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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 19 2008

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IN RE: Petitioner: [redacted]
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:

[redacted]

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.

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 on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the beneficiary's achievements "have demonstrated national and international acclaim" and "have been recognized through extensive documentation."

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
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> > (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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on July 31, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as a squash professional. At the time of filing, the beneficiary was working for the Hartford Golf Club as an Assistant Squash Professional. A July 27, 2006 letter from [redacted]i, General Manager, Hartford Golf Club, states:

> [The beneficiary] will primarily be responsible for assisting the Head Squash Professional with teaching, coaching, and instructing the international standard of squash at the highest level to all players at the Club at all levels. . . . [The beneficiary] will be expected to promote the club through continuing play in local, national, and international squash tournaments and exhibitions.

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 a beneficiary's 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 beneficiary 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). The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner submitted information from the internet site of the Professional Squash Association (PSA), the organizing and coordinating body for the Men's World Squash Circuit (also known as the PSA World Tour), regarding the beneficiary's competitive achievements as a squash player. This information indicates that the beneficiary was the "Zambia Open Champion 1992 to 1998," won international tournaments in Kenya in 1998 and 1999, and achieved a career-high ranking of 77th in the PSA world rankings as of September 2002. A February 27, 2007 letter from the Zambia Squash Association confirms that the beneficiary was a "Zambia National Champion from 1991 to 2001" and further states that he won "the Open Championships of Kenya (4 times)." While the beneficiary's competitive achievements as a professional squash player in Africa appear to meet this regulatory criterion, there is no evidence showing that he has won nationally or internationally recognized prizes or awards as a squash player subsequent to 2001.[1] The statute and regulations, however, require the beneficiary's national or international acclaim as a squash professional to be sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

Aside from the beneficiary's receipt of awards as a squash player, nationally or internationally recognized prizes or awards won by squash teams or players coached directly by him can also be considered for this criterion. Here, it is important to evaluate the level at which the beneficiary acts as a coach. A coach who has established a successful history of coaching top players who win titles at the national level or above has a credible claim under this visa classification; a coach of junior-level or recreational athletes does not.

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[1] For example, the petitioner competed at the Atlanta Squash Open in May 2006, but failed to advance beyond the first round.

A June 19, 2006 letter from Chairman of the Board and President, United States Squash Racquets Association (USSRA), the National Governing Body for the sport of squash in the United States as recognized by the U.S. Olympic Committee, states:

> [The beneficiary] has risen to the very top in the field of squash coaches as evidenced through his work . . . at the Hartford Golf Club where he now works with young prodigies to help them grow as players and individuals, as well as improving the play of experienced adult players. He has been developing innovative training programs aimed at the needs of amateur and professional squash athletes and imparting his knowledge and expertise on technical, tactical, physical and psychological aspects of the game.

Kenneth Stillman states that the beneficiary has been developing training programs aimed at the needs of "professional squash athletes," but there is no evidence identifying the names of any PSA players coached directly by the beneficiary and the prizes and awards they have won.

In response to the director's request for evidence, the petitioner submitted correspondence from parents at the Hartford Golf Club confirming that their children were coached by the beneficiary. The petitioner also submitted USSRA national junior rankings for the beneficiary's players indicating that [redacted] ranked 13th among girls under age 17 as of February 2007, [redacted] ranked 16th among boys under age 19 as of April 2004, [redacted] ranked 19th among boys under age 17 as of April 2006 and 7th among boys under age 15 as of April 2004, and [redacted] ranked 30th among girls under age 17 as of February 2007 and 54th among girls under age 15 as of April 2006. The preceding USSRA rankings from February 2007 were issued subsequent to the petition's filing date. A petitioner, however, must establish the eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the February 2007 USSRA rankings in this proceeding. Nevertheless, there is no evidence establishing that squash teams or individual players coached by the beneficiary have won "nationally or internationally recognized prizes or awards." Further, with regard to prizes or awards won by the beneficiary's players at the junior age-group level, we do not find that such evidence indicates that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). 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.[2] Likewise, it does not follow that a squash instructor who has had

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[2] 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 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.

success coaching youth at the junior level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." In this case, there is no evidence showing that squash players under the beneficiary's direct tutelage have received nationally or internationally recognized awards at the very top level of his sport (such as an award from a nationally recognized PSA competition) rather than awards from regional or junior-level competitions.

Although the beneficiary meets this regulatory criterion based on the competitions he won in Africa as a player in the 1990s, 2000, and 2001, the weight of his evidence is diminished as there is no indication that he has sustained national or international acclaim through his or his players' receipt of nationally or internationally recognized prizes or awards from 2002 to the petition's filing date.

> *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, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, 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 July 25, 2006 electronic mail message from the PSA Chief Executive stating that the beneficiary has been a member of the PSA since 1998. The message, however, does not specify the beneficiary's class of membership. In response to the director's request for evidence, the petitioner submitted a document entitled "PSA Membership." This document states:

> The PSA has the following categories of playing membership:
>
> 1. WORLD PLAYING MEMBER
> 2. CONTINENTAL PLAYING MEMBER
> 3. COUNTRY PLAYING MEMBER
> 4. RATINGS PLAYING MEMBER
> 5. JUNIOR PLAYING MEMBER
>
> * * *
>
> 1. WORLD MEMBER
>
> A World member is entitled to:
>
> 1.1. Enter PSA sanctioned tournaments and be awarded World Ranking points.
> 1.2. A PSA World Ranking position.

1.3. Receive regular PSA tour calendars, player updates and entry forms for PSA sanctioned tournaments and a PSA Tour Guide.
1.4. Two votes at any meeting of members of the Association.
1.5. Nominate members for election in accordance with Article 44(b) of the Constitution.
1.6. Exercise votes on a voting list in accordance with Article 44(e)(i)(A) of the Constitution.
1.7 A World member may downgrade to a Continental member should his ranking fall below 150.
1.8. Stand for election to the PSA Board of Directors.

Further, according to the "PSA Membership" document, Continental, Country, Ratings, and Junior membership classes are all entitled to a "PSA World Ranking position."

The petitioner's response to the director's request for evidence included material printed from the PSA's internet site showing the beneficiary's "Dunlop PSA World Rankings Player Profile." This PSA profile from February 2007 indicated a ranking of 264 for the beneficiary. As all member classes of the PSA are entitled to a PSA World Ranking position, it has not been established which class of membership the beneficiary holds. Further, we note the membership guideline stating: "A World member may downgrade to a Continental member should his ranking fall below 150." Even if the petitioner were to establish that the beneficiary is a PSA "World Playing Member," we cannot ignore that World members who fall below 150 "may downgrade to Continental" at their option and that the beneficiary's PSA ranking ranged from 77th to 264th. Thus, there is no evidence to conclude that the beneficiary's membership in the PSA required outstanding achievements, as judged by recognized national or international experts.

The petitioner submitted the June 19, 2006 letter from as evidence of the beneficiary's membership in the USSRA and two letters from the president of the Zambia Squash Association (ZSA) confirming his membership in the ZSA. In a "List of Exhibits" submitted in response to the director's request for evidence, counsel states that membership in the World Squash Federation (WSF) "is allowed for countries that have National Associations of Squash . . . . Zambia and the U.S. are both members . . . making [the beneficiary] a member of the WSF organization." The record, however, includes no evidence originating from the WSF to support counsel's assertion that the beneficiary is a WSF member. 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 petitioner also submitted general information regarding the USSRA, ZSA, and WSF, but there is evidence (such as membership bylaws or official admission requirements) showing that these associations require outstanding achievements of their members, as judged by recognized national or international experts in the beneficiary's field.

In light of the above, the petitioner has not established that the beneficiary 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 order for published material to meet this criterion, it must be primarily about the beneficiary and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major

media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3]

The petitioner submitted articles posted on the internet sites of the World Squash Federation, Prince Squash, SquashSite.co.uk, SquashColombia.org, SquashPlayer.co.uk, SquashTalk.com, the 2002 Manchester Commonwealth Games, *The Monitor Online Edition*, PA Sport, and *Daily Nation*. The petitioner also submitted articles entitled "Uganda Open due today," "Aces grace squash open," and "Squash aces billed for Kenya championships," but the name and date of the publication in which the latter two articles were printed were not identified. None of the preceding articles, which only mention the beneficiary's name in passing, were primarily about him. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii), however, requires the published material to be "about the alien." Further, there is no evidence showing that the preceding articles were published in professional or major trade publications or some other form of major media.

The petitioner submitted articles about the beneficiary entitled "Against The Odds" and "[The beneficiary] leaves for West Africa," but their authors, the names the publications in which the articles were printed, and their dates of publication were not provided. Another article about the beneficiary, entitled "[The beneficiary] wins Squash Open," did not include the name of the publication and its date. The petitioner's documentation also included an article about the beneficiary entitled "[The beneficiary] still champion," but its author was not identified. The petitioner also submitted an article about the beneficiary in *The Zambian* entitled "[The beneficiary] in the semis" (2002). The record, however, includes no evidence showing that the preceding articles were published in professional or major trade publications or some other form of major media.

In light of the above, the petitioner has not established that the beneficiary 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.*

In response to the director's request for evidence, the petitioner submitted a February 10, 2007 letter from [redacted], Director of Squash, Stanford University, and Founder and Director of the Talbott Squash Academy,[4] stating:

> I recognized that [the beneficiary] had the ability to be one of the top coaches and lead at the Academy and help our students, so I invited him to be one of the Elite Head Coaches at my squash academy. He has coached the top US National Jr. Team players and hundreds of other aspiring young players. He was in charge of all aspects of the player's [sic] training and development.

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[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

[4] Mr. Talbott states that the Talbott Squash Academy "is the Official National Training Center of the United States Squash Racquets Association."

The petitioner's response also included a February 8, 2007 letter from [redacted]t, Associate Professor of Physical Education, Trinity College, stating:

> As the Head Coach for the Women's Squash Team, the majority of my time is spent with the team at practices, matches, and tournaments. Individual attention sometimes is very difficult for me to provide to all players; therefore, [the beneficiary] was an important asset as an assistant coach. Since 2002, [the beneficiary] has been working at Trinity College as the assistant coach.

As previously discussed, the petitioner also submitted correspondence from parents at the Hartford Golf Club confirming that their children were coached by the beneficiary and the youths' USSRA national junior rankings.

In a February 27, 2007 letter submitted in response to the director's request for evidence, counsel argues that the preceding evidence meets this regulatory criterion stating: "By serving as coach for these players and organizations, [the beneficiary] directly serves as a judge for others in the sport." The beneficiary's work as a squash instructor and coach is not tantamount to his participation, either individually or on a panel, as a judge of the work of others in his sport. A squash coach trains athletes for competition by holding practice sessions to perform drills and to improve his players' skills and conditioning. Evaluation of players under one's tutelage is an inherent duty of squash coaches at all levels of the sport. We cannot conclude that evaluating one's players and students in this manner is consistent with sustained national or international acclaim at the very top of the field. There is no evidence showing that the beneficiary judged the work of others in his field in a manner significantly outside the general duties of his coaching positions and consistent with sustained national or international acclaim. Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent or routine in the occupation itself, or in a substantial proportion of positions within that occupation. As such, the beneficiary's involvement in coaching and instructing various junior and collegiate squash players does not fulfill this criterion.

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

In his February 27, 2007 letter submitted in response to the director's request for evidence, counsel states: "[The beneficiary] has provided significant athletic-related contributions for the U.S. because he is training and coaching the young players who have a chance of competing successfully on the international arena. . . . In the U.S. and Zambia, [the beneficiary] has performed significant contributions . . . ."

The petitioner submitted a February 6, 2007 letter of support from [redacted], U.S. Men's team coach and co-owner of San Diego Squash, Inc., stating:

> [The beneficiary] will substantially benefit the United States because of his international experience and success as a player. Because of his international experience, he is one of few able to transfer his playing ability to an extraordinary coaching ability and advance the sport in the U.S. He will be able to train and coach players who have the potential to compete internationally . . . .

[redacted]r discusses his future expectations for the beneficiary rather than specifying exactly what his original contributions in the sport of squash were or how any such contributions have already had a significant impact to the extent that they can be considered contributions of major significance in the field. As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *Id.* We acknowledge that the beneficiary is a skilled coach of junior squash players in the United States, but there is no evidence showing that he has made original athletic contributions of major significance in the field.

The petitioner also submitted a February 27, 2007 letter from [redacted], President, Zambia Squash Association, stating:

> [The beneficiary] was a leader of his generation of outstanding players and was instrumental in Zambia consistently being rated as number three in Africa behind Egypt and South Africa. At the height of his playing career [the beneficiary] was Zambia National Champion from 1991 to 2001 and represented the country in tournaments throughout Africa and Europe.
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> * * *
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> He was a fine ambassador for his country and the sport. Thanks to his pioneering exploits, Zambian players still consistently win national "Open" titles in Zimbabwe, Malawi, Botswana and Kenya.
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> * * *
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> [The beneficiary] gave a lot back to the sport he has so outstandingly served. He proved to be an outstanding coach and was able to pass on his skills, talent and knowledge to the players following his footsteps. Despite a lack of funding from government or corporate sources, [the beneficiary] has devoted his time (and sometimes his own money) for the development of squash in this country.

The beneficiary's competitive victories and the awards of the squash players coached by him have previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

The petitioner submitted additional letters of support, but in the same manner as the preceding letters, none of the letters specify exactly what the beneficiary's original contributions in squash were, and they do not provide an explanation indicating how any such contributions were of major significance to his sport. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. The record reflects that the beneficiary has helped various players with their skills and conditioning, but there is no evidence showing that he developed original training techniques, as opposed

to methodologies passed down from his own tutelage in the sport. Further, even if the techniques taught by the beneficiary were found to be original, there is nothing to demonstrate that these techniques have had major significance in the sport. For example, there is no evidence to indicate that the beneficiary's techniques have been widely adopted throughout the sport or have influenced the way squash is played. While the beneficiary may have improved the skills of the players under his tutelage, this does not demonstrate original contributions of major significance in the field consistent with sustained national or international acclaim.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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 (Commr. 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. Thus, the content of the experts' statements and how they became aware of the beneficiary's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a squash player or coach who has sustained national or international acclaim. Without extensive documentation showing that the beneficiary's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets 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 the beneficiary performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the organization or establishment and the reputation of the organization or establishment.

In response to the director's request for evidence, the petitioner submitted a February 8, 2007 letter from [redacted] stating:

> [The beneficiary] is currently the Assistant Squash Professional at the Club. One of the many important roles he has taken on recently is the establishment and management of the Junior Box League. Three years ago, the interest in the Junior Box Leagues was very limited. With [the beneficiary's] professionalism the [Hartford Golf Club] Junior Box League is the envy of all private clubs in the state of Connecticut.
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> * * *
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> His role with the Junior Box League is very important to the members of the Club and he has performed in a critical role by leading his league.

The petitioner submitted general information and promotional material for the Hartford Golf Club, but there is no evidence showing that its squash program had a distinguished reputation during the beneficiary's employment. For example, there is no evidence establishing that its squash program is known for producing players who win squash titles in national USSRA or PSA competitions. While [redacted] indicates that the beneficiary's Junior Box League enjoys a local reputation in Connecticut, there is nothing in the record to show that it has earned a distinguished reputation in the sport of squash at the national or international level. Regarding the position held by the beneficiary at the Hartford Golf Club, there is no evidence demonstrating how his role as Assistant Squash Professional differentiated him from others in the club holding similar positions (such as the club's other sports professionals), let alone more senior management (such as [redacted], Head Squash Professional or [redacted], General Manager). According to the beneficiary's "Employment Agreement," "the ASSISTANT SQUASH PROFESSIONAL shall be under the supervision and directly responsible to Mick Robberds, Head Squash Professional."

As previously discussed, the petitioner's response to the director's request for evidence included letters from [redacted] "Director and Head Technical Coach" of the Talbott Squash Academy, and [redacted], "Head Coach for the Women's Squash Team" at Trinity College. As the official National Training Center of the USSRA, we acknowledge that the Talbott Squash Academy has a distinguished reputation. According to information submitted by the petitioner from the Talbott Squash Academy's internet site, we note that aside from its Head Technical Coach, the academy had nine other coaches including the beneficiary. There is no evidence demonstrating how the beneficiary's coaching role for the academy differentiated him from the other members of the academy's coaching staff or the director. With regard to the reputation of Trinity College's squash team, an article posted on the college's internet site states: "The Trinity College men's and women's squash teams, both of which have won the last two national intercollegiate titles and have combined for a 63-0 record between them during that time, were chosen by *Sports Illustrated On Campus* as the Most Followed Small Sports in all of intercollegiate athletics." While this article is adequate to demonstrate that the Trinity College squash team has a distinguished reputation, there is no mention of the beneficiary's role as an assistant coach. Rather, the article focuses only on the men's head coach, Paul Assaiante, and the women's head coach, [redacted]

With regard to the beneficiary's positions with the Hartford Golf Club, Talbott Squash Academy, and Trinity College squash team, the evidence submitted by the petitioner is not adequate to demonstrate that the beneficiary was responsible for his employers' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. As such, the petitioner has not established that the beneficiary meets this criterion.

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

The July 27, 2006 letter from [redacted] states: "[The beneficiary's] proposed annual salary is approximately $40,000 per year."[5] In response to the director's request for evidence, the petitioner submitted a September 2006 "Employment Agreement" stating that the beneficiary was to be paid "the sum of three

[5] The Form I-140 petition also identified the beneficiary's earnings as $40,000.

hundred and eighty dollars ($380.00) for each weekly period, commencing the day of September 15, 2006."[6] We note that the salary specified in the beneficiary's contract is less than half of the amount proposed in Mr. [redacted]s July 27, 2006 letter. The petitioner also submitted a February 8, 2007 letter from [redacted] stating that upon approval of the I-140 petition, the beneficiary "will receive a salary of $55,000, which includes his base salary and estimated income from private lessons."[7] As discussed previously, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 45, 49. Subsequent developments in the beneficiary's career, such as a projected future salary increase, cannot retroactively establish that he was eligible as of the petition's filing date. Accordingly, the AAO will not, in this proceeding, consider the $55,000 salary that [redacted] expects the beneficiary will someday earn.

The petitioner's response to the director's request for evidence included online wage statistics (updated July 1, 2006) from the Foreign Labor Certification Data Center. These prevailing wage statistics showed the median earnings of "Coaches and Scouts" for various localities in the United States. For example, the Level 4 Wage (fully competent) for coaches and scouts in the Hartford, Connecticut area was $42,240 per year. According to the documentation submitted by the petitioner, the beneficiary's salary of $40,000 at the time of filing falls below the median wage for fully competent coaches and scouts in the Hartford area. As such, we cannot conclude that the beneficiary has commanded a high salary in relation to others in his field. Nevertheless, the prevailing wage statistics submitted by the petitioner are not an appropriate basis for comparison. Such prevailing wage data offers only local median earnings as a basis for comparison. The petitioner, however, must submit evidence demonstrating that the beneficiary's level of compensation places him in that small percentage who have risen to the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2). In this case, there is no evidence showing that the beneficiary earned a salary that places him among the highest paid coaches or players in his sport.

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

In this case, the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the beneficiary as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Nor has the petitioner submitted evidence showing that the beneficiary has had sustained national or international acclaim as a player or coach. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record includes no evidence of the beneficiary's nationally or internationally acclaimed achievements and recognition in the sport of squash subsequent to 2002.

On appeal, counsel states: "[The beneficiary] has previously been approved for two O-1 Non-immigrant periods of stay as an extraordinary athlete. His most recent O-1 period of stay was in the identical position as the I-140 submission. The Standard of Proof was in fact the same and even more extensive documentary evidence was submitted in support of the I-140."

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[6] A salary of $380.00 per week amounts to $19,760 per year.

[7] There is no evidence (such as U.S. income tax returns or Form W-2 Wage and Tax Statements) reflecting that the beneficiary earned a salary of $55,000 as of the petition's filing date.

While CIS has approved at least two O-1 nonimmigrant visa petitions filed on behalf of the beneficiary, the prior approvals do 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 beneficiary, 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 beneficiary has distinguished himself as a squash professional 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 beneficiary'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) 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.