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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:

SRC 09 063 52629

Office: TEXAS SERVICE CENTER Date:

APR 14 2010

IN RE:

Petitioner:

Beneficiary:

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 Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on July 25, 2009, and is now before the Administrative Appeals Office 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 as a tennis coach. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of her sustained national or international acclaim.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, our assessment of the evidentiary criteria as well as the merits evaluation of the evidence submitted, which addresses the significance of the evidence submitted under the necessary three criteria, leads us to conclude that the petitioner has not demonstrated the necessary national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the basic eligibility requirements.

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

We note here that at the time of the original filing of the petition, as well as at the time of the filing of the appeal, counsel sought classification for the petitioner as a “Coach for Top Juniors Tennis Players.” However, we will not narrow the petitioner’s field to coaching top junior tennis players, rather than to the field of coaching tennis players as a whole.

In addition, aside from her activities as a tennis coach, the record includes evidence showing that the petitioner competed in professional tennis tournaments until 2004. In fact, the petitioner submitted an article, [REDACTED]

[REDACTED] from [REDACTED] in which the petitioner publicized her retirement at age 30. Subsequent to 2004, there is no evidence indicating that the petitioner has remained active as a tennis competitor at the national or international level. The statute and regulations require the petitioner’s national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a tennis

competitor and an instructor certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and tennis instruction 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. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a tennis competitor subsequent to 2004 or that she intends to compete here in the United States. Further, the evidence is clear that the petitioner intends to work as a tennis instructor.

Further, we note that the petitioner was last admitted to the United States on an O-1 nonimmigrant visa petition on May 12, 2004. However, while USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

## I. Law

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* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten criteria.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

(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;

- (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;
- (iv) 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 specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's approach rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at \*6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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<sup>1</sup> Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2), and “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered “sustained national or international acclaim” are eligible for an “extraordinary ability” visa. 8 U.S.C. § 1153(b)(1)(A)(i).

*Id.* at \*3.

Thus, ██████ sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in ██████. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

## II. Analysis

### A. Evidentiary Criteria

This petition, filed on December 22, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a tennis coach. At the time of filing, the petitioner was working as an assistant coach with the Rollins College Women’s Tennis Teach and as a tennis professional at E-Tennis, Inc. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<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.*

On appeal, counsel argues:

In this case, the assigned USCIS TSC adjudicator should have recognized that as a coach, [the petitioner] is no longer in an occupation in which individual awards of the type issued to players are issue to her. As a basic matter to the concept of rankings in any individual competitive sport, the ranking itself is issued for the player competitor. Like an award, it is not issued for their coach who, by definition, is not directly in the competition but who is directing the efforts of those competing.

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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.

We are not persuaded by counsel's argument that in the field of tennis, coaches are unable to receive coaching awards or prizes, and tennis awards and prizes are reserved only for the individual competitors. In fact, the petitioner submitted documentation reflecting that [REDACTED] University of Tennessee, won the 2001 Wilson/ITA NCAA Division I National Coach of the Year for Women; [REDACTED] Rollins College, won the 2001 Wilson/Intercollegiate Tennis Association (ITA) NCAA Division II National Coach of the Year for Women; and [REDACTED] Pomona-Pitzer Colleges, won the 2001 Wilson/ITA NCAA Division III National Coach of the Year for Women. Contrary to counsel's claim, as evidenced here, coaching awards for tennis do exist in this field.

Notwithstanding, we will consider any awards or prizes won by tennis competitors who were coached by the petitioner as comparable evidence pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). The petitioner submitted declarations from the following individuals regarding their rankings from the United States Tennis Association (USTA):

1. [REDACTED] claimed that her current rank was 381;
2. [REDACTED] claimed that her rank improved from 154 to 63;
3. [REDACTED] claimed that his rank improved from being unranked to 1000;
4. [REDACTED] claimed that her rank improved from being unranked to 644;
5. [REDACTED] claimed that her rank improved from unranked to 903; and
6. [REDACTED] claimed that his rank improved from 1081 to 797.

In addition, the petitioner submitted USTA rankings from [REDACTED] reflecting:

1. [REDACTED] - 366;
2. [REDACTED] - 130;
3. [REDACTED] - 682;
4. [REDACTED] - 500;
5. [REDACTED] 809; and
6. [REDACTED] - 505.

Generally, tennis competitors' rankings are not evidence of nationally or internationally recognized awards or prizes. A tennis player is not awarded a ranking based on placement at a specific competition or tournament. Instead, the tennis player's ranking is based on the collective placement of finishes at competitions or tournaments over a period time. We find that a tennis player's finishes (i.e., first, second, third) in a tournament to be a more determinative finding than the tennis player's ranking as it relates to this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." In this case, the petitioner failed to submit any documentation reflecting that the petitioner, or any of her players whom she has coached, has received any nationally or internationally recognized prizes or awards for excellence. While the documentation submitted by petitioner suggests that her players have improved in their USTA rankings, these rankings do not

meet the plain language of the regulation requiring the receipt of lesser nationally or internationally recognized prizes or awards. Even if we would accept the rankings as evidence of awards and prizes, which we clearly do not, the regulation requires that these awards and prizes be for *excellence*. We are not convinced that the highest ranked player, at 130, reflects an award for excellence in the field of tennis.

Accordingly, the petitioner failed to establish that she meets this criterion.

*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.*

On appeal, the petitioner did not address this criterion or contest the decision of the director. At the time of the original filing of the petition, the petitioner submitted the following documentation:

1. Three certificates from the Professional Tennis Registry (PTR) reflecting that the petitioner “has completed all tests and examinations and qualifies for PTR certification of professional” and a member in good standing from 2003 – 2010;
2. 2008 PTR Membership Handbook;
3. PTR Press Release announcing that the certification of the petitioner as a professional;
4. *Certificate of Attendance from PTR for the petitioner's attendance at the Teaching Essentials Certification;*
5. Two certificates along with two letters from the United States Racquet Stringers Association (USRSA) recognizing the petitioner as a Master Racquet Technician (MRT); and
6. USRSA News Release announcing that the petitioner is an MRT.

Regarding PTR, a review of the PTR Membership Handbook reflects the highlighted points below:

In order to become certified by PTR, you must successfully complete a written examination and four on-court examinations.

The written exam tests your knowledge of a standard method of instructing and “[t]he on-court tests examine your ability to demonstrate all the strokes, as well as your ability to conduct a class in a real teaching situation.

The highest rating, that of PROFESSIONAL, is achieved when the applicant scores a PROFESSIONAL rating on all portions of the certification test.

To become a full PTR member, there is a one time non-refundable application fee.

Regarding USRSA, the documentation submitted by the petitioner reflects that in order to receive the title of MRT, you must pass each portion of the MRT exam consisting of written, racquet evaluation, string removal/grommet replacement, handle sizing and gripping, and stringing.

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, 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.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.” However, the requirements listed above for membership with PRT or USRSA, which includes passing qualifying exams, are not outstanding achievements. Other than meeting the minimum qualifying standards, outstanding achievement is not a prerequisite for membership in PRT or USRSA. Furthermore, the petitioner has failed to establish how PRT’s or USRSA’s membership requirements reflect outstanding achievement as judged by national or international experts in the field as an essential condition for admission to PRT or USRSA.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

While the petitioner never claimed eligibility for this criterion at the time of the original filing of the petition, a review of the director’s decision reflects that he found that the petitioner’s submission of articles failed to establish eligibility for this criterion. We note that the petitioner did not address or contest the decision of the director on appeal.

The petitioner submitted several articles relating to the petitioner’s participation as a player in various tournaments. However, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material “relating to the alien’s work in the field for which classification is

sought.” In this case, the articles submitted by the petitioner relate to her competing in tennis tournaments as a player and not as her current field of coaching.

Furthermore, the petitioner also submitted three articles regarding the Rollins College Women’s Tennis Team, as well as three articles mentioning [REDACTED]. The regulation for this criterion requires that the published material be “about” the petitioner relating to her work. However, these articles are not about the petitioner but about tennis players from Rollins College and [REDACTED]. In fact, none of these articles mention the petitioner. The petitioner failed to demonstrate published material about her in professional or major trade publications or other major media, relating to her coaching in tennis.

Accordingly, the petitioner failed to establish that she meets this criterion.

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

On appeal, counsel states:

In summary of what has already been provided in detail above, [the petitioner’s] efforts as a tennis coach have produced remarkable results in the performance of not only one, but numerous junior’s level tennis players. Through individual coaching utilizing the expertise, skills and experience that only a true, very accomplished, and very competent tennis professional can possess, the [petitioner] has transformed each of the noted players into outstanding young tennis stars whose rise in the world of tennis is nothing short of extraordinary.

As in every other competitive sport, the level of interest is only as strong as the level of performance. The level of interest, in turn and like in everything else, is what ultimately determines the level of financial commitment and support that is given to the sport. And the level of financial commitment and support is what ultimately determines whether the sport is propagated and flourishes, or not.

By producing players whose performances has received considerable notice in the tennis world, the [petitioner] has significantly contributed to the issue at the very forefront of the tennis world.

In addition, counsel on appeal also submitted an article, *Tennis Growth Skyrockets 43 Percent!*, from [www.prnewswire.com](http://www.prnewswire.com) which stated:

According to data just released by the Sporting Goods Manufacturers Association (SGMA), Tennis is the fastest growing sport in America among individual traditional sports with an increase in participation of 43% from 2000 to 2008. According to the SGMA, tennis was one of only six sports to experience participation growth exceeding 40% from 2000 through 2008. Tennis is well

ahead of other traditional sports like baseball, ice hockey, gymnastics and football, all of which suffered a decline in participation during the past eight years. In the last year alone (through December 31, 2008), Tennis experienced a 9.6% growth in participation.

A review of the reference letters submitted on the petitioner's behalf as well as the previously mentioned declarations from the six junior tennis players do not provide any specific examples to demonstrate how the petitioner's contributions were original and how they significantly impacted her field. The declarations from the junior tennis players state in verbatim:

[The petitioner's] tennis instruction involves a very specific methodology that, based on my knowledge of the game, she was able to develop based on her proven abilities as a world class tennis player, her very precise understanding of the fundamentals and subtleties of the game, and her obvious and unique ability to translate her experience and knowledge into a proven teaching technique.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” While the declarations from the six junior level tennis players vaguely describe the petitioner’s “methodology,” they fail to specifically identify her original athletic contributions. We are simply not persuaded that the petitioner’s “very precise understanding of the fundamentals and subtleties of the game” rises to the level of original athletic contributions. Moreover, any tennis coach, or any athletic coach for that matter, who establishes the knowledge and essentials of a sport cannot be said to automatically make original contributions. The regulation does not merely require an alien to make contributions to the field but requires those contributions to be original. In this case, the petitioner failed to demonstrate that she has made original contributions of major significance to tennis.

Notwithstanding the above, while the six junior tennis players claim that their rankings have all improved under the tutelage of the petitioner, the record does not reflect, as indicated by counsel, that the improvement in the rankings of the petitioner’s players had a major impact to the field of tennis as whole. Rather, any contributions made by the petitioner reflect contributions restricted to the six junior tennis players themselves. Counsel failed to correlate the improvement in the rankings of these junior tennis players to the field of tennis as a whole. Moreover, counsel failed to establish that the petitioner has significantly impacted the growth of tennis in the United States, as suggested in counsel’s brief and the submission of the article from [www.prnewswire.com](http://www.prnewswire.com), and not just tutored a few junior level tennis players.

Furthermore, the petitioner submitted a letter, dated October 29, 2008, from USTA congratulating the petitioner for her selection to participate in the USTA High Performance Coaching Program in Boca Raton, Florida from [REDACTED]. However, the petition was filed on December 22, 2008. While the petitioner was selected to participate prior to the filing of the petition, the actual event was scheduled after the filing of the petition. Eligibility must be established at the time of filing. Therefore, we will not consider this item as evidence to establish

the petitioner's eligibility. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). 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. Notwithstanding, the petitioner failed to submit any evidence establishing that she attended and completed this program. Furthermore, in any event, while the successful completion of this program may provide job skills to be a better coach, the petitioner failed to demonstrate how her completion of this program establishes original athletic contributions of a major significance in the field.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed, or widely accepted throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

Accordingly, the petitioner failed to establish 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.*

A review of the director's decision reflects that he found that the petitioner failed to submit any evidence for this criterion. However, a review of the record reflects that the petitioner claimed eligibility for this criterion based on her position as an assistant coach at Rollins College and submitted letters of recommendation. [REDACTED] Rollins College, stated:

[The petitioner] has achieved a level of demonstrated performance or standing as a tennis coach that, in my opinion, evidences that she is a coach of extraordinary talent.

\* \* \*

It was because of [the petitioner's] demonstrated discipline, drive and passion for the game that I asked her to be my assistant two years ago. She has a tremendous understanding of the game and is highly respected by the Central Florida tennis community.

Moreover, [the petitioner] has been my assistant coach for the past two years. During that time, she has instilled confidence in the players and raised the bar of excellence. This past season she effectively assisted our program in attaining a best ever win-loss record of 23-3, in reaching the 14<sup>th</sup> consecutive appearance in

the NCAA Championships and the selection of our #1 player as an All-American in singles.

stated:

[The petitioner's] reputation in Central Florida preceeds [sic] her and she has acquired a lot of support in our community. Her knowledge and inarguable talent as a coach and player make her an asset to Central Florida.

University of Arkansas, stated:

I would like to recommend [the petitioner] for any tennis related coaching position. In my opinion she is one of the best, if not the best, personal tennis coaches in the state of Florida. [The petitioner] is a great player but better coach. I have known her for the past eight years and have seen her at work and she is always very professional and ethical at what she does. I have seen her on-court skills as well as her administrative skills. I am impressed with her knowledge of the game of tennis and how she translates that knowledge to all her students. She can easily handle groups as well as individuals – young or old.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.” At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected her. While the letter from credited the petitioner in assisting the Rollins College’s tennis program in attaining the best win-loss record in the school’s history and reaching the NCAA Championships for the 14<sup>th</sup> consecutive time, failed to indicate that the petitioner performed in a leading or critical role for the tennis program. In fact, failed to provide any examples detailing the petitioner’s job responsibilities that directly led to the success or standing of the tennis team. The petitioner has failed to establish how her position as assistant coach differentiates her from others at Rollins such as the president, athletic director, and even as head coach, so as to establish that she performed a leading or critical role as an assistant coach. Further, while the letters from and highly praise the petitioner for her talent as a former player and current coach, the letters do not demonstrate that she performed in a leading or critical role.

Notwithstanding the above, in order to establish that Rollins College Women’s Tennis has a “distinguished reputation,” the petitioner submitted an article from Rollins College’s website citing a U.S. News and World Report article ranking Rollins College as number one among 121 southern master’s-level universities. However, the petitioner failed to submit any documentation establishing that the women’s tennis program has a distinguished reputation. As the petitioner is claiming eligibility as an assistant coach for the women’s tennis program at Rollins College, it is the burden of the petitioner to specifically establish the distinguished reputation of the women’s tennis program and not the distinguished reputation of Rollins College as a whole. While having the best-win loss record in the history of the college and reaching the NCAA Championships 14

times in a row are admirable accomplishments, they do not, however, demonstrate that Rollins College Women's Tennis has a distinguished reputation.

Accordingly, the petitioner has not established 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.*

A review of the director's decision reflects that he found that the petitioner failed to submit any evidence for this criterion. However, a review of the record reflects that the petitioner claimed eligibility for this criterion based on her salary and submitted various documents.

At the time of the original filing of the petition, counsel claimed:

In recognition of [the petitioner's] proven ability, performance and potential as a Tennis Coach, the remuneration that she receives for her services is significantly higher than that received by the majority of those in her field.

The petitioner submitted a copy of her Form W-2 for 2006 reflecting total wages of \$53,911, and a copy of her Form W-2 for 2007 reflecting total wages of \$53,951. In addition, the petitioner submitted documentation from the U.S. Department of Labor (DOL), Bureau of Labor Statistics (BLS) reflecting that the median income for coaches and scouts in 2007 is \$27,840, with the 90<sup>th</sup> percentile earning \$61,320.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." A review of the petitioner's Form W-2s reflects that she was employed by [REDACTED]. In addition, according to the petitioner's USTA High Performance Coaching Program 2009, Application for Candidates, the petitioner listed her job title as "tennis professional" and job duties as "player development." The documentation submitted by the petitioner fails to reflect that her income derived from [REDACTED] was based on her occupation as a tennis professional in player development. The record does not reflect that she earned a salary from [REDACTED] as a coach. As the regulation requires a comparison of salary "in relation to others in the field," the petitioner's salary as a tennis professional cannot be used as a comparison to the salary of coaches.

Notwithstanding the above, while BLS reflects a median annual wage of \$27,840, this wage reflects the median for all coaches and scouts. However, according to BLS, the mean wage for coaches at colleges, universities, and professional schools reflect an annual mean wage of \$46,210. Even if we would accept the petitioner's salary as a tennis professional, which we clearly do not, we do not find that her salary of approximately \$54,000 from [REDACTED] is high when compared to the mean wage statistics from BLS. We note that even though the petitioner claims to have been employed by Rollins College since August 2007, the petitioner failed to submit any documentation reflecting her salary or other remuneration for services from Rollins College. There is no evidence establishing that the petitioner has earned a level of compensation that places her among the highest paid coaches in tennis.

Accordingly, the petitioner has not established that she meets this criterion.

***B. Final Merits Determination***

Thus, in accordance with the [REDACTED] opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 2010 WL 725317 at \*3. In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

While the petitioner submitted documentation reflecting her involvement with junior level tennis players, the petitioner has not demonstrated a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). We are not persuaded that the petitioner’s tutelage of young tennis players, such as boys and girls aging from 12 to 16 years of age, demonstrates 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). 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 coach, such as the petitioner who coaches at the college level, should necessarily qualify for an extraordinary ability employment-based immigrant visa compared to a tennis coach at the professional level. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be

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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.

reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

In addition, the petitioner claims eligibility for two of the criteria, original contributions of major significance (8 C.F.R. § 204.5(h)(3)(v)) and leading or critical role (8 C.F.R. § 204.5(h)(3)(viii)), based almost entirely of recommendation letters, which are not sufficient to meet this highly restrictive classification. We note that the letters were all from individuals who have worked or interacted with the petitioner. We further note that as these letters refer to the petitioner’s limited regional reputation, they fail to show the requisite national recognition and acclaim. For instance, [REDACTED] and [REDACTED] based their opinions on the petitioner’s local reputation in “Orlando,” “Central Florida,” and the “Southeast.” While such letters can provide important details about the petitioner’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

Finally, we cannot ignore that the statute requires the petitioner to submit “extensive documentation” of sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). The petitioner failed to submit evidence demonstrating that she “is one of that small percentage who have risen to the very top of the field.”

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 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.

### III. Conclusion

Review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. 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 petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.