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

(b)(6)

DATE: JUN 2 4 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:

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.

The petitioner seeks classification as an alien of extraordinary ability in athletics, as a Jai Alai player, 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 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 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 asserts that he meets the criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i), (iii) and (ix). 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), 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 is 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):
>
> > (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 alien's sustained acclaim and the recognition of the alien'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. Prior P-1 Visa Approvals

While USCIS has approved at least one P-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. The regulatory requirements for an immigrant and nonimmigrant visa in the athletics are different. The regulation at 8 C.F.R. § 214.2(p)(4) provides that an athlete may be approved a nonimmigrant visa upon a showing that he "is an internationally recognized athlete based on his . . . own reputation and achievements as an individual." The regulation further defines "internationally recognized" in athletics as "having a high level of achievement in a field evidenced by a degree of skill and recognition substantially above that ordinarily encountered, to the extent that such achievement is renowned, leading, or well-known in more than one country." 8 C.F.R. § 214.2(p)(3). The regulation relating to the immigrant

classification, 8 C.F.R. § 204.5(h)(2), however, defines extraordinary ability in any field as "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." As such, the petitioner's approval for a nonimmigrant visa under the standard of "having a high level of achievement . . . substantially above that ordinarily encountered" is insufficient to demonstrate his eligibility for an "extraordinary ability" immigrant visa.

B. Translations of Foreign Language Documents

The petitioner has submitted a number of foreign language documents. The petitioner, however, has not submitted English translations, that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). Specifically, the regulation provides: "Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." In his initial filing, the petitioner submitted three types of translation certifications. They are for translations from (1) Basque to English, (2) Spanish to English, and (3) French to English. None of the certificates affirm that the English translations are "full" and "complete" as required under the regulation. Moreover, some of the English translations are entitled "Translation (Article Clip, Excerpt)," signifying that the translations are not full and complete. Furthermore, the Basque translation certification references a single "attached" translation it is certifying and the petitioner submitted copies of the same certification to accompany all translations from Basque. As the certification does not identify all the translations it is certifying, it is not probative evidence that the translator of each Basque translation certified that translation. The remaining initial translation certifications do not identify the translations they certify; rather, they also reference a translation of a single "attached" document. This blanket translation certification is not probative evidence that the translator of each Spanish and French document the petitioner initially submitted certified the translation.

In response to the director's request for evidence (RFE), the petitioner submitted a translation certificate dated October 16, 2014, which relates to the translations from Spanish to English. This certificate similarly does not affirm that the English translations provided are "full" or "complete and accurate," as required under the plain language of the regulation. Accordingly, the foreign language documents in the record have diminished evidentiary value.

C. Evidentiary Criteria[2]

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner, as initial evidence, may present evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, as initial

[2] 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, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

The director found that the petitioner met this criterion. The evidence in the record does not support this finding. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

Specifically, as discussed, the petitioner has not submitted English translations that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). As such, the foreign language documents in the record have diminished evidentiary value and are insufficient to establish that he meets this criterion. If we are to consider the foreign language documents and their English translations, however, they appear to establish that the petitioner has met this criterion. According to the English translation for a December 4, 2013 certificate from the between 1996 and 2002, the petitioner received "the title of champion at the Tournament, which is the most renowned championship between territorial Federations." The certificate further provides that the petitioner has "won numerous championships, such as the " According to the English translation for an April 3, 2014 letter from President of in 2013, the petitioner won the Tournament that the club organizes. The letter provides that the club "choose[s] the best player[s] of the year between those who play in the United States and Europe" and that the competition is "one of the best tournaments of the year." According to the English translation for a July 10, 2014 certificate from in 2001, the petitioner won the Tournament, in which "the best players in the top 16 clubs" participated. The letter further states that clubs from various regions and provinces of Spain and two clubs from France participated in the event.

The petitioner has submitted some evidence showing that the tournaments in which he participated received media coverage. The English translation for an undated article entitled " " published in the states that the petitioner and his partner won the final match for the Award, which is "a tournament within the " According to the English translation for an 2011 article entitled " ," posted on noticias.lainformation.com, the petitioner and his partner won "the , organized by the World Council." According to the English translation for a 2007 article entitled "

" the petitioner and his partner won the final match at the Had the petitioner submitted English translations for these foreign language documents that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3), it appears that the petitioner might be able to establish that he meets this criterion.

Accordingly, as the petitioner has not submitted English translations that meet the regulatory requirements, the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *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.* 8 C.F.R. § 204.5(h)(3)(iii).

On appeal, the petitioner asserts that he meets this criterion. The evidence in the record does not support the petitioner's assertion. As noted in the director's decision, the petitioner has not shown that the published materials are about the petitioner, relating to his work as a Jai Alai player. Rather, the materials are about tournaments in which the petitioner participated. The petitioner has not shown that published materials that reference the petitioner as having participated in certain tournaments, and that focus on the tournaments as a whole, constitute published materials about the petitioner, relating to his work.

In addition, as discussed, the petitioner has not submitted English translations that meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). Without full and complete English translations of the foreign language materials, the petitioner has not shown that the published materials are about him, relating to his work as a Jai Alai player. In his initial filing, the petitioner submitted a number of foreign language materials. The English translations are entitled "Translation (Article Clip, Excerpt), signifying that the translations are not full or complete. Also, a comparison between the foreign language materials and their corresponding English translations indicate that the translations are not complete. For example, the foreign language material that the petitioner asserts is published in in 2014 contains multiple paragraphs. The corresponding English translation, however, has two sentences. The foreign language material that the petitioner asserts was published in on 2001 has four paragraphs. The corresponding English translation, however, has one sentence. The foreign language material published in on 2006 has four paragraphs and multiple sentences. The corresponding English translation, however, has two sentences. The foreign language material published in , entitled ' ," has two paragraphs, each with multiple sentences. The corresponding English translation, however, has two sentences. The foreign language material published in on 2009 has multiple paragraphs and multiple sentences. The corresponding English translation, however, has one sentence.

In response to the director's RFE, the petitioner submitted English re-translations of a number of published materials. As discussed, the certificate of translation the petitioner filed in his RFE response, like those he initially filed in support of the petition, does not meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3). As such, the foreign language materials and their corresponding English re-translations have diminished evidentiary value.

Moreover, although the petitioner asserts that some of the foreign language materials he initial filed in support of his petition were published in various newspapers, including and the foreign language clippings do not include the name of the publication. The petitioner has not submitted any evidence, such as letters from the publications or clippings that include the name of the publication, verifying the publication of the foreign language materials or the date of publication. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). As such, the petitioner has not shown that these materials constitute published materials in the specified media.

Furthermore, the petitioner has not submitted sufficient evidence showing that any of the publications or websites that published the materials are professional or major trade publications or major media. The petitioner has submitted an online document entitled ' ' from stating that is the third largest general-interest newspaper in Spain. The petitioner, however, did not submit a published material from rather he submitted material published in The petitioner has not shown that and are one and the same, such that like , is the third largest general-interest newspaper in Spain. The petitioner has not established that is a national publication, rather than a local edition of with a distribution and reach primarily in the region of Spain. As such, the petitioner has not shown that constitutes major media.

The petitioner has also submitted evidence about and The evidence, however, does not show that any of the publications, either in print or online, are professional or major trade publications or major media. According to an online printout from in the , one of 17 regions in sells about 126,000 copies per issue and sells 67,000 per issue. The petitioner has not shown that the national distribution level of either publication is indicative of its status as major media. Notably, the same website indicates that the top selling newspaper in Spain, is a nationally distributed newspaper that sells 458,000 copies per issue. In addition, the same website states that and are both regional, not national, publications. The petitioner has not shown that these regional publications constitute major media in Spain. The evidence the petitioner has submitted for the other publications, and does not include information relating to the publications' reach or distribution level, which might demonstrate whether they are major media. The evidence also does not show that they are professional or major trade publications.

The petitioner has submitted a Wikipedia entry entitled " " As there are no assurances about the reliability of the content from this open, user-edited Internet site, we will not assign evidentiary weight to information from Wikipedia.[3] *See Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). In response to the director's RFE, the petitioner submitted a document entitled " " noting that the document relates to the Wikipedia material he initially submitted in support of the petition. Although the document includes some English language information, it also includes foreign language information that has not been fully translated into English. As such, the document has diminished evidentiary weight. Moreover, the document appears to provide information relating to publications' "net circulation average." The circulation information is arranged alphabetically by publication name and it provides information relating to publications whose names begin with the letters A through L. As such, the document does not provide information on all publications in Spain or show that any of the listed publications constitutes major media.

The petitioner has submitted published material that is in English. Specifically, the petitioner has submitted an article entitled " " posted on a blog, This article mentions the petitioner and his playing style. The petitioner, however, has not shown that the blog constitutes professional or major trade publication or major media. The material also does not identify the author of the material as required by the plain language of the criterion.

Accordingly, the petitioner has not submitted published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(iii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. See 8 C.F.R. § 204.5(h)(3)(ix).

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[3] Online content from Wikipedia is subject to the following general disclaimer entitled "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 May 12, 2015, copy of which is incorporated into the record of proceeding.

The director concluded that the petitioner met this criterion. The record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *see also Soltane*, 381 F.3d at 145-46.

The petitioner submitted his Internal Revenue Service (IRS) Form W-2 Wage and Tax Statement showing that he earned $87,303.79 in wages, tips and other compensation in 2013. The petitioner has also submitted employment contracts from 2003 to 2013, showing that he earned a base salary between $1,800 and $2,400 for each full calendar month of playing Jai Alai. The petitioner has submitted online printout from onetonline.org, showing that in 2013 the annual median wage for "Athletes and Sports Competitors" is $39,050; and an online printout from the U.S. Bureau of Labor Statistics (BLS), showing that in May 2013, the annual median wage for "Athletes and Sports Competitors" in Spectator Sports is $79,130. Salary information relating to athletes in general, not limited to Jai Alai players, does not demonstrate that the petitioner meets this criterion, as athletes in general includes many athletes who are not in the same field or sport as the petitioner. The petitioner must present evidence of objective earnings data showing that he has earned a "high salary" or "significantly high remuneration" in comparison with those performing similar work during the same time period. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 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 response to the director's RFE, the petitioner submitted an online printout from salaryexpert.com, showing that the average annual salary for a Jai Alai Player in Florida is between $60,000 and $80,000. Although this information shows that in 2013, the petitioner earned more than the average Jai Alai player in Florida, it does not show that he "commended a high salary or other significantly high remuneration for services, in relation to others in the field." First, earning a salary that is more than the average salary does not constitute earning a "high salary or other significantly high remuneration." Second, "others in the field" includes Jai Alai players who work and live outside Florida.

According to a September 19, 2014 letter from President of the the petitioner's annual salary "is a salary corresponding only to the top players in the field of Jai Alai in the United States." The letter, however, provides no salary information relating to other players or top players in the United States, or evidence demonstrating that the petitioner's salary constitutes a high salary or significantly high remuneration, as compared to others in the sport. As such, Mr. statement relating to the petitioner's salary is conclusory and does not demonstrate that the petitioner meets this criterion. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *See Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. USCIS need

not accept primarily conclusory assertions. *See 1756, Inc.*, 745 F. Supp. at 17. Moreover, according to an article the petitioner has submitted, "[redacted]" posted on [redacted] there are Jai Alai players in Miami who "make well into the six figures," which is more than what the petitioner made in 2013.

Accordingly, the petitioner has not submitted evidence that he has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(ix).

> *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. See* 8 C.F.R. § 204.5(h)(4).

In his initial filing and in response to the director's RFE, the petitioner asserted that he had submitted comparable evidence under the regulation. On appeal, however, the petitioner has not continued to assert that he has submitted evidence comparable to evidence that meets any of the ten criteria listed under 8 C.F.R. § 204.5(h)(3)(i)-(x). Accordingly, the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda v. United States 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 United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal).

In the alternative, the petitioner has not shown that he may submit comparable evidence. 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 Jai Alai player. 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 three 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 published material criterion, 8 C.F.R. § 204.5(h)(3)(iii); and the high salary or other significantly high remuneration criterion, 8 C.F.R. § 204.5(h)(3)(x). In response to the director's RFE, the petitioner continued to assert that he met these three criteria.

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*, 2007 WL 9229758, at *6-7; *Visinscaia*, 4 F. Supp. 3d at 134-35; *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 Jai Alai player. As such, the petitioner has not shown that he may submit comparable evidence.

Moreover, the petitioner submits evidence relating to his ranking within the Miami Jai Alai at [redacted] and Jai Alai and a number of reference letters as comparable evidence. He has not, however, shown that the evidence is comparable to evidence that meets any of the ten criteria listed in 8 C.F.R. § 204.5(h)(3)(i)-(x). The petitioner has not shown that his ranking within one club in one state is evidence comparable to evidence that meets any of the criteria. Similarly, the petitioner has not shown that the reference letters, which praise the petitioner's skills as a Jai Alai player and provide primarily conclusory statements on the petitioner's acclaim in the sport, constitute evidence comparable to evidence that meets any of the criteria. *See* USCIS Policy 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) at 12.

Accordingly, on appeal, the petitioner has abandoned the issue of comparable evidence. In the alternative, the petitioner has not shown that the criteria under 8 C.F.R. § 203.4(h)(3)(i)-(x) do not readily apply to his occupation such that he may submit comparable evidence or that the evidence is comparable. *See* 8 C.F.R. § 204.5(h)(4).

D. Summary

The petitioner has submitted a number of reference letters in support of his petition. Although the reference letters discuss the petitioner's skills as a Jai Alai player, they do not specifically address or establish that the petitioner meets any of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). For the reasons discussed above, with the record supports the director's determination 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 alien 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 on which the petitioner relies on appeal in the aggregate, including the petitioner's employment and earnings as a Jai Alai player

and his competitive achievements, supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, the level of expertise required for the classification sought.[4]

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.

[4] 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).