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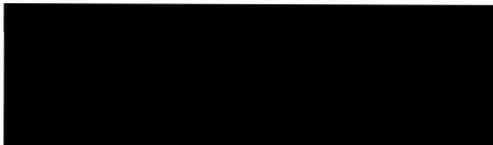
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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FILE: [REDACTED]
LIN 08 032 51812

Office: NEBRASKA SERVICE CENTER

Date: SEP 08 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)

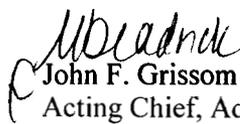
ON BEHALF OF PETITIONER:



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. The petition 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 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 she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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 to the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and the 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 has 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 October 30, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an assistant volleyball coach. The regulation 8 C.F.R. § 204.5(h) requires the alien to “continue work in the area of expertise.” While a volleyball player and a coach certainly share knowledge of volleyball, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

Id. at 918. The court noted a consistent history in this area. Nevertheless, this office has recognized that there exists a nexus between playing and coaching a given sport. To assume that every extraordinary athlete’s area of expertise includes coaching, however, would be too speculative. To resolve this issue, in instances 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 level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner’s area of expertise. Specifically, in such a case we will consider the level at which the alien acts as 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, we will 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 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 of the criteria outlined in 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).

While finding that the petitioner had failed to establish eligibility for this classification as a coach, the director concluded that the petitioner “meets the requisite national or international acclaim as a volleyball athlete.” We do not concur with the director regarding the petitioner’s national or international acclaim as an athlete and withdraw his findings.

The petitioner has submitted evidence that, she claims, meets 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.

Among the “honors and awards” the petitioner lists on her résumé are the World Championship Best Hitter (Brazilian National Team) in 1991 and 1992 and NJCAA Player of the Year for 1998 and 1999. The petitioner also indicated that she was on several “first teams” and was named MVP in several tournaments.

The petitioner submitted a copy of a “Diploma of Honour” in the Volleyball Youth Tournament from the Federation Internationale de Volley-Ball held in Portugal from December 7 to 15, 1991. A copy of a September 1992 diploma is written in Spanish and is not accompanied by an English translation as required by 8 C.F.R. § 103.2(b)(3), which provides:

Translations. Any 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.

Because the petitioner failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. Neither of the diplomas however appear to support the petitioner’s claims that she won “Best Hitter” during the world championships. 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)).

The petitioner submitted copies of pages from the website of the American Volleyball Coaches Association (AVCA) indicating that she was named the AVCA National Player of the Year for JC/CC (Junior College/Community College) in 1998 and 1999 and was named to the AVCA First-Team All-American in the same years. In her October 15, 2007 letter forwarding the petition, counsel stated that the petitioner had, among other honors, also been named national champion in 1998, regional champion in 1999 and President’s Female Player at the year at

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

College of Southern Idaho (CSI). Counsel further stated that, with the Brazilian National team, the petitioner had placed second at the World Championship in Portugal and first place at the South American Championships in Bolivia. However, the record does not contain documentation to support counsel's statements. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The petitioner has not demonstrated that her 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 her amateur or collegiate status, such awards do not indicate that she "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 her 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 60899.² 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." Further, the petitioner submitted no documentation of any awards or prizes that she has won as a volleyball coach.

In her May 12, 2008 letter accompanying the petitioner's response to the director's request for evidence (RFE), counsel asserted:

As a coach [the petitioner] has been identified as one of the most talented coaches in the U.S. due to her immense contribution in the field that has consistently been

² 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.

rewarded by prestigious awards and recognition from some of the most well respected organizations [] worldwide. A major recent achievement for the [petitioner] was the ranking of her team on the National Collegiate Athletic Association.

Counsel reiterates these statements on appeal. The petitioner, however, submitted no documentation of any awards or prizes that she has won as a coach or any awards or prizes won by any team that she has coached. That her school has moved from Division I to Division II is not evidence of her receipt of a nationally or internationally recognized award as a coach.

The petitioner has failed to establish that she meets this criterion either as a volleyball player or as a coach.

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.

To demonstrate that membership in an association meets this criterion, the 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 work experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. The overall prestige of a given association is not determinative. The issue is membership requirements rather than the association's overall reputation.

The petitioner submitted documentation indicating that she was a member of the Amateur Athletic Union (AAU), the American Volleyball Coaches Association (AVCA), the Association of Volleyball Professionals (AVP) and the California Beach Volleyball Association (CBVA). We note that the petitioner joined these organizations in September and October 2007, within a month of the date she filed her petition. The petitioner submitted no documentation regarding the membership requirements of these organizations. According to counsel, "AVP is a leading lifestyle sports Entertainment Company focused on the production, marketing and distribution of professional beach volleyball events worldwide." Although counsel also states that the AVCA "advances the development of the sport of volleyball by providing all coaches with educational programs, a forum for opinion exchange and recognition opportunities," and that the AAU "is dedicated exclusively to the promotion and development of amateur sports and physical fitness association," she submits no documentary evidence in support of her statements regarding these organizations. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. While the record does not support counsel's statements, nothing in those statements suggests that any of the organizations require outstanding achievements of their members as judged by national or international experts. The petitioner submitted no additional documentation regarding these organizations in response to the RFE or on appeal.

The petitioner has failed to establish that she meets this criterion either as an athlete or a coach.

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 order to meet this criterion, published materials must be primarily about the petitioner and be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national distribution and be published in a predominant language. Some newspapers, such as *The New York Times*, nominally serve a particular locality but would qualify as major media because of a significant national distribution.

The petitioner submitted copies of several articles that appeared in various media. Some of the documents do not reflect the publication in which they appeared or the date that they appeared as required by 8 C.F.R. § 204.5(h)(3)(iii). Some merely mention the petitioner's name but are not primarily about her. None of these articles are dated later than 2001, six years prior to date the petition was filed. Additionally, the petitioner submitted no documentation to establish that any of the publications are professional or major trade publications or other major media. As such, they fail to establish the required sustained national or international acclaim required by the Act at section 203(b)(1)(A)(i). The petitioner submitted no evidence of published material about her as a volleyball coach.

In response to the RFE and again on appeal, counsel asserts:

When [the petitioner] took her position with the California [State] University at Bakersfield the schools volleyball team was a Division II team. Due to [the petitioner's] hard work and honest commitment the team has moved from a Division II to a Division I team that is determined by the NCAA. . . .

In the field of athletics it is very rare for a coach who has only coached for less than 10 years to be given such an award and such recognition as it not only is highly regarded in the field but greatly affects the players' future careers as well as the schools reputation. Wherefore we submit that despite the fact that [the petitioner] has not yet received any media attention as a coach, she has established proper and required foundation that she is an athlete of distinguished merit and success, an athlete whose successes were documented almost daily in the newspapers and magazines of the cities and states whose teams she represented.

Counsel then requests that this evidence be considered under 8 C.F.R. § 204.5(h)(4), which provides: "If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." The regulatory language precludes the consideration of comparable evidence in this case, as there is

no indication that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation. An inability to meet a criterion is not necessarily evidence that the criterion does not apply to the petitioner's occupation, on in this case, specifically to the petitioner.

The petitioner has failed to establish that she meets this criterion, either as a player or as a coach.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner claims to meet this criterion based on her job as a coach. In her letter submitted with the petition, counsel stated, "There can be no argument that an essential element of any effective coach's job is having the ability to constantly judge and evaluate the performance of their teams." In her letter accompanying the petitioner's response to the RFE, counsel further stated that the petitioner also evaluated the performance of other teams, and that an essential part of her duties is recruitment which also includes judgment of the prospect as an athlete and professional. Counsel repeats these statements on appeal.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." C.F.R. § 204.5(h)(2). Duties or activities which nominally fall under a given regulatory criterion at 8 C.F.R. § 204.5(h)(3) do not demonstrate national or international acclaim if they are inherent in the occupation itself. In this instance, the petitioner's job responsibilities as a coach required her to review the work and performance of those that she coached. We find the routine duties performed by the petitioner insufficient to meet this criterion and not commensurate with this highly restrictive criterion.

The petitioner has failed to establish that she meets this criterion either as an athlete or as a coach.

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

In her letter submitted with the petition, counsel stated:

As part of an ongoing professional development process through which she deepens the techniques, skills, instructional methods, and assessment strategies and considering that approaches to coaching embraced by universities and other professional teams are quite varied, as are the challenges, there can be no doubt that the resources utilized by the [petitioner] not only make it possible to win prestigious tournaments and competitions, but also greatly contribute to the sport.

Nothing in counsel's statement, however, points to any contribution of major significance that the petitioner has contributed to her field. Counsel references no evidence that would support any conclusion that the petitioner has made any major or significant contributions to her field of endeavor.

In response to the RFE, counsel stated, "Coaches' contribution to their teams enhances their teams professionally in terms of success and being effective on the court." Counsel further stated that the petitioner led her volleyball team from a Division II team to Division I, and that this was a "contribution [of] major significance for Cal State Bakersfield." Counsel reiterates this argument on appeal and asserts that "it is not required that petitioner be able to show some original work or techniques which has been adopted by others. Other evidence of original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field may also be established." Nonetheless, a plain reading of the regulation at 8 C.F.R. § 204.5(h)(3)(v) reveals that the petitioner must establish that she has impacted her field in a significant manner. The petitioner submitted no documentation that the elevation of the University of California Bakersfield to a Division I level competitor is a contribution of major significance to the petitioner's field of endeavor.

The petitioner has failed to establish that she meets this criterion.

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

The petitioner did not initially claim to meet this criterion. However, in response to the RFE and again on appeal, counsel stated that the petitioner's "performance as an athlete [has] been displayed in all major venues of the field" and that the teams she coached "have played in various competitions and sporting events." Counsel stated that this evidence should be considered as "comparable evidence."

The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to athletes or volleyball coaches such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The petitioner and her students' participation in various competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his or her work in the sense of competing in front of an audience. Accordingly, the petitioner has not established that she meets this criterion.

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

To meet this criterion, the petitioner must show that she performed a leading or critical role for an organization or establishment and that the organization or establishment has a distinguished reputation.

The petitioner claimed to meet this criterion as a “key player” for the Southern Idaho Golden Eagles team, “which is well recognized among Volleyball players as a six time winner of National Volleyball Championship,” as “sole recipient of Diploma of Honor by the International Volleyball Federation,” and as an assistant coach “for some of the best teams of prestigious universities.”

The record reflects that the petitioner was an integral member of the CSI Golden Eagles volleyball team in 1998 and 1999, receiving Most Valuable Player (MVP) honors in several tournaments, being named to all-tournament teams, and winning AVCA National Player of the Year awards. The evidence sufficiently establishes that the petitioner served in a leading or critical role for the team. The record also reflects that in 1999, the Golden Eagles had won six straight national titles. Accordingly, as of the date the petitioner played for the team, the CSI volleyball team enjoyed a distinguished reputation.

The record contains a copy of a “Diploma of Honour” presented to the petitioner by the Federation Internationale de Volley-Ball at the “II Volleyball Youth World Championship” in Portugal from December 7 to December 15, 1991. Counsel asserts that the petitioner was the “sole recipient” of this diploma, which was “given to the most promising young individuals in their chosen field of expertise.” However, nothing in the record supports counsel’s assertion. The petitioner submitted no documentation detailing the basis of her receipt of this diploma. Counsel’s unsupported assertions are not evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. Additionally, the diploma indicates that it was for a second place ranking for the petitioner and does not clearly evidence that the petitioner was the “sole recipient” of this diploma.

The petitioner also claims to meet this criterion based on her work as an assistant coach with “prestigious universities such as the University of Texas.” The record indicates that the petitioner served as the assistant women’s volleyball coach and associate head women’s volleyball coach at the University of Texas-Pan American (UTPA). The petitioner submitted no documentation to establish that the UTPA or its women’s volleyball team is an establishment or organization with a distinguished reputation. Further, the petitioner submitted no documentation to establish that her position as an assistant or associate coach was in a lead or critical role.

The petitioner currently serves as assistant coach with the California State University at Bakersfield (Cal State Bakersfield). She stated that under her guidance, the team moved from a Division II to a Division I team and that the team is “one of the top volleyball teams” in the NCAA. However, the petitioner submits no documentation that Cal State Bakersfield is an

establishment with a distinguished reputation or that her position with the volleyball team is in a lead or critical role. The evidence of record does not establish the women's volleyball team as "one of the top" teams in the NCAA.

The petitioner submitted several letters of recommendation outlining her skills and talent as a volleyball player and coach. While the writers praise her relationship with those she coached and stated that she helped to improve players' performance, none indicate that the petitioner's role at either UTPA or Cal State Bakersfield was in a leading or critical role. For example, in an April 27, 2008 letter, [REDACTED] the head volleyball coach at Cal State Bakersfield, stated:

[The petitioner] has great judgment when it comes to evaluating recruits as well as her interpersonal skills with out student-athletes. Her experiences as an elite volleyball player in the world have served her well. Even though I have only known [her] for about one year, I trust and seek out her opinion on every matter involving our program. I have not none that with any other assistant coach in my 24 years as a head coach. She is a special person.

As a University, we are transitioning from NCAA Division II institution to a NCAA Division I institution. [The petitioner's] experience as an elite volleyball player, her experience as a NCAA athlete and her six years as an NCAA assistant coach are invaluable to our transition process.

While [REDACTED] indicates that he consults with the petitioner and that her experience is assisting the team in their division transition, he does not indicate that her experience, while "invaluable," is critical to the process or distinguishes her role from that of other assistant coaches or the head coach.

While the petitioner may have played in a lead role for a team with a distinguished reputation in 1998 and 1999, she submitted no documentation that she has performed in a leading or critical role for any organization since that time. That the petitioner has not performed in a leading or critical role since 1999 is not consistent with the requirement of the Act at section 203(b)(1)(A)(i), which requires the alien to demonstrate sustained national or international acclaim. More importantly, the record fails to establish the petitioner's leading or critical role as a coach.

The petitioner has failed to establish that she meets this criterion.

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

The petitioner did not initially claim to meet this criterion. However, in response to the RFE, the petitioner submitted an April 8, 2008 letter from Cal State Bakersfield Office of Human Resources confirming that the petitioner has been employed by the school as an assistant coach since April 4, 2007 with an annual salary of \$40,868. Counsel asserted that the median annual

compensation for coaches, according to the U.S. Department of Labor's Occupational Outlook Handbook, is \$26,950. However, the petitioner failed to submit the documentation from the Department of Labor. Further, the petitioner did not provide any documentation of the salary earned by those above the median salary or that specifically relates to the salaries earned by other college assistant volleyball coaches. Accordingly, the record does not demonstrate that the petitioner's salary is significantly high relative to all others in her field.

The petitioner has failed to establish that she meets this criterion either as an athlete or as a coach.

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 her field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished herself either as a player or as a coach to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The 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.