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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

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[REDACTED]

FILE: [REDACTED] Office: TEXAS SERVICE CENTER

Date: NOV 09 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]

INSTRUCTIONS:

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. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. 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 Director, Texas Service Center, denied the employment-based immigrant visa petition, which 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 the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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 submits a brief and additional evidence. For the reasons discussed below, while we withdraw some of the director's concerns, we concur with the director's ultimate decision that the petitioner has not established his eligibility for the exclusive classification sought.

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 101st 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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under 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. *Kazarian v. USCIS*, 596 F.3d 1115 (9th 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.¹ 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.* at 1121-22.

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).

Id. at 1119-20.

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 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381

¹ 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).

F.3d 143, 145 (3d Cir. 2004); *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003) (recognizing the AAO's *de novo* authority).

II. Analysis

At the outset, we note that the petitioner lists the proposed employment as a tennis coach. The petitioner has worked as a tennis coach for several years after competing in the sport. The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002).

A. Evidentiary Criteria²

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

The petitioner submitted what appear to be several awards he received as a competitor, the most recent being in 1993. The petitioner did not submit certified translations, or even any translations, as required under 8 C.F.R. § 103.2(b)(3). These awards are not indicative of sustained acclaim as an athlete in 2009 when the petition was filed. Moreover, they are not awards recognizing the petitioner's abilities as a coach. The petitioner did not submit any evidence of awards issued to him as a coach.

The petitioner claimed that his academic credentials and responsibilities as tournament director serve as qualifying evidence under 8 C.F.R. § 204.5(h)(3)(i). Academic credentials and duties for a tournament are not "awards" or "prizes" for excellence in the field according to the commonly understood definitions of those words.³ Rather, an academic degree represents the expected outcome of successful completion of assigned coursework while tournament duties are more akin to employment. Thus, the petitioner's academic credentials and tournament duties do not meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

³ An award is something "awarded or granted, as for merit," while a prize is something "offered or won as an award for superiority or excellence in competition." Webster's New College Dictionary 80, 901 (3rd ed. 2008).

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.

The petitioner initially asserted that his position as a [REDACTED] his service as a "permanent collaborator" with the faculty at that university, the success of his students, his licensure, letters from references, his thesis and his articles should all be considered under 8 C.F.R. § 204.5(h)(3)(ii). The petitioner does not explain how any of this evidence constitutes a "membership" in an "association" as required under 8 C.F.R. § 204.5(h)(3)(ii). Even if we looked at his 1994 trainer license, a license is not a membership in an association. We reach that conclusion from the ordinary meaning of "license" and "membership" and from the regulations relating to aliens of exceptional ability, which include separate criteria for licenses and professional memberships.⁴ 8 C.F.R. § 204.5(k)(3)(ii)(C) and (E).

In response to the director's request for additional evidence, the petitioner submitted his "professional" certification from the Professional Tennis Registry (PTR) for October 2009 through August 2010. The petitioner also submitted a press release about the certification indicating that PTR "is the largest global organization of tennis teaching professionals with 14,000 members in 122 countries." According to the press release, certification is based on a five-part written and on-court examination.

The director concluded that the petitioner's certificate postdated the filing of the petition and could not be considered. On appeal, counsel asserts that the petitioner was already a member of PTR as of the date of filing and that a recent service center decision had "diluted" *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971). Counsel does not explain how an unpublished service center decision can overturn a designated published precedent decision. While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Moreover, the holding in *Matter of Katigbak*, 14 I&N Dec. at 49, has been codified at 8 C.F.R. §§ 103.2(b)(1), (12).

The petitioner submitted a letter from [REDACTED], advising that the petitioner was "a member of the Professional Tennis Registry since August 2009 and currently holds the highest certification rating of Professional." [REDACTED] confirms that the petitioner was not certified as a professional until October 2009, after the date of filing, and asserts that "a very small percentage of our members globally score the Professional rating on their initial testing examination."

We concur with the director that we cannot consider certification after the date of filing. All of the case law on this issue focuses on the policy of preventing petitioners from securing a priority date in the hope that they will subsequently be able to demonstrate eligibility. *Matter of Wing's Tea House*, 16 I&N Dec. 158, 160 (Reg'l. Comm'r. 1977); *Matter of Katigbak*, 14 I&N Dec. at 49; *see also Matter*

⁴ A license is "[o]fficial or legal permission to do or own a specified thing" while a membership is the "state of being a member," defined as "[o]ne who belongs to a group or organization." Webster's New College Dictionary 647, (3rd ed. 2008).

of Izummi, 22 I&N Dec. 169, 175-76 (Comm'r. 1998) (citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981) for the proposition that we cannot "consider facts that come into being only subsequent to the filing of a petition.") Consistent with these decisions, a petitioner cannot secure a priority date in the hope that he will subsequently secure a qualifying membership. Ultimately, in order to be meritorious in fact, a petition must meet the statutory and regulatory requirements for approval as of the date it was filed. *Ogundipe v. Mukasey*, 541 F.3d 257, 261 (4th Cir. 2008).

Even if we considered the petitioner's certification, we are not persuaded that certification is a "membership" rather than a license. As stated above, a license is evidence that is only relevant to a lesser classification, aliens of exceptional ability pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(C). Moreover, passing a certification examination, even an examination that many do not pass on the first attempt, is not an outstanding achievement. It remains that PTR is the largest global organization of its kind with many members. The membership numbers are not consistent with an association that limits its membership to only those with outstanding achievements.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

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.

Counsel has never asserted that the petitioner submitted qualifying evidence under 8 C.F.R. § 204.5(h)(3)(iii) and the director concluded that no such evidence was submitted. We note that the record contains press releases about the petitioner's professional certification that postdates the filing of the petition and a press release announcing that the petitioner was joining Weymouth Club as the [REDACTED]. The petitioner also submitted an article about his son's achievements in a newspaper of undocumented circulation. This article also postdates the filing of the petition.

Once again, we will not consider evidence that postdates the filing of the petition. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Regardless, the record contains no evidence that the press releases were published in professional or major trade publications or other major media. The article about the petitioner's son, while quoting the petitioner, is not about the petitioner as required under 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the record also lacks evidence that this article appeared in a professional or major trade publication or other major media.

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements at 8 C.F.R. § 204.5(h)(3)(iii).

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 explanation of the initial evidence made no mention of 8 C.F.R. § 204.5(h)(3)(iv). In response to the director's request for additional evidence, the petitioner submitted a letter from [REDACTED] a professor at [REDACTED] where the petitioner used to teach and former President of the Romanian Sport Science Council. [REDACTED] asserts that the petitioner has "judged national and international competitions in Europe, where tennis is a very highly respected team sport." [REDACTED] further asserts that selection as a judge is competitive and that the petitioner was selected "repeatedly" to serve as a judge. [REDACTED] does not identify any specific competition where the petitioner served as a judge and the record contains no programs or letters from competition organizers confirming this service.

The director, relying on *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972), concluded that the record contained no evidence to support [REDACTED] assertions. On appeal, counsel cites *Soltane*, 381 F.3d at 151, for the proposition that the director erred in relying on *Matter of Treasure Craft of California*. Counsel concludes that a statement from a Romanian government official should constitute sufficient evidence.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998). This case, citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190, does not involve the issue of administrative notice noted in *Matter of Treasure Craft of California*. Moreover, merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁵ Thus, the bare assertion that the petitioner has judged tennis competitions without even identifying those competitions is insufficient.

Significantly, the regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of experience "shall be in the form of letter(s) from current or former employer(s)." A letter from the petitioner's fellow faculty member at the University of Oradea purporting to confirm judging experience at unidentified competitions outside the university is insufficient evidence of that experience. While [REDACTED] may also have served as [REDACTED] he does not specifically assert that the petitioner judged competitions organized by the council.

On appeal, counsel asserts that the petitioner judged faculty candidates. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record contains a certificate from the Faculty of Physical Education and Sports Oradea indicating that the petitioner was "part of the Entrance committee of the faculty for the disciplines Athletics and Tennis in the period 1996-2004." The certificate does not provide the duties of the entrance committee. As such, we cannot determine whether these duties included judging the work of others.

⁵ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

As the record lacks evidence from competition organizers confirming when and where the petitioner served as a judge of the work of others, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Even if we accepted the vague letter from [REDACTED] as sufficient evidence under this criterion, and we do not, his failure to identify the actual competitions or the dates of the petitioner's service as a judge makes it impossible for us to evaluate the nature of the judging in our final merits determination. *See Kazarian*, 596 F.3d at 1122.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of 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. To be considered a contribution of major significance in the field of tennis coaching the contribution must have influenced the coaching of tennis beyond the institutions and clubs where the petitioner has been employed.

The petitioner submitted several conference presentations and scholarly articles, mostly printed in journals published by [REDACTED]. [REDACTED] asserts that the articles were peer-reviewed before publication. The petitioner, however, submitted no evidence of the circulation of these journals. On appeal, counsel asserts that these articles have been "regularly cited." We reiterate that the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The record contains no evidence that the petitioner's articles have been cited such as a citation index. The record also lacks course curricula from various universities demonstrating that the petitioner's articles are routinely assigned as course reading at universities across Romania. The petitioner did not submit any other comparable evidence that the field relies on his articles.

The petitioner submits several letters supporting the petition. The petitioner's fitness trainer, [REDACTED], provides broad assertions of the petitioner's abilities as a coach, concluding that he would be an asset to tennis coaching programs in the United States. Several members of the faculty at the [REDACTED] praise the petitioner as a professor and an example to his students but provide no examples of the petitioner's methods or techniques being utilized beyond the University of [REDACTED].

The petitioner also submitted letters from colleagues [REDACTED] where he works. [REDACTED] credits the petitioner with a large part of the success of the club's tennis department. [REDACTED] confirms that the petitioner "has become a valuable asset to our tennis professional staff." [REDACTED] praises the petitioner's knowledge of the game and professionalism, asserting that many of the club's top players "were looking to work with him." [REDACTED] characterizes the

petitioner as "highly qualified" and "well above the common Tennis Pros that you may find around the country." [REDACTED] asserts that his own ability as a coach has improved from working with the petitioner.

In addition, several of the petitioner's students and their parents attest to his ability as a coach, asserting that he has improved their game. Some of the petitioner's students make specific assertions. For example, [REDACTED] asserts that the petitioner helped him get third place at the national Tennis Championship for ages 16 and under and to become a member of the Romanian Team at the European Team Championship. [REDACTED] asserts:

As a result of our collaboration I became national champion at the ages 14, 16, and 17, European champion in singles and doubles, age 14 and under, at the European championships for East Europe, and also I made a huge jump in the ATP rankings after the finals played in August 2002 in a satellite in Egypt, moving from 4123 to 604 in the ATP ranking!!"

[REDACTED] asserts that the petitioner spent some time with [REDACTED] daughters, providing better assistance than previous coaches. On appeal, the petitioner provides evidence of [REDACTED] rankings in their age group in Hungary (17th and 23rd).

[REDACTED] asserts that his daughter, coached by the petitioner, is ranked second for under 16 players in New England and 39th in her age group nationally. [REDACTED], who asserts that the petitioner is one of his daughter's coaches, asserts that his daughter has been ranked first in New England in her age divisions and 20th nationally. On appeal, the petitioner submits corroborating evidence of the rankings for [REDACTED].

[REDACTED] asserts that the petitioner "worked with" successful tennis players. While [REDACTED] does not explain his first hand knowledge of this information, the petitioner also submitted a letter from [REDACTED] Tennis Federation. [REDACTED] asserts:

In the time that he has been in Oradea, [the petitioner] worked with the elite program and traveled with junior players to regional, national and international competitions. Players like [REDACTED] are only a few names that [the petitioner] helped to become nationally and internationally ranked tennis players.

[REDACTED] does not explicitly assert that these players were primarily under the petitioner's tutelage when they achieved success. Regardless, [REDACTED] does not explain how coaching successful players is either original or sufficiently influential as to be considered a contribution of major significance.

asserts that the petitioner works with elite ranked players at the Weymouth Club, "one of the largest and most successful junior development programs in New England." [REDACTED] does not identify any original contributions or assert that the petitioner's original contributions are responsible for the success of the Weymouth Club.

[REDACTED] Director at the [REDACTED] in Massachusetts, asserts that players at his club compete against players at the Weymouth Club. [REDACTED] asserts that training junior competitors to become champions takes more ability than refining the game of a seasoned professional. Even if true [REDACTED] does not identify anything original about the petitioner's methodology or explain how it has influenced the field at a level consistent with a contribution of major significance.

[REDACTED] Connecticut, asserts: "I feel that I steal a bit of [the petitioner's] knowledge with each discussion" and that the petitioner is a "valuable resource for my own students." This letter, however, does not establish the petitioner's influence beyond his personal acquaintances in New England.

[REDACTED], affirms the importance of developing teenage players and notes that parents spend "tens of thousands of dollars to see their children develop and succeed." [REDACTED] expresses an interest in having the petitioner coach at the [REDACTED]. While this letter may demonstrate demand for the petitioner's services, it does not establish that his coaching techniques are either original or influential at a level consistent with a contribution of major significance.

On appeal, the petitioner submits documentation about his son's achievements after the date of filing. As this evidence postdates the filing of the petition, however, it cannot be considered. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49.

The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998).

Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁶ The

⁶ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that the "letters from physics professors attesting to [the alien's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

opinions of experts in the field are not without weight and have been considered above. 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 (Comm'r. 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, as we have done above, evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The letters considered above primarily contain bare assertions of the petitioner's status in the field without specifically identifying contributions, explaining how they are original and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁷ The petitioner also failed to submit corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

The above evidence establishes that the petitioner has published some original theories and coached nationally ranked junior tennis players and is valued by his students and local colleagues. While the petitioner may have original theories, the record lacks evidence that these theories have been influential among other coaches at a level consistent with a contribution of major significance. In addition, while the petitioner's successful coaching of nationally ranked junior players may be a contribution to the clubs where he has worked, the record lacks evidence that successful coaching is an original contribution in the field of coaching as a whole. Rather, we find that this evidence is more relevant to whether the petitioner has played a leading or critical role for an organization with a distinguished reputation pursuant to 8 C.F.R. § 204.5(h)(3)(viii).

In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(v).

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

As stated above, the petitioner has authored articles published in journals, mostly in journals affiliated with [REDACTED]. The petitioner has also published articles in *Buletin Stintific* and chapters in the following books: *Schiul: Tehnica, Metodica Organizare, Inot: Tehnica Invatare* –

⁷ *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Ayvr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Perfectionare and *Sesiunea Internationala de Comunicari Stiintifice*. The petitioner did not provide any circulation or sales data for the journals and books. None of these materials postdate 2003.

The director concluded that it was inherent for a tennis coach to author scholarly articles. We disagree. Regardless, the evidence meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vi).

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

As discussed above, the petitioner has served as director of tournaments and director of the junior teams [REDACTED] where he has coached nationally ranked junior tennis players. Given the evidence of record in the aggregate, including the reference letters discussed in detail above and evidence not mentioned in this decision, the petitioner has submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Summary

In light of the above, the petitioner has not submitted the requisite evidence under at least three of the evidentiary categories for which evidence must be submitted to meet the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. Nevertheless, we will review the evidence in the aggregate as part of our final merits determination.

B. 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." 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1119-20.

As stated above, [REDACTED] has attested to the petitioner's services as a judge at unidentified competitions. The nature of the beneficiary's judging experience is a relevant consideration as to whether the evidence is indicative of the beneficiary's national or international acclaim. See *Kazarian*, 596 F.3d at 1122. Without more information about the competitions, we cannot evaluate whether the petitioner's alleged service as a judge is consistent with national or international acclaim. Similarly, even assuming that the petitioner judged potential faculty at [REDACTED] such duties were internal to the university where he worked and, thus, not indicative of or consistent with national or international acclaim. *Id.*

The petitioner has authored articles and book chapters and, as stated above, we disagree with the director that such authorship is inherent to the occupation of tennis coach. Without evidence of the circulation of the journals or the sales data for the books, however, we cannot conclude that the petitioner's authorship is indicative of or consistent with national or international acclaim. Moreover, given that the articles and book chapters are predate the filing of the petition by several years, they are not evidence of "sustained" national or international acclaim in 2009 when the petition was filed.

Finally, we acknowledge that the petitioner has coached nationally ranked junior tennis competitors. While notable, merely coaching successfully at this level is not, by itself, indicative of or consistent with national or international acclaim.⁸ The remaining evidence of record is not persuasive evidence of sustained national or international acclaim for the reasons discussed above.

Ultimately, for the reasons discussed in this section, the evidence in the aggregate does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor.

III. Conclusion

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himself as a tennis coach to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a tennis coach, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

⁸ The only evidence that, by itself, is sufficient to establish eligibility for the classification sought is a one-time achievement, a major internationally recognized award. 8 C.F.R. § 204.5(h)(3).