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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

B<sub>2</sub>

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **AUG 12 2010**

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)

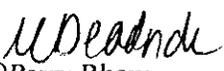
ON BEHALF OF PETITIONER:

[REDACTED]

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “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 determined that the petitioner had not submitted clear evidence that she would continue to work in her area of expertise in the United States. The director also determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act 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 categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3) and that she submitted comparable evidence of her extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). We acknowledge that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The “preponderance of the evidence” standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the applicant is required to submit that evidence. *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)(2), (3), and (5). In this case, the documentation submitted by the petitioner failed to demonstrate by a preponderance of the evidence that she has achieved sustained national or international acclaim, that she is one of the small percentage who has risen to the very top of the field of endeavor, and that she will continue to work in her area of expertise in the United States. For the reasons discussed below, we uphold the director’s decision.

#### **I. Intent to Continue to Work in the Area of Expertise in the United States**

The statute and regulations require that the petitioner seeks to continue work in her area of expertise in the United States. *See* section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). In Part 5 of Form I-140, Immigrant Petition for Alien Worker, filed on October 19, 2006, the petitioner listed her occupation as “Female Soccer Coach.” In addition, at the time of the filing of her petition, the petitioner submitted a signed statement dated October 4, 2006 asserting that she “has sustained national and international acclaim and her achievements have been recognized in

the field of Women's Soccer and she is one of a small percentage of Women Soccer Players and Coaches that has risen to the very top of her field."

In his decision, the director noted that the "Service had requested additional evidence including letters from prospective employers; prearranged commitments such as contracts; or a statement detailing plans on how she intends to continue work in the U.S.," that would confirm the petitioner's desire to enter the United States to continue work in the sport of soccer. In response to the director's request for evidence, the petitioner provided a March 26, 2007 letter from the Waldorf School of Orange County indicating the petitioner would be employed there as a "Games teacher" for the 2007-2008 school year. The director stated that the submitted documentation did "not adequately demonstrate how the petitioner will continue work in the field of endeavor." As such, the director found that the record failed to establish the petitioner would continue to work in her area of expertise, and that the petition must be denied.

On appeal, the petitioner submits evidence that an Application for Permanent Employment Certification has been filed in her behalf with the U.S. Department of Labor, which identifies her job title as "Teacher, Movement and Games" and lists her job duties as follows: "Teaches age appropriate movement and games. Instructs spatial dynamics. Also, teaches body geography, nature, imitation and circle games. Monitors and reports students' progress and development." Thus, the record indicates that the petitioner intends to work as a Movement and Games teacher at the Waldorf School of Orange County. However, it does not adequately support that she will continue to work as a soccer player or soccer coach in the United States. Moreover, even though the petitioner evidenced her employment as a teacher in the United States, her work as a Movement and Games teacher at the Waldorf School has not been shown to specifically relate to her "extraordinary ability" in soccer as either a soccer player and/or a coach/teacher of soccer.<sup>1</sup> Accordingly, we concur with the director's finding that the petitioner has not submitted clear evidence that she will continue to work in her area of expertise in the United States. 8 C.F.R. § 204.5(h)(5).

## II. Law

Section 203(b) of the Act states, in pertinent part, that:

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<sup>1</sup> 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, [REDACTED] 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.

(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 categories of evidence.

(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, *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> Cir. 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>2</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 evaluation 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 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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).

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<sup>2</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).

*Id.* at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. 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 Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

### III. Analysis

#### A. Major, internationally recognized award

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, specifically a major, internationally recognized award. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner submitted the following as evidence of her one-time achievement:

1. A brochure for The Portsmouth International Soccer Cup in 1987; The petitioner's initial statement, dated October 4, 2006 alleged that she participated in the tournament and placed third.
2. A certificate awarded to the petitioner for Runners Up at the John F. Kennedy Field Hockey Tournament in [REDACTED] and [REDACTED]
3. A letter from [REDACTED] dated September 13, 1996 which thanked the petitioner for her work at a summer school and indicated that a check for the petitioner's expenses was enclosed. The petitioner's brief indicated that such evidence was support that the petitioner is a "member of the Top Clubs in England Ranked Top Five in the World."

The petitioner claims that she won third place in the 1987 International Soccer Cup as a member of the British Women's National Soccer Team. However, the brochure (item 1) that the petitioner provided to support this claim failed to confirm the team's win as well as the petitioner's participation on the team. Nonetheless, even if the petitioner proved her participation on the team and the team's third place award, she failed to establish that the award was a major, internationally recognized award.

The petitioner also offered a certificate awarded to her for Runners Up at the John F. Kennedy Field Hockey Tournament in [REDACTED] (item 2), as evidence of a one-time achievement. However, the petitioner failed to provide evidence to demonstrate the significance of the competition. Further, we agree with the director that participating on a team that placed as a runner up is not indicative of a major, internationally recognized award.

Lastly, the petitioner indicated item 3, a letter from Hockeywise thanking her for work during a summer school, supported her claim that she was a "member of the Top Clubs in England Ranked Top Five in the World." However, this letter failed to support this claim. In addition, no other evidence was provided to substantiate this claim either. Simply 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In this case, we agree with the director's conclusion that none of the claimed awards constitute a major, internationally recognized award, and that the petitioner's "participation on various soccer and field hockey teams as a competitor does not demonstrate acclaim as a coach." In light of the above, the petitioner failed to show establish evidence of a qualifying one-time achievement.

### ***B. Evidentiary Criteria***

The petitioner has submitted evidence pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).<sup>3</sup>

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

To fulfill this criterion, the petitioner initially submitted the following evidence:

1. The evidence discussed above related to a one-time achievement;
2. A certificate from the Queens Park Rangers (QPR) congratulating various women's soccer teams including the Solent Women, dated January 24, 1987, and a page that says Congratulations from QPR and signatures on it;

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<sup>3</sup> The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

3. Information from The Football Association entitled, "Ladies F.A. Football Leaders Award 1996," which provides information on a course offered for all "lady managers, youth leaders and coaches" and which indicates the petitioner is "staff" for the course;
4. One page with photocopies of what appears to be the back and front of three metals, one of them appears to be a keychain and has been engraved, "Laguna Beach, Soccer Club-1999, Annette Parry," one metal is engraved, "Premier Cup, 1999" and another says "Nitemares before Christmas Classic 2000," both of the latter metals say "Champion" on the other side.

As previously noted, the petitioner claims that she won third place in the 1987 International Soccer Cup as a member of the British Women's National Soccer Team. However, she did not provide any evidence to support this claim. The brochure that the petitioner provided failed to confirm the team's win as well as the petitioner's participation on the team. Nonetheless, even if the petitioner proved her participation on the team and the team's third place award, she failed to establish that the award was a lesser nationally or internationally recognized prize or award. A certificate awarded to the petitioner for Runners Up at the John F. Kennedy Field Hockey Tournament in 1982 was submitted by the petitioner as well. However, the certificate failed to demonstrate the significance of the competition or that a Runners Up placement equates to a nationally or internationally recognized prize or award. The petitioner also provided a letter from [REDACTED], which was submitted to support her claim that she was a "member of the Top Clubs in England Ranked Top Five in the World." However, this letter failed to support this claim. As aforementioned, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165.

Item 2 was offered to evidence the petitioner's participation on a national women's soccer team in England. However, participation on a team does not equate to receipt of a national or international prize or award. Further, the awards the petitioner claimed satisfied a one-time achievement, also fail to satisfy this criterion. The award for third place in 1987 was not provided and the petitioner failed to show any of the awards constituted a lesser nationally or internationally recognized prize or award. In addition, all of these awards relate to the petitioner's career as a professional soccer, which occurred decades ago, and this petition is being sought for her alleged extraordinary ability as a coach.

Counsel indicates this evidence in items 3 and 4 demonstrates that the petitioner has coached winning teams. However, item 2 is information regarding a course for which the petitioner teaches which is "open to all women with an interest in Association Football." Item 4 confirms that she was the coach of a winning team, Laguna Beach, in 1999, but the other medals do not indicate that she is the coach. Nonetheless, the petitioner failed to provide any evidence to document the significance of the awards so as to establish their national or international recognition.

In summation, the director found there was insufficient evidence to meet this criterion, and we agree. The record fails to demonstrate that any prizes won by the petitioner constitute nationally or internationally recognized prizes for excellence in her field, such as supporting evidence showing the prestige associated with receiving the awards. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally

recognized in the field of endeavor and it is her burden to establish every element of this criterion. Moreover, the record even lacks general information about the competitions (such as the award criteria or the percentage of entrants who earned some type of recognition). There was also no evidence regarding the types of awards presented at all these competitions, how many awards were presented and whether the petitioner won the highest award. For example, the petitioner's team medals indicated that they were "champions" in different competitions. If each competitor won an award at the competition or more important awards were presented at these competitions, these prizes would be insufficient to fulfill this requirement. Additionally, many of the competitions appear to be regional to Southern California.

In light of the above, the petitioner has not established 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.*

In order to demonstrate that membership in an association meets this criteria, 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 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 petitioner initially submitted

1. A certificate from The Football Association indicating that the petitioner has attended their course for "those who are, or intend to be, concerned with teaching children the techniques and fundamentals of Association Football," which was undated;
2. A certificate from The Football Association indicating that the petitioner attended a "Preliminary Coaching Course" at Plymouth University in May of 1995;
3. A letter from The Football Association's Devon County Coach, [REDACTED] dated March 4, 1999, indicating that the petitioner is "a qualified Football Association Coach and one of the few in her profession to attain the FA Preliminary Coaching Badge. This is a prestigious and internationally recognized Football Association, which admits as members only those individuals who have risen to the top of the field, based on their outstanding achievements;"
4. A letter from [REDACTED] of The F.A. Coaches Association, dated March 2, 1999, which states that the petitioner is a "valuable" member of the Woman's Football Association, and also indicated that she is a "leading figure of the Worldwide Football Association," which "admits as members only those individuals who have risen to the top of their field of endeavor based on their outstanding achievements;"
5. A letter from [REDACTED] Head Tutor English Hockey Association of The College of St. Mark & St. John, dated March 1, 1999 was provided to confirm her membership in the

English Hockey Association, according to the petitioner's initial brief. However, the letter did not specifically indicate whether the petitioner was a member of the English Hockey Association. Instead, Mr. [REDACTED] stated that he had the "honour of playing hockey in a team captained by [REDACTED] (the petitioner). She (the petitioner) is truly an inspirational captain who sets an exemplary standard for every member of the team;"

6. A certificate from the California Youth Soccer Association (CYSA) – South indicating that the petitioner has attended and successfully completed a "Course for Soccer Coaching" in 1999;
7. A certificate from the CYSA – South indicating that the petitioner has attended and successfully completed a "Course for Soccer Coaching" in 2001;
8. A copy of a "Risk Management Badge" from CYSA – South which indicates that the petitioner is a coach, license level E, and that the badge expires on December 6, 2006;
9. A webpage from [www.coastsoccer.com](http://www.coastsoccer.com) indicating that [www.coachsoccer.com](http://www.coachsoccer.com) is a "communications center of the Coast Soccer League" and that the league has 26,000 players who participate in it;
10. A letter from [REDACTED] of Amateur Athletic Foundation (AAF), dated September 5, 2001, thanking the petitioner (however, the letter was addressed to Dear Coaching Instructor) for attending the soccer coaching program and also requesting various documents for them to consider employing the petitioner as an instructor;
11. A job description for the AAF/CIF instructors;
12. A schedule of the 2001 AAF/CIF Basic Soccer Clinic Schedule;
13. An AYSO Schedule for an Intermediate Clinic and a list of "Saturday Skills;"
14. A certificate from the YMCA indicating that the petitioner has successfully completed the course requirements for "YMCA Super Sports Director," dated May 7, 2001;
15. A certificate from the YMCA indicating that the petitioner has successfully completed the course requirements for "YMCA Day Camp Director," dated April 14, 2001;
16. A YMCA bulletin listing the petitioner as a Program Director for Community Programs; and
17. A Certificate of Appreciation from the YMCA presented to the petitioner for 1 year of service.

The petitioner also provided internet pages from The Football Association's website with some information regarding the organization and about football (soccer) in general. However, the website pages did not include any details regarding its membership requirements. The petitioner also provided a certificate of membership, dated July 22, 1994, from The Institute of Leisure and Amenity Management, and a certificate of professional development, dated October 31, 1994, for her completion of a leisure and recreation management course in response to the RFE.

Items 1, 2, 6, 7, 14 and 15, as well as the certificate for the petitioner's completion of a leisure and recreation management course, all demonstrate the petitioner's completion of various courses. Items 8, 10, 11 and 17 evidence the petitioner's certifications or service as a coach. Item 5 does not specifically state that the petitioner is a member of any organization. Further, item 9 is meant to accompany items 7 and 8, providing information regarding the organization that provided courses and certifications to the petitioner. Similarly, items 12 and 13 are schedules for various soccer courses, and are not relevant to the petitioner's membership in any association. Item 16 just notes

the petitioner's position at the YMCA. As such, none of this evidence equates to the petitioner's membership in an association.

The petitioner, however, did provide evidence of her membership, in the form of reference letters, in The Football Association (item 3), the Women's Football Association (item 4) and the English Hockey Association (item 5). In addition, the petitioner provided a certificate of membership in The Institute of Leisure and Amenity Management. However, the record lacked evidence (such as membership bylaws or official admission requirements) showing that any of the groups require outstanding achievements of its members. The petitioner also failed to provide any evidence demonstrating that membership is judged by recognized national or international experts in the field.

As such, the petitioner has not established 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.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.<sup>4</sup>

To fulfill this criterion, the petitioner submitted the following evidence:

1. An article from *The Tustin News* entitled "Tustin High girls soccer finds help from 'across the pond,'" without a date, written by [REDACTED]
2. Two additional pages from *The Tustin News*, one which has a picture of two Tustin High soccer players, captioned "Soccer Hug," which references the following page entitled "A Kick in the Pants" consisting only of a photograph as well. Neither of the "articles" include any text, other than a caption, or an author, but the second page is dated January 13, 2000;
3. An article without a source entitled, "Soccer2Day: [REDACTED] Makes Her Mark" without an author or a date;
4. An article from *Tustin Weekly* entitled, "Late goal keeps Tillers from winning Golden West match," dated January 14, 2000 and written by [REDACTED]
5. An article from *Tustin Weekly* entitled, "Tustin girls winless in league matches," dated January 21, 2000 and written by [REDACTED]

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<sup>4</sup> Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

6. A partial article from *Tustin Weekly*, without a title since it was a continued article and the petitioner failed to submit the first page, dated January 28, 2000, without an author regarding the team;
7. An article from *Tustin Weekly* entitled, "Tiller girls capture first league soccer win," dated February 4, 2000 and written by [REDACTED] about the team;
8. An article from *Tustin Weekly* entitled, "Tustin girls soccer starts to make a mark," dated February 11, 2000 and written by [REDACTED] about the team;
9. An article from *Tustin Weekly* entitled, "Tustin girls drop final in soccer," dated February 18, 2000 and written by [REDACTED];
10. An article without a source entitled "LB Girls Hope To Play in Hawaii," dated April 21, 2000 and without an author;
11. A "President's Welcome" from *The Post* (Orange County Women's Soccer League News), dated February 2003;
12. A brochure from Mission Viejo Elite SC (MVSC) 22<sup>nd</sup> Invitational Tournament with a picture of the petitioner with a group of other people (presumably coaches/no caption) that does not mention the petitioner, without a date;
13. Another brochure page from MVSC, without a title, author, date, which is not about petitioner, although her picture appears to be in the brochure despite the lack of a caption indicating the persons in the photograph;
14. An article from *Parenting Magazine*, May 2005, entitled "When Dads Coach" written by [REDACTED] where petitioner was quoted;
15. A page from *Parenting Magazine's* website regarding the publication; and
16. An article from *Goal*, the Coast Soccer League's Magazine, entitled [REDACTED] Makes Her Mark in Southern California," without a date.

The petitioner accompanied the last article (item 16) with a page from the East Coast Soccer League's website which provided some information about the league, not the magazine.

This criterion specifically requires a title, date, and author, as well as a translation where necessary, for the published materials provided as evidence. The petitioner failed to adhere to these requirements. The petitioner's evidence did not include a title in items 6 and 13. No dates were provided for items 1, 2, 3, 12, 13 and 16. Likewise, the names of authors were not included in items 2, 3, 6, 10 and 13.

Moreover, many of the articles submitted by the petitioner were not written primarily about her. In large part, the articles were about the teams in which the petitioner coached. Some examples of these articles that only briefly mention the petitioner or fail to mention her all together include items 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14. These articles fail to conform to the plain language of this regulatory criterion that requires the published materials to be "about the alien."

Finally, the evidence attempting to show that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media is also problematic. Many of the articles appear in regional papers in Southern California rather than major media. Regional coverage or coverage in a publication read by only a small segment of a country's total population is not considered major media. While the petitioner did provide

information regarding *Parenting Magazine*, because the article from this publication was not about the petitioner, but rather about fathers who coach children, it cannot be considered for this criterion as it is not about the petitioner relating to her work.

Similarly, the petitioner failed to provide the source of the article for item 3. As the petitioner was unable to provide independent evidence indicating a source, she was therefore also unsuccessful in proving such article was published in professional or major trade publications or other major media.

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

*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 submitted two certificates signed by her and the Principal at Tustin High School in 2000 reflecting that her players "participated" in "Varsity" and "Junior Varsity" athletics and were recognized for their "outstanding contribution and dedication to the team." *Coaching* members of one's team does not equate to *judging* the work of others in the field. Providing instruction and training to players is not tantamount to presiding over a competition and determining the winner in the same manner as a judge, for instance. We agree with the director that the petitioner, who claims eligibility solely through performing her routine responsibilities as a coach, failed to demonstrate that she has participated as a judge of the work of others in her field in order to fulfill this criterion.

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

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

The petitioner submitted various reference letters, which we will consider to support this criterion. The petitioner submitted a letter from [REDACTED] a Member of the US Soccer's Coaching Staff, dated February 18, 2008. Mr. [REDACTED]'s letter stated that the petitioner is:

[A]n individual of extraordinary ability, based upon her critical coaching of championship-winning soccer teams and her original contributions to soccer coaching. Ms. [REDACTED] recognition by leading soccer coaches clearly establishes her to be an extraordinarily accomplished coach.

The petitioner also provided an internet page from [www.isiphotos.com](http://www.isiphotos.com) that indicates Mr. [REDACTED] was the USA assistant coach with his picture at the Four Nations Cup practice. An LA Galaxy press release, dated December 15, 2005, which noted that Mr. [REDACTED] was promoted to the top assistant spot, was also provided. In addition, the petitioner provided a schedule for a clinic in 2001 where both she and Mr. [REDACTED] spoke. The petitioner also provided an internet page from the "Coaches Bench" which indicates that Mr. [REDACTED] was a Head Coach for the Coaches Bench, a professional

player for the Glasgow Rangers, a Head Club Coach for Mission Viejo and a Staff Coach for LA Galaxy.

Mr. [REDACTED]'s letter fails to provide specific examples of the petitioner's impact or to explain how the petitioner is recognized by leading coaches as a coach for youth soccer. In addition, although the petitioner confirmed her participation in the 2001 clinic with Mr. [REDACTED], she failed to evidence how this represents a contribution of major significance.

The petitioner also provided a letter from [REDACTED] Director of The Soccer Education Academy, dated February 25, 2002. Mr. [REDACTED] stated that the petitioner has:

[C]ontributed greatly to our [his] soccer academy, as well as to soccer in general in Orange County. As an example, [REDACTED] recently organized one of the largest soccer clinics in Tustin, California where hundreds of kids attended for three days to improve their skills.

Mr. [REDACTED] also noted that the petitioner assisted him in the Soccer Education Academy's own training programs, as well as with two of his books. A letter from [REDACTED] dated March 1999, of the University College of St. Mark and St. John, stated that the petitioner "contributed significantly to the field by combining her knowledge and love for the sport and her experience in sports development to create innovative sports programs for youth hockey." Likewise, [REDACTED] from South Dartmoor provided a letter explaining that the petitioner "single-handedly created this (a) new role which has been emulated by other aspiring sports colleges" which develops partnerships between various entities including the College and the community. In addition, the petitioner submitted letters from [REDACTED] and [REDACTED] from the Football Association of England.

Again, while the petitioner appears to have assisted in the production of Mr. [REDACTED]'s book, the above-referenced statements by Mr. [REDACTED] fail to show exactly what contribution the petitioner made to his book. Further, the petitioner's alleged authorship of scholarly articles in the field is more relevant to the criteria under 8 C.F.R. § 204.5(h)(vi), and this evidence will be analyzed later in this decision with respect to that criteria. In addition, Mr. [REDACTED]'s claims that the petitioner has developed an innovative sports program for youth hockey also lack the specificity and details necessary to distinguish her program from other youth hockey programs. Similarly, Mr. [REDACTED] claims that the petitioner created a new role at South Dartmoor falls short of explaining how such role was a contribution of major significance that impacted the field. For instance, he did not specify the other schools who emulated this role or how many schools created such a role.

The petitioner also submitted an article from *The Tustin News*, which was previously submitted for the criterion under 8 C.F.R. § 204.5(h)(iii), entitled "Tustin High girls soccer finds help from 'across the pond.'" The petitioner explained that this article was relevant because it described the important role the petitioner played in improving Tustin High School's soccer team. The petitioner also refers to the article from *Parenting Magazine* in May 2005, entitled "When Dads Coach," however, this article does not provide any insight into contributions made by the petitioner, it merely quotes her. The article from *Goal*, the Coast Soccer League's Magazine, entitled [REDACTED] Makes Her

Mark in Southern California,” was accompanied by a page from the East Coast Soccer League’s website which provided some information about the league, but not the magazine.

To satisfy the criterion relating to original contributions of major significance, the petitioner must demonstrate not only that her work is novel and useful, but also that it had a demonstrable impact on her field at the national or international level or other commensurate evidence.

In this case, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner and provide some examples of her coaching, they fail to specifically identify how her contributions have influenced the field, and therefore to establish that she has made contributions of major significance in her field.

In this case, the recommendation letters are not sufficient to meet this regulatory criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted 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 from experts supporting the petition 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 795-796. 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 an immigration petition are of less weight than preexisting, independent evidence that one would expect of a coach or player who has made original contributions of major significance. Without supporting evidence showing that the petitioner’s work equates to original contributions of major significance in her field, we cannot conclude that she meets this criterion.

*Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

The petitioner submitted the following evidence for this criterion:

1. A recommendation letter from [REDACTED] from The Soccer Education Academy, dated February 25, 2002, which indicates that the petitioner offered him “valuable assistance in finishing” his book and manual, mentioning that there are also pictures of the petitioner and her team in both publications;
2. Pages from [REDACTED]’s book, none of which specifically identify the petitioner as an author or contributor;
3. A page from *The Connection*, South Dartmoor Community College Newsletter, from September 1997 with a biography of the petitioner as a “new member(s) of staff” and no author indicated;
4. An article from *The Connection*, South Dartmoor Community College Newsletter, from January 1998, entitled “Getting to Grips with the Job of Sports Development,” written by the petitioner; and

5. A page from *The Connection*, South Dartmoor Community College Newsletter, from June 1998 with an two articles written by the petitioner, "Sports Development in the Community" and "Sports College 'Membership' Scheme."

In his letter, Mr. ██████ stated that the petitioner offered him "valuable assistance" with his book and manual and that her pictures with her soccer team are prominent in both of his publications. The petitioner also provided the first page of one of Mr. ██████'s books entitled, "Soccer for Everyone."

We agree with the director that the petitioner does not satisfy this criterion. With regard to items 1 and 2, the petitioner has failed to show that she authored any part of Mr. ██████'s book or manual. Mr. ██████ only broadly referenced her contribution to his publications as "valuable assistance." Further, there is no evidence to support either of Mr. ██████'s publications constitute professional or major trade publications or other major media. Likewise, the petitioner failed to establish that *The Connection*, the publication in which the petitioner's articles appeared (items 4 and 5), is a professional or major trade publication or other major media. Moreover, item 3 does not contain an author, and therefore, the petitioner did not prove that she wrote this article.

As such, 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.*

The petitioner submitted the following evidence to support this criterion:

1. A reference letter from ██████, Principal of South Dartmoor Community College, dated March 1, 1999, which indicates that the petitioner was the college's "first ever Sports Development Officer;"
2. A flyer calling for student participation at an event entitled, "South West Sports Colleges: Festival of Sport" on October 22, 1998, that the petitioner and the Director of Physical Education and Sports for the college appear to have organized;
3. Two letters from ██████ Devon County Coach, that confirm the petitioner assisted in holding a Coaching Certificate Course;
4. The Mission Statement of the Waldorf School of Orange County in Costa Mesa, California;
5. A photograph that indicates the petitioner was a member of the Waldorf School of Orange County Staff from 2001 to 2002;
6. A photograph that indicates the petitioner was a member of the Waldorf School of Orange County Staff from 2002 to 2003;
7. A photograph that indicates the petitioner was a member of the Waldorf School of Orange County Staff from 2003 to 2004;
8. A letter from ██████, Director of Development at the Waldorf School of Orange County, dated March 6, 2002, confirming that the petitioner donated to the "Family Giving Campaign;"

9. An announcement or letter, undated, without a source and without an author specified that the petitioner appears to have written, discussing an after school sporting event that she appears to have organized;
10. A bulletin, dated March 5, 2003, regarding the events at the Waldorf School of Orange County with information regarding the Capital Campaign;
11. Two flyers for Sports Enrichment Camp at the Waldorf School, which appear to be organized by the petitioner because her name is listed at the bottom of the page as the contact person;
12. A flyer requesting donations for the "Capital Campaign;"
13. A letter from the petitioner, which is not addressed to anyone, discussing a 7<sup>th</sup> and 8<sup>th</sup> Grade Track Meet on March 28, 2003, which reported the events of the day;
14. A letter from the petitioner, again not addressed to anyone, discussing Waldorf's 5<sup>th</sup> Grade Greek Pentathlon in Santa Barbara on May 9, 2003;
15. A bulletin, dated April 28, 2004, regarding the events at the Waldorf School of Orange County;
16. A school handout from the petitioner regarding the 7<sup>th</sup> and 8<sup>th</sup> Grade Track and Field Event in Santa Barbara;
17. A thank you note from the students of the Waldorf School for helping with a fundraising event;
18. A press release, dated March 22, 2005, regarding the 7<sup>th</sup> and 8<sup>th</sup> Grade Track and Field Event in Santa Barbara with a quote from the petitioner providing information about the event;
19. A bulletin dated May 4, 2005 regarding the events at the Waldorf School of Orange County;
20. A handout regarding the 5<sup>th</sup> Grade Pentathlon from the petitioner, indicating her title is "games teacher;"
21. A flyer for a May Faire arts event on May 14;
22. Two of the same flyers for "The Company of Angels," a Waldorf School Community Store;
23. Two of the same reports from the petitioner regarding the Medieval Games on May 16, 2005;
24. A bulletin dated May 25, 2005 regarding the Waldorf School's events;
25. A flyer for "The All England Soccer Academy 1999 Soccer Camp" directed by [REDACTED] which lists the petitioner as one of the coaches;
26. A flyer for the "U.K. International Soccer Camps Community Day Programs," and what appears to be pictures of the petitioner coaching possibly at one of those programs;
27. A flyer for the "Laguna Beach Soccer Club," with try out information which does not appear to mention the petitioner;
28. A flyer for a Sports Enrichment Program, which the petitioner appears to organize as her name is listed as a contact person;
29. A flyer for a Middle School Campus Program at the YMCA for the Fall of 2000;
30. A training certification indicating that the petitioner successfully completed the course requirements for "YMCA Super Sports Director," dated May 7, 2001;

31. A certificate of appreciation presented to the petitioner for one year of service to the YMCA, without a date;
32. A training certification indicating that the petitioner successfully completed the course requirements for "YMCA Day Camp Director," dated April 14, 2001;
33. A photograph of the petitioner holding a microphone on a field presumable for some YMCA event, without any caption;
34. A flyer for Soccer2Day's "Team Camps," directed by the petitioner in 2002;
35. A presentation or brochure for Soccer2Day, indicating that the petitioner is its founder and director accompanied by her biography, and providing information regarding its vision, mission, and values;
36. The petitioner's resume;
37. A flyer for the Elite Partnership Program;
38. A flyer for a Term/Week Sports Program, which appears to be organized by the petitioner as she is listed as the contact person; and
39. Reference letters from various individuals.

A letter from [REDACTED], a Member of the US Soccer's Coaching Staff, dated February 18, 2008, stated that the petitioner's "recognition by leading soccer coaches clearly establishes her to be an extraordinarily accomplished coach." The petitioner also provided a letter from [REDACTED], Director of The Soccer Education Academy, dated February 25, 2002. Mr. [REDACTED] stated that the petitioner "organized one of the largest soccer clinics in Tustin, California where hundreds of kids attended for three days to improve their skills." Lastly, the petitioner also provided letters from [REDACTED] of the Football Association of England and from [REDACTED] of the University College of St. Mark and St. John.

The most applicable evidence that the petitioner provided for this criterion was item 1, a letter from [REDACTED]. In his letter, he stated that the petitioner's "post was created in a pioneering move to develop partnerships between the College, the community and the National Governing Bodies" and that this position "has been emulated by other aspiring sports colleges," presumably to show that the petitioner played a leading role at South Dartmoor. However, most of the evidence submitted by the petitioner evidenced her organization of various events as the games director at the Waldorf School (e.g., flyers sent home to parents, handouts, etc., items 2, 8, 9, 10, 11-24, 28, 29, 33, 34, 37, 38 all represent such evidence). The petitioner also provided information, including items 3, 25 and 27 (although she is not specifically referenced here), that confirms that she acted as a coach for various camps and other programs. The petitioner also provided materials to regarding an organization that she founded (items 34 and 35), Soccer2Day. However, there was no information regarding her responsibilities as a founder and what she has specifically accomplished with this organization.

The director found that the petitioner failed to satisfy this criterion, and we agree. In order to establish that the petitioner performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of her role within the entire organization or establishment and the reputation of the organization or establishment. There was no evidence that indicated what the petitioner's responsibilities were within any of the organizations for which she worked. Similarly, there is no evidence demonstrating how the petitioner's role

differentiated her from others where she worked. For instance, the petitioner did not submit evidence such as an organizational chart which would demonstrate her position within the organization in relation to others. Mere title, without specific information regarding actual duties or explanation of relevance or importance of that position within the hierarchy of the organization's management is not sufficient to establish the petitioner's leading or critical role. Therefore, while the petitioner may have proven that she provided valuable services to her employers, she has failed to support the proposition that she has performed a leading or critical role for those organizations.

Lastly, the evidence further lacks proof that the schools and programs for which the petitioner was employed by had "distinguished reputations." There was limited independent information to demonstrate each organization's standing or reputation.

As such, 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.*

In counsel's brief, he argued that the petitioner is "one of the few individuals in the field of Women's Soccer who earns their income by teaching and practicing what they most love, the art of coaching, educating and playing Soccer." The petitioner provided her 2007 W-2 Form photocopied on the bottom of an employment letter, indicating that she earns \$46,500 per year as the Waldorf School's "Games teacher," and the 2006-7 Compensation Package for the Waldorf School of Orange County which confirms the same. The plain language of this criterion requires the petitioner to submit evidence of a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that her compensation was significantly high in relation to other school teachers.

Counsel argues that the petitioner's salary "is nearly 20% more than the USDOL level IV [highest] average salary in the region" for the occupational classification of "Coaches and Scouts." The submitted evidence from the Waldorf School showing the petitioner's salary and earnings, however, relates to her employment as a school teacher rather than a soccer coach. Moreover, it is noted that the petitioner must show a high salary compared "to others in the field," not just in one particular region. Counsel indicated that the salary information came from USDOL On-Line Wage Survey and provided the corresponding URL address, yet did not provide the web pages with this information. As aforementioned, simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici* at 165. Based on counsel's unsubstantiated claim we accessed DOL Bureau of Labor Statistics at <http://www.bls.gov/oes/2008/may/oes272022.htm> now incorporated into the record of the proceedings. The wage tables show that highly paid Coaches and Scouts earn \$62,660 or more annually.

In this case, the petitioner has failed to submit evidence demonstrating that she commands a high salary in relation to others in her field.

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

*Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner provided evidence that she coached various girls' soccer teams, including plaques thanking her for being the coach, lists of team names and coaches, and pictures of the petitioner with her teams. The petitioner also provided brochures for various trainings that she provided. In his brief, counsel conceded that this criterion is not applicable to the "field of athletic coaching."

In his decision, the director found that the petitioner had not met this criterion. We agree that the plain language of the criterion requires evidence of commercial success *in the performing arts*. As no claim has been made that the petitioner's field involves the performing arts, the petitioner cannot satisfy this criterion.

Even if the category were expanded to include commercial success in all fields, this regulatory criterion calls for evidence of commercial successes in the form of "sales" or "receipts." The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts.

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

#### *Summary*

In this case, we concur with the director's determination that the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

#### ***C. Comparable Evidence***

On appeal, counsel argues that the reference letters, as well as other evidence previously submitted on the petitioner's behalf, should be considered as comparable evidence of her extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the categories of evidence specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, counsel's appellate submission specifically addresses half of the preceding regulatory criteria. Where an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, there is no evidence showing that the documentation the petitioner requests reevaluation of as comparable evidence constitutes achievements and recognition consistent with

sustained national or international acclaim at the very top of her field. We note that the petitioner's reference letters have already been addressed under the regulatory criteria at 8 C.F.R. § 204.5(h)(3). While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not comparable to extensive evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. 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 commentary for the proposed regulations implementing the statute 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). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals selected by the petitioner.

#### ***D. Final Merits Determination***

In accordance with the *Kazarian* 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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1119-1120. In the present matter, 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). The submitted documentation relates primarily to the petitioner's achievements as a coach for youth soccer teams. The submitted evidence, however, is not indicative of the petitioner's national or international acclaim and there is no indication that her individual achievements have been recognized in the field.

With regard to the evidence submitted for the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i), most of the "awards" provided were received in the late 1990's, more than a decade after this petition was filed. The plain language of statute and of the controlling regulation requires the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The submitted evidence is not consistent with sustained national or international acclaim.

Regarding the evidence submitted for the published material criterion at 8 C.F.R. § 204.5(h)(3)(iii), we have already noted several deficiencies with the proffered evidence.

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner submitted two certificates signed by her and the Principal at Tustin High School in 2000 stating that her players "participated" in "Varsity" and "Junior Varsity" athletics and were recognized for their "outstanding contribution and dedication to the team." The director found that the petitioner's recognition of

players under her tutelage was inherent to her coaching position and indicative of “competency” rather than national or international acclaim. We concur with the director’s finding. There is no supporting evidence documenting the significance of these recognition certificates or the process of their distribution to students. The petitioner has not established that her involvement in recognizing players participating on the high school team for which she coached is commensurate with sustained national or international acclaim at the very top of her field. Rather, the petitioner’s involvement simply reflects her performance of local coaching duties inherent to her position at Tustin High School.

The evidence provided to demonstrate that the petitioner made contributions of major significance in her field pursuant to 8 C.F.R. § 204.5(h)(3)(v) was insufficient as previously examined. In addition, the petitioner failed to support that she is recognizable outside of the small regional area of Orange County. For example, a letter from Mr. [REDACTED] indicated that the petitioner “contributed greatly to our [his] soccer academy, as well as to soccer in general in Orange County” and that she “organized one of the largest soccer clinics in Tustin, California.” Both examples do not illustrate that she has national or international acclaim, but only regional recognition.

The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

#### ***E. Prior O-1 Nonimmigrant Visa Status***

While USCIS has approved a prior O-1 nonimmigrant visa petition filed on behalf of the petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis upon review of the evidence of record. 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 the alien’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. 593, 597 (Comm. 1988). 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 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

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 has approved a nonimmigrant petition on behalf of the alien, 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).

#### **IV. 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. Further, the petitioner has not submitted clear evidence demonstrating that she will continue to work in her area of expertise in the United States. Therefore, the petitioner has not established her eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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.