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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

B2

[REDACTED]

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

JAN 10 2011

IN RE:

Petitioner:

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, 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,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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. The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). We acknowledge that the standard of proof is a preponderance of the evidence, as noted by counsel on appeal. The petitioner must prove by a preponderance of evidence that the alien is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the petitioner is required to submit that evidence. 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)(2) and (3). In this case, the documentation submitted by the petitioner failed to demonstrate by a preponderance of the evidence that he has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor.

For the reasons discussed below, we uphold the director's decision.

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

The statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii); 8 C.F.R. § 204.5(h)(5). In Part 5 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed his occupation as "Professional Soccer Coach." Under part 6 of the form, "Basic Information about the proposed employment," the petitioner states that he will "[p]lan, organize and conduct practice sessions." In addition, the petitioner submitted a personal statement detailing his plans to continue working as a soccer coach in the United States. The petitioner states: "I have had offers to coach in America, from such organizations as [REDACTED]"

The petitioner also submitted evidence showing that he completed the Union of European Football Associations (UEFA) B-License Coaching Course in 2007. The record thus reflects that the petitioner is seeking classification as an alien of extraordinary ability as a soccer coach.

In addition to evidence of his coaching intentions, the record includes documentation pertaining to the petitioner's athletic career as a soccer player in South Africa and Germany in the 1970s and 1980s. The petitioner's athletic achievements playing for [REDACTED] occurred more than nineteen years prior to the July 15, 2009 filing date of the petition. Accordingly, the petitioner's accomplishments as a soccer player in the 1970s and 1980s are not evidence of his sustained national or international acclaim as a coach. Subsequent to retiring from playing in the late 1980s, there is no evidence indicating that the petitioner, age 51 at the time of filing, has competed as a professional soccer player.

As noted above, the statute and regulations require that the petitioner seeks to continue work in his 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), and 8 C.F.R. § 204.5(h)(5). While a soccer player and coach share knowledge of the sport, the two rely on very different sets of basic skills. Thus, playing soccer 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, [REDACTED] extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through achievements as a soccer player since his career as a competitor ended in the late 1980s. Further, while the record adequately demonstrates that the petitioner intends to work as a soccer coach, there is no evidence indicating that he intends to compete as a professional soccer player in the United States. We acknowledge the possibility of an alien's extraordinary claim in more than one field, such as a soccer coach and a professional soccer player, 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 compete as a soccer player for any teams in the United States. Although the petitioner's competitive accomplishments as a soccer player are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulations at 8 C.F.R. §§ 204.5(h)(2) and (3) through his achievements as a coach.

II. 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, internationally 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).

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).

Id. at 1119-1120.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (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).

III. Analysis

A. Evidentiary Criteria

This petition, filed on July 15, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a soccer coach. The petitioner has submitted evidence 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 evidence showing that he was chosen by [REDACTED] [emphasis added] in 1984. The petitioner also submitted a "Certificate of Dedication" (1984) from [REDACTED] in recognition of his "great achievement of winning five titles in one season." The certificate identifies [REDACTED] as the soccer team's "Manager/Coach" and [REDACTED]. The petitioner's initial evidence also included two Certificates of Merit from [REDACTED] soccer club in recognition of his being "1st Team Player of the Year" and "Players' Player of the Year" for the 1989 soccer season. The preceding athletic honors equate to regional or institutional soccer club honors rather than nationally or internationally recognized prizes or awards for excellence in the field. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no supporting documentary evidence demonstrating that the petitioner's playing honors were commensurate with "nationally or internationally recognized" prizes or awards for excellence in the field. Further, as previously discussed, the statute and regulations require that the petitioner seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). As the field of endeavor in which the petitioner seeks to continue working is coaching, not playing, ultimately he must satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) through

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

his nationally or internationally recognized prizes or awards for excellence as a soccer coach. Accordingly, the petitioner's awards from the 1980s demonstrating his achievements as a soccer player cannot serve to meet this regulatory criterion. Additional deficiencies pertaining to the preceding evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with "sustained national or international acclaim" as of the petition's filing date.

On appeal, the petitioner submits a January 7, 2010 letter from [REDACTED] The Football Association (FA) Learning Limited, Wembley, London, stating:

The purpose of this letter is to confirm that our organization has recently awarded South African soccer coach [the petitioner] [REDACTED] coaching qualification upon his completion of the required process of training and assessment. . . . As a consequence of completing this qualification, [the petitioner] has demonstrated that he has the coaching competencies required to use his knowledge and operate at the elite levels of the game whilst developing himself further through his commitment to Continuous Professional Development. Because of the prestigious nature of this award, we employ a very robust and demanding assessment process and will only deem a candidate coach competent when they have reached the exacting standards demanded.

The petitioner's initial evidence included a facsimile from [REDACTED] stating that the petitioner completed the [REDACTED] in 2007. [REDACTED] further states: "The course contained the following elements: Psychology, Fitness, Annual Periodisation and Tactical Delivery of Coaching Sessions and Match Analysis to name a few." The petitioner's [REDACTED] is a coach's training qualification issued upon completion of coursework rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor.³ In this case, there is no evidence of the petitioner's receipt of any

³ While the petitioner's UEFA B-License is a Level 3 qualification, information about FA Learning courses at TheFA.com indicates that the FA offers far more advanced courses such as the "UEFA A License" (Level 4) and the "UEFA Pro License" (Level 5). See <http://www.thefa.com/GetIntoFootball/FALearning/FALearningPages/ResidentialCourses>, accessed on December 17, 2010, copy incorporated into the record of proceeding. The FA's website states:

Level Three Certificate in Coaching Football (UEFA B Licence)

Understand match analysis and performance evaluation

Coaches will gain detailed coaching knowledge based on functional practices, small sided (8 v 8) games and phases of play to enhance game related understanding. This knowledge will aid them to evaluate player and team performance and set goals accordingly. Coaches will also learn how to analyse matches, assess fitness, provide a psychological evaluation of players and build on nutritional awareness.

UEFA A Licence

Raising the benchmark

One of the most respected qualifications in the game, the UEFA A Licence will educate candidates in the practical and theoretical developments in modern football, so that they may devise, organise, and evaluate coaching sessions in the advanced skills, tactics, strategies and systems of play. Candidates are required to undertake a mandatory UEFA A Preparatory Course prior to the Part One of the UEFA A Licence.

UEFA Pro Licence

nationally or internationally recognized "prizes or awards" for excellence in coaching. Accordingly, the petitioner has not established that he meets this criterion.

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

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

The petitioner submitted articles from the 1970s and 1980s in [REDACTED] and other unidentified newspapers mentioning his competitive achievements. Several of the preceding articles describe the petitioner's work as a "player-coach" for teams such as Hellenic and Camps Bay. Many of the submitted articles did not include the name of the publication, the date, and the author as required by the plain language of this regulatory criterion. Further, there is no documentary evidence showing that [REDACTED], and the other unidentified newspapers equate to major media in South Africa or any other country.

The petitioner also submitted several foreign language newspaper articles from the 1980s. Pursuant to 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. The foreign language articles submitted by the petitioner were not accompanied by proper English language translations as required by this regulatory criterion and the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted an article entitled [REDACTED] in an unidentified publication. The date and author of the material were not included as required by the plain language of this regulatory criterion. The article, which is about the petitioner's career as a soccer player in the

The Ultimate Coaching Qualification

The highest coaching qualification in the game, the UEFA Pro Licence will be mandatory for all Premier League Managers from 2010. The Pro Licence marries the finer points of a coach or manager's match preparation with other non-football specific modules including employment law, finance, the media, technology, business management and club structure.

Id.

⁴ 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.

1970s and 1980s and which briefly mentions his work as a coach in the late 1980s, identifies him as a "38-year-old" who "acts as a financial services consultant with [REDACTED]". Based on the petitioner's age as mentioned in the article, the article appears to have been published some time in the mid-1990s. The article concludes by stating: "[The petitioner] returned to his home town and played for Hellenic before taking over the managerial duties of the club until he retired in 1989."

The petitioner also submitted a May 11, 2009 article [REDACTED] [The petitioner]." There is no documentary evidence showing that [REDACTED] is a professional or major trade publication or some other form of major media. The majority of the article is about the petitioner's activities as a soccer player from 1974 to 1988. The article concludes by stating:

Since his retirement in 1988 [the petitioner] has concentrated on his business.

In 2007, however, the 51-year-old financial trader returned to the game, having successfully completed the FA Advanced Coaching Licence (UEFA B Licence).

"Ever since I returned from Germany in 1982, I've worked with provident funds, but I needed to get back into football," he says.

"I'm looking to do some coaching and am currently attempting to get a B1 visa for the U.S. I have a letter of recommendation from [REDACTED] who I coached at Hellenic, and I'm also looking at getting something from [REDACTED]. We grew up together, and it was his father who signed me for City."

In response to the director's request for evidence, the petitioner submitted a captioned photograph of two others and himself in *Cape Argus* stating:

DOUBLE TROUBLE . . . only weeks after the soccer season ended, [REDACTED] signed up the coaching services of former Hellenic players, [REDACTED] [the petitioner]. Farrell and [the petitioner] has been appointed assistant coach and coach respectively for the 1989 season.

The plain language of this regulatory criterion requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The preceding captioned photograph from the late 1980s does not meet these requirements. The petitioner also submitted a profile of *Cape Argus* from its website stating that the newspaper has a readership of 359,000 and circulation of 60,552. The self-serving claims posted on the website of *Cape Argus* do not establish that this newspaper qualifies as a form of "major" media. There is no evidence (such as objective circulation information from an independent source) showing the distribution of *Cape Argus* relative to other media to demonstrate that the newspaper is a form of major media. Additional deficiencies pertaining to the petitioner's published material from the 1970s and 1980s will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with "sustained national or international acclaim" as of the petition's filing date.

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

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

As evidence for this criterion, the petitioner initially submitted published material reporting on his activities as a player for various soccer teams in the 1970s and 1980s, but this material has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii). Because separate criteria exist for original contributions of major significance in the field and published material about the alien, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Nevertheless, the petitioner has not established that published articles about his being signed to various teams or his on-the-field plays in various soccer games are tantamount to original athletic contributions of major significance in the sport.

The petitioner also submitted letters from the Cape Town City Football Club stating that they renewed his playing contracts for the 1976 and 1978 seasons, a September 1974 letter informing the petitioner of his selection for the South African Currie Cup XI, team photographs of the petitioner as a member

and photographs of the petitioner playing soccer in various tournaments. There is no evidence establishing that securing a position to compete for these teams and in these tournaments equates to original athletic contributions of major significance in the sport.

In response to the director's request for evidence, the petitioner submitted letters of support discussing his work as a coach during the 1980s. Talent and success in coaching players in one's sport, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the petitioner has made original athletic contributions that have significantly influenced or impacted the field of soccer coaching.

South Africa, states:

I got to know [the petitioner] firstly as a player with my club, but then as a highly respected player/coach for Hellenic Soccer Club. It was always a daunting task for my team to play against Hellenic in those days, because of the organized manner in which he was able to mobilize his team. His teams were always extremely motivated and disciplined and for this he garnered national recognition. Simply put, his coaching skills and ability made him one of the best in the country, perhaps even *the* best. His uninterrupted dedication to, and passion for, soccer as well as his ongoing stature as one of the finest coaches South Africa has produced is clear for all to see by him been awarded the coveted in 2007. It is pleasing to see that soccer coaches of [the petitioner's] caliber and knowhow are rewarded by these prestigious International qualifications and I'm certain that he will do the name of soccer proud wherever he may coach in the world.

[REDACTED] does not provide specific examples of the petitioner's original coaching techniques and methodologies that have significantly impacted the sport. Moreover, the petitioner's UEFA B-License is a coach's training qualification issued upon completion of coursework rather than an original athletic contribution of major significance in the field.

[REDACTED] states:

In 1989, with firm instructions from the club's governing committee, I personally head hunted [the petitioner], who was then the Head Coach of the highly successful Hellenic Football Club. At the time, due to his remarkable success as a coach and unsurpassed knowledge of the game, [the petitioner] could have commanded soccer coaching jobs anywhere at the highest level in South Africa, if not abroad as well. We recruited him aggressively, as we believed, quite simply, that he was the best in the country.

Our success on the field once we had the fortune of obtaining [the petitioner's] services made it clear that our judgment had been precisely correct. He took us from 3rd bottom to 4th from the top in our league in just one season as well as being runner-up in the lucrative National Bobsave Knock Out Competition, losing narrowly to arch-rivals Hellenic in the final. Remarkable, and telling, that the two teams that reached the final were those [the petitioner] was currently coaching, and had just stopped coaching, respectively. The second season under [the petitioner] saw us finishing runner-up in the league, but more encouraging was the fact that he managed to mould this town into a winning outfit on the field that played precise, colourful and entertaining soccer. This was incontrovertibly proved by the fact that our spectator base increased by over 10 fold after he took over.

The petitioner's leading role as coach [REDACTED] teams will be addressed below under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii). Because separate criteria exist for original contributions of major significance in the field and performing in a leading role for an organization with a distinguished reputation, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Although the petitioner's teams may have enjoyed success in league competition, there is no evidence showing that his work equates to original athletic contributions of major significance in the field.

[REDACTED] states that he is "a soccer Sports Analyst/Presenter for Africa's biggest TV sports channel, Super Sport" and that he "was a member of the successful England World Cup winning Squad [REDACTED] further states:

[The petitioner] began his career as a top-level athlete, and then used that grounding to become one of the best soccer coaches that South Africa has produced. Our paths crossed as opposing coaches of highly respected National Professional Soccer teams, namely Wits University and Hellenic in the then top South African Soccer League.

[The petitioner] was of course originally a great player, but built on that to rise to the pinnacle of the coaching profession such that, over time, he became respected nationally in that capacity as one of a handful of South Africa's best soccer coaches. By way of example, [the petitioner's] coaching was vital in one of South Africa's top attackers, Mark Williams not only being selected to represent South Africa's national team for several years, but also making a name for himself in the tough European soccer league.

[The petitioner's] success as a coach has been sustained and ongoing. It comes as no surprise, given the length of his career and his sustained success, that he has now been awarded a prestigious Advanced Coaching credential by one of soccer's most esteemed organizations, the Union of European Football Associations ('UEFA').

asserts that the petitioner's "success as a coach has been sustained and ongoing," but the submitted documentation does not support this conclusion. There is no documentary evidence of the petitioner's original contributions or achievements as a coach of soccer players or teams subsequent to 1990. As previously discussed, the petitioner's UEFA B-License is a training qualification issued upon his completion of coursework in 2007 rather than an original athletic contribution of major significance in the field of soccer coaching.

a former player for the South African national soccer team, states:

I was fortunate enough to be coached by [the petitioner] during my time at Hellenic Football Club. Hellenic was a very successful and feared team, one of the best in the highest level soccer league in South Africa, the National Professional League. Coaching at that elite level of the sport, [the petitioner] was unparalleled in his ability to equip and motivate players to perform at their maximum ability. His prior career as a top player himself, coupled with the empathetic but tough and confident manner in which he'd impart his knowledge and skill for the game, left an indelible mark on my career and on those of the other players on the teams he coached. He was a master tactician who spent hours teaching me the art of ball control and when and how to use my speed to torment defenses around the world. The knowledge I was lucky enough to have learned from him regarding my positioning and intuitive feel for how to be in the right place at the right time enabled me to reach great heights. Largely because of [the petitioner], I became one of the most prolific goal scorers in the South African Professional Soccer League for many years and that success led in turn to my being recruited to play at the highest levels of English soccer too. I have, in the succeeding years, been coached by many of the finest coaches in the world, and I can say as an expert that none were better than the extraordinary [petitioner].

While the record reflects that the petitioner enjoyed success as a soccer coach in South Africa in the 1980s, there is no evidence showing that his work equates to original athletic contributions of major significance in the field. does not explain how the petitioner's coaching contributions were "original" in the sport of soccer or how they have significantly impacted his field.

The preceding letters of support submitted by the petitioner describe him as a talented and successful coach in South Africa during the 1980s, but they do not specify exactly what his original contributions in the sport of soccer have been, nor is there an explanation indicating how any such contributions were of major significance in his field. It is not enough to be a talented coach and to have others attest to that talent. An alien must have demonstrably impacted his 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. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the admiration of his references, there is no evidence demonstrating that he 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 throughout the sport, nor does it show the field as a whole has specifically changed as a result of his work.

The preceding reference letters 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 (Commr. 1988). 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 soccer coach who has made original contributions of "major significance." Without extensive documentation showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion. Additional deficiencies pertaining to the preceding evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with "sustained national or international acclaim" as of the petition's filing date.

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

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

The petitioner submitted three reference letters as evidence for this regulatory criterion.

Africa, states:

I had the privilege of working together with [the petitioner] in coaching The School's first Soccer team in 2006/7, thereby assisting [the petitioner] in the practical sessions he

needed to complete to achieve the prestigious UEFA B Advanced Coaching Licence issued to him by [REDACTED]

Obviously knowing his background, not only as a highly skilled and successful international professional soccer player, but also as a respected Head Coach of one of our biggest Professional Clubs of that time, namely Hellenic Football Club made this partnership exciting and interesting for both the players and myself. The coaching sessions were not only enjoyable, but we all learned a great deal from been [sic] taught by this former professional coach and South African soccer player, who reached the pinnacle of his career in South Africa during the days of isolation by the rest of the world.

There is no evidence (such as competitive statistics or published material) showing that the [REDACTED] first soccer team had a distinguished reputation. Further, we note that [REDACTED] rather than the petitioner, was the team's head coach. The petitioner has not established that performing "the practical sessions he needed to complete" to receive his UEFA B Coaching License equates to a leading or critical role for [REDACTED] of youth players.

[REDACTED] states:

I am [REDACTED] . . . last years [sic] Champions of The South African Professional Soccer League. I hold a UEFA A Soccer Coaching License, obtained through The FA in England and have been coaching at this level for the passed [sic] 15 years. I have also previously assisted and advised the South African National Soccer team.

I strongly believe that [the petitioner] would be a tremendous asset to any soccer club in any country; not only because of his coaching ability, but because of the vast experience he has of playing International and National Soccer at the top level for many years. This was endorsed by The FA inviting him to be part of The UEFA B License Course reserved only for Senior ex Professional Players. Here he rubbed shoulders with other International players of World class ability, namely [REDACTED]

[The petitioner] passed this course with flying colours and was awarded his UEFA B License in 2007 by [REDACTED] knowing [REDACTED] highly successful background, having both played with him and been coached by him whilst playing for Hellenic Football Club, a top Professional Club in Cape Town at the time, I can only say that I would have no hesitation in appointing him to my coaching staff as I know other coaches and players would benefit hugely from his experienced input.

[REDACTED] opines that the petitioner "would be a tremendous asset to any soccer club in any country" and that he "would have no hesitation in appointing" the petitioner to his coaching staff. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider potential developments in the petitioner's career in this proceeding.

states that he is a "former Manchester United (10 years and 373 matches) and England goalkeeper (1986 world cup squad)" and a soccer commentator/host for the Supersport television channel in South Africa. further states:

My association with [the petitioner] goes back to school days, when as 16/17 year olds we played together in Cape Town City's reserve team (one of the top professional clubs in the country at the time). [The petitioner's] exceptional soccer talent then, was rewarded when my father the then head coach of Cape Town City offered him a Professional contract at the age of 16, making him one of the youngest professionals in the country. His rare talent was further shown when he was chosen to represent the Senior South African Currie team also at the age of 16. Due to apartheid and sanctions unfortunately Internationals were then not allowed, however [the petitioner] had the opportunity of playing against an England great such as the legendary [The petitioner's] professional career in South Africa blossomed as he became a regular First team player and thereby getting the opportunity to play against and with International players of the calibre of to name a few. Due to various reasons soccer in SA in the early eighties became very disorganized, with breakaway leagues and poor administration, however this was when [the petitioner's] greatest soccer achievement was to be accomplished. realized he had exceptional talent, offering him a fully Professional contract allowing him the opportunity of playing Professional Soccer in the German Bundesliga and having the experience of playing against all time greats of soccer like . On his return to SA, his soccer coaching ability, coupled with his outstanding motivational skills was realized and was thus employed by Hellenic FC (one of the top Cape Town Professional clubs at the time) as player coach. *Although he was not involved in active soccer for a long period of time*, his extraordinary ability in understanding the dynamics surrounding soccer coaching allowed him to be awarded his prestigious UEFA B Licence soccer coaching badge from the Football Association in London in 2007, having successfully completed an intensive practical plus theory course and exams....

[Emphasis added.]

While the petitioner "successfully completed an intensive practical plus theory course and exams" for his UEFA B License in 2007, earning this credential does not equate to evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. In this case, there is no evidence showing that the petitioner has performed in a leading or critical role for a distinguished soccer team subsequent to the 1980s.

The director found that "[t]he petitioner's coaching in the late 1980s was a leading or critical role, and the teams had distinguished reputations." We concur with the director's determination that the petitioner's coaching role for distinguished soccer teams in the 1980s meets the plain language requirements of this regulatory criterion. However, a significant deficiency regarding this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with "sustained national or international acclaim" as of the petition's filing date.

Summary

In this case, we concur with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he 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). A final merits determination that considers all of the evidence follows.

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." 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 regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (iii), (v), and (viii).

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(3)(i), there is no evidence showing that the petitioner has received any nationally or internationally recognized prizes or awards for excellence as a soccer player or coach subsequent to the 1980s. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim in his sport as of the filing date of the petition. Further, with regard to the petitioner's UEFA B-License, information about FA Learning courses at TheFA.com indicates that the FA offers far more advanced courses such as the "UEFA A License" (Level 4) and the "UEFA" Pro License (Level 5).⁵ We cannot ignore [REDACTED] statement indicating that he holds a UEFA A Soccer Coaching License reflecting a higher level of achievement than that of the petitioner. Accordingly, the petitioner's UEFA B-License from 2007 is not evidence that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2).

In regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(iii), there is no evidence showing that the petitioner has had qualifying material published about him since the 1980s. Further, we note that the two [REDACTED] about the petitioner do not discuss his work coaching players or soccer teams in the 1990s or 2000s. Rather, both articles state that the petitioner retired from the sport in the late 1980s and has since been employed in the financial services industry. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim as a coach has been *sustained*. *See* section

⁵ *See* <http://www.thefa.com/GetIntoFootball/FALearning/FALearningPages/ResidentialCourses>, accessed on December 17, 2010, copy incorporated into the record of proceeding.

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 8 C.F.R. § 204.5(h)(3)(iii) is not commensurate with *sustained* national or international acclaim in his sport as of the filing date of the petition.

Regarding the documentation for 8 C.F.R. § 204.5(h)(3)(v), there is no documentary evidence of the petitioner's original athletic contributions of major significance in his sport subsequent to the 1980s. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(v) is not commensurate with *sustained* national or international acclaim as of the filing date of the petition.

With regard to the documentation submitted for 8 C.F.R. § 204.5(h)(3)(viii), the petitioner submitted evidence showing that he last performed in a leading or critical role for distinguished soccer teams in the late 1980s. There is no documentary evidence indicating that the petitioner has performed in a leading or critical role for a distinguished organization subsequent to the 1980s. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim in his sport 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 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.

While the petitioner has earned the respect and admiration of his references, the evidence of record falls short of demonstrating his sustained national or international acclaim as a player or coach during the nineteen years immediately preceding the petition's July 15, 2009 filing date. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that a financial services consultant who has not been employed as a soccer coach since the 1980s should necessarily qualify for an extraordinary ability employment-based immigrant visa. In this case, the record does not include evidence of the petitioner's nationally or internationally acclaimed achievements and recognition in his sport subsequent to the 1980s. Accordingly, the petitioner has not demonstrated that his national or international acclaim as a player or coach has been *sustained* as of the filing date of the petition. 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).

IV. Conclusion

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim and to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements in the last two decades set him significantly above almost all others in his 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.