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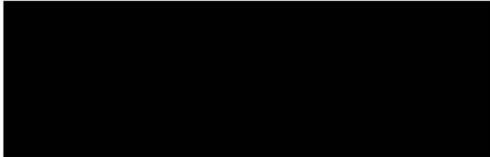
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



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FILE: [REDACTED]  
SRC 07 146 51660

Office: TEXAS SERVICE CENTER Date:

**JUN 05 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*  
John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the record did not establish that the petitioner had achieved the sustained national or international acclaim requisite to classification as an alien of extraordinary ability. The director also found the petitioner had not established that she is one of that small percentage who have risen to the very top of her field of endeavor. Finally, the director determined that the petitioner failed to establish that she is coming to the United States to work on her area of expertise.

On appeal, counsel cites to an unpublished case previously decided by the AAO and claims that unrelated decision renders the petitioner eligible for this classification.

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.

United States Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on April 12, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a swimming coach. Initially, the petitioner submitted race results, award certificates, Olympics results, a letter from her current employer, and news articles. In response to a Request for Evidence ("RFE") dated

October 24, 2007, the petitioner submitted letters of recommendation, award certificates, news articles, information about her Olympic appearance, race results, and evidence of her collegiate scholarship. On appeal, the petitioner does not specifically dispute any of the director's specific findings. Instead, on the Form I-290B, counsel generally refers to an unpublished May 12, 2008 decision of the AAO and contends that the unpublished decision overrules the director's decision in this unassociated case. Each petition reviewed on appeal must be adjudicated on its own merits under the statutory provisions and regulations which apply. Counsel does not indicate that the facts of the AAO's unpublished case are analogous to the instant case or provide any further information to support a finding that the AAO's previous decision (which was, in fact, not sustained but remanded for further review by the director) has any relevance to the current case other than to mention that the two were teammates on the Hungarian National team. Regardless, while the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Counsel also submits additional documents in which he generally asserts that the director's decision in this case was "an unlawful act" by the adjudications officer who rendered the decision, which we note was signed on behalf of the director and not the officer individually. Counsel also discusses the petitions filed by several of his other clients, none of which are currently before us in this proceeding. As discussed, we are not persuaded by any of counsel's arguments or allegations on appeal. Thus, the sole issue this decision will decide is whether the record supports the petitioner's claims of eligibility for the benefit sought as of the date of filing, April 12, 2007.

The record reflects that the petitioner had a successful career as a swimmer as a member of the Hungarian national team and as a collegiate swimmer for the University of South Carolina ("USC"). However, the record contains no evidence that the petitioner continued to compete as a swimmer after the completion of her degree in 2004. In fact, on the Form G-325 signed by the petitioner on May 4, 2007, the petitioner indicated that she worked as a graduate assistant for the Walker Institute for International Studies from August 2004 to May 2006 and as a researcher with Harvard Medical International from November 2006 to January 2007. The Form G-325 further indicates that the petitioner did not begin employment as a swim instructor until January 2007. The petitioner also submitted a letter dated March 29, 2007 from [REDACTED] director of aquatics at Boston University ("BU"), which states that the petitioner is employed with BU as a swimming coach. On appeal, counsel states that the petitioner "is coaching swimmers at Boston University who are training for national and international competition." Thus, the petitioner's evidence reflects that she is seeking work in the United States as a swimming coach rather than as a competitive athlete.

The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). Although experience as an athlete is undoubtedly relevant to coaching the same sport, the two endeavors are not identical and an alien who seeks to enter the United States as a coach under the extraordinary ability immigrant classification cannot rely solely on acclaim as an athlete. While a competitive swimmer and a coach certainly share knowledge of the sport, the two rely on a different set of basic skills. Thus, competing as a swimmer and coaching other swimmers are not the same area of expertise.<sup>1</sup>

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<sup>1</sup> While not binding precedent, we note that the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

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

In the present matter, the evidence is clear that the petitioner intends to work as a swimming instructor and coach. Although a nexus exists between engaging in and coaching a given sport, to assume that every extraordinary athlete's area of expertise includes coaching 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 at a national or international level, we may consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. In such a case we will consider the level at which the alien acts as a coach; a coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim, a coach of novices does not. Thus, we will examine whether the petitioner has demonstrated her extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete and has sustained that acclaim, we may also consider the level at which she has successfully coached.

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 a such an award, the regulation at 8 C.F.R. § 204.5(h)(3) 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 regulatory criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

*(i) 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 evidence of her first place finish in the 100 meter freestyle and 100 meter butterfly races at the 1996 European Junior Championships. The petitioner submitted no evidence that competing in the "Junior" Championships is illustrative of this highly restrictive classification as the competitors in these events were limited by age and excluded others in the field, such as professional swimmers. The petitioner also submitted evidence that she was awarded the "Excellent Student, Excellent Athlete of the Republic of Hungary" in 1994 and that she received certificates for her achievements from the Ministry of Youth and Sport and evidence of her successes in college. As it relates to the awards received as a student in Hungary, the petitioner presented no evidence of how these certificates are recognized, if at all, in Hungary or elsewhere. The

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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.

<sup>2</sup> Only those criteria claimed to be applicable by the petitioner will be discussed, because neither the petitioner nor counsel claim to meet any of the remaining criteria and the record contains no evidence relevant to those criteria.

petitioner's collegiate accomplishments demonstrate that she was part of a relay team with the second and third best times in the 200 meter freestyle relay for USC, part of the first and third best 200 Medley relay team times for USC, part of the sixth and seventh best 400 Medley relay team times for USC, best time in the 100 meter and 200 meter butterfly for USC, third best time in the 50 freestyle for USC, second place in the 50 meter freestyle and part of the first place 200 freestyle relay team in the 2002 Auburn Invitational, first place in the 50 meter freestyle in a 2001 meet between USC and the University of Florida, and first place in the 50 yard freestyle and part of the first place 400 yard medley and freestyle relays in the October 2001 meet between USC and the University of Tennessee. Similar to the narrow field of competitors in the "Junior" Championships and as a secondary student, the NCAA field is limited in scope to only those swimmers currently enrolled at a United States college or university. 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.<sup>3</sup> Accordingly, the receipt of awards as a secondary student or at the collegiate level, where competitions are restricted by age or experience, does not reflect national or international recognition commensurate with this highly restrictive classification. 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."

The petitioner also submitted evidence that she came in 30<sup>th</sup> place in the 100 meter freestyle at the 1996 Olympics and was listed as one of the "non-qualifiers," that she won fifth place in the 400 meter medley relay at the 1998 FINA world championships, that she finished in second place in the 1999 FINA championships, and that she had the 12<sup>th</sup> best time worldwide in the 50 meter butterfly which also set the Hungarian national record in 1999. We do not find the petitioner's finishes at these events, only one of which was even in the top three, and all of which were nearly a decade ago are evidence of sustained national or international acclaim required by this highly restrictive classification.

Finally, at it relates to the petitioner's claim in response to the RFE, that she won "several Hungarian Championship titles" and numerous "Best Female Athlete of the Competition" awards, the record contains no evidence to support these general claims. 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.

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<sup>3</sup> 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's interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

1972)). Although the petitioner did submit photographs of medals and trophies, we are unable to ascertain what most of these medals were awarded for as the faces of the medals are unreadable.

The evidence submitted indicates that, as a swimmer, the petitioner was moderately successful in international competition and that she subsequently performed well at the collegiate level in the United States until 2004. Even if we found that these achievements demonstrate the petitioner's eligibility under this criterion as a swimmer, which we do not, as her most recent achievements as a competitive swimmer occurred in the early 2000s, nearly a decade ago, the record does not demonstrate that she sustained this acclaim as an athlete.

As it relates to her coaching, which she appears to have begun a mere three months prior to filing the petition, [REDACTED] states that the petitioner coaches swimmers "with all abilities and [all] types of people." A letter from the manager of BU aquatics, [REDACTED] also states that the petitioner coaches swimmers of all abilities. The petitioner submitted no evidence to demonstrate that she coaches athletes at the national or international level, much less that she has coached athletes who have won national or international prizes or awards.

Accordingly, the petitioner has not demonstrated eligibility under this criterion either as a swimmer or as a coach.

*(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*

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, proficiency certifications, 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 response to the RFE, the petitioner states that she is eligible under this criterion by virtue of being a member of the 4x100 meter medley relay team and the Hungarian national swim team. Competing as part of a team representing the country as a whole qualifies as an association requiring outstanding achievement as judged by recognized national experts in the field.

Based on her participation with the Hungarian national swim team, the petitioner could have demonstrated eligibility under this criterion as a swimmer. However, as the evidence dates back to the late 1990s and early 2000s, it is not evidence of the petitioner's sustained acclaim in 2007 when the petition was filed.

As it relates to her field of endeavor as a coach, the petitioner has failed to submit any evidence of her membership in organizations that require outstanding achievements of their members as judged by national or international experts in the field.

*(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.*

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.<sup>4</sup>

The petitioner submitted articles from between 1996 and 2001 published in five Hungarian news sources: *Nemzeti Sport*, *Nepszava*, *Nepszabadsag*, *Mai Nap*, *Magyar Hirlap*, and *Sport Plusz Foci*. The translations provided for those articles state that only “relevant text” has been translated. The regulation at 8 C.F.R. § 103.2(b)(3), however, requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which 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 [emphasis added].” Not only were the submitted translations not full and complete, no translation certifications appear in the record. Without a certified and full translation, we are unable to determine whether these articles are about the petitioner as contemplated by this criterion. Even if the translations had been complete and certified, the record is devoid of documentation which demonstrates that these publications are major media, such as information regarding the circulation of any of the newspapers. In response to the RFE, the petitioner asserts that *Nemzeti Sport* is the number one daily sports newspaper in Hungary, that *Nepszabadsag* is the leading daily newspaper, that *Magyar Nemzet* is a major daily newspaper, and that *Nepszava* is a major daily newspaper. The petitioner, however, provided no evidence to support her assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. at 165.

The petitioner also submitted a copy of an article appearing on the USC website.<sup>5</sup> As with the Hungarian language articles, the petitioner submits no evidence that this publication is a professional, major trade publication or other major media. In addition, this article was not primarily about the petitioner as required by the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) as opposed to being about all of the USC athletes who earned a place on the academic honor roll.

In response to the RFE, counsel stated that he enclosed an article appearing in *Nepszava* and one that appeared in *Blikk*, two Hungarian newspapers. We are unable to find any evidence of these articles in the record.

The record also contains no published materials about the petitioner as a coach. Accordingly, the petitioner has

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<sup>4</sup> 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.

<sup>5</sup> While Internet sites are technically accessible nationally and even internationally, it cannot be credibly asserted that every Internet site has the same degree of national or international influence. In today’s world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet and make their stories available to large electronic databases. The petitioner must still show usual circulation numbers and/or that the websites routinely attract national or international attention or some other evidence illustrative of major media.

not established her eligibility under this criterion.

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

The letter from the head coach at USC, states that the petitioner "is a truly extraordinary individual in athletics" and that the petitioner's "participation at the University of South Carolina was of a high and acclaimed level, sustained over a period of 4 years." The letter submitted from states that the petitioner is "an excellent swimmer" who "achieved results that placed her in the top percentage of the world swimming population." Although these letters indicate that the petitioner is a talented swimmer, they do not demonstrate how the petitioner made an original contribution to the sport, if at all. Nor do these letters demonstrate how the petitioner's work or competition significantly impacted the field. In addition, these letters are from the petitioner's immediate circle of colleagues. While such letters are important in providing details about the petitioner's role in various competitions and teams, they cannot by themselves establish the petitioner's acclaim beyond her immediate circle of colleagues. The ten regulatory criteria at 8 C.F.R. § 204.5(h)(3) reflect the statutory demand for "extensive documentation" in section 203(b)(1)(A)(i) of the Act. Opinions from witnesses whom the petitioner has selected do not represent extensive documentation. Independent evidence that already existed prior to the preparation of the visa petition package carries greater weight than new materials prepared especially for submission with the petition. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a swimmer who has sustained national or international acclaim.

The petitioner also claims that her contributions in the classroom qualify her under this criterion as she "made a positive impact on society's perception of swimmers and athletes" by earning her undergraduate and graduate degrees. The petitioner submitted no evidence to support her statements that she improved the public perception of athletes. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. at 165.

In response to the RFE, the petitioner states that she demonstrates eligibility under this criterion by virtue of her performance at major international competitions including the Olympic Games. These awards and achievements have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

As it relates to her occupation as a coach, in response to the RFE, the petitioner also asserted that her employment with BU "proves that [her] contributions to field of swimming is [sic] highly valued and respected" and that her experience and "expert knowledge of stroke mechanics [and] training techniques make [her] a very valuable asset for the program." Even though the petitioner submitted evidence that she is valued as an employee and may possess great knowledge of swimming, such a fact does not demonstrate that she made an original contribution of major significance to the field. The petitioner did not submit evidence of, for example, different teaching methods that have been adopted by the field or other evidence that she engages in different training techniques so as to affect the sport of swimming.

As a result, the petitioner has not demonstrated eligibility under this criterion either as a coach or as a swimmer.

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

The letter from [REDACTED] states that “being a member of the University of South Carolina Swim Team requires outstanding achievement of its members.” The petitioner submitted no evidence regarding the reputation enjoyed by the USC swim team and no evidence that indicates its reputation is distinguished. Even if the USC swim team was an organization with a distinguished reputation, the petitioner submitted no evidence that she performed in a leading or critical role. We note that the relay teams on which the petitioner participated have three other swimmers who presumably are also accomplished swimmers including [REDACTED] who holds two freestyle records for USC as well as the other members of the relay that all have top times in individual events. The petitioner presented no evidence to differentiate herself from her teammates so as to establish that she performed in a leading or critical role for the USC swim team.

In response to the RFE, the petitioner also asserts eligibility under this criterion by virtue of her participation on the national athletic team of Hungary at various international swim meets, including the Olympic Games. Although the petitioner submitted evidence of her participation at the Olympic Games and other competitions on behalf of Hungary, that evidence does not demonstrate how the petitioner performed in a leading or critical role. The petitioner failed to show how her performance set her apart from her teammates such that she can be said to have demonstrated a leading or critical role for her team. Simply being selected for this team is not sufficient to demonstrate eligibility under this criterion and her membership on the team was already found sufficient to meet the criterion at 8 C.F.R. § 204.5(h)(3)(ii). At issue for this criterion is the nature of the role the petitioner was selected to fill, not whether she successfully competed as a regular member of a team. The nature of the role must be such that selection to fill that role is indicative of or consistent with national or international acclaim. The record contains no further evidence which identifies the petitioner’s distinct performance for either of her teams or a specific role, such as team captain, to differentiate the petitioner from her teammates in such a way, that she can be considered to have performed in a leading or critical role for the Hungarian national team or the USC team.

As it relates to her occupation as a coach, the letter from [REDACTED] states that the petitioner “significantly contributed to [the] program . . . at Boston University. Her classes are consistently full and many participants return semester after semester to take part in her classes.” In addition, [REDACTED] states that “other instructors have learned from [the petitioner’s] techniques and have benefited from teaching alongside [the petitioner].” The petitioner submitted no evidence regarding what **type of reputation** is enjoyed by the BU swim program. Even if the program enjoys a distinguished reputation, [REDACTED] letter does not indicate that the petitioner performs in a leading or critical role any different from any other swimming instructor. Instead, the letter from [REDACTED] indicates that the petitioner only participates in a part time capacity, which does not indicate a leading or critical role despite [REDACTED] statements that the petitioner “is establishing a positive reputation and her star quality is attracting business” and that the petitioner’s involvement “makes [the] department stronger, and fosters an unprecedented reputation for providing superb professional instruction.”

For all of the above reasons, the petitioner failed to demonstrate eligibility under this criterion as a swimmer or as a coach.

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

The letter from [REDACTED] states that the petitioner received a scholarship in excess of \$100,000, which “was high remuneration compare[d] to other swimmers on [the] team and other foreign swimmers that competed in the United States.” The letter from [REDACTED] assistant athletics director at USC, states that the petitioner received a scholarship of \$75,668.00. Collegiate scholarship represents funding to pursue educational studies rather than a salary or remuneration for services. Further, there is no evidence comparing the dollar amount of the petitioner’s total scholarship to the amounts received by other collegiate swimmers. We cannot conclude that a “grant-in-aid” limited to collegiate athletes is evidence that the petitioner “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). As previously 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 954; 56 Fed. Reg. at 60899. Similarly, it does not follow that a collegiate swimmer who receives financial aid at the discretion of his university should necessarily qualify for an extraordinary ability employment-based immigrant visa. There is no indication that top swimmers’ remuneration is limited to collegiate scholarships rather than paid endorsements or other compensation. The plain language of this criterion requires the petitioner to submit evidence of a high salary “in relation to others in the field” (rather than restricted to those at the collegiate level). The petitioner offers no basis for comparison showing that her remuneration was significantly high in relation to others in her field.

Regarding her salary as a coach, the letter from [REDACTED] states that the petitioner receives \$35 per hour of group instruction and \$52.50 per hour for private lessons. The petitioner stated in her response to the RFE that other “instructors receive 12 USD/hour for the same classes,” however, she provided no documentary evidence to support her statements. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I. & N. Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I. & N. Dec. 190). Accordingly, the petitioner has not established eligibility under this criterion either as a swimmer or as a coach.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of her field. The evidence in this case indicates that the petitioner won several national and international prizes as a swimmer, but did not sustain any acclaim through coaching. The record does not establish that the petitioner achieved sustained national or international acclaim so as to place her at the very top of her field either as a swimmer or a coach nor did the petitioner provide evidence that she intends to continue working in her area of expertise. She is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and her 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 burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. **Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.**

**ORDER:** The appeal is dismissed.