identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 06 2010

SRC 09 027 54166

IN RE: Petitioner:
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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, 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.[1] The director determined that 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 demonstrate receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States. Finally, the director found that the petitioner had not established that her entry will substantially benefit prospectively the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). Counsel also contends that the director erred by failing to request further evidence before denying the petition. The regulation at 8 C.F.R. § 103.2(b)(8)(ii) provides:

> If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.

The director is not required to issue a request for further information in every potentially deniable case. If the director determines that the record lacks initial evidence or does not demonstrate eligibility, the cited regulation does not require solicitation of further documentation. With regard to counsel's concern, it is not clear what remedy would be appropriate beyond the appeal process itself. The petitioner has in fact supplemented the record on appeal, and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

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

[1] The petitioner was initially represented by attorney Charles J. Sibley. In this decision, the term "previous counsel" shall refer to Mr. Sibley.

> international acclaim and whose achievements have been recognized in the field through extensive documentation,
>
> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
>
> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 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 she has sustained national or international acclaim at the very top level.

This petition, filed on November 5, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a competitive athlete in swimming. 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). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[2]

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

The record contains documentation from the Estonian Swimming Federation indicating that the petitioner was her native country's national champion in several individual and relay swimming events between 1995 and 2008. The preceding documentation also indicates that the petitioner holds Estonian national records in various freestyle events. The petitioner also submits evidence showing

---

[2] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

that she placed 2nd and 3rd at the U.S. Open Swimming Championships in the 50 meter freestyle in 2005 and 2006. Among her other notable results in the 50 meter freestyle, the petitioner placed 4th at the FINA Swimming World Cup in 2001, 8th at the FINA World Championships in 2005, and 10th at the FINA World Championships in 2008. Accordingly, we withdraw the director's determination on this issue and find the petitioner has established that she meets 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.*

While an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete can earn a place on a national or an Olympic team through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that she meets every element of a given criterion, including that she is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive.

The documentation contained in the record from the Estonian Swimming Federation indicates that the petitioner was a national swimming team member at the Olympic Games in Athens and Sydney, at five World Championships, and at several European Championships. We find such evidence sufficient to establish that the petitioner meets this criterion and therefore withdraw the director's determination to the contrary.

> *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 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. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national 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 initially submitted two Auburn University swimming and diving team media guides for 2004-2005 and 2005-2006. The media guides mention the petitioner in various sections, but there is no

[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.

evidence that such material prepared by "Auburn Athletic Media Relations Office" equates to "published material about the alien in professional or major trade publications or other major media." We cannot conclude that the content of a university athletic team's media guide, which is not the result of independent media reportage, meets the requirements of this regulatory criterion.

On appeal, the petitioner submits the top portion of a March 19, 2006 article in the "Sports Part 2" section of *The Atlanta Journal-Constitution* entitled "Final relay hands title to Auburn." A captioned photograph appearing above the title of the article mentions the petitioner and two others, but the content of article itself was not submitted. Accordingly, the petitioner has not established that this article was about her. The plain language of this regulatory criterion requires "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The captioned photograph submitted by the petitioner does not meet these requirements.

The petitioner submits a March 6, 2006 article posted online at CollegeSwimming.com entitled "Nearing the End of a Journey, Auburn's Seniors Look to Go Out On Top," but the article only briefly mentions the petitioner among eight seniors departing from Auburn University's swimming team. The plain language of this regulatory criterion, however, requires that the published material be "about the alien." Further, there is no evidence showing that CollegeSwimming.com qualifies as a professional or major trade publication or some other form of major media.

The petitioner submits an August 2005 article about her in *MK-Estonia*, but there is no evidence (such as circulation statistics) showing that this publication qualifies as a professional or major trade publication or some other form of major media.

Finally, the petitioner submits non-translated articles from Estonian newspapers *Ohtuleht*, *Eesti Paevaleht*, *Postimees*, and *Eesti Spordileht*. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The preceding articles were unaccompanied by an English language translation as required by the regulation at 8 C.F.R. § 103.2(b)(3) and by the plain language of this criterion. The petitioner also submits circulation information for *Ohtuleht*, *Eesti Paevaleht*, and *Postimees* printed from *Wikipedia*, an online encyclopedia. Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[4] *See Lamilem Badasa v. Michael*

[4] Online content from *Wikipedia* is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of

Mukasey, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

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

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

On appeal, counsel argues that the petitioner's Olympic team membership, Estonian national championship victories, national records, NCAA Division I swimming All-American awards, swimming career longevity, and international ranking in the 50 meter freestyle in world competition represent "original athletic achievements of significance." Counsel does not explain how the preceding achievements are "original" in the sport of swimming. Nevertheless, the preceding achievements relate to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (ii), criteria we find that the petitioner has already met. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards, memberships, and original contributions of major significance, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

We acknowledge the petitioner's submission of reference letters from the Secretary General of the Estonian Swimming Federation, the Head Coach of the University of Auburn's Swimming and Diving Team, [redacted], [redacted] and Olympic gold medalist and [redacted] These individuals discuss the petitioner's competitive swimming successes and talent in her sport. The record, however, does not include evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted her sport. With regard to the petitioner's athletic achievements, the reference letters do not specify exactly what the petitioner's original contributions in competitive swimming have been, nor is there an explanation indicating how any such contributions were of major significance in her 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. While the individuals offering letters of support express admiration for the petitioner, there is no evidence demonstrating that any of her past accomplishments equate to original athletic contributions of major significance in the field.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary

---

the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on December 23, 2009, copy incorporated into the record of proceeding.

ability claim. USCIS 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, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. Thus, the content of the experts' statements and how they became aware of the petitioner'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 achievements and recognition that one would expect of a competitive swimmer who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's accomplishments have been unusually influential, highly acclaimed throughout her sport, or have otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

On appeal, the petitioner submits competitive swimming results and rankings that counsel refers to as "evidence of display of [the petitioner's] work in the field." The petitioner's field, however, is not in the arts. Virtually every athlete "displays" his or her work in the sense of competing in front of an audience. The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to competitive athletes. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner's participation and success in competitive events has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Accordingly, the petitioner has not established that she 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 she performed in a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment.

The documentation submitted by the petitioner showing that Auburn University's Women's Swimming and Diving Team has won several Division I National Championships during the last decade is adequate to demonstrate the team's distinguished reputation. With regard to the petitioner's role for Auburn University's women's team, we find that the petitioner's evidence does not establish that her role as a team member was leading or critical. On appeal, the petitioner, who specializes in sprint freestyle events, submits a letter of support from [redacted] Auburn Swimming and Diving, stating:

> Once she arrived at Auburn [the petitioner] surpassed all expectations as she earned an impressive number of accolades that include:

Nineteen All-American Honor
CSCAA Academic All-American Honors
SEC Academic Honor Roll
Three-time NCAA Champion
Three-time SEC Champion

On a team of leaders and Olympic swimmers [the petitioner] was one of the strongest and most positive figures in our program. She was always at the heart of our efforts and was one of our most reliable performers. [The petitioner] did everything that was asked of her even if it meant foregoing personal glory so that the team would have the best chance of success. She excelled in all facets of college life both in the classroom as well as in the pool.

letter, however, does not provide specific information differentiating the petitioner's role from that of the other Auburn women's team members, let alone (for instance) its top competitors, coaches, and captains. According to a "Top Times" list on page 30 of the Auburn University swimming and diving team media guide for 2004-2005, the petitioner ranked fifth on the team in both the 50 and 100 meter sprint freestyle events. We note that the petitioner's teammates [redacted] and [redacted] posted the two top fastest times in those events in 2004. Further, aside from the Auburn team's sprint freestyle specialists, there is no evidence distinguishing the petitioner's role from that of the other team members (such as a comprehensive tally of women's first place finishes or medals won) during the years she competed. For example, the petitioner has not established that she accumulated more points or victories during her career at Auburn than teammates [redacted], or [redacted] Without objective evidence showing that the petitioner's achievements differentiated her from those of her teammates, we cannot conclude that she was responsible for her college team's success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of national or international acclaim. While all team members certainly play a vital role in swimming competition, the evidence submitted by the petitioner does not demonstrate that her role significantly differentiated her from the other members of the team (including those competing in backstroke, breaststroke, butterfly, individual medley, and distance freestyle events), or indicate how her role was leading or critical for the team as a whole.

The petitioner also submits a letter from [redacted] of the Estonian Swimming Federation, stating: "[The petitioner] has been a member of the Estonian National Swimming Team since 1996 when she was 15 years old, and is by far the most accomplished Estonian swimmer of all time." We note that the petitioner's membership and competitive accomplishments on the Estonian National Swimming Team have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (ii). Moreover, while [redacted] letter specifically addresses the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii) and (ix), he does not claim that the petitioner meets the requirements of 8 C.F.R. § 204.5(h)(3)(viii). Nevertheless, the record does not include evidence showing that the Estonian National Swimming Team has a distinguished reputation in the sport. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Further, the record lacks evidence demonstrating that the petitioner's role on the Estonian national team significantly differentiated her from the other members of her team.

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

On appeal, the petitioner submits another letter from [redacted] stating that she "received combined national and international monthly salary and stipends of 1,750 U.S. dollars (2000-2009)." The petitioner also submits an agreement she executed with [redacted] to promote its products. The agreement, beginning November 1, 2007 and ending December 31, 2008, states: "the total amount of payment shall become U.S. $2,500 if the Agreement is not terminated during the Contract Period." The record, however, does not include supporting evidence (such as payment records or income tax forms) showing the petitioner's actual earnings for any specific period of time. As previously discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Further, the plain language of this regulatory criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to others in the field.

The petitioner also submits several letters from the Director of Student Financial Aid at Auburn University reflecting that she received athletic grants-in-aid and scholarships from 2003 through 2008. There is no evidence comparing the dollar amount of the petitioner's financial aid and scholarships to the amounts received by other collegiate swimmers. Further, we cannot conclude that a "grant-in-aid" limited to collegiate athletes is evidence that the petitioner "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). USCIS 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.[5] Likewise, it does not follow that a collegiate swimmer who receives financial aid at the discretion of her university should necessarily qualify for an extraordinary ability employment-based immigrant visa. To

---

[5] While we acknowledge that a district court's decision is not binding precedent, 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 USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

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." There is no indication that top swimmers' remuneration is limited to collegiate scholarships rather than paid endorsements or some other form of compensation. The plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field" (rather than restricted to those at the collegiate level). Nevertheless, the petitioner offers no basis for comparison showing that her remuneration was significantly high in relation to others in her field.

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

In this case, we find that the petitioner meets only two of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she 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.

The director also found that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States. Counsel does not address this finding on appeal. The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the petitioner detailing plans on how she intends to continue her work in the United States. On the Form I-140, the petitioner failed to provide any information in Part 6, "Basic information about the proposed employment." Further, the Form G-325A, Biographic Information, submitted in conjunction with the petitioner's Form I-485, Application to Register Permanent Residence or Adjust Status, indicates that the petitioner has not been employed since 2003. Moreover, there is no indication that the petitioner was still competing for the Auburn University women's swimming team as of the petition's November 5, 2008 filing date. Aside from a promotional agreement with [redacted]. of Osaka, Japan, which terminated in 2008 and which does not address how the petitioner would continue to work *in the United States* at the conclusion of her collegiate swimming career, the petitioner has submitted no personal statement, no letters from prospective employers, contracts, or other information detailing her future plans in the United States. Accordingly, we concur with the director's finding that the petitioner has not submitted clear evidence that she will continue to work in her area of expertise in the United States.

Finally, we concur with the director's finding that the petitioner has failed to establish that her entry into the United States will substantially benefit prospectively the United States. Counsel does not address this finding on appeal. As discussed above, the petitioner has failed to establish her extraordinary ability as demonstrated by her receipt of a major, internationally recognized award, or that she 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. Section 203(b)(1)(A)(i), 8 U.S.C. § 1153(b)(1)(A)(i) and 8 C.F.R. § 204.5(h)(3). In addition, the petitioner

has not submitted clear evidence that she will continue to work in her area of expertise in the United States. Section 203(b)(1)(A)(ii), 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). Given her failure to satisfy these statutory and regulatory requirements, the petitioner's substantial prospective benefit cannot be automatically assumed. As previously discussed, the petitioner has failed to provide any description of her future plans in the United States. As she has failed to provide any probative details about her future prospects, opportunities, plans or intent, it is unclear how she will substantially benefit prospectively the United States. Moreover, it is unclear how, as a member of the Estonian National Swimming Team, the petitioner will substantially benefit prospectively the United States by competing for a foreign national team at international swimming events.

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim. Further, the petitioner has not submitted clear evidence demonstrating that she will continue to work in her area of expertise in the United States. Finally, the evidence is not persuasive that the petitioner's entry into the United States will substantially benefit prospectively the United States. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i), (ii), and (iii) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.