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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

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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
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Date:

JUL 28 2009

IN RE: Petitioner: [REDACTED]
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:

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he seeks to continue working in the United States “as a soccer player or coach.”

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant

criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on June 8, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a soccer player or coach. The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).¹

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

The petitioner submitted the following:

1. Certificate of Merit stating that the petitioner "participated in the Subroto Mukerjee Cup Football Tournament 98 in Sub-Junior Group" as a member of the All Nepal Football Association (ANFA) Juniors;
2. Certificate stating that the petitioner's "Elite Co-Ed (Blue)" team was runner-up at the "ANFA Cup Youth Football Tournament" (2001);
3. Certificate of Appreciation stating that the petitioner's team, Jawalakhel Youth Club, was runner-up at the 7th Budhasubba Tuborg Gold Cup;
4. Certificate of Appreciation stating that the petitioner's team placed "first in the 1st Xavier International Inter College Football Tournament" (2004);
5. Certificate stating that the petitioner's team, Friend's Club, placed first (out of eight teams) in the Sun Moon Peace Cup held at the National Police Academy in Kathmandu (April 2005);
6. Certificate of Merit from the ANFA stating that the petitioner's team won the Nara Shamsher Football Tournament (January 25 – February 3, 1999);²
7. Certification stating that "[o]n the auspicious occasion of Twenty-Ninth Birthday of Highness Crown Prince Dipendra Bir Bikram Shah Dev" an "Inter-School soccer tournament was organized by All Nepal Football Association" in which the petitioner secured "First Position" (June 1999);

¹ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

² The petitioner, born on March 4, 1986, was age 12 at that time.

8. Certificate of Merit reflecting that that the petitioner was a “Winner” at the “Subroto Mukerjee Cup Football Tournament 1999 in Sub-Junior Group” as a member of the ANFA Juniors;
9. Certificate of Merit stating that the petitioner “participated in the Subroto Mukerjee Cup 2001 in Junior Group as a member of the Elite’s Co-Ed;”
10. Certificate of Appreciation reflecting that the petitioner was a champion at the “2nd Xavier International Inter-College Running Shield Football Competition” (2006);
11. “Certificate of Award/Appreciation” from the ANFA and the “Kavre District Football Association” stating that the petitioner’s team, “U.Y.S.R. club,” was a runner-up at the “District Level Dhulikhel Nagar Cup Football Tournament;”
12. Certificate from the Social Welfare Sports Center stating that the petitioner’s team placed 1st in its “2nd Under 16 Football Tournament (2002);
13. A November 20, 2006 letter from the Nebraska Nepalese Society stating that the petitioner was recognized as “the most valuable player” at a soccer meet “organized by the Association of Nepalese in Midwest America in September of 2006;” and
14. Certificate from “St. Xavier’s School” stating that the petitioner placed 1st in the 4x100 event at its “Invitational Track and Field Meet” (2001).

With regard to items 1 and 9, there is no evidence demonstrating that they are nationally or internationally recognized prizes or awards for excellence in soccer, rather than simply an acknowledgment of the petitioner’s tournament participation. The record does not include evidence demonstrating that the petitioner actually received a prize or award at these tournaments.

In regard to items 2, 3, and 11, while it is certainly an honor to be selected as a runner-up, the plain language of this regulatory criterion requires evidence of the petitioner’s receipt of “nationally or internationally recognized prizes or awards.” In the preceding instances, there is no evidence from the competition’s organizers showing that the petitioner received a prize or an award at these tournaments. Further, regarding items 11 and 13, these honors reflect regional recognition rather than nationally or internationally recognized prizes or awards for excellence in soccer.

In regard to item 14, the petitioner has not established that running track is his field of endeavor or that he has competed as a runner in recent 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).

The petitioner also submitted photographs of medals and trophies from various soccer competitions, but there is no evidence demonstrating that these items equate to nationally or internationally recognized prizes or awards for excellence.

With regard to awards won by the petitioner in amateur, junior, youth, secondary school, or collegiate soccer competition, we do not find that such awards 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). There is no indication that the petitioner faced competition from throughout his field, rather than

competition limited to his approximate age group or skill level within the field. 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 60899.³ Likewise, it does not follow that a soccer player who has had success in competition at the amateur, junior, youth, secondary school, or collegiate level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence establishing that the petitioner’s awards were received in top-level competition and that they had significant recognition beyond the context of the soccer tournaments where they were presented.

Nationally or internationally recognized prizes or awards won by teams coached primarily by the petitioner can also be considered for this criterion. In that regard, the petitioner submitted a November 14, 2006 letter from the President of Friends’ Club Kopundole, Nepal, stating: “[The petitioner] has served as the coach for the junior U-14 (y[o]unger p[l]ayers u[n]der 14) and achieved successful results during his work as a coach.” The record, however, does not include evidence demonstrating that athletes coached primarily by the petitioner have won nationally or internationally recognized prizes or awards in soccer.

Finally, there is no evidence showing that the petitioner or teams coached by him have received nationally or internationally recognized prizes or awards in soccer competition subsequent to his entry into the United States in May 2006. Accordingly, the petitioner has not demonstrated that any acclaim that he may have achieved as a soccer player or coach has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The preceding evidence is not consistent with sustained national or international acclaim as of the date of filing of this petition and, thus, is insufficient to meet this criterion without additional evidence under this criterion or other criteria documenting the petitioner’s more recent acclaim in soccer.

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

³ While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

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

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner submitted a March 23, 2006 letter from the President of Friends' Club Kopundole stating:

This is to certify that the petitioner is one of the talented players of this prestigious Friends Club. [The petitioner] has been playing a key role as a goalkeeper of the Friends' Club from 2004. He was the successful member of the Friends' Club impressive National League Campaign of 2004 and 2005/2006.

The petitioner also submitted a March 20, 2006 letter from the General Secretary of the ANFA stating:

This is to certify that [the petitioner] is a Youth Football Player. He had been an Academic Player for four year which was established as a football institution by All Nepal Football Association.

Being as an academic football player due to his sincereness [sic], hardworking and honesty now he is able to be a Youth National Player. He had also represented as a National Football Player in Nepalese National U-19 Team for AFC U19 Championship

* * *

Currently, he is playing one of the well known 'A' Division Football Club name Friend's Club.

On appeal, the petitioner submits a June 5, 2008 letter from the General Secretary of the ANFA stating:

[The petitioner] had been professional player for three years and due to his outstanding performance in the national football league he pulls for the Nepal national team.

* * *

[The petitioner] played one of the well known premiers professional 'A' division club named Friends' Club which is related to All Nepal Football Association.

Membership on an Olympic Team or a major national team such as a World Cup soccer team can serve to meet this criterion. Such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding

achievements of its members, as judged by recognized national or international experts. We will not presume that every professional or national “team” is sufficiently exclusive.

The petitioner submitted his Asian Football Confederation “U-20 Championship” tournament credential identifying him as a player for Nepal. With regard to the petitioner’s membership on the Nepalese National U-19 and U-20 teams, we note that membership on these teams was restricted to athletes under ages 19 and 20 rather than limited to those at the very top of the field who have shown outstanding achievements. As discussed, 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. at 953, 954; 56 Fed. Reg. at 60899. As such, the petitioner cannot establish that he meets this criterion based on his achievements as a member of the U-19 or U-20 Nepal soccer teams.

The petitioner’s appellate submission includes his assertions regarding the “Requirements for Membership” in the ANFA and the Friends’ Club. The record, however, does not include supporting evidence (such as membership bylaws) showing the official admission requirements for these organizations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). In this case, there is no evidence showing that the ANFA and the Friends’ Club require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field or an allied one. Accordingly, the petitioner has not established that he meets this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

The petitioner’s initial submission included several Nepalese articles that were unaccompanied by certified English language translations. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.

⁴ 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.

The petitioner submitted a February 28, 2006 article in *The Rising Nepal*, entitled “Young soccer talents likely to emerge,” stating:

New breeds of young soccer players have been coming up in the last few years and have started to show their potential at the national level as well. Trained by the All Nepal Football Association (AFNA), they learn the technical aspects of the game early on and represent the country in the youth level tournaments.

One such player who has played for the age group national teams from the lowest age group level and has earned plenty of experience in the international level apart from being a regular player in the national football league is [the petitioner], first choice keeper of premier division Friend’s Club.

The preceding article states that the petitioner has shown “potential at the national level” as an emerging talent, but it does not indicate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

The petitioner submitted May 21, 2006; November 19, 2006; and January 6, 2007 articles posted on *SoccerAgeNepal*’s internet site entitled “Another big loss for ANFA; [the petitioner] sees U.S. best place for him,” “U.S. based players condemns [sic] NSC decision,” and “A little light beams for [the petitioner].” The author of the first two articles was not identified as required by the plain language of this regulatory criterion. Further, there is no evidence showing that *SoccerAgeNepal* qualifies as a form of major media. For example, there is no evidence showing that the internet site has a significant number of visitors.

The petitioner submitted a transcription of an article in *Samacharpatra Daily* entitled “Nepal Trying to Create History with High Moral,” but the date of the article was not provided as required by the plain language of this regulatory criterion. Further, the article was not about the petitioner. The petitioner also submitted a transcription of a May 12, 2005 article in *Samaya* entitled “[The petitioner’s] Journey,” but the author of the article was not identified. We note that the preceding transcriptions were not attached to copies of the original published material. Nevertheless, there is no evidence (such as circulation statistics) showing that *Samacharpatra Daily* and *Samaya* qualify as major media.

In addition, the petitioner submitted the following:

1. A December 2005 article in *Rajdhani* entitled “Army got shocked for their league Title;”
2. A May 1, 2005 article in *The Kathmadu Post* entitled “Ghising guides Friends’ to title win;”
3. An August 6, 2003 article in *The Kathmadu Post* entitled “Three Star regain third position;”
4. A July 20, 2003 article in *The Himalayan Times* entitled “Jibesh Pandey bails out Sankata;”
5. A July 9, 2003 article in *The Kathmadu Post* entitled “MPC thrash Boys’ Sports to stay in title hunt;”

6. A June 18, 2003 article in *The Kathmadu Post* entitled “League leaders MMC beat Boys’ Sports 3-0;”
7. A June 12, 2003 article in *The Kathmadu Post* entitled “Boys Union hammer Boys Sports Club;” and
8. A June 6, 2003 article in *The Kathmadu Post* entitled “RCT struggle for win over Boys Sports Club.”

With regard to items 1 through 8, while these articles briefly mention the petitioner, they are not primarily about him. The plain language of this regulatory criterion, however, requires that the published material be “about the alien.”

On appeal, the petitioner provides circulation information for *The Rising Nepal*, *The Kathmadu Post*, *Rajdhani*, and *The Himalayan Times*. The petitioner’s statement identifies the internet sites from which he obtained the circulation information, but his appellate submission does not include copies of the circulation data from those websites.⁵ As previously indicated, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165. In this case, aside from the deficiencies specific to the petitioner’s individual articles, the record lacks evidence (such as objective circulation information from an independent source) showing the distribution of the preceding publications relative to other national media to demonstrate that the submitted articles were published in professional or major trade publications or some other form of major media. Further, we cannot ignore the lack of articles about the petitioner in major publications from February 2006 through the petition’s filing date. As previously noted, the statute and regulations require the petitioner to demonstrate that his national or international acclaim has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien’s selection to fill the position is indicative of or consistent with national or international acclaim.

The petitioner submitted a March 20, 2006 letter from the General Secretary of the ANFA stating that the petitioner played for the Nepalese National U-19 Team. The petitioner also submitted a March 23, 2006 letter from the President of Friends’ Club Kopundole stating that the petitioner played “a key role as a goalkeeper” from 2004 to 2006. The petitioner’s appellate submission includes “Martyr’s Memorial ANFA ‘A’ Division League” standings reflecting that Friends Club ranked 7th out of 14 teams in the division. The record also includes a November 20, 2006 letter from the

⁵ The self-serving nature of circulation information posted on a publication’s own internet site is not, by itself, sufficient to demonstrate that the publication qualifies as a form of major media.

Nebraska Nepalese Society stating that the petitioner was “instrumental in assisting” the Nebraska Nepalese Football Club in its competitions. The record, however, does not include evidence demonstrating that the preceding teams have distinguished reputations. Further, without evidence showing that the petitioner’s competitive achievements differentiated him from those of his team members (such as comprehensive team statistics or letters from his head coaches detailing his impact as a player), we cannot conclude that his role for the preceding teams was leading or critical. There is no evidence showing that the petitioner was responsible for the preceding teams’ success or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director’s finding that the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). Further, there is no evidence showing that the petitioner has national or international acclaim as an athlete or a coach or that it has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record does not include evidence of the petitioner’s nationally or internationally acclaimed achievements and recognition subsequent to his entry into the United States in May 2006. For example, a March 23, 2008 letter submitted by the Manager/Coach of the Annandale Boys & Girls Club Men’s Soccer Team states that the petitioner plays for them in the amateur Washington International Soccer League. We cannot conclude that the petitioner’s participation as an amateur competitor in a field that includes professionals is an indication that he “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 director also found that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States. The regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” In response to the director’s request for evidence, the petitioner submitted an April 3, 2008 signed declaration stating:

1. I came to the United States of America to continue my soccer career and play for the professional leagues.
2. I will be playing in my specialty position as a goalkeeper for the University of the District of Columbia in the fall of 2008 upon completion of several successful tryouts.
3. I play for a league called Men’s Open Second Division Indoor Soccer and have tournaments against several teams like the Alexandria F.C., Michael Group, and ERAC.
4. Further, I play as goalkeeper in Annandale Virginia for an adult men’s team (letter attached).

5. I will be coaching soccer to kids this summer for the Annandale Boys & Girls Club.
6. I plan to take coaching classes to receive my coaching license.

The director found that the record did not clearly reflect “the petitioner’s employment intentions.” On appeal, the petitioner submits a March 28, 2008 letter offering the petitioner a coaching position with the Annandale Boys & Girls Club team. While the petitioner’s future playing opportunities and coaching position are not consistent with sustained national or international acclaim in his sport, we find that the job offer letter submitted on appeal is adequate to satisfy the regulation at 8 C.F.R. § 204.5(h)(5). Therefore, we withdraw the director’s finding regarding this issue.

Nevertheless, review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner’s achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A)(i) of the Act and the petition may not be approved.

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

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

ORDER: The appeal is dismissed.