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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 22 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on October 27, 2009, 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 that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate "sustained national or international acclaim" and present "extensive documentation" of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Intent to Continue to Work in the Area of Expertise in the United States

We note here that in Part 5 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed his current job occupation as a "Badminton Specialist/head Coach." However, in Part 6, the petitioner listed his job title as a "Badminton Athlete." In a letter in support of the petition, counsel indicated that "[the petitioner] has been a badminton player and badminton coach for the past six years." The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a badminton athlete and a badminton coach share knowledge of the sport, the two rely on very different sets of basic skills. Thus, badminton competition and instruction are not the same area of expertise. This interpretation has been upheld in federal court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. While the documentary evidence submitted by the petitioner reflected some evidence of the petitioner as a coach, the majority of the documentary evidence pertained to the petitioner as a competitive athlete. As such, the director issued a request for additional evidence affording the petitioner the opportunity to clarify his intention to continue to work in the area of expertise in the United States. In response, counsel stated:

> [The petitioner] is seeking approval with USCIS as an EB-1 Badminton Athlete. [The petitioner] wishes to be a badminton Athlete for the duration of time that he remain[s] competitive. This will last above five to ten more years. After that point, [the petitioner] wishes to continue his career in the sport and continue as a coach and trainer.

Moreover, on appeal, counsel stated that "the Petitioner meets the definition of an alien of extraordinary ability as a badminton player through his national acclaim in Indonesia and international acclaim in the United States." While we acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a badminton player and coach, the alien, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* the regulation at 8 C.F.R. § 204.5(h)(5). Although the petitioner initially made a claim of eligibility as a coach, the record is clear that the petitioner is seeking classification as a badminton player. While the petitioner's documentary evidence relating to his coaching is not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a badminton player.

II. Law

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

> (1) Priority workers. -- Visas shall first be made available ... to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(ii) 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;

(iii) 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;

(iv) 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 specialization for which classification is sought;

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
>
> (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003);

[1] Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

see also Soltane v. DOJ, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

III. Eligibility at Time of Filing

The petition was filed on March 9, 2009. However, in response to the director's request for evidence and on appeal, the petitioner submitted documentary evidence reflecting events occurring after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider these items as evidence to establish the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

IV. Analysis

A. Evidentiary Criteria

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.*

In the director's decision, he found that the petitioner's awards were not nationally or internationally recognized. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser *nationally or internationally recognized* prizes or awards for excellence in the field of endeavor [emphasis added]." A review of the documentary evidence submitted by the petitioner reflects that he submitted sufficient documentation demonstrating that his awards won in Indonesia are nationally recognized awards for excellence in his field of endeavor. Therefore, we withdraw the decision of the director for this criterion.

Accordingly, the petitioner established that he meets the plain language of the regulation for 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.*

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

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on his membership with [redacted] In support of the petitioner's claim, he submitted a copy of his membership card for [redacted] and a letter from [redacted] reflecting the petitioner's resignation on April 20, 2006.

In response to the director's request for evidence, counsel argued:

> The [redacted] has already nominated [the petitioner] to be a level one coach and pending background check, [the petitioner] will in fact be certified as a level on coach. Please be aware that there are four levels of coaching in accordance to the rules and regulation of [redacted]. Only the most extraordinary players can be certified as a level coach. Please note that each level increases its requirement and its difficulty by the time level four coach is certified.

The petitioner also submitted a letter from [redacted] Board Member of [redacted], who stated:

> As Board member and National Coaching Director of the [redacted] we are constantly looking for more coaches to help send more athletes to the Olympics. [The petitioner] has applied for the coaching certification and is pending [a] background check. At the moment, [the petitioner] is assured of a National Level-I coaching certificate. There are 4 levels of Coaching, the highest being Level-IV, which requires very stringent rules. However, he has the potential and the credentials of reaching the highest level of coaching.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is 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, a 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.

In the director's decision, he found that the petitioner's documentary evidence failed to establish eligibility for this criterion. On appeal, counsel claims the petitioner's eligibility for this criterion based on his membership with the [redacted] and [redacted]

The petitioner submitted a letter from [redacted] Head of [redacted], who stated:

> The [redacted] was established in 1969 and is the most prestigious badminton club in Indonesia in its entirety. Only the most prominent national-level badminton players are hired by the [redacted] to represent it in national and international badminton tournaments. Many of the badminton players who play for [redacted] go on to train with [redacted] and some players leave the [redacted] to come back to play for our club.
>
> The [redacted] hired [the petitioner] as a full-time badminton player from July 1999 to March 2005 and from April 2006 to July 2006. [redacted] invited [the petitioner] to represent our club after he won seven (7) Indonesian Badminton Tournaments and placed first at the [redacted]. Accordingly, [the petitioner] is nationally acclaimed in Indonesia, which significantly enhanced our reputation as the most prestigious badminton club in Indonesia while [the petitioner] represented our club at national and international badminton competitions.

In addition, the petitioner submitted a letter from [redacted] Secretary General of [redacted], who stated:

> The winners of the annual National Selection are invited to train with the [redacted], where the best badminton players in the world train. Badminton players from different clubs and cities are invited to compete at the annual National Selection based on whether they win first, second, and third place at national badminton tournaments for that year or are ranked for each National Selection varies depending on the number of player slots available at the [redacted].
>
> * * *
>
> As the first place winner at the annual [redacted], [the petitioner] was invited to join the [redacted] to train full-time with the most renowned badminton players in the world.

Regarding the petitioner's membership with [redacted], while the petitioner submitted sufficient documentary evidence demonstrating his membership, the petitioner failed to establish that membership with [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts in the field. Moreover, as indicated in the letter from [redacted] the record reflects that the petitioner *applied* for a level one coaching certification, of which level four is the highest certification. We note that [redacted] letter, dated August 19, 2009, was submitted in response to the director's request for evidence, and the record fails to reflect when the petitioner applied for level one coaching certification. Regardless, the petitioner failed to establish that he received his level one coaching certification at the time of the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi*, 22 I&N

Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114. Even if the petitioner received level one coaching certification, the petitioner failed to establish that such certification demonstrates membership in an association in the field of competitive badminton which requires outstanding achievements its members, as judged by recognized national or international experts.

Similarly, regarding [redacted], the petitioner submitted sufficient documentary evidence establishing that he was a member of [redacted]. However, the petitioner failed to establish that membership with [redacted] requires outstanding achievements of its members, as judged by recognized national or international experts. Merely submitting documentation reflecting membership in an organization, without documentary evidence establishing that the organization requires outstanding achievements of its members as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii). We note that although the letter from [redacted] indicated that he is the Secretary General of [redacted], [redacted] discussed the petitioner's involvement with the [redacted] and not [redacted].

Regarding [redacted], the letter from [redacted] failed to reflect the membership requirements, so as to establish that outstanding achievements are required for membership with [redacted]. Instead, [redacted] stated that they hired the petitioner "after he won seven (7) Indonesian Badminton Tournaments and placed first at the [redacted]" The petitioner failed to demonstrate that such tournament victories are outstanding achievements. Regardless, the petitioner failed to establish that membership with [redacted] is judged by recognized national or international experts.

Likewise, regarding [redacted], the letter from [redacted] reflected that badminton players who finished first, second, or third at national badminton tournaments or are ranked in the top ten are invited to train at the [redacted]. However, the petitioner failed to establish that such tournament victories or ranking also reflects outstanding achievements. Based on the letter from [redacted], a badminton player's invitation to train at the [redacted] is based on performances or yearly ranking and not "judged by recognized national or international experts." As such, we are not persuaded that the petitioner's selection to train at the [redacted] demonstrates eligibility pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

Accordingly, the petitioner failed to establish 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.*

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on the following submitted documentation:

1. An article entitled, "Badminton Superstar Finds Home at GGBC," unidentified date, [redacted] *Daily News*;

2. An article entitled, "2008 Adult Nationals! Action on the Courts!" May 1, 2008, [redacted], *GGBC Newsletter*;
3. A document entitled, "2008 United Commercial Bank Adult National Championships," unidentified date, [redacted], unidentified source;
4. A screenshot entitled, "X Miami Pan Am International Badminton Tournament at Shula's Athletic Club," April 21, 2008, unidentified author, [redacted]
5. A screenshot entitled, "Congratulations to ALL Winners & GG Athletes at the 2008 UCB National Championshiop," unidentified date, unidentified author, [redacted]
6. A screenshot entitled, "4/8/2008 Adult National Results," unidentified date, unidentified author, [redacted];
7. A screenshot entitled, "2008 Adult National Results," May 29, 2008, unidentified author, [redacted]; and
8. A screenshot of a tournament bracket for the Yonex Bay Area Open Fall 2006, unidentified title, unidentified date, unidentified author, [redacted]

In response to the director's request for evidence, counsel claimed:

> There is [sic] currently no major publications on the sport of badminton only local badminton newsletters are the publication [sic] that handles all the interest that published [sic] all the information on the sport of badminton. The major publication on badminton in the United States appears to be on the internet. Furthermore, on the internet there are copious amount of articles broadcast on [the petitioner].

Furthermore, the petitioner submitted the following documentation:

A. A screenshot entitled, "Badminton in the USA – 'What is Right About it?' – Boston Open, Men's Doubles Finals," [redacted], May 13, 2009, www.usabadminton.org;
B. A screenshot entitled, "Boston Badminton Open," unidentified date, unidentified author, *Wikipedia*;
C. Screenshots of *Yahoo! Search* and *Google* caches from various websites;
D. Screenshots from *You Tube* of the petitioner's matches; and
E. A screenshot of picture with a caption, unidentified title, May 12, 2009, unidentified author, [redacted]

The director determined that the petitioner's documentary evidence failed to establish eligibility for this criterion. On appeal, counsel argues that the petitioner "has published articles about the Petitioner in major Indonesia newspapers and major newspapers and magazine in the United States." The petitioner also submitted the following documentation:

i. An article entitled, "The Selection of 16 Shuttlers to Pelatnas," March 17, 2005, unidentified author, [redacted]
ii. An article entitled, "Transparent is Being Questioned," March 4, 2005, unidentified author, [redacted];
iii. An article entitled, "New Admission in Cipayung," March 18, 2005, unidentified author, [redacted]
iv. An article entitled, "Indonesia Will Send 2 Doubles Team," unidentified author, March 3, 2005, [redacted]
v. An article entitled, "India Causes Panic," October 21, 2005, unidentified author [redacted]
vi. A document, unidentified title, unidentified date, unidentified author, [redacted]; and
vii. An article entitled, "[redacted] and [redacted] Team Up at the U.S. Boston Badminton Open Championships," unidentified date, unidentified author, unidentified source.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[p]ublished 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." 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. 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] Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that "[s]uch evidence shall include the title, date, and author of the material."

Regarding item 1, the petitioner failed to include the date of the article. While a review of the article reflects material about the petitioner relating to his work, the petitioner failed to submit any documentary evidence establishing that *Daily News* is a professional or major trade publication or other major media.

Regarding item 2, a review of the article fails to reflect that it is published material about the petitioner. Instead, the article is about the [redacted] USA Badminton Adult Nationals as a whole. Furthermore, the petitioner failed to submit any documentary evidence establishing that *GGBC Newsletter* is a professional or major trade publication or other major media.

Regarding item 3, the petitioner failed to include the date of the document. Although the petitioner is mentioned as competing and coaching, the document is about the [redacted] United Commercial Bank Adult National Championships. In addition, the petitioner failed to establish that the document was

[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.

ever published, let alone that it was published in a professional or major trade publication or other major media.

Regarding item 4 - 8, the petitioner failed to include the title, date, and/or author of the screenshots. While the petitioner is mentioned as winning a tournament or his name listed in a tournament bracket, we are not persuaded that the screenshots reflect published material about the petitioner. Further, the petitioner failed to submit any documentation demonstrating that the websites submitted by the petitioner are professional or major trade publications or other major media. In today's world, many newspapers, regardless of size and distribution, or organizations post some stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Similarly, with the exception of item A, the petitioner failed to include the title, date, and author of the evidence for items B – E. A review of the evidence fails to reflect that it is published material about the petitioner relating to his work. The evidence merely reflects the petitioner being mentioned as participating in tournaments. In fact, the evidence from *Yahoo! Search* and *Google* reflects excerpts and caches, and the petitioner failed to submit the full articles in order to determine if the evidence is published material about the petitioner relating to his work. Merely submitting screenshots that mention the petitioner without evidence reflecting material about the petitioner is insufficient to meet the plain language of the regulation. Moreover, the petitioner failed to submit any documentary evidence establishing that the various websites are professional or major trade publications or other major media. We note that since the regulation at 8 C.F.R. § 204.5(h)(3)(iii) specifically requires the title, date, and author of the material, screenshots of the petitioner's matches on *You Tube* do not meet the plain language of the regulation. We further note that the vast majority of the items reflect events occurring after the filing of the petition, such as the Wilson Boston Open from May 8 – 10, 2009. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114.

Regarding item i - v, the petitioner failed to include the authors of the articles. A review of the articles reflect that the petitioner is simply mentioned as being selected to train, compete, or winning in tournaments. However, the articles are not about the petitioner but the selection of several athletes to train and compete, as well as the finishes of those athletes. Moreover, the petitioner failed to submit any documentary evidence demonstrating that *Kompas* or *Bola* are professional or major trade publications or other major media.

Regarding item vi, the petitioner failed to include the title, date, and author of the material. While the snippet briefly provides some background information regarding the petitioner, we are not persuaded that it is published material about the petitioner. Furthermore, the petitioner failed to submit any documentary evidence establishing that *INDiner* is a professional or major trade publication or other major media.

Finally, regarding item vii, the petitioner failed to include the date and author of the material. While a review of the article reflects material about the petitioner relating to his work, the petitioner failed to indicate the source of the article, so as to establish that is was published in a professional or major trade publication or other major media.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on the following submitted documentation:

1. A recommendation letter from [redacted] CEO of USA Badminton;
2. A recommendation letter from [redacted] Chairman of DBC;
3. An unsigned letter from Nike, Inc.; and
4. An advice column entitled, "Coaching Tips: Chandra's Firecracking Footwork," in the February 1, 2008 edition of the [redacted] and posted on [redacted].

In response to the director's request for evidence, counsel argued:

> The concern of the Service is whether or not the athletic contributions have made major significant [sic] in the field of badminton. There has been an up swelling of interest in America on the entire sport of badminton. Furthermore, there has been an up swelling of badminton gymnasiums throughout the United States. From the beginning of about two gyms dedicated to the sport, there are now over close to twenty such gymnasiums. As another indicator of the interest nationwide is the very fact that the sportswear company of Nike is producing lines of clothing and shoes for the sport of badminton. Usually this would follow by endorsements and name brands identification events such as sponsorship. For now the United Commercial Bank of California has sponsored numerous events on badminton which is another indication that the sport is taken on an economic as well as a cultural significance.

In the director's decision, he concluded that the petitioner failed to establish that he made original contributions of major significance to the field. On appeal, counsel did not specifically address or contest the decision of the director for this criterion. However, counsel refers to the petitioner's endorsement contract with Yonex Corporation, consultation with Nike, consultation with USA Badminton for a DVD project, and a performance at an exhibition game for the National Badminton League (NBL).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." While counsel argued the recent interest in badminton in the United States, counsel's argument is not relevant to establish eligibility for this criterion. Instead, in compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original athletic-related contributions "of major significance in the field."

Regarding the petitioner's endorsement of Yonex Corporation, the petitioner submitted a letter from [redacted] National Sales Manager, who stated:

> In having [the petitioner] as a part of [redacted], he is not just a top player we sponsor, but rather a spokesperson and extension of our Company. He has always represented Yonex in the most favorable manner, and I can honestly say that the positive reputation of the Yonex brand has grown because of [the petitioner]. I can also say from first hand experience that [the petitioner] strives to be the best in all aspects of his life, not just badminton.

While [redacted] praised the petitioner and generally credited him with growing the Yonex brand, [redacted] failed to explain how the petitioner's endorsements for Yonex is considered an original contribution of major significance to the field as a whole. Instead, [redacted] broadly indicated the petitioner's impact to the limited area of Yonex and not to the field of badminton.

Regarding the petitioner's consultation Nike, the unsigned letter merely thanks the petitioner for speaking with Nike "regarding indoor court performance footwear." While the petitioner also submitted photographs of himself purportedly at the photo shoots, the petitioner failed to establish how he has made original contributions of major significance through his consultation with Nike. Similar to Yonex, we are not persuaded that the petitioner's endorsement of Nike footwear is reflective of an original contribution of major significance to badminton. Instead, the documentary evidence appears to reflect the petitioner's intangible contribution to Nike and not to the field of badminton.

Regarding the petitioner's single advice column in the February 1, 2008 edition of the *GGBC Newsletter* and posted on [redacted] the petitioner failed to submit any documentary evidence demonstrating the influence or impact of the single column. For example, the petitioner failed to establish that the advice column somehow changed or altered the way badminton players perform in matches. Moreover, while the petitioner's single column may be a contribution to the newsletter or website, we are not persuaded that the information in the column is an *original* contribution. The petitioner failed to establish that he created the techniques for the "firecracking footwork."

Regarding the DVD project, the petitioner submitted a letter, dated November 20, 2009, from [redacted] USA Badminton, who stated:

> USA Badminton Coaching Department is launching its Visual Resource Projects. In the first series of such projects, we are embarking on a DVD project. We are inviting [redacted] and [redacted] former world doubles champions to be involved in this project. The Project will be lead by [redacted] and myself. We will be supported by a team of twenty technical experts, junior players and general volunteers.
>
> In addition to that, we would like to invite you as a key member of the technical presenter team with [redacted] and [redacted] We believe that your world-class playing skills, athleticism and enthusiasm will be a great help in our efforts to promote badminton in the USA.

The letter reflects that the petitioner was invited to be "a key member of the technical presenter team" after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114. Moreover, the record fails to reflect if the petitioner participated as a member of the technical presenter team or if the DVDs were ever produced. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The fact remains that any measurable impact that results from the petitioner's participation in badminton DVDs will likely occur in the future, if ever.

Regarding the petitioner's participation in an exhibition game with the NBL, the petitioner submitted a flyer reflecting that the exhibition game took place on July 6, 2009, after the filing of the petition. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114. Regardless, the petitioner failed to submit any documentary evidence establishing that his participation in an exhibition game equates to an original contribution of major significance to the field.

We note here the petitioner submitted numerous recommendation letters. We cite representative examples:

[redacted] stated:

> [The petitioner] is very well respected in the sport of badminton both as an athlete and a coach. . . . [The petitioner] possesses the highest admiration from those who know him both nationally and internationally. [The petitioner] is looked upon as a role model by our athletes and commands the highest respect in our sport of badminton.

[redacted], Chairman of USA Badminton Tournament Committee, stated:

> Not only are [the petitioner's] achievements on the badminton court impressive in their own right, but the positive effect that he has had on the professional development of his doubles partners and team mates is also worthy of mention. A good example of this is [the petitioner's] regular [redacted] partner, [redacted] with whom he achieved the successes noted in the preceding paragraph. Since teaming up with [the petitioner], [redacted] level of play, tactical awareness, self-confidence, and attitude on court have been transformed. From being a mid-level player with success only at the regional level, [redacted] is now one of the highest ranked players in the USA, has qualified for the U.S. National Team, and seems to have found a renewed enthusiasm for the sport and technically is unrecognizable from the player he was just a couple of years ago.

[redacted] stated:

> [The petitioner] has significantly improved and increased the level-of-play by competing in several national/international competitions in the region. His unique skills and technique, developed by years of training with several of the top players in the world, have set him apart from his peers and enabled him to make significant achievements in a very short period of time in the United States.

[redacted] stated:

> [The petitioner's] extraordinary skills, knowledge, and experience will more than substantially benefit the United States in the field of badminton. As a player, [the petitioner] brings national and international acclaim to the field of badminton with the many new admirers he has attained because of his many successes.

[redacted] stated:

> I can state without hesitation that [the petitioner] is one of the most talented and skilled badminton players in the United States currently. [The petitioner] has already proven his capabilities by winning several top tournaments, including against tough international competition. I believe that, with the right training and support, he will be able to make a significant mark at the international level, while representing the U.S. if his green card is approved. Further, [the petitioner] has done much to popularize badminton at a personal level too. His sportsmanship and demeanor on the court have earned him kudos across the community. His hardwork [sic], dedication and focus are second to no one.

While the petitioner's recommendation letters discuss the petitioner's awards and performances in badminton tournaments, this evidence has already been considered under the regulation at 8 C.F.R. § 204.5(h)(3)(i), and we will not presume that evidence relating to or even meeting the awards criterion is presumptive evidence that the petitioner also meets this criterion. To hold

otherwise would render meaningless the regulatory requirement that a petitioner meet at least three separate criteria.

Even though the recommendation letters highly praise and admire the petitioner for his talents as a badminton player, the letters contain general statements that lack specific details to demonstrate that the petitioner has made original contributions of major significance. We note that while the letter from [redacted] attributed the improvement of [redacted] to the petitioner, the record fails to reflect that the petitioner's contributions have been of major significance to badminton as a whole and not limited to the play of [redacted]

This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. We are not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.[4] The lack of supporting evidence gives the AAO no basis to gauge the significance of the petitioner's present contributions.

USCIS may, in its discretion, use as advisory opinion 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' 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 original contributions of major significance.

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. Without extensive documentation showing that the petitioner's contributions has been unusually influential or widely accepted throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

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[4] *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

At the time of the original filing of the petition, the petitioner claimed eligibility for this criterion based on the previously mentioned advice column entitled, "Coaching Tips: [redacted] Firecracking Footwork," in the February 1, 2008 edition of the *GGBC Newsletter* and posted on [redacted]. In the director's decision, he found that the petitioner failed to establish that the advice column appeared in a professional or major trade publication or other major media. On appeal, counsel failed to contest the decision of the director or offer additional arguments. Therefore, we will not further discuss this criterion on appeal.

We note that the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(vi) requires "[e]vidence of the alien's authorship of *scholarly articles* in the field, in professional or major trade publications or other major media [emphasis added]." Generally, scholarly articles are written by and for experts in a particular field of study, are peer-reviewed, and contain references to sources used in the articles. In this case, the petitioner's advice column does not contain the characteristics of a scholarly article. As there is no evidence such as that the petitioner's advice column was peer-reviewed, references any sources, or was otherwise considered "scholarly," the advice column is insufficient to meet this criterion. Moreover, this regulatory criterion also requires the authorship of scholarly articles in professional or major trade publications or other major media. The petitioner failed to submit any documentation to establish that *GGBC Newsletter* or [redacted] is a professional or major trade publication or other major media. Finally, even if we considered this evidence to be qualifying, which we do not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(vi) requires more than one scholarly article.

Accordingly, the petitioner failed to establish that he meets this criterion.

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

At the time of the original filing of the petition, counsel claimed the petitioner's eligibility for this criterion based on a screenshot from [redacted] that counsel claimed was:

> An internet ad regarding a well-known badminton champion, [redacted] who used [the petitioner] to demonstrate the technique of playing badminton in his badminton DVDs.[5]

In the director's decision, he found that this criterion was not applicable to the petitioner since the petitioner's field of endeavor is in athletics and not coaching. On appeal, counsel failed to

[5] We note that a review of the screenshots fails to support counsel's assertion that [redacted] used the petitioner to demonstrate a badminton technique. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. 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).

contest the decision of the director or offer additional arguments. Therefore, we will not further discuss this criterion on appeal.

Accordingly, the petitioner failed to establish that he 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 petitioner did not claim eligibility for this criterion at the time of the initial filing of the petition or in response to the director's request for evidence. However, on appeal, counsel claims:

> The Service erroneously concluded that the Petitioner does not have national acclaim in Indonesia and international acclaim in the United States because the Petitioner commands a higher salary compared to other badminton players in the field.

Counsel refers to evidence, which will be discussed below, that was only submitted on appeal. Therefore, the director could not have erred for this criterion as it was only claimed for the first time on appeal. Counsel refers to the following documentation:

1. A previously mentioned letter from [redacted] who stated:

   > [The petitioner's] salary while at the [redacted] was a full-time badminton player was Rp. 1,000,000.00 per month, which is a considerably high salary for a badminton player. Salary depends on skill level, age, and rank. Considering these factors, [the petitioner's] salary is comparably higher than the average badminton player's salary of Rp. 500,000.00 because [the petitioner's] badminton skills exceed those of other national-level badminton players.

2. A previously mentioned letter from [redacted] who stated:

   > As a full-time salaried badminton player for the [redacted] in 2006, [the petitioner] was paid Rp. 1,500,000.00 per month, which is a significantly high salary for a badminton player. Salary depends on skill level, age, and rank. Taking these factors into account, [the petitioner's] salary is significantly higher than other badminton players at our club because [the petitioner's] badminton skills exceed those of other national-level badminton players. Also, in comparison, [the petitioner's] salary is higher than the average badminton player's salary at other badminton clubs. [redacted] also compensated [the petitioner] for equipment, travel, and accommodation costs for badminton competitions. Unfortunately, we cannot provide any other documentary evidence of the [redacted] payments to [the petitioner].

3. An unsigned Yonex contract from January 1, 1999, to December 31, 1999, reflecting that Yonex will pay annual stipend of $500 on December 1, 1999.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added]." Regarding item 1, while [redacted] indicated that the petitioner earned 1,000,000 rupees and the *average* badminton player earned 500,000 rupees, we are not persuaded that a letter that compares the petitioner's salary to the average badminton player's salary is sufficient to demonstrate that the petitioner's salary is high in relation to others in the field. In addition, the petitioner failed to submit any documentary evidence supporting the claims of [redacted] regarding the average salary of a badminton player in Indonesia.

Regarding item 2, while [redacted] indicated that the petitioner earned 1,500,000 rupees per month, the petitioner failed to submit any documentary evidence comparing his salary to others in his field. Merely submitting a letter that claims that the petitioner's salary "is a significantly high salary" without offering evidence comparing the petitioner's salary to others in his field fails to meet the eligibility requirements of the regulation.

Regarding item 3, notwithstanding the fact that the contract is unsigned, the petitioner failed to establish that he actually earned any stipends or bonuses from Yonex. In addition, the petitioner failed to submit any documentary evidence comparing his endorsements with others in the field. We note that the contract was effective on January 1, 2009. As indicated above, the contract was for a one period, ending on December 31, 2009, and the petitioner's annual stipend of $500 was scheduled to be paid on December 1, 2009. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49; *Matter of Izummi,* 22 I&N Dec. at 175; *Matter of Bardouille,* 18 I&N Dec. at 114. The petitioner must establish that he commanded a high salary or other significantly high remuneration prior to the filing date of the petition. However, we note that according to the exclusive use clause, the player's failure to abide with the terms of the contract "will result in forfeiture of any and all stipends and/or bonus monies." Further, pursuant to the termination clause, Yonex may terminate the agreement if the player fails to abide by the obligations of the contract. Given these terms, it is apparent that the contract could be terminated prior to the petitioner receiving any compensation. Such evidence does not establish that the petitioner "has commanded" a high salary at the time of filing. We note that regarding items 2 and 3, the petitioner failed to submit any supporting documentary evidence, such as tax returns, to demonstrate that he earned the salary as claimed.

Accordingly, the petitioner failed to establish that he meets this criterion.

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1)

a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *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). *See also Kazarian,* 596 F.3d at 1115. The petitioner established eligibility for one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

In evaluating our final merits determination, we must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 201(b)(1)(A) of the Act. In this case, the petitioner enjoyed some success in badminton tournaments in Indonesia from 2002 – 2004, and has won some local tournaments in the United States. Based on these achievements, the petitioner has garnered some limited attention from the media and has earned some monetary compensation. However, the accomplishments of the petitioner fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." *See* 8 C.F.R. § 204.5(h)(2), 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).

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." The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), 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).

While the petitioner met the plain language of the "lesser nationally or internationally recognized prizes or awards" criterion at the regulation at 8 C.F.R. § 204.5(h)(3)(i), we note that the majority of the awards in Indonesia were from junior-level competitions. For example, the petitioner certifications reflect:

1. Third place at the [redacted] in the Junior Male Double in [redacted];
2. Third place at the [redacted] in the Junior Male Double in [redacted];
3. Third place at the [redacted] in Junior Male Double in [redacted];
4. Third place at the [redacted] in the Junior Male Double in [redacted];

5. Second place at the [redacted] in the Junior Male Double in [redacted];
6. First place at the Sonic Meteor – [redacted] in Junior Male Double in [redacted];
7. First place for the [redacted] in the Junior Male Double in August [redacted];
8. Third place at the [redacted] in the Junior Male Double in [redacted];
9. First place for the [redacted] in the Junior Male Double in [redacted];
10. First place at the [redacted] in the Junior Male Double in [redacted];
11. First place at the [redacted] in Male Double in [redacted].
12. Third place at the [redacted] in Senior Male Double in [redacted]; and
13. Third place at the [redacted] in Mixed Double in [redacted].

As evidenced above, items 1 – 10 reflect awards won by the petitioner in competitions that were limited by his age and do not indicate 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). Similarly, while the petitioner submitted documentary evidence that he won the [redacted] in Men's Doubles, [redacted] in Mixed Doubles, [redacted] in Mixed Doubles, and [redacted] in Mixed Doubles and Men's Doubles, the petitioner failed to submit any documentary evidence demonstrating the recognition of the awards or tournaments beyond the awarding entities. There is no indication that the petitioner faced significant competition from throughout his field, rather than mostly limited to a few individuals in age-based or local competition. 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.[6] Likewise, it does not follow that a badminton competitor like the petitioner who has

[6] 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.

had success in a competition restricted by age or locality, 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." We further note that even though the record reflects that the petitioner received certificates for the 13 cited tournaments above in Indonesia, the petitioner placed first in only five of the tournaments, in which four of the tournaments were at the junior level.

While the petitioner failed to establish eligibility for the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), we note that the petitioner failed to establish that his involvement with [redacted], [redacted], [redacted], and [redacted] requires outstanding achievements of their members so as to demonstrate the sustained national or international acclaim required for this highly restrictive classification.

We also cannot ignore that the statute requires the petitioner to submit "extensive documentation" of [redacted] sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide 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). Although the petitioner failed to establish eligibility for the published material criterion, the petitioner relied heavily on screenshots from websites that merely list the petitioner's name as competing in tournaments. While the petitioner submitted numerous documents, only two of the documents reflected material about the petitioner relating to his work, in which the petitioner failed to establish that they were published in professional or major trade publications or other major media. We find that for an athlete, like the petitioner, that the lack of published material about him relating to his work demonstrates that he has not achieved the level of sustained national or international acclaim. Likewise, the petitioner failed to demonstrate that he commands a high salary when compared to others in his field.

Further, the petitioner claimed eligibility for the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v) based on documentation that the petitioner failed to identify how the evidence related to the criterion. Furthermore, the petitioner submitted recommendation letters that provided general appraisals of the petitioner without identifying any original contributions of major significance to the field. While such letters can provide important details about the petitioner's role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. Vague, solicited letters from local colleagues or letters that do not specifically identify how her contributions have influenced the field are insufficient. The statutory requirement that an alien have "sustained national or international

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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.

acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. *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). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791 at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts in 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.

Finally, when compared to the accomplishments of individuals who submitted recommendation letters on the petitioner's behalf, it appears that the highest level of the petitioner's field is far above the level he has attained. For example, [redacted] stated that he was a two-time [redacted], three-time [redacted], and [redacted]. Furthermore, [redacted] stated that he was an Olympic Gold Medalist and World Champion. The petitioner failed to submit evidence demonstrating that he "is one of that small percentage who have risen to the very top of the field." In addition, the petitioner has not demonstrated his "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

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 petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

V. P-1 Nonimmigrant Admission

Finally, the record of proceeding reflects that the petitioner was last admitted as a P-1 nonimmigrant on January 6, 2009, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seeks to enter the United States "temporarily and solely for the purpose of performing as such an athlete." However, while USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS 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). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

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. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

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 had approved the nonimmigrant petitions 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).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

VI. Conclusion

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 and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

The 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.