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



U.S. Citizenship  
and Immigration  
Services

B2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **JUN 05 2009**  
EAC 06 082 51872

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)

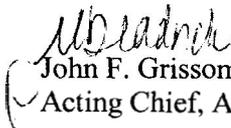
ON BEHALF OF PETITIONER:

[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).

  
John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, initially approved the preference visa petition. Subsequently, the director issued a notice of intent to revoke the approval of the petition (NOIR). In a Notice of Revocation (NOR), the director ultimately revoked the approval of the Immigrant Petition for Alien Worker (Form I-140). The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

Section 205 of the Act, 8 U.S.C. § 1155, states, in pertinent part, that the Secretary of Homeland Security “may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204.”

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for “good and sufficient cause” where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner’s failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

*Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988) (citing *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987)).

By itself, the director’s realization that a petition was incorrectly approved is good and sufficient cause for the revocation of the approval of an immigrant petition. *Id.* The approval of a visa petition vests no rights in the beneficiary of the petition, as approval of a visa petition is but a preliminary step in the visa application process. *Id.* at 589. The beneficiary is not, by mere approval of the petition, entitled to an immigrant visa. *Id.*

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director ultimately determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. The director also questioned whether the petitioner sought to enter the United States to continue working in his field of expertise.

We note that the regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows the affected party to make a written request to the AAO for additional time to submit a brief. The same regulation provides that the AAO may allow additional time “for good cause shown.” Counsel dated the initial appeal June 2, 2008 and checked the box indicating that a brief and or additional evidence was attached. Counsel has never requested additional time to supplement the appeal. We note that there is no provision that allows the petitioner to continue to supplement the record indefinitely. Thus, even if counsel had checked the box

that a brief or additional evidence would be submitted within 30 days, the date as of which all briefs and evidence supplementing the appeal should have been submitted is July 2, 2008. We note that counsel has continued to supplement the record after that date, mostly with briefs that provide no new information relating to the petition before us. Rather, counsel relies on assertions and evidence that relate to counsel's other clients, or evidence that does not relate to the instant petitioner's eligibility as of the date of filing as required. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Specifically, counsel submitted a "Supplemental Brief" on September 8, 2008, a "Second Supplemental Brief" on September 11, 2008, a "First Emergency Motion" on October 16, 2008 and a "Second Emergency Motion" on November 14, 2008. Nevertheless, the new submissions are part of the record and will be referenced below where relevant.

At the outset, we must address the fact that in 2008, 18 months after filing the petition, the petitioner won a bronze Olympic medal. Counsel emphasizes this accomplishment several times on appeal. This decision in no way attempts to diminish that accomplishment. Rather, it remains that this accomplishment postdates the filing of the petition and simply cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. The reasoning in *Matter of Katigbak* is clearly expressed as follows:

If the petition is approved, he has established a priority date for visa number assignment as of the date that petition was filed. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of its filing. The beneficiary cannot expect to qualify subsequently by taking additional courses and then still claim a priority date as of the date the petition was filed, a date on which he was not qualified.

Section 204 of the Act requires the filing of a visa petition for classification under section 203(a)(3). The latter section states, in pertinent part: "Visas shall next be made available to *qualified immigrants who are members* of the professions." (Emphasis added.) It is clear that it was the intent of Congress that an alien be a recognized and fully qualified member of the professions at the time the petition is filed. Congress did not intend that a petition that was properly denied because the beneficiary was not at that time qualified be subsequently approved at a future date when the beneficiary may become qualified under a new set of facts. To do otherwise would make a farce of the preference system and priorities set up by statute and regulation.

*Id.* The Regional Commissioner continued this reasoning in *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977). That decision reemphasizes the importance of not obtaining a priority date prior to being eligible based on future experience. In fact, this principle has been extended beyond the alien's eligibility for the classification sought. For example, an employer must establish its ability to pay the proffered wage as of the date of filing. *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Act. Reg'l. Comm'r. 1977). That decision provides that a petition should not become approvable

under a new set of facts. Recognizing that *Matter of Katigbak*, 14 I. & N. Dec. at 49 was not “foursquare with the instant case” in that it dealt with the beneficiary’s eligibility, *Matter of Great Wall*, 16 I&N Dec. at 145 still applies the reasoning. The decision provides:

In sixth-preference visa petition proceedings the Service must consider the merits of the petitioner’s job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met, as well as determine whether the alien meets the minimum requirements to perform the offered job satisfactorily. It follows that such consideration by the Service would necessarily be focused on the circumstances at the *time of filing* of the petition. The petitioner in the instant case cannot expect to establish a priority date for visa issuance for the beneficiary when at the time of making the job offer and the filing of the petition with this Service he could not, in all reality, pay the salary as stated in the job offer.

*Id.* (Emphasis in original.) Finally, when evaluating revisions to a partnership agreement submitted in support of a petition seeking classification as an alien entrepreneur pursuant to section 203(b)(5) of the Act, this office relied on *Matter of Katigbak*, 14 I. & N. Dec. at 49 for the proposition that “a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts.” *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm’r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. As the petitioner’s bronze medal is clearly a fact that came into being subsequent to the filing of the petition, it cannot be considered in these proceedings. To hold otherwise would allow an athlete to secure a priority date in the hopes that subsequent achievements will demonstrate eligibility.

On appeal, counsel spends little time responding to specific concerns raised by the director. Rather, counsel asserts generally that the decision is “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 discusses the petitions filed by several of his other clients, none of which are currently before us in this proceeding. It is counsel’s position that the sole basis of revocation was that the petitioner was an athlete represented by counsel, whose clients the Service Center is allegedly targeting. Counsel requests that the AAO investigate a specific adjudications officer at the Service Center, but provides no authority suggesting that the AAO is an investigative body. 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, January 26, 2006.

Significantly, in a May 28, 2008 pleading before the Southern District Court of Florida, Miami Division, a copy of which was submitted on appeal, counsel asserted that the AAO’s May 12, 2008 decision withdrawing a decision by the director regarding another of counsel’s clients demonstrates that the AAO “in effect, upheld the Class Plaintiff[’]s allegations in regard to unlawful acts by Defendant Officer 1014.” Counsel submits a copy of this May 12, 2008 decision in support of the “Second Emergency Motion.” A review of this decision does not suggest or imply that the AAO made any

findings of unlawful activities by the Service Center or a particular officer. Rather, the AAO simply withdrew the basis of revocation but remanded the matter because the AAO found that the petition was not approvable. Counsel's attempt to use this decision by the AAO, which is not an investigative body, to suggest that the AAO has made findings of unlawful activity, is not persuasive and is, in fact, of serious concern to this office.

Counsel's specific assertions and the evidence relating to the petition now before the AAO will be discussed below. As will be discussed, while we withdraw the director's concern regarding the petitioner's intention to continue working in his field of expertise, we uphold the director's finding that the petitioner had not demonstrated eligibility as of the filing date in this matter. We stress that the petitioner's Olympic medal was not part of the record before the director when the final notice of revocation was issued. Thus, the director could not have erred in failing to consider this medal.

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, 60898-9 (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 *as of the date of filing*. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a track and field athlete. The regulation at 8 C.F.R. § 204.5(h)(5) provides:

*No offer of employment required.* Neither an offer for employment in the United States nor a labor certification is required for this classification; however, the petition must be accompanied by 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.

The director concluded that the record did not demonstrate that the petitioner would support himself primarily as a track and field athlete rather than competing in his “spare time.”

As stated above, the petitioner has since won a bronze medal at the Olympics. Thus, we are persuaded that he continues to compete at the top level of his sport.<sup>1</sup> As such, we withdraw the director’s concerns on this issue. Any new petition supported by that medal, however, will have to include evidence that the petitioner still intends to continue competing.

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, international recognized award). We acknowledge that the petitioner won a bronze medal at the 2008 Olympics in Beijing. The petitioner, however, must demonstrate eligibility as of the date of filing, January 26, 2006. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Thus, this medal would need to support a new petition with a new priority date. This decision is without prejudice to a new petition with a new priority date supported by the petitioner’s recent Olympic medal.

Barring the alien’s receipt of such an award *as of the date of filing*, the regulation outlines ten criteria, at least three of which must be satisfied *as of the date of filing* for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. On appeal, counsel cites *Buletini v. INS*, 860 F. Supp. 1234 (E.D. Mich. 1994), for the proposition that the petitioner need only demonstrate national acclaim. In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. That said, the plain language of the statute requires extensive evidence of sustained national or international acclaim. Thus, we do not contest that the petitioner need only demonstrate

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<sup>1</sup> We note that while the petitioner was suspended from competition for six months, that period of suspension ended in September 2006. See <http://www.thenassauguardian.com/sports/323067211833355.php> (accessed May 21, 2009 and incorporated into the record of proceeding).

sustained national acclaim as of the date of filing. In addition, the court stated that “the examiner must evaluate the quality, including the credibility, of the evidence presented to determine if it, in fact, satisfies the criteria.” *Buletini*, 860 F. Supp. at 1234.

Prior to the appeal, counsel has never attempted to explain which criteria the petitioner claims to meet. On appeal, counsel only claims that the petitioner meets three criteria. We will discuss those three criteria below in addition to two criteria that warrant discussion in light of certain evidence submitted. If it is counsel’s contention that the record actually contains evidence relating to other criteria, he has never explained which criteria they are or how the evidence relates to those criteria. The petitioner has submitted evidence that relates to the following criteria.<sup>2</sup>

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

Initially, the petitioner submitted Auburn University materials about [REDACTED] who is not one and the same as the petitioner, but shares the same last name of the petitioner. Specifically, we note that both Shamar Sands and the petitioner are pictured on the front cover of one of the Auburn University booklets. Thus, the evidence regarding [REDACTED] will not be considered.

The petitioner also submitted two All-NCAA Region Awards issued to the petitioner on May 29, 2004 for his first place finish in the mid-east region in long jump and triple jump. In addition, the petitioner submitted a certificate of appreciation issued to the petitioner by the Games of the XXVIII Olympics in 2004. Further, the petitioner submitted what appear to be certificates issued by the International Amateur Athletic Federations (IAAF). The photocopies of these certificates, however, are mostly illegible. Nevertheless, the numbers six, eight and six are legible, suggesting these certificates do not reflect any finishes in the top three. An undated article in the *Birmingham News* indicates that the petitioner was favored to win long jump and triple jump at a national meet and had previously won the NCAA national championship in long jump while finishing second in the triple jump. An August 27, 2003 article in the *Opelika-Auburn News*, asserts that the petitioner won a bronze medal in the triple jump at the IAAF World Championships in Paris. An April 28, 2003 article in the same newspaper reported that the petitioner placed first in the triple jump at the Penn Relays in Philadelphia. A May 19, 2003 article in the same newspaper reported that the petitioner won a title at the Southeastern Conference (SEC) Track and Field Championships.

In response to the director’s July 25, 2006 request for additional evidence, the petitioner submitted a certificate for the petitioner’s 2003 third place finish at the IAAF “Championnats du Monde d’Athletisme” in Paris. The petitioner also submitted a 2003 certificate from the U.S. Track Coaches Association recognizing the petitioner as “Mondo Regional Athlete of the Year” for the NCAA Division I Indoor Track and Field, South Region and other similar certificates. Finally, the petitioner

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<sup>2</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

submitted a letter from [REDACTED], the petitioner's mother, listing other undocumented awards, such as a gold medal in the triple jump at the 2003 London Norwich Union British Grand Prix.

The director initially approved the petition. On April 16, 2008, the director issued an NOIR, advising that additional evidence was required regarding the significance of the above awards, such as media coverage of the awards. In response the petitioner submitted a 2008 IAAF ranking placing the petitioner second in the triple jump and evidence about the IAAF. The petitioner also submitted photographs of two triple jump trophies issued at the Qatar Athletic Super Grand Prix in 2007 and 2008, well after the date the petition was filed. Similarly, the petitioner submitted other certificates and a medal dated in 2007, after the petition was filed. [REDACTED], the assistant coach for Auburn University Track and Field, asserts that the petitioner won a bronze medal at the Commonwealth Games in Manchester England in 2002.

The director concluded that the petitioner had not submitted primary evidence of the following awards referenced by others: (1) the gold medal in the triple jump and long jump at CARIFTA in 2000; (2) the silver medal in the long jump in Guatemala City in 2001; (3) the gold medal at the London Norwich Union British Grand Prix in the trip jump in 2003; (4) the gold medal in the CAC at St. Georges in 2003; (5) a bronze medal at the World Championships in 2003 and (6) the gold medal in the CAC and bronze medal in the triple jump in 2005. The director concluded that the awards documented in the record with primary evidence were insufficient to meet this criterion and that even if the awards referenced in the record were document, they would not establish sustained acclaim in 2006 when the petition was filed.

On appeal, the petitioner resubmitted a copy of the certificate for the 2003 bronze medal at the IAAF World Championship in Paris. In counsel's supplemental brief, he asserts that the petitioner's prizes and awards are not "merely going on the record" but "historical fact." Counsel notes that he is submitting a copy of the petitioner's Olympic bronze medal. This medal, however, postdates the filing of the petition and cannot be considered. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

We acknowledge that the petitioner's 2003 award at the IAAF World Championships in Paris was documented in the record before the director. That said, the petitioner did not submit primary evidence of the remaining five awards listed by the director as undocumented. The assertions by the petitioner's mother and Coach Rolle are insufficient. Specifically, the regulation at 8 C.F.R. § 103.2(b)(2)(i) provides that the non-existence or unavailability of required evidence creates a presumption of ineligibility. According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence (such as news articles) and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits.

The only non-collegiate award in the record is the petitioner's 2003 bronze medal at the IAAF World Championships in Paris. We concur with the director that a single qualifying prize or award in 2003 is

not evidence of sustained national or international acclaim as of January 26, 2006, the date of filing. Further, the petitioner has not demonstrated that his collegiate or amateur recognition constitutes nationally or internationally recognized prizes or awards. With regard to awards won by the petitioner in competitions that were limited by his amateur or collegiate status, such awards do not indicate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than mostly limited to a few individuals in age-based or other similarly limited competition. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>3</sup> Likewise, it does not follow that a competitor like the petitioner who has had success in a competition restricted by age or non-professional status, 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.”

Even if we were to conclude that the petitioner meets this criterion, which we do not, for the reasons discussed below, the petitioner would meet only a single other criterion.<sup>4</sup> Thus, the petitioner would still not meet at least three criteria as required.

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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’ interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

<sup>4</sup> The evidence to meet that criterion is also well before the date of filing. Thus, even considering the evidence in the aggregate would not demonstrate sustained acclaim in 2006 when the petition was filed. While the petitioner may have subsequently regained (and, in fact, surpassed) his former standing in the field in 2008, that evidence cannot be considered as it postdates the filing of the petition by approximately 18 months.

*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 record confirms that the petitioner was a member of the Bahamian Olympic Team at the 2004 Olympics in Athens. The director concluded that an Olympic team is not an association and, thus, team membership could not serve to meet this criterion.

On appeal, counsel references a non-precedent decision by this office concluding that Olympic team membership can serve as comparable evidence to meet this criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Nevertheless, we are satisfied that Olympic team membership, resulting from selection among the top athletes nationally, is comparable to membership in an exclusive association that requires outstanding achievements for membership.

In light of the above, the petitioner has established that he meets this criterion. That said, the evidence dates from 2004, and is not indicative of sustained acclaim in 2006 when the petition was filed. Regardless, for the reasons discussed below, the petitioner falls far short of meeting any other 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.*

On appeal, counsel does not contest the director's conclusion that the published material submitted is either not primarily about the petitioner or did not appear in professional or major trade publications or other major media. We concur with the director that articles reporting the results of a specific competition that mention the petitioner are not "about" the petitioner. We further concur with the director that the record lacks circulation data, or other comparable evidence, suggesting that the publications featuring the petitioner are professional or major trade publications or other major media.

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.*

The director acknowledged a letter from [REDACTED] discussing the petitioner's record of prizes of awards, only some of which are documented in the record, but concluded that the petitioner had not established that he performed in a leading or critical role for Auburn University or the Bahamas.

On appeal, counsel asserts that the petitioner has performed in a leading or critical role for the IAAF, Auburn University, the Bahamian National Team and the Bahamian Olympic Team because he successfully competed at an IAAF event and for Auburn University and the Bahamas. Counsel asserts that Auburn University's distinguished reputation is demonstrated through the number of its students who have won Olympic medals.

For the reasons discussed above, we will not consider the petitioner's 2008 Olympic medal. Rather, that medal must support a new petition. We have already considered the petitioner's documented prizes and awards above. We have also already considered the petitioner's membership on a national Olympic team. We will not presume that winning a qualifying prize or award or securing team membership is also evidence that the alien has performed in a leading or critical role for his team whether a national or university team. We will also not presume that winning a prize or award constitutes performing a leading or critical role for the entity sponsoring the competition. To hold otherwise would render meaningless the statutory requirement for extensive evidence and the regulatory requirement that an alien meet at least three separate criteria.

At issue for this criterion is the nature of the role the petitioner was selected to fill, not whether he 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. While the petitioner successfully competed as a member of his university team and, in 2003, as a member of the Bahamian National Team, the record lacks evidence that he was selected for a special role within the team, such as team captain, or any type of role within the IAAF.

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

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

On appeal, counsel does not contest the director's conclusion that a scholarship cannot serve to meet this criterion. We concur with the director that a scholarship, even an athletic scholarship, is not remuneration for services as an athlete. Regardless, the record does not compare the petitioner's scholarship with track and field scholarships nationally.

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

Finally, beyond the director's decision, we find the petitioner has failed to establish that his entry into the United States will substantially benefit prospectively the United States. In his "Second Emergency Motion," counsel argues that it is USCIS policy to not require evidence regarding this benefit. Counsel cites to a letter written by [REDACTED], Immigration Branch, Adjudications in 1995, published in 72 No. 12 *Interpreter Releases*, 443. First, letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Therefore, contrary to counsel's assertion, letters written by the Office of Adjudications do not constitute official USCIS policy and will not be

considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any USCIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Moreover, it appears that counsel has taken the language of the letter out of context and inappropriately applied it to the instant case. Although the letter does initially acknowledge that the regulations do not require a petitioner to submit evidence to show that he or she will substantially benefit the United States, the letter goes on to state that "Congress did not intend for aliens of extraordinary ability to immigrate to the United States and remain idle" and that the language in section 203(b)(1)(A)(iii) cannot be "written off." The letter concludes that "ordinarily the 'substantial benefit' criterion is met through satisfying the other statutory requirements. . . ." In this instance, the petitioner has failed to demonstrate the required sustained acclaim and has also failed to establish through extensive documentation that his achievements have been recognized. Given his failure to satisfy these statutory requirements, the petitioner's substantial benefit cannot be automatically assumed. The petitioner has provided little documentation regarding his future plans in the United States such as future prospects, opportunities, plans or intent. Moreover, it is unclear how, in his current position as a member of the Bahamian National team, that he will substantially benefit prospectively the United States by training for and competing with a foreign national team. For this additional reason, 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 documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a track and field athlete 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 *as of the date of filing*. The evidence indicates that the petitioner shows talent as a track and field athlete, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field *as of the date of filing*. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved. As stated above, this decision is without prejudice to the filing of a new petition supported by the petitioner's Olympic medal (and other

documented achievements) and evidence of his future plans to continue competing and, if he plans to continue competing for the Bahamas, evidence of how he will prospectively benefit the United States.

Given counsel's previous assertions in federal court about a recent AAO decision, we must stress that while we have withdrawn some of the director's adverse findings in this decision, we are not an investigative body, we have not conducted an investigation in this matter, and we are making no findings of criminal or unlawful conduct on the part of the Service Center. Specifically, the petitioner has overcome the director's concerns regarding his intent to continue competing by submitting evidence of his recent Olympic medal. As the medal was not before the director, his failure to consider it was not a criminal or unlawful act. In addition, we make no finding that the director's factual error in concluding that the 2003 IAAF award was not part of the record was a criminal or unlawful act, especially as the certificate names the competition in French. Finally, our conclusion that Olympic team membership may constitute comparable evidence to meet the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) is not meant to suggest that the director's stricter interpretation was a criminal or unlawful act rather than an interpretation with which we disagree.

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.