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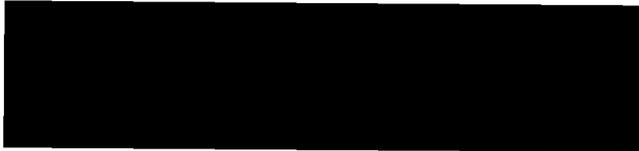
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **SEP 07 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,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on February 16, 2010, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of the beneficiary's 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 beneficiary's "sustained national or international acclaim" and present "extensive documentation" of his or her 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, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific 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 claims that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

The AAO notes here that in Part 6 of Form I-140, Immigrant Petition for Alien Worker, the petitioner listed the beneficiary's job title as "Professional Tennis Coach." In addition, the petitioner indicated the beneficiary's job description as a "Professional Tennis Instructor." Thus, the record reflects that the petitioner is seeking to classify the beneficiary as an alien of extraordinary ability as a coach rather than as a competitor. Moreover, according to the letter submitted in support of the original petition, the petitioner stated that the petition was filed on behalf of the beneficiary "for a permanent position as a tennis coach" and "will coach rising junior stars." Even though the petitioner submitted documentation regarding the beneficiary's involvement in earlier tournaments as a competitor, which will be discussed later in this decision, the record reflects the beneficiary's intent to come to the United States as a coach.

The statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a tennis coach and a tennis player share knowledge of the sport, the two rely on very different sets of basic skills. Thus, tennis instruction and tennis competition 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. In the present matter, there is no evidence showing that the beneficiary has sustained national or international acclaim through achievements as a tennis competitor subsequent to 2006 or that he intends to compete here in the United States. In fact, the petitioner submitted a letter from [REDACTED] Association of Tennis Professionals (ATP), who stated that "[the beneficiary] *used* to compete as a professional tennis player of the ATP circuit [emphasis added]." While the AAO acknowledges the possibility of an alien's extraordinary claim in more than one field, such as tennis competition and tennis instruction, the petitioner, however, must demonstrate "by clear evidence that the alien is coming to the United States to continue work in the area of expertise." *See* the regulation at 8 C.F.R. § 204.5(h)(5).

Based on the petitioner's answers to the questions on Form I-140 and the submitted documentation, the record reflects that the beneficiary intends to continue to work in the area of tennis coaching rather than the area of tennis competition. Ultimately, the beneficiary must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a tennis instructor or 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 the petitioner demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

(i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;

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

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

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;

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

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

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

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.

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);

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).

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

The petitioner has submitted evidence pertaining to the following criteria under the regulation at 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.

A review of the record of proceeding reflects that the petitioner failed to specifically claim the beneficiary's eligibility for this criterion at the initial filing of the petition or in response to the director's request for additional evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8). However, in the director's decision, the director found that the beneficiary failed to meet this criterion as the petitioner failed to submit any documentary evidence supporting the claims on the beneficiary's curriculum vitae regarding his junior tennis career highlights and ATP professional career highlights, such as the national champion for boys under 14, 16, and 18, and winner of the Les Petit Tournament. On appeal, counsel argues that the petitioner previously submitted documentary evidence of the beneficiary's tournament results in the form of recommendation letters, newspaper articles, and tournament draw results, as well as on appeal in the form of photographs of trophies purportedly won by the beneficiary.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence *in the field of endeavor* [emphasis added]." For this criterion, the director's findings and counsel's arguments on appeal are related to the purported prizes or awards won by the beneficiary as a tennis competitor rather than as an instructor or coach. Therefore, any prizes or awards that may have been garnered as a competitor are not within the beneficiary's field of endeavor as a tennis coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise). As the beneficiary's eligibility for this criterion is based entirely on his purported prizes or awards as a tennis competitor, no further discussion of the beneficiary's eligibility for this criterion is necessary. Moreover, the petitioner does not claim, nor does the record of proceeding reflect, that the beneficiary has ever received any nationally or internationally recognized prizes or awards for excellence as a tennis coach.

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

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

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

In the director's decision, he found that the beneficiary's membership with the Slovenian Tennis Association (STA) and the United States Professional Tennis Association (USPTA) failed to establish eligibility for this criterion. In his appellate brief for this criterion, counsel argues that sustained international acclaim is not required to qualify as an alien of extraordinary ability and refers to unpublished decisions by this office and three district court decisions - *Buletini v. INS*, 860 F. Supp. 1222 (E.D. Mich. 1994); *Muni V. INS*, 891 F. Supp. 440 (N.D. Ill. 1995); and *Grimson v. INS*, 934 F. Supp. 965 (N.D. Ill. 1996). In addition, counsel argues:

Based on the evidence presented above, the Petitioner has established that the Beneficiary is an individual of that small percentage who have [sic] risen to the very top of the field of endeavor and has shown evidence of sustained national acclaim by the Beneficiary. Therefore, the Service should follow [the] plain language of Title 8, CFR § 204.5(h)(3), as well as the Courts [sic] rulings in *Muni, v. I.N.S.* and *Grimson v. I.N.S.* and reopen this case and approve the petition reference.

As section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) both require the alien to demonstrate "sustained national *or* international acclaim [emphasis added]," the AAO agrees with counsel that international acclaim is not required for an alien of extraordinary ability. However, a review of the director's decision for this criterion fails to reflect that the director found the beneficiary ineligible for this criterion based on the absence of sustained international acclaim. Regarding STA, the petitioner submitted a letter from [REDACTED], who stated:

In order to become a member, a player must demonstrate the ability to compete and win matches at the highest [sic] levels [sic] of national and international competition. We place great emphasis on the number of wins that a player has amassed throughout [sic] his professional career. We also look at the world rankings that the player was able to reach [sic] in both singles [sic] and doubles events, as well as the amount of exposure and fame that a player has nationally and internationally.

At the time of his application, [the beneficiary] met all of the criteria that we require from our members. [The beneficiary] was, and still is, a big tennis star in our country. When he applied to be a member, he was the best young player that Slovenia had to offer to the world. [The beneficiary] competed at the highest levels of national and international competition and won many great matches.

To this day, [the beneficiary] is still a member of our Association because he is now a tennis coach in the USA. Although [the beneficiary] lives and works in the United States, we still consider him to be a great representative of our Association

and our country. We are aware that as a tennis coach, [the beneficiary] has helped improve the game and rankings of many professional tennis players who play on the World Circuit. We feel that [the beneficiary's] accomplishments as a player and now as a coach of tennis bring tremendous positive attention to our Association and help promote the growth and popularity of tennis in our country.

The director found that "competing and winning matches at the highest levels of national and international competition" is not one of that small percentage who have risen to the very top of the field of endeavor. The AAO is not persuaded by counsel's arguments that the director required sustained international acclaim in his decision. The director was evaluating the letter from [REDACTED], who indicated that membership with STA requires competing in and winning national and international competitions, as well as being exposed nationally and internationally. The director did not make a finding that the beneficiary failed to demonstrate sustained international acclaim. Regarding USPTA, the director found that the petitioner failed to establish that "the beneficiary joined the [USPTA] based on the judgment of recognized national *or* international experts in their disciplines or fields [emphasis added]." Again, the director did not make a finding that the beneficiary was ineligible for this criterion because the beneficiary's membership with USPTA was judged exclusively by national experts rather than international experts. Instead, consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the director found that the beneficiary's membership with UPSTA was not judged by national or international experts.

Notwithstanding the above, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields." In compliance with *Kazarian* 596 F.3d at 1121, the AAO must focus on the plain language of the regulatory criteria. The beneficiary's national or international acclaim is not a relevant factor in determining whether the beneficiary meets the plain language of this criterion. In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

Regarding STA, at the initial filing of the petition, the petitioner submitted a letter from [REDACTED] who confirmed the best tennis results of the beneficiary as a *player*. In response to the director's request for additional evidence, the petitioner submitted the above referenced letter from [REDACTED]. On appeal, the petitioner submitted another letter from [REDACTED] who stated:

When a player matures and is no longer competing as a junior, he needs to maintain his status as a member of the Slovenian national team Association by being selected as a member of the Slovenian Davis Cup team, achieving world rankings, receiving a great deal of national and international recognition and winning at least 100 matches. If a player is no longer participating in national and [sic] international tournaments as competitor, then we look at the player's [sic] current accomplishments [sic] as a professional coach, Slovenian ambassador of tennis, or employee of the [STA].

As indicated above, the beneficiary became a member of STA as a junior player. Therefore, as the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations *in the field* for which classification is sought [emphasis added],” the beneficiary’s membership with STA based on his achievements as a tennis player is not within the beneficiary’s field as a tennis coach. See *Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, while [REDACTED] stated that the beneficiary is still a member of STA “because he is now a tennis coach in the USA,” [REDACTED]’s letter fails to reflect that outstanding achievements are required as a member of STA as a coach. The AAO is not persuaded that simply coaching at the professional level is demonstrative of outstanding achievements. Furthermore, the petitioner failed to establish that the beneficiary’s membership with STA as a coach requires outstanding achievements, as judged by recognized national or international experts in their disciplines or field.

Regarding USPTA, at the initial filing of the petition, the petitioner submitted a certificate from USPTA reflecting that the beneficiary received a Professional 3 rating. In response to the director’s request for additional evidence, the petitioner submitted a copy of his USPTA Certification Exam Results indicating that the beneficiary received an overall Professional 3 rating on October 31, 2009. The petitioner also submitted a document reflecting an overview of the USPTA certification process. In the director’s decision, the director indicated that the petitioner claimed:

Becoming a member of the USPTA is an achievement which is indicative of extraordinary ability. The three part examination, along with the necessity to show proof of coaching and playing experience on the professional level makes the achievement of USPTA membership a feat of great and revered accomplishment.

The director also indicated that based on USPTA’s website, which was accessed by the director on February 9, 2010, a Professional 3 rating is the lowest level of professional-level certification by USPTA.³ In fact, Professional 3 is entry level compared to Professional 1, which is the most

³ The AAO notes that the beneficiary’s USPTA certification exam reflects the following overall rating:

Professional 1 – Applicant must score Professional 1 on all three part of the Certification Exam.

Professional 2 – Applicant must score at least a Professional 2 on all three parts of the Certification Exam.

Professional 3 – Applicant must score at least a Professional 3 on all three parts of the Certification Exam.

advanced. Furthermore, contrary to the petitioner's assertions, the director found that according to the website, "USPTA Professional 3 level explicitly negates the need for any tennis teaching experience."⁴ 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).

On appeal, the petitioner submitted a letter from [REDACTED] of USPTA, who stated:

To become a member of USPTA and receive a professional rating, one must demonstrate ability in a variety of areas. Applicants are required to show a mastery of stroke productions, grips, private lessons, group lessons, playing skills, rules of tennis, history of tennis, tennis business and programming. The exam is administered by a certified USPTA tester. To become a UPSTA tester, a member must be in good standing and hold the highest USPTA rating of Professional 1 for at least five years. The average length of time that divisional head testers have held the Professional 1 rating is 10 years or more.

Although [REDACTED] provided evidence of the qualifications of USPTA testers, the letter fails to overcome the inconsistencies regarding the petitioner's claim that certification requires "proof of coaching." [REDACTED] letter fails to reflect that the beneficiary's Professional 3 rating was earned, in part, based on his coaching experience. Again, the petitioner demonstrated that the beneficiary received a Professional 3 rating. However, according to USPTA's website, Professional 3 is "not required to have tennis-teaching experience" compared to Professional 2 that requires "teaching ability through apprenticeship or testing experience" and Professional 1 that requires "three years or five seasons of full-time teaching experience." As such, on appeal, the petitioner failed to resolve its contradictory claims made in response to the director's request for additional evidence.

Nevertheless, the AAO is not persuaded that the beneficiary's Professional 3 rating reflects outstanding achievements. Regardless of the professional level, an applicant must meet the minimum age requirement, pass all portions of the Certification Exam, and have a National Tennis Rating Program (NTRP) of 4.0 or higher for Professional 2 and 3 and NTRP of 4.5 or

⁴ See <http://www.uspta.org/default.aspx?MenuItemID=1627&MenuSubID=278&MenuGroup=New-USPTA-Join&&AspxAutoDetectCookieSupport=1>. Accessed on August 16, 2011, and incorporated into the record of proceeding.

higher for Professional 1. The lowest NTRP is 1.5, reserved for limited experience and “working primarily on getting the ball in play,” and the highest NTRP is 7.0, reserved for “a world-class player.”⁵ The AAO notes that the record fails to reflect the NTRP of the beneficiary. Nonetheless, such prerequisites for USPTA certification ratings are not demonstrative of outstanding achievements. The AAO is not persuaded that passing standardized examinations and having at least medium ratings is tantamount to outstanding achievements, as they are not judged by recognized national or international experts in their disciplines or fields. Moreover, while USPTA testers must be at a Professional 1 rating and have three years of five seasons of full-time teaching experience, there is no evidence that USPTA testers are “recognized” national or international experts. Furthermore, even if Professional 1 reflected outstanding achievements, which the AAO clearly does not imply, the beneficiary’s USPTA certification rating is Professional 3 – a level entry certification. Clearly, when compared to a Professional 1 rating, a Professional 3 rating does not reflect outstanding achievements.

Accordingly, the petitioner failed to establish that the beneficiary 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.

The director found that the petitioner failed to demonstrate the beneficiary’s eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted several articles, including photographs with captions, which were either published material about the beneficiary as a tennis player or simply mentioned the beneficiary as a tennis player. However, the petitioner failed to submit any documentary evidence reflecting published material about the beneficiary in professional or major trade publications or other major media, relating to the beneficiary’s work in the field as a tennis coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise).

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

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

In the director’s decision, he found that the petitioner failed to establish the beneficiary’s eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed the beneficiary’s eligibility based on recommendation letters. On appeal, counsel argues that “the recommendation letters submitted sufficiently indicate how the Beneficiary has

⁵ See http://www.usta.com/Play-Tennis/USTA-League/Information/1655_General_Characteristics_of_Various_NTRP_Playing_Levels/. Accessed on August 16, 2001, and incorporated into the record of proceeding.

significantly impacted the tennis coaching field and established his extraordinary ability as a professional tennis coach.”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original athletic-related contributions “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).

A review of the recommendation letters reflect that they refer to the beneficiary’s experience and accomplishments as a tennis player. While the beneficiary’s experience and talents as a player may provide him with the knowledge and skills to be a coach, the beneficiary must ultimately establish that he has made original contributions of major significance in the field as a tennis coach. *See Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise). Moreover, assuming the beneficiary possesses unique skills as a coach, which the recommendation letters do not reflect, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 (Comm’r 1998).

Furthermore, the majority of the recommendation letters refer to the beneficiary’s potential or possible impact in the tennis field. For example, the petitioner stated that it considers the beneficiary “to be an integral part in the development of up and coming talent for the future of the United States and its endeavors in tennis.” Further, [REDACTED] stated that the beneficiary “can definitely develop a player to the point of competing on the highest level such as the ATP tour [emphasis added].” Moreover, [REDACTED] stated that the beneficiary “can develop a player to a very high level [emphasis added].” In addition, [REDACTED] stated that the beneficiary “can develop a young player into a world class professional [emphasis added].” Also, [REDACTED] stated that “he will develop these players to the best of their ability [emphasis added].” Finally, [REDACTED] stated that “whoever [the beneficiary] works with will improve their level greatly in the sport [emphasis added].” The authors of the letters fail to reflect that the beneficiary has already made original contributions of major significance in the field. There is no evidence, for example, demonstrating that the beneficiary has already developed world class tennis players. A petitioner cannot file a petition for the beneficiary under this classification based on the expectation of future eligibility. Given the descriptions in terms of future applicability and determinations that may occur at a later date, it appears that the beneficiary’s coaching has not significantly impacted the field of tennis. The actual present impact of the beneficiary’s contributions to coaching has not been established. Rather, the beneficiary’s references appear to speculate about how the petitioner’s coaching may affect the field at some point in the future. Eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1),

(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. The assertion that the coaching of the beneficiary is likely to be influential is not adequate to establish that his coaching is already recognized as major contributions in the field.

Some of the recommendation letters also discuss the beneficiary's work with students. For example, the petitioner submitted a letter that listed eight students that were under the tutelage of the beneficiary. While the letter briefly indicated the individual accomplishments, such as [REDACTED] being ranked number three in Florida, [REDACTED] as being ranked number one in Michigan, and [REDACTED] as being ranked in the top 20 in Florida, the letter fails to reflect the impact or influence of the beneficiary's work in the field as a whole beyond the students with whom he has coached. Moreover, the petitioner submitted a letter from the [REDACTED] (the beneficiary's brother), [REDACTED] who stated that the beneficiary has helped them improve their tennis game, as well as a letter from [REDACTED] who indicated that the beneficiary helped his son. Again, the letters only reflect the beneficiary's coaching contributions to [REDACTED] son rather than the beneficiary's contributions of major significance in the field as a whole. Furthermore, the petitioner submitted a letter from [REDACTED] who made general assertions without providing any specific information to establish that the beneficiary's contributions have been of major significance. For instance, [REDACTED] stated that the beneficiary's "expertise has allowed many professional tennis players to perfect their game and successfully improve their tennis game, winning many tournaments." [REDACTED] failed to identify any players who were coached by the beneficiary, which tournaments were won by the beneficiary's students, and how the success of the beneficiary's students have impacted the field in a significant manner.

While those familiar with the beneficiary generally describe him as "extraordinary," there is insufficient documentary evidence demonstrating that the beneficiary's contributions are of major significance in the field. This regulatory criterion not only requires the beneficiary to make original contributions, the regulatory criterion also requires those contributions to be significant. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the beneficiary's contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof.⁶ The lack of supporting evidence gives the AAO no basis to gauge the significance of the beneficiary's present contributions.

Further, USCIS may, in its discretion, use as advisory opinion 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

⁶ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the beneficiary's personal contacts 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; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008). Thus, the content of the writers' statements and how they became aware of the beneficiary'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 of original contributions of major significance.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of *major significance in the field* [emphasis added]." Without additional, specific evidence showing that the beneficiary's work has been unusually influential, has significantly impacted the field as a whole, or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that he meets this criterion.

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

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

In the director's decision, he found that the petitioner failed to establish the beneficiary's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner claimed the beneficiary's eligibility for this criterion based on the beneficiary's role with the World Tennis Organization, LLC (WTO). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added]." In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment.

At the initial filing of the petition, the petitioner submitted a letter from [REDACTED] who stated that the beneficiary "is the head coach at WTO mainly in charge of fitness training, match play, and strategic coaching at tournaments." In addition, the petitioner submitted a brochure for WTO reflecting that [REDACTED] is the WTO founder and tennis director, [REDACTED] is the manager and tennis and life coach, and [REDACTED] is the fitness and nutrition coach, as well as reflecting that the beneficiary is the head coach.

In response to the director's request for evidence, the petitioner submitted another letter from [REDACTED] who stated:

WTO has been training National juniors, college players, and professional players for over 12 years under the company title of WTO. [REDACTED] the founder of WTO, had designed many revolutionary drills and coaching concepts that have unmatched results in player development and improvement. [The beneficiary],

the head coach at WTO structures the daily program to best utilize these drills and teaching concepts. He gives mini seminars to promote our program and is in the process of creating a web video with [REDACTED] to further get our message to aspiring tennis players.

Based on [REDACTED]'s two letters and the brochure, the petitioner failed to demonstrate that the beneficiary has performed in a leading or critical role for WTO. The submission of two letters that simply indicate the job title and generally claim that the beneficiary performed in a leading or critical role is insufficient to establish eligibility for this criterion. In other words, it cannot be determined from the beneficiary's job title alone that his role is leading or critical. The documentary evidence submitted by the petitioner fails to distinguish the roles of the beneficiary from the other employees of WTO, so as to establish that the beneficiary performed in a leading or critical role. For example, the petitioner failed to demonstrate that the petitioner's role is any more leading or critical than [REDACTED]. In fact, when compared to the roles of president, founder, and director of [REDACTED] the beneficiary performs in a far more subordinate role. Moreover, according to [REDACTED] letter, he was the individual who "designed many revolutionary drills and coaching concepts" rather than the beneficiary who utilizes [REDACTED] drills in his coaching. Moreover, the petitioner submitted an article entitled, "WTO Training Center: Diamond in Rough" from *Florida Tennis* which indicated that Mr. [REDACTED] "is one of a few coaches in the world with documented, developmental results for increasing countless junior tennis player rankings over the past few decades." Although the documentary evidence reflects that the beneficiary performs in a role with WTO, the record falls far short in establishing that the beneficiary has performed in a leading or critical role. Clearly, [REDACTED] performs in a leading or critical role for WTO when compared to the lesser role of the beneficiary.

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires that the beneficiary performed in a leading or critical role "for organizations or establishments that have a distinguished reputation." In response to the director's request for additional evidence, the petitioner submitted the article from *Florida Tennis* discussed above, as well as an advertisement for WTO in *Florida Tennis*. While the article provides a general background and profile of WTO, the article does not reflect that WTO has a distinguished reputation. The petitioner failed to submit any documentary evidence, for example, that compared WTO to other tennis training organizations. Furthermore, the advertisement is simply an announcement for WTO that publicizes itself. *See Braga v. Poulos*, No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (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).

On appeal, counsel argues that [REDACTED] letter demonstrates that WTO has a distinguished reputation. Specifically, [REDACTED] stated that WTO has trained "more than 50 ATP professionals including former World number 18 Vincent Spadea," as well as "developed no fewer than 100 junior that have succeeded at the top of the collegiate tennis." As previously noted, the AAO need not rely on [REDACTED] self-serving statements regarding WTO's reputation. The petitioner also submitted screenshots from www.atpworldtour.com reflecting that

██████████ was ranked 18th by the ATP on February 28, 2005. Notwithstanding that the record of proceeding fails to support ██████████'s claims of training 50 ATP professionals and 100 junior players, as well as evidence that ██████████ was trained by WTO, the AAO is not persuaded that such claims are demonstrative of a distinguished reputation. As WTO is an organization whose basic function is to train junior, collegiate, and professional players, the general, unsupported claims regarding WTO's achievements do not establish that it has a distinguished reputation as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

Finally, even if the petitioner were to submit supporting documentary evidence showing that the beneficiary meets the elements of this criterion, which it has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires a leading or critical role in more than one organization or establishment. In the case here, the petitioner only claimed the beneficiary's eligibility based on his role with WTO. 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. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO 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.⁷

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, the AAO 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." 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). See also *Kazarian*, 596 F.3d at 1115. The beneficiary failed to meet any of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

⁷ 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(l)(2) requires a single degree rather than a combination of academic credentials).

In evaluating the AAO's final merits determination, the AAO must look at the totality of the evidence to conclude the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner established that the beneficiary is a former professional tennis player who is now a head coach and has instructed various levels of players. However, the personal accomplishments of the beneficiary fall far short of establishing that he "is one of that small percentage who have risen to the very top of the field of endeavor" and that he "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

The AAO cannot ignore that the statute requires the petitioner to submit "extensive documentation" of the beneficiary's sustained national or international acclaim. See section 203(b)(1)(A) of the Act. 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). In the case here, the petitioner claimed the beneficiary's eligibility for the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i) and the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii) based entirely on the beneficiary's previous occupation as a tennis player rather than the beneficiary's current field of expertise as a tennis coach. Moreover, the petitioner became a member of STA as a junior level player. See *Lee v. I.N.S.*, 237 F. Supp. 2d at 914 (upholding a finding that competitive athletics and coaching are not within the same area of expertise). In fact, the petitioner failed to submit any documentary evidence regarding any nationally or internationally recognized prizes or awards for excellence that were garnered by the beneficiary as a coach or any published material about the beneficiary relating to his work as a tennis coach in professional or major trade publications or other major media. The lack of awards or published material as a tennis coach fails to reflect that the beneficiary "is one of that small percentage who have risen to the very top of the field" and a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The petitioner also failed to demonstrate that the beneficiary's membership with USPTA as a Professional 3 (entry level) requires outstanding achievements of their members, so as to reflect

that his “achievements have been recognized in the field of expertise.” See section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Regarding the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the petitioner based the beneficiary’s eligibility entirely on recommendation letters. It must be emphasized that the favorable opinions of experts in the field, while not without evidentiary weight, are not a solid basis for a successful extraordinary ability claim. Again, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* Again, none of the letters submitted on behalf of the beneficiary reflect any original contributions of major significance made by the beneficiary.

As it relates to the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner claimed the beneficiary’s eligibility based solely on his role with WTO, a single organization whose distinguished reputation the petitioner failed to establish. Evidence of multiple leading or critical roles as a tennis coach for nationally or internationally acclaimed tennis training institutions would constitute more extensive documentation and is far more indicative that the petitioner is one of “that small percentage of individuals that have risen to the very top of their field of endeavor.” 8 C.F.R. § 204.5(h)(2).

The AAO notes that the beneficiary’s references’ accomplishments are far more impressive than his own. For example, [REDACTED] has “trained and worked with five players that have reached Number One in the tennis world on the Men’s and Women’s Tour including: [REDACTED]” In addition, [REDACTED] won the USPTA Coach of the Year seven times.

In contrast, the beneficiary relies on his accomplishments as a coach of junior level players. Specifically, according to the petitioner, the following are the accomplishments of the beneficiary’s students:

1. [REDACTED] - Ranked 3rd in Florida, Florida sectional champion, and top 20 blue chip recruit;
2. [REDACTED] - Reached the round of 16 at the Boys 18’s National Clay Court Championships;
3. [REDACTED] - Runner-up in the North Florida Designated, winner of Extreme Tennis Academy junior tournament, and finalist at the Miramar Super Series;
4. [REDACTED] - Top 20 currently in Florida for Girls 10 and under; 2 time Super Series winner;

5. [REDACTED] – Number 1 12 year old in Michigan, Girls 14's Super Series winner;
6. [REDACTED] – Qualifier at the Boys 12's Tallahassee Designated;
7. [REDACTED] – Top 100 in the Boys 12's in Florida; and
8. [REDACTED] – Orange Bowl participant in 2008 Boys 14's.

The accomplishments of the beneficiary's students are limited to regional and junior level tournaments and competitions. 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. Comm'r 1994); 56 Fed. Reg. at 60899.⁸ Likewise, it does not follow that the beneficiary who has coached junior level players who have achieved minimal to moderate regional success should necessarily qualify for approval of an extraordinary ability employment-based visa petition. 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."

In this matter, the evidence of record falls short of demonstrating the beneficiary's sustained national or international acclaim as a tennis coach. The conclusion the AAO reaches 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 beneficiary as one of that small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner need not demonstrate that there is no one more accomplished than the beneficiary to qualify for the classification sought, it appears that the very top of his field of endeavor is far above the level he has attained. The petitioner seeks a highly restrictive visa classification for the beneficiary, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. In this case, the petitioner has not

⁸ 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.

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.

established the beneficiary's achievements at the time of filing the petition were commensurate with sustained national or international acclaim as a coach/instructor, or that he was among that small percentage at the very top of the field of endeavor.

IV. P-1 Nonimmigrant Admission

The AAO notes that at the initial filing of the petition, the petitioner indicated on Form I-140 that the beneficiary was last admitted to the United States on November 29, 2009, as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seeks to enter the United States "temporarily and solely for the purpose of performing as such an athlete." See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). The current record is devoid of any evidence to indicate that the petitioner is performing as an athlete at an internationally recognized level or that he is in the United States "temporarily and solely" for the purpose of performing as such an athlete. However, while USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm'r 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

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).

V. Conclusion

Review of the record does not establish that the beneficiary 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 beneficiary's achievements 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.

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.