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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

**PUBLIC COPY**

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[Redacted]

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **JAN 21 2011**

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:  
[Redacted]

**INSTRUCTIONS:**

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, 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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an “alien of extraordinary ability” in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

On appeal, counsel submits a brief and evidence, much of which is already part of the record of proceedings. For the reasons discussed below, we uphold the director’s ultimate conclusion that the petitioner has not established her eligibility for the benefit sought.

## **I. Law**

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien’s entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term “extraordinary ability” refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

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

- (i) Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien’s membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien’s work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

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

*Id.* at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See* 8 C.F.R. 103.3(a)(1)(iv); *Soltane v. DOJ*, 381

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

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

## II. Analysis

The petitioner initially submitted evidence of her past activities as a tennis player but did not indicate her plans for future employment as required under 8 C.F.R. § 204.5(h)(5). In response to the director's request for additional evidence, the petitioner submitted evidence of prospective employment as a coach.

The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to "continue work in the area of expertise." While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002).

USCIS recognizes that there exists a nexus between playing and coaching 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, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we 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 the national level has a credible claim; a coach of novices does not.

### A. Evidentiary Criteria<sup>2</sup>

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

The record contains evidence that the petitioner won [REDACTED] [REDACTED] in 2004, 2005 and 2006. The petitioner also won several national awards in China. Specifically, in 2003 the petitioner placed third in a national championship in China, in 2002 the petitioner placed second in the [REDACTED] [REDACTED] in 2001 the petitioner placed third at an unidentified competition, in 2001 the petitioner placed third in both mixed and women's doubles at the [REDACTED] [REDACTED] in 2000 the petitioner again placed third in mixed doubles at the [REDACTED] [REDACTED], in 2000 the petitioner placed third at the [REDACTED] [REDACTED] and in 1998 the petitioner placed third in the [REDACTED] [REDACTED]

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

The petitioner also submitted evidence of lesser place finishes as well as awards in student and youth events.

In light of the above, we concur with the director that the petitioner has submitted qualifying evidence that meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

*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.*

Initially, the petitioner submitted a June 29, 2006 certificate from the [REDACTED] certifying the petitioner as a "Professional 3." In a May 29, 2008 letter, [REDACTED] asserts that the petitioner was currently ranked as a "Professional 1." In response to the director's request for additional evidence, the petitioner submitted a credential from [REDACTED] as [REDACTED]." The card is dated "2008" and indicates that it would expire on December 31 of that year. The petitioner submitted general information about [REDACTED] from its website, but these materials do not discuss the significance of "Professional" rankings. Finally, the petitioner submitted her personal, self-serving [REDACTED]. On this page, she discusses what was required to obtain a professional 1 ranking. The webpage, however, includes a disclaimer indicating that [REDACTED] does not guarantee the accuracy of statements made by members on their individual pages. The director concluded that the petitioner had not demonstrated the membership requirements for [REDACTED].

On appeal, the petitioner submits evidence from [REDACTED] regarding Professional-level member rankings. These materials provide:

The majority of [REDACTED] consists of Professional-level members who work full time in the tennis industry. Professionals are rated at three levels, with Professional 1 being the highest according to their scores on a five-part certification exam.

The materials further provide that Professional 1 members must meet the following requirements:

- Must be 22 years of age or older
- Must pass all portions of the Certification Exam at the Pro 1 level or higher
- Must have an NTRP [National Tennis Rating Program] of 4.5 or higher
- Must have three years or five seasons of full-time teaching experience.

First, the petitioner's 2008 [REDACTED] does not list a specific issue date. Thus, the petitioner has not established that she held the Professional 1 membership rank on June 13, 2008, when the petition was filed. The petitioner must establish her eligibility as of that date. See 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

Second, even if we accept [REDACTED] assertion that the petitioner was already ranked as a "Professional 1" as of the date of filing, the petitioner has not established that [REDACTED] must demonstrate outstanding achievements as judged by national or international experts. Age and experience are not outstanding achievements. In addition, simply passing a certification examination as a specific level is not an outstanding achievement. The petitioner has not established how many [REDACTED] exist and what they represent.<sup>3</sup> Thus, regardless of the petitioner's own [REDACTED] rating, she has not established that [REDACTED] outstanding achievements for [REDACTED] level membership.

Finally, while the petitioner submitted information about the contents of the certification examination, this information does not indicate whether national or international experts judge the examinations.

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

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

As noted by the director, the petitioner submitted newspaper articles, mostly about competitions she attended and her collegiate team although a single article is primarily about the petitioner as a student and player. As the director also noted, the petitioner did not provide evidence that the publications are professional or major trade publications or other major media in response to the request for such documentation.

On appeal, the petitioner submits evidence that [REDACTED] included photographs of the petitioner in one of its articles. The petitioner also submits evidence [REDACTED] is a monthly magazine published by [REDACTED]

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764, 766 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533, 537 (BIA 1988). Regardless, the article in *ADDvantage* is not "about" the petitioner as required by the plain language at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted only a single article about her. Even if that article appeared in a professional or major trade journal or other major media, the regulation at 8 C.F.R. § 204.5(h)(3)(iii)

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<sup>3</sup> According to the U.S. Tennis Association's website, the highest NTRP level is seven, world class player. A minimum of a six rating is required for national level junior or collegiate competition. Thus, a 4.5 rating would not appear to be an outstanding achievement.

requires evidence of published material in publications in the plural. That requirement is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. Thus, we can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the singular or plural is used in a regulation.<sup>4</sup>

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

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

On appeal, counsel asserts that the petitioner's awards are evidence of her original contributions to the field. As stated above, the statute requires extensive evidence. Section 203(b)(1)(A)(i) of the Act. Consistent with this statutory requirements, the regulation at 8 C.F.R. § 204.5(h)(3) requires evidence qualifying under three separate criteria. We have already considered the petitioner's awards under 8 C.F.R. § 204.5(h)(3)(i), the criterion specifically addressing awards. Only a major international award can serve as the sole evidence of eligibility. 8 C.F.R. § 204.5(h)(3). Thus, we will not consider lesser awards as qualifying evidence under multiple criteria. Counsel has not explained how winning a tennis award is either original or a contribution of major significance to the field as a whole such that the petitioner's influence or impact on the field is apparent.

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

*Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner submitted photographs that purport to be of an exhibition match the petitioner and another female played partnering [REDACTED] titles. The record does not reveal that this "exhibition" was either artistic or designed to feature or showcase the petitioner's work as opposed to that of [REDACTED].

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

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<sup>4</sup> See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at \*10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(1)(2) requires a single degree rather than a combination of academic credentials).

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

On appeal, counsel asserts that the petitioner “was one of the lead tennis players of [REDACTED] tennis team.” Counsel further asserts that BYU-Hawaii is consistently ranked among the best by *U.S. News and World Report*. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

In support of counsel’s assertions, the petitioner has submitted evidence that [REDACTED] awarded the petitioner [REDACTED] and again for [REDACTED]. Counsel also references a school newspaper article quoting the petitioner’s coach as stating that the petitioner is “a coaches [sic] dream.” The petitioner also submitted promotional material about [REDACTED] athletic teams in general on the school’s website. [REDACTED] asserts that his collegiate teams have won 11 national collegiate championships. [REDACTED] notes the petitioner’s success on the team and asserts that she served as an assistant coach in the most recent season.

While the petitioner may have played a critical role for the [REDACTED] tennis team, the tennis team is not an organization or establishment. A student athlete does not play a critical role for the entire university simply by being a successful athlete.

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

### *Summary*

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

### ***B. Final Merits Determination***

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. § 204.5(h)(3). See *Kazarian*, 596 F.3d at 1119-20.

The petitioner’s awards, while qualifying under 8 C.F.R. § 204.5(h)(3)(i), are not consistent with sustained national or international acclaim in 2008 when the petitioner filed the petition. The

petitioner's most recent accomplishments were at the Division II collegiate level. The petitioner has not demonstrated that the highest level of tennis competition nationally is Division II collegiate athletics. Significantly, even playing at the professional level, by itself, is insufficient to establish eligibility for the classification sought. Supplementary information at 56 Fed. Reg. 60899 (Nov. 29, 1991). Moreover, the petitioner's awards all recognize her ability as an athlete. The record contains no evidence that athletes that have won nationally or internationally recognized awards while principally under the petitioner's tutelage.

Assuming the petitioner was a [REDACTED] member of the [REDACTED] as of the date of filing, we reiterate that the petitioner has not established that this membership requires outstanding achievements. The record contains no evidence that there are a very limited number of [REDACTED] [REDACTED] or other evidence that [REDACTED] is uniquely consistent with acclaim or placement among the small percentage at the top of her field.

The media coverage, as discussed above, is minimal. The petitioner has not demonstrated that there is published material "about" her in professional, trade or other major media. The published materials submitted, some of which appear to be in local publications, primarily cover specific competitions. The media coverage is not consistent with the petitioner's status as one of the small percentage at the top of her field as an athlete. The record contains no published material relating to the petitioner as a coach.

The petitioner was a valuable team member of her collegiate tennis team and served as an assistant coach for one season. The record is not persuasive that her role at [REDACTED] is indicative of national or international acclaim or her placement among the small percentage at the top of her field, including professional tennis players. Moreover, a student assistant coach position is not indicative of any acclaim as a coach or placement among the small percentage at the top of her field.

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 either as an athlete or a coach. The petitioner, whose highest level coaching position as of the date of filing was an assistant coach position while a student, relies on her past accomplishments as an athlete, most recently at the Division II collegiate level. The petitioner claims that coaching is within her area of expertise, but the record contains no evidence of the accomplishments of any student primarily under her tutelage. By contrast, [REDACTED] is a former president of the [REDACTED] and has served in other major roles for [REDACTED]. He is the recipient of the [REDACTED] from the [REDACTED] and the [REDACTED] from the [REDACTED]. Even if we look at the field of athletic competition, [REDACTED] have won seven [REDACTED] titles. Thus, it appears that the highest level of the petitioner's field in coaching and even athletics is far above the level she has attained.

### **III. Conclusion**

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

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

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

**ORDER:** The appeal is dismissed.