(b)(6)

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

DATE: JUL 2 2 2015

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed 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, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

In his initial filing, the petitioner indicated that he sought classification as an alien of extraordinary ability in athletics as a cricket player, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). In response to the director's request for evidence (RFE) and on appeal, however, the petitioner asserted that he qualified for the exclusive classification as a cricket player and as a cricket coach, and stated his intent to work as a cricket player and coach in the United States. The Act makes visas available to petitioners 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 did not satisfy the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of the petitioner's one-time achievement or evidence that the petitioner meets at least three of the ten regulatory criteria.

On appeal, the petitioner asserts that the director erred because he did not: (1) consider the totality of the circumstances or conduct a final merits determination; (2) use the preponderance of the evidence standard when determining whether the petitioner, as initial evidence, met at least three of the ten criteria set forth under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x); and (3) consider comparable evidence under the regulation at 8 C.F.R. § 204.5(h)(4).[1] On appeal, the petitioner does not specifically state which of the ten criteria, if any, he meets.

For the reasons discussed below, we agree with the director 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), evidence that he 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), or comparable evidence under 8 C.F.R. § 204.5(h)(4). 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:

> (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):

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[1] The petitioner also asserts that the director issued a "vague Request for Additional Evidence ('RFE'), wherein the officer merely restated the regulations in outline form." The RFE, however, listed the evidence the petitioner had submitted and several specific concerns about that evidence.

(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. 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 his sustained acclaim and the recognition of his 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 he 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), or comparable evidence that establishes his eligibility under the regulation at 8 C.F.R. § 204.5(h)(4).

The submission of the requisite initial evidence pursuant to 8 C.F.R § 204.5(h)(3) or (h)(4), 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); s*ee 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. Eligibility as a Player and a Coach

On appeal, the petitioner asserts that the director erred in not conducting a final merits determination, in which he "take[s] into account the totality of the circumstances of the athletics and the coaching." We find that the director did not err on this issue.

In the petitioner's initial filing, the petitioner asserted in the cover letter that he qualified for the exclusive classification as a cricket player. In part 5 of his petition, the petitioner did not provide information on either his occupation or his proposed employment in the United States. The petitioner referenced an invitation to serve as captain of the cricket team during a tournament and an invitation to play at a event. In response to the director's RFE, the petitioner submitted an August 20, 2014 statement, asserting his intent to work as a cricket coach and player in the United States. The petitioner also submitted an employment agreement, indicating that he will "captain and coach the players of the cricket team in various national and international tournaments" from On appeal, the petitioner asserts that he "has been an acclaimed athlete for more than three decades" and "in recent years, he has begun coaching as well." The petitioner further asserts that he "falls in between the coach and the athlete categories."

In *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), the court upheld a finding that competitive athletics and coaching are not within the same area of expertise, stating "extraordinary ability as a baseball player does not imply . . . extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach. The regulations regarding this preference classification are extremely restrictive, and not expanding 'area' to include everything within a particular field cannot be considered unreasonable. *Id.* at 918.

While a cricket player and a cricket coach certainly share knowledge of the game of cricket, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. *See Lee*, 237 F. Supp. 2d at 918. Nevertheless, there does exist a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, as noted in the petitioner's appellate brief, the following balance is appropriate. In a case where the beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, USCIS can, in the context of the final merits determination, consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability consistent with a conclusion that coaching is within the petitioner's area of expertise. Specifically, in such a case the level at which the petitioner acts as coach is a consideration. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not.

The petitioner, however, intends to continue playing competitively as well as coaching. Accordingly, he need only demonstrate eligibility as an athlete or a coach.

In this case, as discussed below, because the petitioner has not met the initial evidentiary requirement of submitting at least three of the ten criteria set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x) as a cricket player or coach, we need not conduct a final merits determination or consider the totality of the evidence. *See* 8 C.F.R. § 204.5(h)(3); *Kazarian*, 596 F.3d at 1122. Accordingly, the director did not err in not conducting a final merits determination or not considering the totality of the evidence.

B. Standard of Proof

On appeal, the petitioner asserts that the director erred because he stated in his decision: "USCIS will not conduct a final merits determination to determine whether the [petitioner] has reached a level of expertise indicating that [he] is one of that small percentage who have risen to the top of the field of endeavor, and whether [he] has sustained acclaim." The petitioner further asserts that the director "improperly inflated the standard of review to be the 'very top of their field' rather than considering whether [the petitioner] had reached 'sustained international acclaim.'" The petitioner cites *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994) and a 2003 non-precedent case we issued as support for his assertions. The petitioner has not shown that the director erred on this issue.

First, the petitioner has not shown that we should rely on a 2003 non-precedent case when adjudicating the appeal. While the regulation at 8 C.F.R. § 103.3(c) provides that our precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. *See also AAO Practice Manual* § 3.15(a) ("DHS officers may not rely upon or cite to non-precedent decisions as legal authority in other decisions.").

Second, the petitioner has not shown that *Buletini* is applicable in this case. In *Buletini*, the U.S. District Court concluded that the legacy INS had applied "a much higher standard of eligibility than is called for by the [Act] or the federal regulations." For example, the Court stated that the legacy INS improperly required the petitioner to show that his awards were not only nationally, but internationally, recognized; that his participation as a judge was the result of his having extraordinary ability; and that his salary was based on a certain level of qualifications and was the result of his having extraordinary ability. *Buletini*, 860 F. Supp. at 1230-33. In this case, the petitioner has not shown that the director applied any of the above-mentioned or other higher standards of eligibility. In fact, as discussed below, the standard that the petitioner asserts as erroneous is a quote from the regulation.

Third, as discussed, in accordance with the relevant regulation and controlling case law, the petitioner, as initial evidence, must first establish that he meets at least three of the ten criteria set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). *See* 8 C.F.R. § 204.5(h)(3); *Kazarian*, 596 F.3d at 1122. If he has submitted the requisite initial evidence, the next step would be a final merits determination. In this case, the director found that the petitioner did not submit the requisite initial evidence showing that he meets at least three of the ten criteria. Based on this finding, the director concluded that a

final merits determination is not necessary. As the director had followed the two-part review when adjudicating the petition, we find no error in the director's statement: "USCIS will not conduct a final merits determination to determine whether the [petitioner] has reached a level of expertise indicating that [he] is one of that small percentage who have risen to the top of the field of endeavor, and whether [he] has sustained acclaim." The "very top of their field" phrase, which the petitioner asserts as an "improperly inflated" standard is from the regulation, which provides that "[e]xtraordinary ability means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2); *see also* H.R. 723 101st Cong., 2d Sess. 59 (1990). On the first page of his appellate brief, the petitioner provides the same quote from the legislative history, noting that the exclusive classification is "intended for the 'small percentage of individuals who have risen to the very top of their field of endeavor.'" Moreover, the *Kazarian* court expressly stated that a final merits determination looks at both whether the petitioner has sustained national or international acclaim and whether the individual is one of that small percentage who have risen to the every top of the field of endeavor. *Kazarian,* 596 F.3d at 1119. As such, we find no error in the director's use of the phrase or indication that the director had used an improper standard when adjudicating the petition.

Fourth, although the petitioner correctly states that the standard of proof is the preponderance of the evidence, other than asserting that the director erred, the petitioner has not specifically provided any factual or legal basis showing that the director did not follow the proper standard in his decision. In most administrative immigration proceedings, the petitioner must prove by a preponderance of the evidence that he is eligible for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The truth is to be determined not by the quantity of evidence alone but by its quality. *Id.* at 376. In this case, the director reviewed the evidence in the record, and concluded that the petitioner has not shown by the preponderance of the evidence that he meets at least three of the ten criteria set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x). On appeal, the petitioner has not contested the findings of the director for any of the criteria, offered additional arguments or pointed to evidence in the record establishing that he meets any of the criteria. We therefore consider that on appeal, the petitioner has abandoned the assertion that he meets any of the ten criteria. *See 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). Moreover, the petitioner's statement on appeal that he meets the eligibility for the exclusive classification sought, without providing any legal support as relating to any of the ten criteria, does not require us to conduct a full analysis of all the criteria. *See Desravines v. United States Att'y Gen.*, No. 08-14861, 343 F. App'x 433, 435 (11th Cir. 2009) (finding that issues not briefed on appeal by a *pro se* litigant are deemed abandoned); *Tedder v. F.M.C. Corp.*, 590 F.2d 115, 117 (5th Cir. 1979) (deeming abandoned an issue raised in the statement of issues but not anywhere else in the brief). Accordingly, the petitioner has not shown that the director applied an erroneous or higher standard when adjudicating his petition.

C. Comparable Evidence

On appeal, the petitioner asserts that he has presented comparable evidence that establishes his eligibility for the exclusive classification. Specifically, he points to: (1) a Wikipedia document entitled (2) an April 30, 2014 letter from Vice President-Operations, Offices of and (3) a May 8, 2013 letter from Stadium Manager, Florida. As the petitioner did not previously present this evidence as comparable evidence pursuant to 8 C.F.R § 204.5(h)(4), the director did not err by failing to consider it under that regulation. Nevertheless, in the interest of thoroughness, we will consider this new assertion on appeal.

On appeal, the petitioner asserts that because he "is an athlete, and athletes don't normally acquire the same evidence in the normal practice of their careers, other similar criteria, including letters and lesser-known or local awards, should have been considered." With respect to letters, the petitioner cites the *Adjudicator's Field Manual* (*AFM*) for the proposition that comparable evidence "may include expert opinion letters attesting to the applicant's abilities."

The memorandum, *Evaluation of Evidence Submitted with Certain Form I-140 Petitions*; *Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2*, AFM Update AD11-14, PM-602-0005.1 (Dec. 22, 2010), updated the AFM to include the following:

> General assertions that the ten objective criteria described in 8 CFR 204.5(h)(3) do not readily apply to the alien's occupation are not probative and should be discounted. Similarly, claims that USCIS should accept witness letters as comparable evidence are not persuasive. 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).

Prior to the appeal, the petitioner did not rely on comparable evidence to establish his eligibility. On appeal, the petitioner's only explanation of why comparable evidence is appropriate is that the criteria do not apply to athletes in general. As stated in the *AFM Chapter 22.2* on which the petitioner relies on appeal, such a general assertion is not probative. Moreover, the *AFM* says that an assertion that witness letters constitute comparable evidence is "not persuasive."

The regulation at 8 C.F.R. § 204.5(h)(4) provides: "[i]f the above standards [set forth at 8 C.F.R. § 204.5(h)(3)(i)-(x)] do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." To establish that the petitioner may submit comparable evidence, the petitioner must first demonstrate that the criteria listed in 8 C.F.R. § 204.5(h)(3)(i)-(x) "do not readily apply to [his] occupation." In this case, the petitioner seeks to enter the United States to work as a cricket player and a cricket coach. He has not, however, shown that the regulatory criteria do not readily apply to his occupation. In his initial filing, the petitioner asserted that he met five of the ten regulatory criteria. Specifically, he asserted that he met the prizes

or awards criterion, 8 C.F.R. § 204.5(h)(3)(i); the membership in associations criterion, 8 C.F.R. § 204.5(h)(3)(ii); the published material criterion, 8 C.F.R. § 204.5(h)(3)(iii); the participation as a judge criterion, 8 C.F.R. § 204.5(h)(3)(iv); and the leading or critical role criterion, 8 C.F.R. § 204.5(h)(3)(viii). In response to the director's RFE, the petitioner continued to assert that he met four of the ten criteria. Specifically, other than the participation as a judge criterion, 8 C.F.R. § 204.5(h)(3)(iv), the petitioner asserted that he met all the remaining four criteria discussed in his initial filing.

Significantly, federal courts have held in a number of cases that the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) apply to athletes and coaches. See *Braga v. Poulos*, No. CV 06-5105 SJO 10, 2007 WL 9229758, at *1, 6-7 (C.D. Cal. July 6, 2007), *aff'd*, 2009 WL 604888 (9th Cir. 2009); *Visinscaia v. Beers*, 4 F. Supp. 3d 126, 134-35 (D.D.C. 2013); *Noroozi v. Napolitano*, 905 F. Supp. 2d 535 (S.D.N.Y. 2012); *Russell v. I.N.S.*, No. 98 C 6132, 2001 WL 11055 (N.D. Ill. Jan. 4, 2001). The petitioner has not submitted sufficient legal support that demonstrates that the criteria listed in 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation as a cricket player or coach. Accordingly, the petitioner has not shown that he may submit comparable evidence to establish his eligibility.

In the alternative, even if the petitioner has shown that he may submit comparable evidence, he has not submitted evidence that is comparable and meets any of the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). With respect to "lesser-known or local awards," the petitioner has not shown that they constitute evidence comparable to evidence that meets the prizes and awards criterion, 8 C.F.R. § 204.5(h)(3)(i), which requires the petitioner to demonstrate his "receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." As we discussed above, the petitioner has not demonstrated that lesser nationally or internationally recognized prizes or awards do not exist in cricket. The petitioner's profile indicates he previously played in international leagues, which is indicative of leagues that compete for prizes or awards. The petitioner has not shown that "less-known or local awards," which are not nationally or internationally recognized, are comparable to prizes or awards that are recognized on a national or international level. In addition, the petitioner no longer asserts that his award certificates constitute nationally or internationally recognized prizes or awards. Accordingly, the petitioner may not rely on "lesser-known or local awards" or award certificates as comparable evidence.

On appeal, the petitioner also references a letter from Vice President-Operations, According to Mr. April 2014 letter, the council invited the petitioner to serve as the captain of the team and coach two teams at the December Mr states that the event would "be the largest T20 cricket tournament to be played in " with 40 participating teams, and that "[o]ver 900 players, coaches, support staff, media and officials [would] visit ' for the event. The regulation at 8 C.F.R § 204.5(h)(3)(ii) allows for the submission of membership in an association that requires outstanding achievements of its members. While membership in a country's official national team that competes internationally might serve as comparable evidence of the membership criterion, the

team is one of 40 U.S. teams that compete nationally. The petitioner has not demonstrated that the requirements for membership on the U.S. All-Stars team are comparable to the outstanding achievements for membership required under 8 C.F.R § 204.5(h)(3)(ii). Similarly, the regulation at 8 C.F.R § 204.5(h)(3)(viii) allows for the submission of evidence that the petitioner has performed in a leading or critical role for an organization or establishment with a distinguished reputation. A leading or critical role for an organization or establishment that the petitioner has not demonstrated enjoys a distinguished reputation is not comparable evidence. The petitioner has not demonstrated that the team, one of 40 teams to compete in the enjoys a distinguished reputation.

While the petitioner does not raise this evidence on appeal, we acknowledge that the petitioner submitted a May 5, 2014 letter from Director of the in Connecticut, advising that they had selected the petitioner for inclusion. The petitioner has submitted evidence relating to the , but not the in Connecticut. Accordingly, the petitioner has not established that his selection for inclusion in the in Connecticut is comparable to a membership in an association that requires outstanding achievements of its members pursuant to 8 C.F.R § 204.5(h)(3)(ii).

Finally, the evidence in the record, including online printouts form yahoo.com, ar printout of partnership records, and a document entitled "[the Petitioner] – " shows that the petitioner partnered with in a world record opening stand of 561 in ' While this evidence is arguably comparable evidence of contributions of major significance in the field pursuant to 8 C.F.R § 204.5(h)(3)(v), it is only comparable evidence relating to one criterion. Under the regulation, the petitioner must demonstrate that he meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)-(x). Moreover, as the petitioner set the record back in even if we were to reach a final merits determination based on this evidence, we would conclude that it is not indicative of or consistent with sustained national or international acclaim in , when the petitioner filed the petition.

D. Summary

As the petitioner has not specifically challenged or stated on appeal what criteria, if any, he meets as either a cricket player or coach, we will not conduct a full analysis on all the criteria. As noted, the petitioner's statement on appeal that he meets the eligibility for the exclusive classification sought, without providing any legal support as relating to any of the ten criteria, does not require us to conduct a full analysis of all the criteria. *See Desravines*, 343 F. App'x at 435; *Tedder*, 590 F.2d at 117. Accordingly, we conclude that the petitioner has abandoned these issues, as he has not properly raised them on appeal. Although the petitioner has asserted on appeal that he has submitted comparable evidence under 8 C.F.R. § 204.5(h)(4), he has not shown that he may submit comparable evidence, because he has not demonstrated that the criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation as a cricket player and coach. In the alternative, the petitioner

has no submitted evidence that is comparable to evidence that meets at least three of the criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x).

The record includes evidence showing that the petitioner has the "highest record in partnership first wicket," a record he set with his partner in The record also includes evidence showing that the petitioner has received a number of award certificates and cash prizes, has been a competitive cricket player and a member of the Pakistan seniors and veteran teams, and has been playing and coaching cricket in the United States. However, for the reasons discussed above, we agree with the director that the petitioner has not satisfied the initial evidentiary requirements of meeting at least three of the ten regulatory criteria, and he has not presented comparable evidence.

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 have 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 or comparable evidence, 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 not satisfied 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 at the time of filing in 2014,[2] the petitioner has not demonstrated the level of expertise required for the classification sought.[3]

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[2] The evidence shows that in recent years, the petitioner has been a member of veteran and senior cricket teams in Pakistan. According to a May 2, 2014 letter from Chief Executive Officer of the petitioner "has been a regular player in [the Pakistani] tournaments in the over 40 and over 50 age groups." An website lists the petitioner as a Pakistan senior player. The petitioner has not shown that he has been playing in teams – which have an age restriction – that are top national or international teams or that have players of the highest caliber nationally or internationally. Accordingly, the petitioner has not demonstrated that he has sustained any acclaim he may have enjoyed previously. Section 203(b)(1)(A)(i); 8 C.F.R § 204.5(h)(3); *Kazarian*, 596 F.3d at 1119-20.

[3] 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

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, that burden has not been met.

ORDER: The appeal is dismissed.

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legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).