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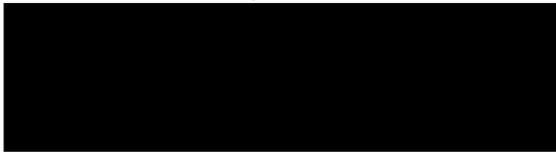
IN RE:

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Beneficiary:



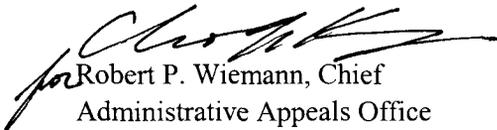
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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.

  
for Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Nebraska 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. More specifically, the director found that the petitioner had failed to meet at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel states that the petitioner “meets the requirements for an EB-1 visa as he was a member in an association which requires outstanding achievements of its members, plays a leading or critical role at the Gentlemen of Aspen Rugby Football Club, and was a judge of the work of others.”

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.

Citizenship and Immigration Services (CIS) 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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). 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 or her 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 sustained national or international acclaim at the very top level.

This petition, filed on February 23, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a “professional” rugby player and coach. At the time of filing, the petitioner was employed as a rugby player and coach with the Gentlemen of Aspen Rugby Football Club in Aspen, Colorado.<sup>1</sup>

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, internationally 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” 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.” 8 C.F.R. § 204.5(h)(2).

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

We concur with the director’s finding that the record includes no evidence of the petitioner’s receipt of nationally or internationally recognized prizes or awards for excellence as a rugby player or coach. On appeal, counsel does not address this criterion.

*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.*

The petitioner submitted an “AFFIDAVIT OF EXPERT” from [REDACTED] Editor, Goff on Rugby.com, stating:

I currently hold the position of editor of Goff on Rugby.com, a website covering North American rugby news. I am also a contributing editor to *Rugby World* and *Rugby Magazine*, and have been a respected rugby columnist since 1998.

\* \* \*

In New Zealand, [the petitioner] was a provincial all-star player and a player/coach for the North Auckland Rugby Football Union. As a player [the petitioner] was the captain of the Kaikohe Rugby Club, the North Auckland Provincial Champions from 1994-1999. As a provincial all-star [the petitioner] led North Auckland to the Seven’s Rugby National Provincial All-Star Championship from 1990-1994 as well as representing North Auckland in the New Zealand National Provincial Championship series . . . .

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<sup>1</sup> There is no evidence that this team is a professional rugby team rather than an amateur rugby team.

\* \* \*

[The petitioner] also represented New Zealand with the invitational national team, New Zealand Barbarian's [sic] in 1993.

The preceding assertions addressing the petitioner's activities for rugby teams in New Zealand are repeated almost verbatim in letters of support from [redacted] Chairman of the Board of Directors, Gentlemen of Aspen Rugby Football Club; [redacted] former player for the United States Eagles, a men's national team fielded by USA Rugby (United States of America Rugby Football Union); and [redacted], Member of the Board of Directors for USA Rugby. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-96. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The letters from [redacted] do not even include an address, telephone number, or any other contact information for USA Rugby. Further, in addition to identical language, the statements from [redacted] included the same punctuation error. All three of their letters contain an incorrect apostrophe in the sentence: "[The petitioner] . . . represented New Zealand with the invitational national team, New Zealand Barbarian's [sic] in 1993." It is not clear who is the actual author of the duplicative text in the letters of support, but it is highly improbable that these individuals independently formulated the exact same wording. While it is acknowledged that these individuals have lent their support to this petition, it remains that they did not independently prepare significant portions of their statements. As such, we find their duplicative statements to be of limited probative value.

While the record includes adequate supporting documentation (such as newspaper articles) to corroborate the witnesses' assertions regarding the petitioner's involvement with the Kaikohe Rugby Club, the North Auckland provincial all-star team, and the Gentlemen of Aspen Rugby Football Club, the record lacks primary and secondary evidence showing that the petitioner played for New Zealand Barbarians in 1993. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

*Submitting secondary evidence and affidavits.* (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who

have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

Rather than submitting primary evidence from the New Zealand Barbarians indicating that he played for the team in 1993, the petitioner instead submitted third-party statements issued several years later attesting to his involvement with that team. In this instance, the petitioner has not overcome the absence of primary and secondary evidence demonstrating that he was actually a member of the Barbarians.

In addressing this criterion, the director's decision stated:

The petitioner claimed this criterion in the initial submission, but did not clearly outline the associations he is allegedly a member of or document that outstanding achievements were required for membership. Counsel's cover letter references this criterion in conjunction with several letters, and it appears that counsel is claiming this criterion on the basis of the petitioner's inclusion on several teams, such as his current employer the Gentlemen of Aspen Rugby Football Club. While this would demonstrate an employer/employee relationship, employment would not be considered membership in an association requiring outstanding achievement. Inclusion on a team may, in rarefied instances, meet this criterion, if such team is at the highest level, such as an Olympic team or other national or international level team. However, there is nothing to demonstrate that the Gentlemen of Aspen Rugby Football Club is at that level or that inclusion as a coach would be commensurate with membership based on outstanding achievements.

We concur with the director's findings. Regarding the petitioner's participation as a player and coach on teams such as the Gentlemen of Aspen Rugby Football Club, the Kaikohe Rugby Club, the North Auckland provincial all-star team, and the New Zealand Barbarians, there is no evidence from these teams showing that they require outstanding achievements of their members, as judged by recognized national or international rugby experts.

An article entitled "Kaikohe flies North Zone flag" indicates that the petitioner's team, the Kaikohe Rugby Club, participated in a Northern Zone "division two" championship in New Zealand. The record, however, fails to demonstrate that the petitioner competed or coached at the top national level in New Zealand. There is no indication that competing in a division two provincial championship series is consistent with sustained national acclaim. CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>2</sup> Likewise, it does not follow that a rugby player or coach participating at the division two level in

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<sup>2</sup> While we acknowledge that a district court's decision is not binding precedent outside of the district in which the case arose, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent

the National Provincial Championship series in New Zealand, or at the amateur level in the United States, should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor,” as prescribed by 8 C.F.R. § 204.5(h)(2).

On appeal, counsel argues that the petitioner’s play for an “invitational national rugby team,” the New Zealand Barbarians, is sufficient to meet this criterion. Counsel refers to an unpublished decision involving an ice skating coach for the Russian Olympic Team. In that case, the AAO determined that the alien met the requirements of the membership criterion by virtue of his membership on the Russian Olympic team. Counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the unpublished decision. We find that the present matter is easily distinguishable as there is no evidence of the petitioner’s membership on an Olympic team, nor evidence establishing that playing for the Barbarians is consistent with sustained national or international acclaim in the same manner as playing or head coaching for the United States Eagles, the national rugby team which represents the United States in major, international tournaments. Nor is there primary or secondary evidence establishing the petitioner’s level of play for the Barbarians. Furthermore, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all CIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, even if we were to accept that the petitioner’s involvement with the Barbarians was a qualifying membership, the plain language of the criterion requires “membership in associations in the field.” A single national team membership that appears to have terminated in 1993 does not meet the plain language of this criterion, nor is it evidence of *sustained* national or international acclaim.

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

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

In addressing this criterion, the director’s decision stated:

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. The record does not illustrate that the petitioner meets this criterion.

Specifically, the petitioner provided a number of newspaper clippings. None of the source publications were identified, so the record does not demonstrate that the material appeared in major

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with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court’s reasoning indicates that CIS’s interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

publications as required. Further, several of the photocopies submitted were illegible, so the content of the articles is unknown. Illegible articles are not sufficient to meet this criterion. Of the remaining legible articles, many appeared to be simply reporting game results and only briefly mentioned the petitioner. The record contains only two articles which appear to be primarily about the petitioner. Both of those articles discuss the petitioner as a player, not as a coach. The record contains no published material discussing the petitioner as a coach.

The petitioner was advised of the deficiencies in the documentation provided and requested to document the source publications along with any published material regarding the petitioner as a coach. The petitioner's response did not address this criterion or provide any additional evidence. Therefore, the record does not demonstrate that the petitioner meets this criterion.

We concur with the director's findings. On appeal, counsel does not address this criterion. There is no evidence (such as circulation statistics) showing that the newspapers with the articles mentioning the petitioner qualify as professional or major trade publications or other major media. Nor is there evidence of any published material about the petitioner from 2002 to the petition's filing date, which would indicate that the petitioner's national or international acclaim has been *sustained*.

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

*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.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" 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." 8 C.F.R. § 204.5(h)(2). For example, serving as a judge for a national competition involving professional athletes is of far greater probative value than serving as a judge for a regional collegiate competition.

The letter of support from [REDACTED] submitted in response to the director's request for evidence states:

In February [2006], [the petitioner] was specifically summoned to participate in the Oklahoma Rugby Camp held in Norman, Oklahoma at the University of Oklahoma. In this capacity, [the petitioner] held numerous seminars for both coaches and players particularly focusing on attacking methods in the final third of the pitch. Additionally, [the petitioner] taught, goal kicking, panting the rugby ball and half back passing.

In addressing this criterion, the director's decision stated:

The petitioner initially claimed this criterion, but did not specify in what capacity he acted as a judge of the work of others. Counsel's letter references three witness statements, none of which discuss any specific participation as the judge of the work of others. Presumably, counsel refers to the petitioner's actions as a coach, "judging" the work of the team. However, these duties are inherent to all coaching employment. The Service cannot conclude that every coach, merely by performing his or her coaching duties, ranks among the top few members of the field.

The Service requested the petitioner to clearly document any participation as a judge of the work of others along with the criteria for such participation, and advised that simply performing normal coaching duties would not meet this criterion. The petitioner's response did not address nor provide any additional evidence in relation to this criterion. Therefore, the record does not demonstrate that the petitioner meets this criterion.

We concur with the director's findings. The record includes no evidence of the petitioner's participation, either individually or on a panel, as a judge of the work of others in his or an allied field.

On appeal, the petitioner submits an article bearing a February 24, 2006 dateline and posted on AmericanRugbyNews.com discussing an upcoming "Big XII Championship" collegiate rugby tournament to be held on February 25<sup>th</sup> and February 26<sup>th</sup>. The article states: "The Big XII Championship tournament is on again this weekend in Norman, OK. . . . Gentlemen of Aspen coaches [redacted] will be on hand to make All-Big XII selections and look for talent to take part in Aspen's initiative to develop American rugby in its summer program." The petitioner's involvement with this collegiate tournament, which took place February 25 – 26, 2006, occurred subsequent to the petition's filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider this evidence in this proceeding. Nevertheless, we cannot conclude that making "All-Big XII selections" at a regional collegiate tournament is indicative of national or international acclaim.

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

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

In addressing this criterion, the director's decision stated:

The petitioner initially claimed this criterion, but . . . did not specify exactly what his original contributions to the field have been, nor did he demonstrate how any such contributions were of major significance to the field. The petitioner was requested to clearly document how his contributions have been original and to submit evidence of the importance of such contributions to the field.

In response, the petitioner submitted letters from team players discussing techniques and skills passed on from the petitioner to the players. However, there is nothing to suggest that these techniques were

originally developed by the petitioner, as opposed to skills passed down from his own tutelage in the sport. The record contains nothing to demonstrate that the petitioner has made any specific original contributions to the sport. Further, even if the techniques taught by the petitioner were original, there is nothing to demonstrate that these techniques have had major significance in the field. For instance, there is no documentation to indicate that the petitioner's techniques have been widely adopted in the field or have affected the way rugby is played. While he may have affected the playing techniques of the members of his immediate team, this does not demonstrate an impact of major significance in the field at large.

We concur with the director's finding that the petitioner's evidence does not establish he has made original athletic contributions of major significance in his sport. On appeal, counsel does not address this criterion.

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

The February 8, 2006 letter of support from [REDACTED] Chairman of the Board of Directors, Gentlemen of Aspen Rugby Football Club, states:

In August 2003 [the petitioner] was petitioned for and approved on a P-1 visa as a rugby player/coach for the Gentlemen of Aspen Rugby Football Club. In this capacity, [the petitioner] led the Gentlemen of Aspen RFC to the Seven's National Championship each year. Further, under the leadership of [the petitioner], four Aspen *ruggers* were selected to the United States National Rugby team, The Eagles; they are [REDACTED].

From 1996 to 2000, the Gentlemen of Aspen won four USA Rugby Division I national championships (after 2000, Super League teams did not compete for this title). From 1997 to 2002, Aspen reached the USA Rugby Super League final four times, winning three times. Aspen is the most dominant American club of its time. Aspen did not win a National Championship in 2003. Aspen's dedication to excellence mandated a change and it conducted a world-wide search. [The petitioner's] ability to play and coach at the highest level made him an ideal selection for the most premier position in America's top rugby league.<sup>3</sup>

For some players, their prowess is simply athletic, for players like [the petitioner] their acumen is in the strategy of the game. [The petitioner] was always like a coach on the field; his transition to coaching was natural. He has taken his talents in analyzing defenses while on the field to the sideline and has become a master of developing strategy and tactics for offenses especially in the scoring zone of the field.

At Aspen RFC, [the petitioner's] role with the Sevens Team is to develop offensive scoring strategies and develop players' abilities to identify how to beat the opposition and execute the positional and mechanical aspects of their technique. [The petitioner] has been extraordinary at this skill as he has produced several US Rugby National Team players.

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<sup>3</sup> This paragraph is repeated verbatim in the letter from Alex Goff.

In his employment with the Gentlemen of Aspen RFC, [the petitioner] will continue in his role as the offensive coordinator and coach of the Aspen National Sevens Team. It is a critical position that is responsible for game plan tactics and player development.

The self-serving assertions of [redacted] are insufficient to demonstrate that the Gentlemen of Aspen Rugby Football Club has earned a distinguished reputation. Rather than submitting objective evidence of the reputation of his employer (such as published material about his team or official competitive records from a league source), the petitioner instead relies upon the letters of support prepared in support of his petition. As discussed previously, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 791, 795. However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* CIS may even give less weight to an opinion that is not corroborated by evidence. *Id.* at 795. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i). The commentary for the proposed regulations implementing this statute provided that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). We find that the petitioner's sole reliance upon the statements contained in the letters of support is simply not adequate to demonstrate the distinguished reputation of the Gentlemen of Aspen Rugby Football Club.

In addressing this criterion, the director's decision stated:

The petitioner initially claimed this criterion, again without specifically identifying the organization or establishment for which he allegedly has performed a leading or critical role. From the response to the Service's request for evidence, it appears that the petitioner is claiming this criterion based on his current employment as a coach for the Gentlemen of Aspen Rugby Football Club. However, the record lacks documentation that his role has been leading or critical as considered by regulations.

First, the only evidence submitted in relation to his employment with this club or the reputation of this club has been in the form of letters. The letters assert that the petitioner has "led the Gentlemen of Aspen RFC to the Seven's National Championship each year since his installment" and that he has "personally developed" several players who have since competed with the United States National Rugby Team, but the record contains no corroborative documentation of these claims. It is also noted that it is claimed that the named players went on to the national team within a year of joining the Gentlemen of Aspen, suggesting that a large part of their development occurred prior to being coached by the petitioner.

Further, while the statement from [redacted] of the USA Rugby Football Union claims that a copy of the petitioner's contract and other evidence of his position were being provided, no such documentation accompanied this petition. The letter from the Gentlemen of Aspen RFC itself provides some information regarding the petitioner's coaching duties, it does not provide specific enough information to demonstrate that the role is leading or critical . . . .

It is also noted that the record contains no documentation to demonstrate that the Gentlemen of Aspen Rugby Football Club has a distinguished reputation.

We concur with the director's findings. On appeal, counsel states: "Based on his position developing offensive strategy for Gentlemen of Aspen Rugby Football Club and the success of several of his players, [the petitioner] meets the criteri[on] for playing a critical or leading role within an organization with a distinguished reputation." Counsel's assertion that the Gentlemen of Aspen Rugby Football Club has a distinguished reputation, however, is not adequately supported by the evidence of record. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record includes no official competitive statistics from USA Rugby or other evidence establishing that the Gentlemen of Aspen Rugby Football Club had a distinguished reputation during the petitioner's tenure as coach. For example, the petitioner has not submitted a listing of USA Rugby Super League rankings showing that his team consistently finished among the top teams nationally since assuming his coaching role subsequent to the 2003 season. Thus, the evidence submitted by the petitioner is not sufficient to demonstrate that he performed in a leading or critical role for organizations or establishments having a distinguished reputation.

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

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or 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.

While CIS approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989).

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

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



Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim 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 the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) 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.