the petitioner's area of expertise as a fencing instructor in the field of fencing. The petitioner continued to focus on his achievements as an instructor and referee in response to the director's RFE. The petitioner also submitted a letter indicating he will be employed as a fencing instructor. Consequently, we will consider his intended employment, and area of expertise, to be as a fencing instructor. *See Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (upholding a finding that competing and coaching are two separate areas of expertise).

Even if we were to consider the petitioner's athletic achievements as qualifying evidence, he has not submitted primary evidence of his athletic awards. Where the regulations require specific, objective evidence of achievements, such as awards, the primary evidence of such awards would be copies of the awards themselves. The regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. 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. There is no primary evidence demonstrating the petitioner received the award for his third place finish at the [REDACTED] in 2000, the [REDACTED] in 2001 through 2003, the 2001 [REDACTED], or the [REDACTED] Vice-Champion in 2004. Each of these awards is listed within the petitioner's curriculum vitae (CV). In this case, the petitioner submitted his CV, reference letters, and foreign language articles without a translator's certification in accordance with the regulation at 8 C.F.R. § 103.2(b)(3), all reflecting his awards. He did not, however, submit any documentary evidence demonstrating that primary evidence does not exist or cannot be obtained. As such, the petitioner has not documented his receipt of awards as an athlete. Even if the petitioner had submitted primary evidence of his athletic awards, his most recent awards predate the petition by ten years. As a result, the petitioner has not established that he has recent accomplishments as an athlete.

C. Evidentiary Criteria¹

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

This criterion contains several evidentiary elements the petitioner must satisfy. According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the petitioner is the recipient of the prizes or the awards. The clear regulatory language requires that the prizes or the awards are nationally or internationally recognized. The plain language of the regulation also requires the petitioner to submit evidence that each prize or award is one for excellence in the field of endeavor rather than simply for participating in or contributing to an event or to a group. The petitioner must satisfy all of these elements to meet the plain language requirements of this criterion.

The petitioner provided the prizes or awards of those he has coached as evidence under this criterion. The director considered this evidence, but ultimately did not grant the criterion. To meet the plain language requirements of this criterion, however, the petitioner must be the named award recipient establishing he was officially credited with, or given the award. *See Hristov v. Roark*, 09-CV-2731, 2011 WL 4711885, at *1, *7 (E.D.N.Y. Sept. 30, 2011). The awards of those the petitioner coached could be considered as comparable evidence if the petitioner demonstrates he meets the USCIS policy requirements enabling him to assert a claim of comparable evidence. Such awards, on a case by case basis, may also serve as relevant evidence under the contributions criterion at 8 C.F.R. § 204.5(h)(3)(v).

The remaining prizes or awards associated with the petitioner as the recipient relate to his performance as an athlete. As his prospective employment is as an instructor, the only qualifying prizes or awards under this criterion are those issued to him, and relating directly to his performance as a coach. The petitioner has not submitted any such prizes or awards. As such, he has not submitted qualifying evidence of his prizes or awards as a coach or instructor under this criterion.

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

The director discussed the evidence submitted for this criterion and found that the petitioner did not establish his eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional discussion. Therefore, the petitioner has abandoned his eligibility claims under this criterion. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov*, 2011 WL 4711885 at *1, 9 (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not submitted qualifying evidence under this criterion.

¹ We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

This criterion requires not only that the petitioner was selected to serve as a judge, but also that the petitioner is able to produce evidence that he actually participated as a judge. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). Additionally, these duties must have been directly judging the work of others in the same or an allied field in which the petitioner seeks an immigrant classification within the present petition. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The director determined that the petitioner established eligibility for this criterion. The plain language of this criterion requires evidence of the petitioner's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought." The AAO conducts appellate review on a *de novo* basis. *See Siddiqui v. Holder*, 670 F.3d at 741; *Soltane*, 381 F.3d at 145; *Dor*, 891 F.2d at 1002 n. 9. For the reasons outlined below, a review of the record of proceeding does not reflect that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of this criterion.

The petitioner submitted a letter from [REDACTED] dated December 28, 2013. [REDACTED] is the former Executive Director of the [REDACTED]. Mr. [REDACTED] confirms that the petitioner served as a referee at competitions under the sanction of the [REDACTED] with which [REDACTED] is affiliated. The record also contains [REDACTED] website materials confirming various competitions where the petitioner officiated as a referee. Within his letter, [REDACTED] explains that the petitioner is a true asset to the fencing community and that he is one of the best referees currently residing in the United States.

The record, however, lacks evidence detailing what duties the petitioner performed as a referee. For example, the petitioner did not submit official competition rules showing that his activities in the tournaments constituted participation as a judge of the work of others. If the petitioner's duties involved simply enforcing the rules of a match and sportsmanlike competition, then his participation as a judge cannot be said to have involved evaluating or judging the skills or qualifications of the participants. Without further evidence that he judged the work of others, such as evidence that he awarded points or exercised his judgment in choosing the ultimate winner, evidence regarding officiating at a match is insufficient to meet this criterion.

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

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions

are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. 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). Contributions of major significance connotes that the petitioner’s work has significantly impacted the field. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 135-136. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

The petitioner indicates his contributions in the field are the accomplishments of those he coached, his coaching style, and his performance as a referee. The director determined that the petitioner did not meet the requirements of this criterion. Specifically, the director stated the letters contain general comments about the petitioner’s level of expertise in the field. The director also concluded that even though the petitioner assisted two athletes in achieving success, that this achievement is not unusual for those who coach, and that the petitioner did not establish this success constitutes a contribution of major significance within the field. Finally, the director determined that the petitioner’s performance as an assistant coach on a championship collegiate team is not a contribution of major significance in the field, as this achievement was at the college level.

On appeal the petitioner indicates the director “discounted to the point of dismissing the letters” and implied that the director assessed the letters in an arbitrary and capricious manner. We will review the letters below.

In the petitioner’s initial filing brief and RFE response, he identified the contributions described in the letters as his unique coaching style in the old French or European style; his in-depth knowledge of fencing rules; his refereeing experience, which brings new tactical and technical worldwide tendencies to the United States; and being the youngest international referee at the time he received his diploma. Additional letters describe him as one of the best sabre or fencing coaches and referees in the country. Such general and conclusory opinions that repeat the statutory standard do not establish that the petitioner has made contributions of major significance in the field. *See Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108, *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.); *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

The petitioner has not submitted evidence that describes or otherwise demonstrates the impact of his work, such that he has exerted a significant influence in the field. It is not sufficient to be an experienced and talented coach or referee in order to satisfy this criterion. The petitioner must have demonstrably impacted his field in order to meet this regulatory criterion. *See* 8 C.F.R. § 204.5(h)(3)(v); *see also Visinscaia*, 4 F. Supp. 3d at 134. Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated the conclusion

that “letters from physics professors attesting to [the petitioner’s] contributions in the field” was insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

The petitioner does not specifically address the director’s statement that the petitioner’s performance as an assistant coach on a championship collegiate team is not a contribution of major significance in the field. A review of the letters from the Head Coach and Assistant Head Coach at The [REDACTED] University reveals similar language. For example, the undated letter from [REDACTED] Associate Head Coach of The [REDACTED] Teams, states:

[The petitioner] came to the [REDACTED] for a Biochemistry internship in 2011 . . . He first was a sparring partner for the University fencing teams, and has worked with the team continuously since his arrival. We decided to move him quickly from sparring partner to a volunteer coach as I became aware of his extensive knowledge and expertise in fencing . . . Under our direction, numerous students have achieved success, including [sic] top performances at in [REDACTED] events, junior and senior events, and local competitions . . .

The November 15, 2012 letter from [REDACTED] Head Coach of the [REDACTED] University [REDACTED] Teams, states:

[The petitioner] came to the [REDACTED] University for a Chemistry/Biology internship in 2011 . . . he became a sparring partner for the University fencing teams, and has worked with the team as a volunteer continuously since his arrival. We have promoted him to volunteer coach as I became aware of his extensive knowledge and expertise in sport [sic] of fencing. Under his direction numerous students have achieved success, including top performances at in [REDACTED] events, junior and senior events, and local competitions . . .

[REDACTED] continues as follows:

[The petitioner’s] extraordinary abilities and fencing would not only benefit our University and my club but also the [REDACTED] . . . I strongly support [the petitioner’s] application to get a work visa to be able to coach in my club . . . I am convinced that his continued presence here will lead to further achievements of U.S. fencers, as well as the elevation of this skill of referees for national and international events. [The petitioner] will be very beneficial to the United States in the sport of fencing . . .

[REDACTED] concludes:

[The petitioner’s] extraordinary abilities in the sport of fencing benefit not only [REDACTED], where he currently on volunteers, but also the sport of fencing in the United States. I strongly support [the petitioner’s] application for a work visa in the Central [REDACTED]. I am convinced that his continued presence here will

lead to further achievements of U.S. fencers, as well as the elevation of the skill of referees as [*sic*] national and international events. [The petitioner] will be very beneficial to the United States in the sport of fencing . . .

As a general concept, when a petitioner has provided affidavits from different persons, but the language and structure contained within the affidavits is notably similar, the trier of fact may consider those similarities when evaluating the content of the letters. *Cf. Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006). When affidavits contain such similarities, it is reasonable to infer a common source from where the similarities derive. *Cf. Mei Chai Ye v. U.S. Dept. of Justice*, 489 F.3d 517, 519 (2d Cir. 2007). Because someone other than the authors appears to have drafted some portions of the letters, the letters possess diminished probative value.

Regardless, the Board of Immigration Appeals (BIA) 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 BIA 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). The opinions of experts in the field are not without weight and have received consideration within this decision. 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.* Based on the extensive similarities between the above letters, USCIS may accord them less weight.

The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as above, evaluate the content of those letters as to whether they support the alien’s eligibility. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). *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)). Accordingly, the content of the letters is insufficient to establish the petitioner’s eligibility for the immigration benefit sought.

explains that the petitioner served as a sparring partner for University and they promoted him to volunteer coach. confirms that the petitioner is assistant for the sabre team. identifies four students who achieved success under the petitioner’s direction. He does not assert that the students were primarily under the tutelage of the petitioner during his time as a volunteer coach. Notably, asserts that the students achieved success “under our direction.” While the record contains evidence of the success of University’s fencing team, the materials the petitioner provided from indicate that the university has “the most awarded fencing program in the” United States. Accordingly, the petitioner’s service as a volunteer and assistant coach for a team that is already an

award-winning program is not, by itself, evidence that he has contributed to the field at a level consistent with original contributions of major significance.

In response to the director's RFE, the petitioner submitted a letter from The [REDACTED] University [REDACTED], affirming the petitioner's influence on his performance. [REDACTED], however, did not sign the letter. Accordingly, it has no evidentiary value.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

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

The director discussed the evidence submitted pursuant 8 C.F.R. § 204.5(h)(3)(viii) and found that the petitioner did not establish his eligibility. On appeal, the petitioner makes only passing reference to this issue, asserting that he "performs a leading or critical role as an athlete, coach and referee for organizations that have distinguished reputations." The petitioner did not identify an incorrect application of law or statement of fact underlying the director's finding that the petitioner had not established how his role is considered leading or critical. Therefore, the petitioner has abandoned his eligibility claims under this criterion. *Desravines v. U.S. Atty. Gen.*, 343 F. App'x 433, 435 (11th Cir. 2009) (a passing reference in the discussion section of a brief without substantive discussion is insufficient to raise that ground on appeal). The record supports the director's determination that the petitioner has not established how his role as a volunteer and assistant coach is either leading within the hierarchy of the organization or critical in that it has notably impacted the organization.

D. Comparable Evidence

Within the initial filing brief, the petitioner indicates "the awards won by him are the medals won by the athletes he coached . . ." Within the RFE response, the petitioner describes the awards won by those he coached as "comparable to a prize awarding national or international recognition." On appeal, the petitioner states that the director failed to consider such awards under the comparable evidence provision at 8 C.F.R. § 204.5(h)(4).

The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if he or she is able to demonstrate that the standards at 8 C.F.R. § 204.5(h)(3)(i) – (x) do not readily apply to his occupation and states: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." Further, the Adjudicator's Field Manual (AFM) at Chapter 22.2(i)(1)(A) provides in pertinent part:

The petitioner should explain clearly why it has not submitted evidence that would satisfy at least three of the criteria set forth in 8 CFR 204.5(h)(3) as well as why the evidence it has submitted is "comparable" to that required under 8 CFR 204.5(h)(3).

As indicated in this decision, throughout the proceeding the petitioner specifically addressed five of the ten criteria at 8 C.F.R. § 204.5(h)(3). It is the petitioner's burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i) – (x). As the petitioner has not attempted to demonstrate that the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i) – (x) do not readily apply to his occupation, the petitioner may not rely on comparable evidence to qualify for this immigrant classification.

Regardless, if the petitioner had demonstrated his eligibility to claim comparable evidence, he would still not satisfy the prizes or awards criterion with comparable evidence. While a petitioner who is a ██████████ Division I coach whose athlete wins the top collegiate competition while under the petitioner's principal tutelage might constitute evidence comparable to that in 8 C.F.R. § 204.5(h)(3)(v) as explained in the AFM, the petitioner has not established that the athletes he identifies were primarily under his tutelage. Specifically, as discussed above, neither ██████████ nor ██████████ provides specifics regarding the nature of the petitioner's role for the students as a volunteer coach and the letter from a student is unsigned.

E. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the petitioner has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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 field of endeavor," 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R. § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a

finding that the petitioner has not demonstrated the level of expertise required for the classification sought.²

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.

² We maintain *de novo* review of all questions of fact and law. See *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); see also INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).