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

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: **DEC 03 2009**
LIN 07 006 50918

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, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decision of the AAO will be affirmed and the petition will be denied.

According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. On motion, counsel raises four points, only one of which is supported by any legal authority and the legal authority cited is an unpublished decision by this office, which counsel also cited on appeal. In our previous decision, we explained that, while designated and published decisions of the AAO pursuant to 8 C.F.R. § 103.3(c) are binding precedent on all USCIS employees in the administration of the Act, unpublished decisions have no such precedential value. Nevertheless, in the interest of thoroughness, we will reopen the matter for the limited purpose of responding to counsel's four points raised on motion. The analysis in our March 19, 2009 decision not contested by counsel on motion is incorporated into this decision by reference.

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 record did not establish that the petitioner achieved the sustained national or international acclaim required for classification as an alien of extraordinary ability. On appeal, counsel submitted a brief and the unpublished decision by the AAO referenced above. The AAO dismissed the appeal in a nine-page decision that addressed the evidence submitted in detail and noted the petitioner's failure to respond to specific requests for evidence, such as evidence of the significance of the awards received by the petitioner.

On motion, counsel raises four points: (1) the director and the AAO should have afforded more weight to the petitioner's accomplishments as a shooting competitor despite the fact that the petitioner has worked primarily as an instructor since 2000; (2) the petitioner's alleged membership on the Venezuelan Olympic team constitutes a one-time achievement; (3) the record contains sufficient evidence that the petitioner was nationally recognized through "numerous awards/medals" and (4) the director and the AAO ignored the published material "about" the petitioner and the expert opinion letters. For the reasons discussed below, these conclusory assertions, some of which have been raised previously in some form, are not persuasive and cannot overcome the detailed analysis provided in the AAO's previous decision.

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

> (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.

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, 60898-9 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a sharpshooter instructor. Both the director and the AAO noted that the petitioner must demonstrate that he seeks to enter the United States to continue working in his area of expertise. The director, therefore, concluded that the petitioner must demonstrate sustained national or international acclaim as an instructor. In the interest of thoroughness, however, the director did consider the petitioner's shooting awards but concluded that the petitioner had not demonstrated the significance of those awards. The AAO stated:

> Although experience as an athlete is undoubtedly relevant to coaching or instructing the same sport, the two endeavors are not identical and an alien who seeks to enter the United States as a coach or instructor under the extraordinary ability immigrant classification cannot rely solely on prior acclaim as an athlete. While a competitive shooter and an instructor certainly share knowledge of the sport, the two rely on a different set of basic skills. Thus, competing as a shooter and instructing other shooters are not the same area of expertise. [Footnote referencing *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), a non-binding district court decision that nevertheless is notable for upholding the differences between competing and coaching, omitted].
>
> In the present matter, the evidence is clear that the petitioner intends to work as a shooting instructor. Although a nexus exists between playing and coaching or

> instructing a given sport, to assume that every athlete's area of expertise includes instruction would be too speculative. To resolve this issue, in a case where an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching or instruction at a national or international level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that instruction is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as an instructor. An instructor who has an established successful history of instructing athletes who compete regularly at the national level has a credible claim; an instructor of novices does not. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as an instructor or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully instructed.

The AAO then concluded that the petitioner had not demonstrated sustained national or international acclaim as an athlete or an instructor. On motion, counsel states: "to conclude that [a] person with the Petitioner's merit cannot be a coach defies imagination." Counsel mischaracterizes the AAO's decision. At no point did the AAO suggest that a successful athlete "cannot be a coach." Rather, the AAO acknowledged that there is a nexus between competing and instructing in the same sport. The AAO then went on to consider the petitioner's documented accomplishments as a shooter and as an instructor.

In a case where an athlete demonstrates recent acclaim as an athlete and has shifted to coaching or instructing at the national level too recently to document acclaim in coaching or instructing, this office is willing to consider athletic accomplishments and the level of coaching in determining whether coaching is indeed within the athlete's area of expertise. In this matter, however, the petitioner stopped competing six years before the petition was filed and had been instructing long enough to have established a reputation as an instructor if instructing is, in fact, within his area of expertise. Thus, in the matter before us, it is not unreasonable to require evidence of sustained national or international acclaim as an instructor. Regardless, as stated above, both the AAO and the director *did* consider the petitioner's athletic accomplishments but concluded that they did not establish eligibility for the exclusive classification sought. Thus, counsel's first assertion on motion has no merit.

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). The petitioner's initial filing includes no reference to his alleged membership on an Olympic team or his receipt of an Olympic medal. In response to the director's request for additional evidence, counsel stated:

> **BENEFICIARY MEMBER OF NATIONAL TEAM THAT WON THE OLYMPICS**

> **As stated earlier, regulations states [*sic*] that if one provides evidence of [a] one-time achievement such as a major international award, then he or she will meet the criterion for establishing Extraordinary Ability and thus qualifies for permanent residency.**
>
> **1. Receipt of Major International Award**
>
> [The petitioner] is an outstanding sports shooter and a member of the Venezuelan National Olympic team that represented Venezuela in various national/international competitions including the Olympics.

(Emphasis in original.)

The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). The petitioner submitted a letter from of the Sport National Institute, Ministry of Education, Culture and Sport, in Venezuela. states that the petitioner "is recognized by our institution as "National Champion" during the years 1997, 1999 and 2000, *in the modality of* Olympic Shooting, Defensive Shooting IDPA and Practical Shooting IPSC." (Emphasis added.) This statement indicates that the petitioner was a national champion in an Olympic *form* of shooting, not that he actually competed at the Olympics, which is an international event. goes on to state that the petitioner "is the outstanding Shooting Leader from the Venezuelan Olympic Group, being awarded in many occasions for his outstanding participation in events [and] national and international contests." is not clear as to whether the "Olympic Group" is limited to the actual athletes who competed at the Olympics. She certainly does not suggest that the petitioner actually won an Olympic medal, which he would have received if he was actually a member of a winning team as claimed by counsel. Finally, the petitioner submitted several affidavits from individuals who claim to know the petitioner but do not explain their association with either the Olympics or the Venezuelan national team. These individuals all suggest that the petitioner was the team leader for an Olympic team although they do not specify a year or how the team did at the Olympics.

The director concluded:

> It is noted that the record contains no documentary evidence to establish that the petitioner actually competed in the Olympic games let alone that he received an Olympic medal. Further, the letter from does not specifically address participation in the Olympic games or any prizes or award won in Olympic competition.

On appeal, counsel stated: "Most importantly we provided evidence (a letter from the Director General Ministry of Education, Culture & Sport, Bolivarian Republic of Venezuela) that [the

petitioner] was a **member of his country's national team that participated in the Olympics competition**." (Emphasis in original.)

The AAO concluded that the petitioner had not adequately documented his participation on an Olympic team or receipt of any Olympic medals. On motion, counsel states: "We reiterate that by virtue of his membership in [the] Venezuelan Olympic Team, he has attained that one-time achievement contemplated by the regulations." Counsel no longer seems to imply that the petitioner is the recipient of an Olympic medal. Counsel's inconsistent claims regarding the level of the petitioner's participation in the Olympics reinforce why the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. at 534 n.2; *Matter of Laureano,* 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez,* 17 I&N Dec. at 506. Counsel's emphasized assertions notwithstanding, the AAO was concerned that there is insufficient documentary evidence to support those assertions. We reaffirm that concern.

The record is absent any documentary evidence that the petitioner competed at the Olympics, evidence that would seem to be readily available if true. The regulation at 8 C.F.R. § 103.2(b)(2) requires the submission of primary evidence absent documentation that primary evidence is unavailable or does not exist. Only where both primary and secondary evidence are both documented as unavailable or nonexistent can the petitioner rely on affidavits. *Id.* The petitioner in this matter has not documented that primary evidence of his Olympic team membership, such as official team rosters or Olympic team identification, are unavailable or nonexistent. The petitioner has also not demonstrated that secondary evidence, such as published material covering his selection for an Olympic team or his Olympic participation, is also unavailable or nonexistent. Thus, the ambiguous letter from [redacted] and the affidavits cannot be considered sufficient evidence.

While we do not contest that an Olympic medal, where documented, can serve as evidence of a one-time achievement, even counsel no longer asserts that the petitioner received an Olympic medal. Rather, counsel asserts that the petitioner's alleged membership on the Olympic team is sufficient evidence of a one-time achievement.

Congress' example of a one-time achievement is a Nobel Prize. H.R. Rep. No. 101-723, 59 (September 19, 1990). The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, lesser internationally recognized awards could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in major media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a significantly large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field. Qualifying to compete for a major, internationally recognized award, such as selection for an Olympic team, is not the same as actually winning such an award. Thus, even if the petitioner had documented his Olympic

team membership, which we reiterate that he has not, we would not consider this team membership as evidence of a one-time achievement as defined at 8 C.F.R. § 204.5(h)(3).

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. 8 C.F.R. § 204.5(h)(3). The AAO addressed all of the criteria claimed by the petitioner: lesser nationally or internationally recognized awards pursuant to 8 C.F.R. § 204.5(h)(3)(i), exclusive memberships pursuant to 8 C.F.R. § 204.5(h)(3)(ii), published material about the alien pursuant to 8 C.F.R. § 204.5(h)(3)(iii), original athletic contributions of major significance pursuant to 8 C.F.R. § 204.5(h)(3)(v) and performance in a leading or critical role for an organization or establishment with a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii). The AAO concluded that the petitioner had not established that he meets any of these criteria as an athlete or as a trainer. Specifically, the AAO concluded that the petitioner's shooting awards were not indicative of sustained national or international acclaim in 2006 when the petition was filed; that the record contained no evidence of the membership requirements for the associations of which the petitioner is a member, that the published materials submitted were either not "about" the petitioner or postdated the filing of the petition in a publication with undocumented circulation; that the petitioner's training company, while successful, was not original or a contribution of major significance; and that the petitioner had not demonstrated the nature of his roles or the reputation of the entities where he provided services. The AAO also rejected counsel's assertion that the letters supporting the petition constitute comparable evidence to meet the regulatory criteria pursuant to 8 C.F.R. § 204.5(h)(4), which is only relevant where the regulatory criteria are not "readily applicable." We incorporate all of those findings into this decision by reference.

On motion, counsel asserts that the record contains sufficient evidence that the petitioner was nationally recognized through "numerous awards/medals" and that the director and the AAO ignored the published material "about" the petitioner and the expert opinion letters. The AAO acknowledged the petitioner's shooting awards and prizes but concluded that awards and prizes ending in 2000 could not establish *sustained* national or international acclaim. Counsel cites no precedent decision or other legal authority suggesting that the congressionally mandated standard of "sustained" acclaim does not require evidence proximate to the date of filing. We reaffirm that, in the absence of more recent acclaim as a shooter, the awards and prizes cannot be considered sufficient evidence of *sustained* acclaim in 2006 when the petition was filed.

Next, neither the director nor the AAO "ignored" the published material submitted. Rather, this evidence was considered and concluded to be insufficient. As stated above, the AAO concluded that the published material initially submitted was not "about" the petitioner as required under the plain language of 8 C.F.R. § 204.5(h)(3)(iii). The article submitted in response to the director's request for evidence was about a training session led by the petitioner but was not specifically "about" the petitioner relating to his work as required by 8 C.F.R. § 204.5(h)(3)(iii). Regardless, citing 8 C.F.R. §§ 103.2(b)(1), (12) and *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971), the AAO concluded that the new article postdated the filing of the petition and could not be considered.

Counsel cites no precedent decision or other legal authority suggesting that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires anything less than the plain language mandates, published material "about the alien . . . relating to the alien's work in the field." Counsel also fails to cite any precedent decision or other legal authority permitting the AAO to rely on evidence that postdates the filing of the petition. To the contrary, two regulatory provisions, a federal court decision and several precedent decisions consistently hold in no uncertain terms that such evidence may not be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Ogundipe v. Mukasey,* 541 F.3d 257, 261 (4th Cir. 2008); *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998); *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981); *Matter of Wing's Tea House,* 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Great Wall,* 16 I&N Dec. 142, 144-145 (Act. Reg'l. Comm'r. 1977); *Matter of Katigbak,* 14 I&N Dec. at 49.

Finally, we acknowledge the submission of two letters from the petitioner's close colleagues attesting in general terms to his talent as a shooter. The petitioner also submitted the vague letter from and the affidavits from friends of the petitioner with no alleged association with the Olympics attesting to the petitioner's alleged membership on an Olympic team. As stated above, the AAO considered the claims that the petitioner was a member of an Olympic team and found the testimonial evidence insufficient in the absence of primary evidence or secondary evidence. The AAO further concluded that the petitioner had not demonstrated that the regulatory criteria are not "readily applicable" to his occupation (the petitioner, in fact, claims to meet several of them) and, thus, cannot rely on "comparable evidence" pursuant to 8 C.F.R. § 204.5(h)(4). Counsel cites no precedent decision or other legal authority suggesting that comparable evidence may be submitted in situations where the petitioner has not explained how the criteria are not readily applicable to his field, which would be in clear contradiction to the plain language of 8 C.F.R. § 204.5(h)(4).

Moreover, we are not persuaded that necessarily subjective letters, while useful in explaining the objective evidence, are "comparable" in and of themselves to the ten objective evidentiary criteria set forth at 8 C.F.R. § 204.5(h)(3). The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. 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 (Comm'r. 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. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information, or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Vague, solicited letters from local colleagues or letters that do not specifically identify contributions or how those contributions have influenced the field are insufficient. *Kazarian v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009).

In light of the above, counsel's brief, conclusory assertions on motion, none of which are supported by precedent decisions or other binding legal authority, are not persuasive and cannot overcome the detailed analysis provided in the AAO's previous decision.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the previous decision of the AAO will be affirmed, and the petition will be denied.

ORDER: The AAO's decision of March 19, 2009 is affirmed. The petition is denied.