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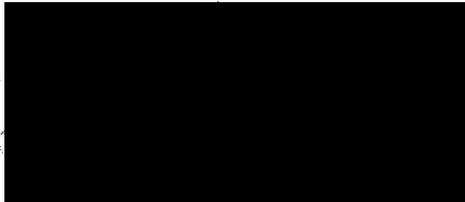
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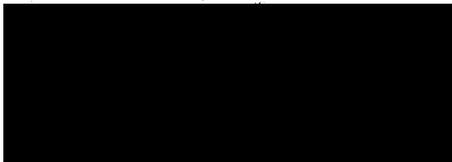
FILE: [REDACTED]  
SRC 03 129 54114

Office: TEXAS SERVICE CENTER Date: DEC 03 2004

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Mari Johnson*

*S* Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary 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). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has earned sustained national or international acclaim at the very top level.

This petition, filed on April 7, 2003, seeks to classify the petitioner as an alien with extraordinary ability as a "Professional Tennis Coach." A memorandum from counsel accompanying the petition indicated that, as of the filing date, the petitioner was working as a Lawn Tennis Association (LTA) Coach at the Leeds Academy in England.<sup>1</sup> Counsel states: "Since 1996, [the petitioner] has been a National Coach for the LTA.... As a national coach, [the petitioner] accompanies Senior Professional Players to important games such as the Wimbledon Championship, the French and U.S. Open."

On appeal, the petitioner submitted a letter from Sarah Sayers, Human Resources, LTA, indicating that the petitioner became "Head Coach at the Leeds Academy" effective July 18, 2003. According to the "LTA

<sup>1</sup> The LTA is the governing body for the sport of tennis in Great Britain.

Tennis Academy Leeds Handbook," also submitted on appeal, "[t]he LTA Tennis Academy at Leeds has been running since January 2000 as a part of the LTA's Performance Plan." The handbook further states:

The ultimate objective is to produce players of an international standard with the goal of having players in the top 100 in the world competing at the highest level in the Davis Cup and Fed Cup.

The particular goal of the academy is to develop the players so that they get selected for the Intermediate traveling teams at 16 years old.

At 16 all players will leave the academy program whether or not they make the Intermediate teams.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

*Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, a fixed minimum of education or experience, recommendations by colleagues or current members, or payment of fees, do not satisfy this criterion because participation, employment, education, experience, and recommendations do not constitute outstanding achievements. It is also clear from the regulatory language that members must be selected at the national or international level rather than the regional level. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a letter from Dr. [REDACTED] Secretary, British Tennis Coaches' Association (BTCA), North West Region, stating: "I am able to confirm that [the petitioner] is a member of the BTCA for the 12 months beginning March 2002."

The record, however, contains no evidence of BTCA's bylaws or membership requirements to demonstrate that it requires outstanding achievement in coaching or tennis as an essential condition for admission to membership. Nor is there any indication that the petitioner was selected for membership at the national or international level, rather than the regional level (i.e., by officials from BTCA North West).

The petitioner also submitted a certificate from the LTA indicating that he is a "LTA licensed Tennis Coach Level 2." The certificate states:

Qualification: Intermediate Coach

License Expiration Date: 4 November 2002  
Coach Number: CO 003226

A printout provided by the petitioner from LTA's website states: "Overall, there are 7,000 qualified tennis coaches, and over 2,200 have registered under the LTA's new Coach Licensing Scheme."

The director's decision noted that the petitioner's LTA license had expired.

On appeal, counsel states:

[The petitioner] holds the qualification as a Professional Licensed Tennis Coach. This is a very competitive position and only the best coaches qualify for it. To maintain the position as a Professional Coach, [the petitioner] is committed to undertaking annual training to enhance coaching expertise.

In the denial, the Director pointed out that [the petitioner's] license expired on November 4, 2002. However, attached is a copy of [the petitioner's] current license....

The petitioner's appellate submission includes his current "Level 2 Intermediate Coach" license from the LTA with an expiration date of November 4, 2005. The petitioner has not demonstrated, however, that outstanding achievement is an essential requirement for becoming a LTA Level 2 Intermediate Coach.<sup>2</sup>

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<sup>2</sup> It is noted that the petitioner submitted an LTA North West Review Board Annual Report. This report was on LTA letterhead, which, in turn, identifies the LTA web site as <http://www.lta.org.uk>. Information from LTA's website (accessed November 4, 2004), describes the three levels of LTA licensing classifications as follows:

**The Development Coach Award (DCA)** is the Level 1 Coaching Qualification. The DCA is designed for coaches interested in working with beginners and improvers, in clubs and schools. **Prerequisite** - In order to obtain your DCA, you must first have attended the Tennis Assistants course, have an appointed Persons First Aid Certificate and a 'Criminal Records Bureau Enhanced Disclosure' Certificate.

**The Club Coach Award (CCA)** is the Level 2 Coaching Qualification. The CCA is structured to train a wider range of coaches. Coaches will choose either the Performance or Development strand. **Prerequisite** - In order to obtain your CCA, you must first have passed the DCA at least 12 months previously, hold a Coach License and a 'Criminal Records Bureau Enhanced Disclosure' Certificate if the coach license has been held for more than 12 months.

**The Performance Coach Award (PCA)** is a Level 3 Coaching Qualification. The PCA is designed to give coaches the relevant information and experience to train excellence and performance players. It is a basic requirement for...all National Training Coaches. **Prerequisite** - All candidates applying for the PCA, must first have obtained the DCA and CCA (passing the CCA at least 12 months previously), hold a Coach License and a 'Criminal Records Bureau Enhanced Disclosure' Certificate.

Clearly, Level 3 supercedes the Level 2 coaching qualification possessed by the petitioner. Furthermore, there is no indication that any of the above licensing classifications require outstanding coaching achievement as a prerequisite for

Without documentary evidence to support counsel's claim that the petitioner "holds the qualification as a Professional Licensed Tennis Coach" and that it "is a very competitive position" for which "only the best coaches qualify," the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It has not been established that the petitioner's membership in the LTA or the BTCA required outstanding coaching achievement or that his admission to membership was evaluated by experts at the national or international level.

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

In regard to this criterion, the director's decision stated: "The articles submitted are all from the early 1990s, and all appear to be local publications or flyers." This statement is withdrawn from the director's decision.

The petitioner submitted a total of 24 articles, several from major newspapers and tennis magazines, which included discussions about the petitioner, his players, and his impact as a coach. At least ten of these articles were published subsequent to 2000. For example, discussions about the petitioner and his commentary on his players appear in newspapers such as *The Sunday Telegraph*, *The Daily Telegraph*, and *The Observer*. The petitioner's work as a coach has also been featured in *Ace*, Britain's most widely circulated tennis magazine, at least three times since 1997. On appeal, the petitioner provides evidence showing that *The Sunday Telegraph* and *The Daily Telegraph* each have a readership in excess of two million and that *The Observer* has a readership in excess of one million. Counsel also provided evidence regarding the national circulation of *Ace*.

The petitioner's appellate submission included a letter from [REDACTED] Producer, ITV Sport, indicating that the petitioner and two of his players were the subject of a tennis documentary that was broadcast on ITV in 2001.<sup>3</sup> Helen Frankland states:

I am writing to confirm that *Breaking Through: Inside British Tennis* was transmitted on ITV, in the United Kingdom, on 19<sup>th</sup> December 2001. This was a one-hour, fly-on-the-wall style documentary following [the petitioner], Britain's top national coach, on tour with [REDACTED] and [REDACTED] (Britain's third and fourth nationally ranked players) as they competed on the ATP [Association of Tennis Professionals] tennis circuit in the USA. The program culminated with their participation in the U.S. Open at Flushing Meadows.

Based on the strength of the evidence provided on appeal, we find that the documentation presented is adequate to satisfy this criterion.

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receiving one's coaching license. Rather, an individual need only complete standard training courses, provide a criminal record disclosure certificate, and fulfill certain time requirements between courses.

<sup>3</sup> According to the evidence presented on appeal, ITV is the largest commercial television network in the United Kingdom, watched on average by 45 million people every week.

*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.*

In an occupation where "judging" the work of others is an inherent duty of the occupation, such as a coach, instructor, teacher, professor or editor, simply performing one's job related duties demonstrates competency, and is not evidence of national or international acclaim.

On appeal, counsel states: "A coach, or in individual sports, an instructor trains athletes for competition by holding practice sessions to perform drills and improve the athlete's skills and conditioning. A coach also evaluates and judges on the player's ability to play, and on the ability and strategy of the opposing player." Evaluation of players under one's tutelage and their competitive opposition is a routine duty of tennis coaches at all levels of the sport. We do not find that evaluating one's tennis players in this manner is adequate to distinguish the petitioner from almost all other coaches in his sport at the national or international level.

The petitioner submitted a letter from [REDACTED] Coach Education Manager, LTA, dated March 25, 1996. The letter is addressed "To all tutors of LTA Short Courses." In the space immediately below the typed salutation appears the petitioner's name in printed handwriting. The letter from [REDACTED] states: "The courses will now be called 'LTA Short Courses' and not Coach development Courses because some of them (e.g., Starter Tennis) can also be accessed by people who are not coaches." We do not find that serving as a tutor of such courses is tantamount to judging the work of professionals.

The petitioner also submitted a "LTA North West Review Board Annual Report" that he prepared for the LTA. The report begins:

This is an abridged Annual Report as Bolton only officially opened in April and the Academy only kicked off in September 2001.

Enclosed you will find an Activity Report of where I was and a number of the things that were accomplished in Bolton before the start up.

The content of the report (consisting of less than two pages) discusses the petitioner's individual activities during the year rather than his evaluation of the work of other coaches. The content of this report suggests that the petitioner was answering to the Board rather than serving as a reviewing member. The record contains no first-hand evidence showing that the petitioner has specifically evaluated the work of other professional coaches on behalf of the LTA as a sitting member of the North West Review Board.

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

On appeal, counsel states:

[The petitioner] successfully coached the following leading tennis players. The ranking shows their highest achieved under [the petitioner].

1. [REDACTED] (ATP 19 highest December 2004) ATP Doubles Ranking
2. [REDACTED] Britain No. 3; (ATP 93 March 2002)
3. [REDACTED] Britain No. 3; (ATP 128)
4. [REDACTED] No. 3; (ATP 138)
5. [REDACTED] No. 4; (ATP 158)
6. [REDACTED] No. 3 (ATP 137)
7. [REDACTED] No. 5 (ATP 189)

Moreover, he accompanied these leading players to the most important tournaments worldwide, including the U.S. Open, the French Open, the Australian Open, and Wimbledon.

Such rankings, however, are not adequate to demonstrate that the petitioner has made "contributions of major significance" in the sport of tennis. The record does not show that players under the petitioner's direct tutelage have consistently won awards at national or international tournaments.<sup>4</sup> Here, it is important to evaluate the level of success that the petitioner enjoys as a coach. A coach who has established a successful history of coaching top athletes who win tennis titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or professionals who do not consistently win such titles does not. For comparison, Citizenship and Immigration Services (CIS) has long held that athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *See* 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that all professional tennis coaches working with players on a national level should necessarily qualify for an extraordinary ability immigrant visa. To do so would contravene Congress' intent that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Counsel cites the petitioner's "Play Great Tennis" video series and Personal Endorsement Contract with Nike (amounting to approximately 5,000 British pounds annually) as further evidence under this criterion. It has not been shown, however, that sales from the petitioner's video series far exceed those of other instructional videos to the extent that his videos would be considered contributions of major significance to the sport of tennis. Nor has the petitioner offered evidence showing that the amount of Nike's contract with him far exceeds amounts offered to other professional tennis coaches. In this case, the petitioner has not demonstrated any specific contributions at the national or international level that have been unusually influential and acclaimed throughout the sport of tennis. The commercial success of the petitioner's video series and the Nike contract remuneration will be properly addressed under subsequent criteria.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted an article, entitled "How to Counter Specialists Styles," that was published in *Coaches and Coaching: International Tennis Federation Coaches Review*, issue 7, page 5-6 (1995). The article appeared again in 2001 in the International Tennis Federation publication *Sports Science Review*.

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<sup>4</sup> Nationally or internationally recognized prizes or awards won by individual players or teams coached by the petitioner may be considered as comparable evidence under 8 C.F.R. § 204.5(h)(4).

The petitioner also submitted a piece that he authored appearing in the "Coaches Forum" section of a publication issued by the Professional Tennis Coaches' Association. On appeal, counsel claims that the petitioner "regularly published articles in the *Journal of the Professional Coaches' Association*," but the only evidence presented to support this claim was the piece from the "Coaches Forum" section. The assertions of counsel do not constitute evidence. See *Matter of Obaighena*, *Matter Of Laureano*, and *Matter of Ramirez-Sanchez*.

Counsel also states: "[The petitioner] also frequently publishes articles for the online magazine *TennisONE*. For example, he posted the updated title "How to Counter Specialist Styles" in September 2003, "Locker Room Power" in October 2003 and "Taking away time and its effect on technique" in January 2004." These articles, however, were posted subsequent to the petition's filing date. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). New circumstances that did not exist as of the filing date cannot retroactively establish eligibility as of that date.

Counsel further states: "In addition to publication of articles in print and on-line, [the petitioner] has also prepared a series of coaching videos. He has already released six (6) parts of the series called "Play Great Tennis." This training series provides an important tool to learn how to play tennis, for professionals as well as for amateur players."<sup>5</sup> While the petitioner's videos are not "scholarly articles," we will consider his videos as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4).

A published piece appearing in *Ace*, Britain's top selling tennis magazine, entitled "Biomechanics on Video," states:

This science, dealing with the movement of the human body, is the subject of a new tennis video from International Tennis Productions called *Biomechanics: The Source of Power*.

Presented by LTA coach [the petitioner], who has worked with some of Britain's leading players, the program attempts to 'demystify' biomechanics and, using graphics and video analysis of live coaching and matchplay, show amateur players how to generate more power in their shots through the different movements and rotations of the upper and lower body.

[The petitioner] won't be asked to present at the Oscars next year on the back of this, but his explanations are clear and easy-to-follow, even if, after 50 minutes, you're itching to get out onto the court and put it into practice.

While it is not entirely clear whether the above piece was an advertisement paid for in *Ace* by International Tennis Productions, the preceding comment on the petitioner's presentation leads us to conclude otherwise. In addition to *Ace's* review of the petitioner's video, the petitioner provided evidence from York University indicating that its Sports Science and Psychology School has adopted the petitioner's videos as a part of their undergraduate curriculum. Furthermore, the record contains supporting letters from respected tennis professionals attesting to the value of the petitioner's work.

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<sup>5</sup> The commercial success of this video series will be addressed under a subsequent criterion.

While publication is an inherent duty of scientific researchers, the same cannot be said of professional tennis coaches. The petitioner's authorship of scholarly tennis articles, combined with his release of tennis videos, adequately distinguishes him from others involved in his sport. Therefore, we find that the petitioner's evidence is adequate to satisfy this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

On appeal, counsel states: "Since 1996, [the petitioner] has been a LTA National Coach at the National Academy of the Lawn Tennis Association.<sup>6</sup> Since, July 18, 2003, [the petitioner] is the Head Coach of he LTA National Academy based in Leeds, one of the training institutions for Britain's potential professional players managing a budget of £340,000 (\$630,000)." We note here that the petitioner's appointment to "Head Coach" at Leeds Academy occurred subsequent to the petition's filing date. *See Matter of Katigbak.* Subsequent developments in the petitioner's career cannot retroactively establish that he was already eligible for the classification sought as of the filing date. Furthermore, according to the "LTA Tennis Academy Leeds Handbook" submitted on appeal, "[t]he LTA Tennis Academy at Leeds has been running since January 2000." The petitioner has not shown that this academy has distinguished itself from the other LTA national academies through player rankings or head-to-head academy competitions. Nor does the record adequately document the petitioner's work as coach for the other LTA national academies from 1996 to 2003. It has not been established that the petitioner's role as a coach for the LTA national academies is any more important than that of the other coaches or of the academy "Performance Directors" (such as, for example, David Felgate). In conclusion, we find the petitioner has not shown that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim.

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

On appeal, the petitioner submitted a letter from Sarah Sayers, Human Resources, LTA, indicating that, effective July 18, 2003, the petitioner's annual salary would "be increased to £42,500." It is reasonable to conclude from this letter, therefore, that the petitioner was receiving less than £42,500 from the LTA prior to July 18, 2003. The petitioner also submitted a letter from his accountants, R.A. Leslie and Company, stating that his "tax return shows an employment with the LTA, with gross pay, including benefits for the year ended 5<sup>th</sup> April 2003, of £51,783." The evidence from the LTA Human Resources Department directly contradicts the statement from the petitioner's accountants. While the petitioner may have earned an additional £3,000 in yearly compensation from Nike from 2001 to 2003, the difference between the petitioner's original LTA

<sup>6</sup> On page four of his appellate brief, counsel notes that the LTA runs several national academies and only recently "reduced the total number of national academies from 7 down to 4."

salary as of the petition's filing date (rather than the "increased" amount of £42,500 cited in the letter from Sarah Sayers that did not become effective until July 18, 2003) and the £51,783 in gross compensation claimed by his accountants has not been adequately explained or documented. In fact, counsel claims that "the petitioner's stated salary [from his accountants] does NOT even include additional income derived from a sponsorship/endorsement contact [sic] with NIKE or from revenue derived from his instructional video series and related teaching tools." It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In regard to the petitioner's contract with Nike, the record contains no evidence showing that the petitioner's contract to endorse products for Nike in exchange for £3,000 in annual base compensation and £2,000 for personal use of Nike products is so unusual that it elevates the petitioner above almost all other professional tennis coaches. Such contracts are routine in professional sports and often far exceed the personal endorsement contract amount received by the petitioner.

Counsel also states:

[A]s Director of Tennis at the LTA in the [United Kingdom], the petitioner earns 51,783 (U.K. pounds) which is equivalent to \$96,000 in the U.S.A.

According to the U.S. Department of Labor, "the prevailing wage" for an experienced professional coach in Florida is \$50,000. This means, therefore, that [the petitioner] actually earns more than 100% of the prevailing wage earned by other experienced professional coaches in the United States as reported by the U.S. Department of Labor.

First, without first-hand documentation resolving the petitioner's salary discrepancy, the record is not clear regarding the actual remuneration earned by the petitioner as of the petition's filing date. Second, counsel's use of median salary statistics for "coaches and scouts" of all sports in Florida such as soccer and baseball (including the salaries of coaches from youth recreation programs and scholastic sports), rather than only for professional tennis coaches in the United Kingdom or the United States, is flawed. The petitioner must offer evidence that his salary places him at the very top of the sport of tennis, not in the top half. Local prevailing wage figures for coaches from Florida do not meet this standard. Without comparative evidence showing that the petitioner is among the highest paid professional tennis coaches in his sport at the national or international level, we cannot conclude that the documentation presented is adequate to satisfy this criterion.

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner submitted evidence showing that he released six parts of a video series entitled "Play Great Tennis." The record, however, contains no evidence showing the amount of videos sold. The regulation specifically requires evidence of commercial success as shown by "video sales"; simply documenting the petitioner's development of a video series cannot meet the plain wording of the regulation.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States. The petitioner in this case has failed to demonstrate that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability.

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

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.