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



U.S. Citizenship
and Immigration
Services

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DATE: DEC 02 2011

Office: TEXAS SERVICE CENTER FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 \$630. 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,

SR Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined 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 states:

[The petitioner] is a world-class competitive swimmer. She has competed at a [REDACTED], and at an international level in Europe, since she was a teenager. The evidence shows that she was a national champion in [REDACTED] and she was a leading swimmer on the [REDACTED] from 1995 to 2003.

In 2003, she came to the United States as a member of the [REDACTED] swim team at [REDACTED] the perennially leading swim and diving team in [REDACTED] college sports. . . . She left [REDACTED] after one season, but returned to the United States in 2004 and joined the women's swim team at [REDACTED] Mississippi.

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) as a competitive swimmer and that she has submitted comparable evidence of her extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). For the reasons discussed below, the AAO will uphold the director's decision.

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.* 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. *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.

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).

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 (9th 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).

II. 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). On the Form I-140, Immigrant Petition for Alien Worker, in Part 6, “Basic information about the proposed employment,” the petitioner lists her job title as “Coordinator of Aquatic Operations & Assistant Men and Women Swim” and the nontechnical description of her job as “Assistant in Coaching Men and Women Swim Team; Assist in Operations of Aquatics Center.” Further, the petitioner submitted a letter from [REDACTED] and [REDACTED] stating:

[REDACTED] employs [the petitioner] as [REDACTED] and [REDACTED] and [REDACTED]. [The petitioner] is responsible for the following duties: running and managing of the [REDACTED] swim and diving practice; supervising Aquatic staff in maintaining the facility, conducting aquatic programs; maintaining staff certification; maintenance of both aquatic facilities; aquatic program development, instruction, and supervision of staff; hiring, training and evaluation of staff and program personnel; observance of operation and maintenance of pool, monitoring staff and observance of safety regulations; and coordinating and supervising swimming meets. She assists the Head Coach in recruitment of student athletes; in promoting and running events in both facilities.

The petitioner also submitted a September 1, 2009 letter from [REDACTED] stating: “[The petitioner] has worked with [REDACTED] at [REDACTED] for 3 seasons as a [REDACTED] to Advanced. [The petitioner] was responsible for working primarily with our swimmers ages 5 – 10, who were just beginning their skills in our team’s learn to swim program.” The petitioner’s evidence also includes an April 19, 2010 letter from [REDACTED] stating: “As a coach for [REDACTED] [the petitioner] has been instrumental in developing our swimmers.” Based on the preceding letters and the information provided on the Form I-140, the record is clear that the petitioner intends to continue to work in the area of swim coaching and aquatics operations in the United States.

Aside from documentation establishing the petitioner’s intention to continue to work in the United States as an assistant swimming coach and a [REDACTED] the petitioner submitted evidence of her accomplishments as a competitive swimmer in Bulgaria

and as collegiate swimmer in Division II of the [REDACTED]. The documentation accompanying the petition focuses primarily on the petitioner's national achievements as a competitive swimmer from the 1990s to 2006. The submitted documentation reflects that the petitioner's collegiate swimming career ended in 2006 upon her graduation from [REDACTED]. The petitioner also submitted local newspaper articles mentioning her non-competitive swim across the [REDACTED] in September 2008 and her participation in a triathlon relay (swimming a 1.2 mile stretch of [REDACTED] in the "Medical Co-Ed" division of the [REDACTED] in April 2009, but there is no evidence demonstrating that recreational open-water swimming or triathlon competition constitutes the petitioner's area of extraordinary ability, or that she intends to continue to work in those areas in the United States. Rather, the record is clear that the petitioner intends to continue to work in the area of swim coaching and aquatics operations at [REDACTED]. While a competitive swimmer and a coach may share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

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

Id. at 918. The court noted a consistent history in this area. While the record demonstrates that the petitioner intends to continue working as a swim coach, there is no evidence indicating that she intends to compete in national or international swimming pool competitions as she has done in the past. The AAO acknowledges the possibility of an alien's extraordinary claim in more than one field, such as a swim coach and a competitive swimmer, but the petitioner must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." See 8 C.F.R. § 204.5(h)(5). In this case, there is no evidence establishing that the petitioner intends to continue working in the United States as a competitive swimmer. Although the petitioner's accomplishments as a competitive swimmer are not completely irrelevant and will be given consideration, ultimately she must satisfy the statutory requirement at section 203(b)(1)(A)(i) of the Act as well as the regulations at 8 C.F.R. §§ 204.5(h)(2) – (4) through her achievements as a coach and an aquatics coordinator.

USCIS recognizes that there exists a nexus between competing and coaching in a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, a balanced approach is appropriate when reviewing the evidence in the aggregate in the final merits determination. Specifically, in a case where an alien has achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, the AAO can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that the AAO can conclude that coaching is within the petitioner's area of expertise. A coach who has an established successful history of coaching athletes who compete regularly at an advanced national level has a credible claim; a coach of intermediates or novices does not.

III. Analysis

A. Evidentiary Criteria

The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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 two February 17, 2006 certificates from the [REDACTED] [REDACTED] honoring her for making the “[REDACTED]” and the “[REDACTED]”. These certificates are regional collegiate honors rather than nationally or internationally recognized prizes or awards for excellence in swimming.

The petitioner submitted photographs of award plaques from the 37th and 38th [REDACTED] [REDACTED] reflecting that she received the “[REDACTED]” (2006) and the “[REDACTED]” (2005). These awards are institutional honors from the petitioner’s alma mater rather than nationally or internationally recognized prizes or awards for excellence in swimming.

The petitioner submitted a “1st Place [REDACTED]” award from the [REDACTED] [REDACTED] in April 2009. There is no evidence demonstrating the significance and magnitude of the “[REDACTED]” division won by the petitioner and her male teammates. For instance, the petitioner failed to submit evidence of the official results indicating the total number of relay entrants in the “[REDACTED]” division. A victory in a division with only a small pool of entrants is not evidence of national or international recognition. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is “nationally or internationally recognized.” The burden is on the petitioner to demonstrate the level of recognition and achievement associated with her awards. Further, the AAO is not persuaded that triathlon competition falls within the petitioner’s field of endeavor. Finally, while the record includes local coverage of the petitioner’s award dated May 2009 in the [REDACTED] [REDACTED] (both of [REDACTED] Mississippi), the petitioner did not submit evidence of the national or international *recognition* of her award, such as national coverage of the award in the general media. The plain language of the regulation 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. There is no documentary evidence demonstrating that the petitioner’s “1st Place [REDACTED]” award from the [REDACTED] was

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

recognized beyond the presenting organization or her local community and therefore commensurate with a nationally or internationally recognized award in swimming.

The petitioner submitted separate letters from [REDACTED] and [REDACTED] stating: "In 1996 [the petitioner] joined the [REDACTED] and she was the leader on the [REDACTED]. From 1995 to 2003, [the petitioner] received the [REDACTED]. The preceding letters provide the same conflicting information regarding the petitioner's participation on the [REDACTED]. As the petitioner did not join the [REDACTED] until 1996, it is unclear how she would receive [REDACTED] in 1995. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); see also *Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001). Rather than submitting primary evidence of her [REDACTED] from 1995 – 2003, the petitioner instead submitted third-party letters from [REDACTED] and [REDACTED] attesting to her receipt of the awards. 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) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The letters from Ronnie Mayers and Jeremy McClain do not comply with the preceding regulatory requirements.

The petitioner submitted documentation showing that from 2000 to 2004 she won multiple national swimming championships in [REDACTED] in butterfly and individual medley events. The petitioner also submitted certificates honoring her as an [REDACTED] in 2005 and photographs of several award plaques she received at the [REDACTED]. For instance, the petitioner placed third in the [REDACTED] in 2002 and second in the 400 yard individual medley in 2003 at the [REDACTED]. Although the director found that the preceding awards qualify as nationally recognized awards for excellence in competitive swimming, the "field of endeavor" in which the petitioner intends to work in the United States is coaching and aquatics operations. There is no evidence indicating that the petitioner seeks to work in the United States as

a competitive swimmer. The preceding [REDACTED] awards resulted from the petitioner's accomplishments as a competitive swimmer during her collegiate career and thus cannot be considered evidence of her national recognition as a coach or an aquatic operations coordinator. As previously discussed, 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's competitive swimming awards from the mid-1990s to the mid-2000s do not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a coach. There is no evidence showing that the petitioner has received nationally or internationally recognized prizes or awards for excellence in coaching.

In light of the above, the AAO withdraws the director's finding that the petitioner meets this regulatory 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.

The petitioner submitted a letter from [REDACTED] in [REDACTED], stating: "[The petitioner] as a swimming competitor achieved the best results in comparison with all competitors who have been [REDACTED]. [REDACTED] discusses the petitioner's swimming accomplishments, but aside from his own club he does not identify any associations of which the petitioner is a member. There is no evidence demonstrating that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted a letter from [REDACTED] [REDACTED], stating that the petitioner was a "[REDACTED] champion," a "national record breaker," and "one of the most-distinguished [REDACTED] female swimmers." In discussing [REDACTED] letter, the director's decision stated:

The letter reiterates events from the petitioner's past as a [REDACTED] competitive swimmer, however the author fails to state that the petitioner is or was a member of the [REDACTED]. Nor does the author provide any details regarding the [REDACTED].

The AAO concurs with the director's observations. Nowhere in [REDACTED] letter does it state that the petitioner is a member of the [REDACTED]. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, there is no evidence demonstrating that the [REDACTED] requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

As previously discussed, the petitioner submitted separate letters from [REDACTED] and [REDACTED] stating: "In 1996 [the petitioner] joined the [REDACTED] and she was the leader on the [REDACTED]. From 1995 to 2003, [the petitioner] received the [REDACTED]" The preceding letters provide the same conflicting information regarding the petitioner's participation on the Bulgarian national team. As the petitioner did not join the [REDACTED] until 1996, it is unclear how she would receive [REDACTED] in 1995. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Rather than submitting evidence of her team membership from an official representative of the [REDACTED] team, the petitioner instead submitted third-party letters from [REDACTED] and [REDACTED] attesting to her participation. 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. at 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The letters from [REDACTED] and [REDACTED] do not comply with the preceding regulatory requirements.

Nevertheless, the record does not include documentary evidence showing that membership on the [REDACTED] required outstanding achievements, as judged by recognized national or international experts. While an athletic team is not strictly speaking an "association," it is nonetheless equally true that a player can earn a place on a national or an Olympic team through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, a player's membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. The AAO reiterates, however, that it is the petitioner's burden to demonstrate that she meets every element of a given criterion, including that she is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. The AAO will not presume that every national "team" is sufficiently exclusive. Without evidence showing, for instance, the selection requirements for the [REDACTED] the AAO cannot conclude that the petitioner meets the elements of this regulatory criterion.

Aside from the preceding deficiencies, the plain language of this regulatory criterion requires evidence of the "alien's membership in associations in the field for which classification is sought." In this case, the field for which classification is sought is swim coaching. There is no evidence indicating that the petitioner seeks to continue work in the United States as a competitive

swimmer. As previously discussed, the statute and regulations require that the petitioner seeks to continue to 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). *See also* *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's participation as a competitor on the Bulgarian national team from the late 1990s to mid-2000s does not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a coach.

The director discussed the evidence submitted for this criterion and found that the petitioner failed to establish her eligibility. On appeal, the petitioner does not contest the director's findings for this criterion or offer additional arguments. The AAO, therefore, considers this issue to be abandoned. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Accordingly, the petitioner has not established that she meets this regulatory 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.³

The petitioner submitted [REDACTED] for 2005, 2006-2007, 2007-2008, and 2008-2009. The media guides list the petitioner's top times and swimming awards in various sections and include her biography along with those of the other [REDACTED] team members and coaches. The biographies from the 2007-2008 and 2008-2009 identify the petitioner as one of three assistant coaches for the [REDACTED] team. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "published material about the alien in professional or major trade publications or other major media" including "the title, date and author of the material." The AAO cannot conclude that the content of a university athletic team's media guide, which is not the result of independent media reportage, meets the elements of this regulatory criterion. For instance, there is no evidence identifying the author of the material or showing that the media guide qualifies as a form of major media.

The petitioner submitted a May 3, 2009 article about her in the [REDACTED] September 12, 2008, December 19, 2005, and March 14, 2005 articles briefly mentioning her in the [REDACTED]

³ 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.

██████████ and a photograph of her in the ██████████ in May 2009, but there is no evidence showing that these two ██████████ Mississippi qualify as major media. Further, the AAO notes that the September 12, 2008 article in the ██████████ is about a birthday swim across the ██████████. The December 19, 2005 article includes only a single sentence mentioning the petitioner and instead focuses on the ██████████ meet results in general. The March 14, 2005 article highlights ██████████ results at the ██████████ and only briefly mentions the petitioner's results along with those of multiple other ██████████ team members. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be "about the alien." See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

The petitioner submitted articles in the ██████████ language entitled "██████████ for [the petitioner]" (December 23, 2003) and "[The petitioner] won the silver medal in the USA" (March 21, 2003), but the English language translations accompanying these articles were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. *Id.* Further, the name of the publication and the author of the articles were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, there is no circulation evidence showing that the articles were published in professional or major trade publications or other major media.

The petitioner submitted an article entitled "Hein opens new era of men's and women's swimming and diving," but the name and date of the publication were not identified and the article was not about the petitioner as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted a December 18, 2005 article entitled ██████████ and a December 19, 2005 article entitled ██████████ but the name of the publication and the author of the articles were not identified. Further, the articles were not about the petitioner and only briefly mentioned her in passing. Moreover, there is no evidence showing that any of the preceding three articles were published in professional or major trade publications or other major media.

Aside from the preceding deficiencies, the plain language of this regulatory criterion requires "published material about the alien . . . in the field for which classification is sought." In this case, the field for which classification is sought is swim coaching. There is no evidence indicating that the petitioner seeks to continue work in the United States as a competitive swimmer. As previously discussed, the statute and regulations require that the petitioner seeks to continue to 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, published material solely about the petitioner's achievements as a competitive

swimmer does not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a coach.

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

The petitioner submitted letters of support from the [REDACTED], the [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The preceding reference letters discuss the petitioner's competitive swimming achievements and talent in her sport, but they fail to provide specific examples of how the petitioner's original work has significantly influenced or impacted her sport at a level indicative of original athletic contributions of major significance in the field.

[REDACTED] states:

[The petitioner] has . . . developed many close relationships throughout the local community which has helped bring in new community users and [REDACTED] supporters to the aquatics facility and other fitness facilities on campus. She is a motivator who encourages anyone she comes in contact with to work hard to become the best that they can be at any endeavor they may choose. Through the masters swimming program, [the petitioner] has brought many local adult swimmers back to the pool to train for events such as local triathlons or to simply improve or maintain their health.

[REDACTED] states that the petitioner's work has impacted the local community and her university, but there is no documentary evidence showing that her work has notably influenced the field at large or otherwise constitutes original contributions of major significance in the sport of competitive swimming.

[REDACTED] states:

As a [REDACTED] [the petitioner] has been instrumental in developing our swimmers. Her style of coaching demands the best of our athletes while offering encouragement so that they can continue to grow and improve. In fact, I've had several parents over the years tell me how much they appreciate the way [the petitioner] is tough with their children while still being accessible to them and encouraging their development both as swimmers and as individuals.

[REDACTED] compliments the petitioner on her coaching style, but he does not provide specific examples of how the petitioner's work has significantly impacted swimmers and coaches throughout the field at large.

[REDACTED] states:

[The petitioner] has worked with [REDACTED] for 3 seasons as a [REDACTED]. [The petitioner] was responsible for working primarily with our swimmers ages 5 – 10, who were just beginning their skills in our team's learn to swim program. [The petitioner] was always prompt for team meeting and was never late to any practices On a regular basis she would talk to parents after practice about their athletes' progress and share with them the new skills they have learned.

[REDACTED] discusses the petitioner's work for the [REDACTED] but he does not provide specific examples of how the petitioner's contributions have impacted the field such that her work rises to the level of original contributions of major significance in the field. 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. *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 "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.

With regard to the petitioner's athletic and coaching achievements, the reference letters submitted by the petitioner do not specify exactly what the petitioner's "original" contributions in competitive swimming have been, nor is there an explanation indicating how any such contributions were of major significance in her sport. None of the references provide specific examples of how the petitioner's original contributions rise to a level consistent with major significance in the field. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted her field in order to meet this regulatory criterion. 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" in the field. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). While the petitioner has earned the admiration of her references, there is no evidence demonstrating that she has made original athletic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other coaches or swimmers in the sport, nor does it show that the field has significantly changed as a result of her original work.

The 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 evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *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"). Thus, the content of the experts' 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 swimmer or coach 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, the AAO cannot conclude 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.

On appeal, counsel argues that the petitioner has performed in a leading or critical role for the [REDACTED]. The letters of support from [REDACTED] are sufficient to demonstrate that the petitioner performed in a leading or critical role as a swimmer for her [REDACTED], but there is no documentary evidence showing that either of these teams has earned a distinguished reputation in the sport of swimming. Regarding the self-serving information in the [REDACTED] for 2005, 2006-2007, 2007-2008, and 2008-2009, USCIS need not rely on self-promotional material. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media).

The petitioner submitted letters of support from [REDACTED] discussing her achievements as a competitive swimmer, but neither of their letters states that the petitioner performed in a leading or critical role for the [REDACTED]. The preceding letters do not provide specific information differentiating the petitioner's role from that of the other members who swam for the [REDACTED] let alone its top competitors, coaches, and captains. Further, there is no evidence distinguishing the petitioner's results at international swim competitions from those of the other successful members of the national team (such as a comprehensive tally of the women's first place finishes or medals won). Moreover, there is no documentary evidence demonstrating that the [REDACTED] has earned a distinguished reputation in the sport of swimming. 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. at 165.

Aside from the preceding deficiencies, there is no evidence indicating that the petitioner seeks to continue work in the United States as a competitive swimmer. As previously discussed, the statute and regulations require that the petitioner seeks to continue to 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). *See also Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, letters of support focusing on the petitioner's leading or critical role as a competitive swimmer do not meet the elements of this regulatory criterion for purposes of establishing her extraordinary ability as a coach.

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

Summary

The AAO concurs 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).

B. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel argues that the petitioner's competitive victories, [REDACTED]

[REDACTED] from 1995 – 2003 are comparable evidence that establishes the petitioner's eligibility for the classification sought. Regarding the petitioner's [REDACTED] from 1995 – 2003, as previously discussed, the petitioner submitted conflicting information regarding her participation on the Bulgarian national team. As the petitioner did not join the [REDACTED] until 1996, it is unclear how she would receive [REDACTED] in 1995. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent, objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Moreover, rather than submitting primary evidence of her [REDACTED] from 1995 – 2003, the petitioner instead submitted third-party letters from [REDACTED] attesting to her receipt of the awards. 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. at 165. The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i).

Nevertheless, 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). 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. The AAO notes that the awards listed by counsel readily apply to the awards criterion at 8 C.F.R. § 204.5(h)(3)(i) and have already been considered there. Although the director found that the petitioner submitted qualifying nationally recognized awards for excellence in competitive swimming, the "field of endeavor" in which the petitioner intends to work in the United States is coaching and aquatic operations. There is no evidence indicating that the petitioner seeks to work in the United States as a competitive swimmer. The awards listed by counsel as comparable evidence resulted from the petitioner's accomplishments as a competitive swimmer and thus cannot be considered evidence of the petitioner's national recognition as a coach or an aquatic operations coordinator. As previously discussed, 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's

competitive swimming honors from the mid-1990s to the mid-2000s do not establish her extraordinary ability as a coach.

C. Final Merits Determination

The AAO will 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 1119-20. 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 categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (v), and (viii).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), the AAO cannot conclude that the petitioner’s New South Intercollegiate Swimming Conference honors, NCAA Division II All-American Swimmer honors, and NCAA Division II Women’s Swimming and Diving Championships awards are indicative of a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field.⁴ *See* 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that a swimmer who has received awards or records limited to the NCAA Division II level or age group level should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. While the AAO acknowledges that a district court’s decision is not binding precedent, the AAO notes that in *Matter of Racine*, 1995 WL 153319 at *4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

⁴ “Division II is an intermediate-level division of competition, which offers an alternative to both the highly competitive level of intercollegiate sports offered in Division I and the nonscholarship level offered in Division III.... Total Division II Membership: Division II has 302 member institutions, with 281 currently classified as active member institutions and 21 institutions advancing through the membership process. These schools range in size from less than 2,500 to over 15,000, with the average enrollment being around 4,500.... Public/Private: Division II schools tend to be smaller public universities (52 percent) and many private institutions (48 percent).” *See* <http://www.ncaa.org/wps/wcm/connect/public/NCAA/About+the+NCAA/Who+We+Are/Differences+Among+the+Divisions/Division+II/About+Division+II>, accessed on November 14, 2011, copy incorporated into the record of proceeding.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

The AAO acknowledges the documentation showing that from 2000 to 2004 the petitioner won multiple national swimming championships in Bulgaria in butterfly and individual medley events. However, there is no evidence showing that the petitioner has received nationally or internationally recognized prizes or awards in swimming competitions subsequent to 2005. The statute and regulations require the petitioner to demonstrate that her 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 documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the November 4, 2009 filing date of the petition. Moreover, 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's awards and competitive results demonstrating her past record of success as a competitive swimmer are not an indication that she has sustained national or international acclaim as a swimming coach.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), there is no evidence showing that the petitioner's associations require outstanding achievements of their members, as judged by recognized national or international experts in her field. The petitioner has not established that her memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field. Moreover, there is no evidence showing that the petitioner has competed as a member of the Beroe Swimming Sports Club, the Bulgarian Swimming Federation, and the Bulgarian National Team subsequent to 2005. The statute and regulations, however, require the petitioner to demonstrate that her national or international acclaim as a competitive swimmer 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 documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date. Further, as previously discussed, 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, the petitioner's memberships based on her accomplishments as a competitive swimmer are not an indication that she has sustained national or international acclaim as a swimming coach.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), as previously discussed, there is no evidence of qualifying published material about the petitioner in professional or major trade publications or other major media. The petitioner has not established that her level of media coverage is indicative of or consistent with sustained

national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of her field. Further, the record lacks evidence of qualifying published material about the petitioner relating to her work as a swimming coach. As previously discussed, 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). See also *Lee v. I.N.S.*, 237 F. Supp. 2d at 914. Accordingly, published material relating to the petitioner's work as a competitive swimmer is not an indication that she has sustained national or international acclaim as a swimming coach.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), as previously discussed, the petitioner did not submit evidence establishing that she has made original athletic contributions of major significance in the field. Aside from the petitioner's failure to submit evidence demonstrating that she has made original athletic contributions of major significance in the field, the AAO notes that the petitioner's claim is based on recommendation letters. While such letters can provide important details about the petitioner's experience and activities, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's personal contacts. 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 section 203(b)(1)(A)(i) of the Act provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). 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 swimmer or coach who has sustained national or international acclaim at the very top of the field. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that she is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has not established that she has performed in a leading or critical role for organizations that have a distinguished reputation. Moreover, there is no documentary evidence showing that the petitioner has performed in a leading or critical role for the Bulgarian National Swim Team, the Drury University swim team, or the DSU swim team subsequent to 2006. As previously discussed, the statute and regulations require the petitioner to demonstrate that her national or international acclaim as 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 documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition. The AAO acknowledges that the petitioner has worked for DSU in recent years as an assistant coach, but there is no evidence showing that her present role is leading or critical in relation to [REDACTED] assistant coaches [REDACTED] and [REDACTED] and Director of Aquatics [REDACTED]. Moreover, there is no evidence showing that the Drury

University swim team and the DSU swim team have a distinguished reputation when compared to teams competing at a more advanced level of competition (such as the numerous NCAA Division I swim teams). *Cf.*, *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard).

In this case, the petitioner has not established that her achievements at the time of filing were commensurate with sustained national or international acclaim as a competitive swimmer or coach, or being among that small percentage at the very top of the field of endeavor. Demonstrating that the petitioner enjoyed success as a competitive swimmer in the United States at the intermediate NCAA Division II level is not useful in setting her apart from other swimmers and coaches through a “career of acclaimed work.” H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that “an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)...” The conclusion we reach by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, 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. 8 C.F.R. § 204.5(h)(2). The submitted evidence does not establish that the petitioner has sustained national or international acclaim as competitive swimmer subsequent to 2005, that she has earned national or international acclaim based on her achievements as a swim coach and aquatics coordinator, or that she is among that small percentage at the very top of her field.

IV. 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 does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner’s achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.