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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

[Redacted]

B2

DATE: **AUG 24 2012** Office: TEXAS SERVICE CENTER

[Redacted]

IN RE: [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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition on November 1, 2011. The petitioner, who is also the beneficiary, appealed the decision to the Administrative Appeals Office (AAO) on December 2, 2011. The appeal will be dismissed.

On the Form I-140 petition, part 6, the petitioner indicated that he sought classification as an "alien of extraordinary ability" as table tennis athlete, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). In counsel's brief filed in support of the petition, counsel also referenced the petitioner's accomplishments as "a leading table tennis teacher and skills trainer," i.e., a table tennis coach. The director determined that the petitioner has not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability as an athlete or coach. While the petitioner initially submitted some evidence relating to his intent to continue working as an athlete, the director concluded, based on all the evidence, that the petitioner intended to work as a coach.

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; 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)-(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 does not contest the director's determination that the petitioner does not qualify as an athlete of extraordinary ability or the director's determination that the petitioner intends to work as a coach. Therefore counsel has abandoned those issues. *Sepulveda v. United States Atty Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Instead, counsel asserts that the petitioner has demonstrated extraordinary ability as a coach. Counsel submits a brief and a number of documents. Counsel asserts that the petitioner meets the nationally or internationally recognized prizes or awards criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(i); the published material about the alien criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii); the original contributions of major significance criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v); and the leading and critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

For the reasons discussed below, the AAO finds that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the AAO finds that the petitioner has not submitted qualifying evidence under at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the AAO finds that the petitioner has not demonstrated that he is one of the small percentage who are at the very top of the field and he has

not sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO must dismiss the petitioner's appeal.

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.

United States 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. 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, internationally recognized award, or through the submission of qualifying evidence under at least three of the ten categories of evidence listed under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the 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 the 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

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 (vi).

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.” *Kazarian*, 596 F.3d 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).” *Kazarian*, 596 F.3d at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

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 this case, the AAO affirms the director’s finding that the petitioner has not satisfied the antecedent regulatory requirement of presenting three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that he is one of the small percentage who are at the very top in the sport of table tennis or has achieved sustained national or international acclaim. *See* 8 C.F.R. §§ 204.5(h) (2), (3).

II. ANALYSIS

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish sustained national or international acclaim and that his achievements have been recognized in the field of endeavor by presenting evidence of a one-time achievement that is a major, internationally recognized award. In this case, the petitioner has not asserted or shown through his evidence that he is the recipient of a major, internationally recognized award at a level similar to that of the Nobel Prize. As such, the petitioner must present at least three of the ten types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x) to meet the basic eligibility requirements.

Documentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i).

On appeal, counsel asserts that the petitioner meets this criterion because (1) the petitioner’s students have achieved competitive success in table tennis, (2) the petitioner has been a coach for [REDACTED], which was named the table tennis club of the year by the United States Association of Table Tennis (USATT) Magazine in January 2008, and (3) [REDACTED] was named the 2008 development coach of the year by [REDACTED]. Counsel concedes in the appellate brief that the petitioner “did not win these awards personally,” “did not earn these awards on his own, nor was he named as the specific winner of the

² Counsel does not claim that the petitioner meets the regulatory categories of evidence not discussed in this decision.

award[s],” but asserts that USCIS credits the petitioner with awards his employer wins if attributable to the petitioner. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the petitioner’s “receipt” of qualifying awards or prizes. USCIS may not utilize novel substantive or evidentiary requirements beyond those set forth at 8 C.F.R. § 204.5. *Kazarian*, 596 F.3d at 1221, citing *Love Korean Church v. Chertoff*, 549 F.3d 749, 758 (9th Cir. 2008). Regardless, counsel is not persuasive that an award issued to a named individual in recognition of that individual’s work is comparable to an award issued to an entity in recognition of an employee’s work.

Based on the evidence, the AAO finds that the petitioner has not met this criterion. First, although the petitioner has shown that [REDACTED] has achieved competitive success in table tennis, he has not shown that [REDACTED] competitive success constitutes the petitioner’s receipt of nationally or internationally recognized prizes or awards for excellence. According to a November 2011 online printout from tabletennis.teamusa.org, the petitioner is listed as one of [REDACTED] eleven coaches. Moreover, according to [REDACTED] father’s August 18, 2011 affidavit, [REDACTED] trains with the petitioner before competitions, but the petitioner is not [REDACTED] primary coach. Furthermore, according to the July 8, 2011 *World Journal* newspaper article, “USTT Open Chinese [REDACTED] Captured 2 Championships,” [REDACTED] is the petitioner’s “former student.” The evidence in the record is inconsistent as relating to the petitioner’s association with [REDACTED]. As the petitioner has provided inconsistent documents, “it is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts [or evidence], absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has provided no such evidence to explain or reconcile the inconsistent evidence.

Second, although the petitioner has shown that [REDACTED] has achieved competitive success in table tennis in the twelve and younger age groups, he has not shown that [REDACTED] competitive success within the youth age groups constitutes the petitioner’s receipt of nationally or internationally recognized prizes or awards for excellence. According to a November 2011 online printout from tabletennis.teamusa.org, the petitioner is listed as one of [REDACTED] two coaches. Moreover, as noted in counsel’s appellate brief and in the November 2011 USATT Ratings History Page, [REDACTED] is ranked eighty-two among United States female table tennis players. Even if the AAO were to attribute [REDACTED] ranking to the petitioner’s coaching ability, it would nonetheless find that the petitioner has not met this criterion, as the petitioner has not shown that a national ranking of eighty-two constitutes a lesser national or international recognized prizes or awards for excellence.

Third, the AAO cannot find that the 2008 development coach of the year award, presented to [REDACTED] constitutes an award to the petitioner. According to [REDACTED] of the Palo Alto Table Tennis Club, “even though [REDACTED] has not given [the petitioner] formal credit, [the petitioner] is largely responsible [for] the success of [REDACTED] and is why [REDACTED] has been so successful.” Neither [REDACTED] nor any other evidence in the record establishes that the petitioner can be deemed to have received the 2008 development coach of the year award, when the award was presented to [REDACTED] alone. Moreover, the petitioner has not provided sufficient

evidence, i.e. documents relating to the nomination and/or selection process, to show that the award constitutes a nationally or internationally recognized award for excellence in the sport of table tennis.

Finally, when the petitioner initially filed the petition in February 2011, counsel claimed that the petitioner also meets this criterion based on awards he received as an athlete. On appeal, however, counsel has not continued to maintain that those awards establish that the petitioner meets this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the AAO finds that the petitioner has not presented documentation of his receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not met this criterion. See 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. 8 C.F.R. § 204.5(h)(3)(ii).

When the petitioner initially filed the petition in February 2011, he claimed to meet this criterion as a member of the International Table Tennis Federation (ITTF) and the USATT. On appeal, however, counsel has not continued to maintain that the petitioner meets this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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. 8 C.F.R. § 204.5(h)(3)(iii).

On appeals, counsel asserts that the petitioner meets this criterion. In his appellate brief, counsel points to the following articles as supporting evidence:

- (1) A July 8, 2011 [REDACTED] entitled "Champion Coach Shaping his Second US Champion";
- (2) A July 8, 2011 [REDACTED] "USTT Open Chinese [REDACTED] Captured 2 Championships"; and
- (3) A July 9, 2011 [REDACTED] entitled [REDACTED] Championship Again."

Based on the evidence, the AAO finds that the petitioner has not met this criterion. First, the AAO declines to consider all three articles, because they were published in July 2011, months after the petitioner filed the petition on February 28, 2011. It is well established that the petitioner must

demonstrate eligibility for the petition at the time of filing. 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, the petitioner has not shown that *Sing Tao Daily*, *World Journal* or *Epoch Times* constitute professional or major trade publications or other major media. The petitioner's evidence relating to the publications is from the publications themselves. Such self-promotional evidence has minimal evidentiary value. See *Braga v. Poulos*, No. CV 06-5105 SJO 10 (C.D. Cal. 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). The petitioner has not supported the self-promotional evidence with independent and objective evidence, including distribution and circulation data, showing that the publications constitute major media. Moreover, the AAO declines to consider the wikipedia articles on the publications, as there are no assurances about the reliability of the content from this open, user-edited Internet site.³ See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008). Furthermore, even if the publications are popular Chinese-American newspapers, the petitioner has not shown that publications not published in a predominant national language constitute major media.

Finally, when the petitioner initially filed the petition in February 2011, he provided other documents to show he meets this criterion. On appeal, however, counsel has not continued to maintain that those documents establish that the petitioner meets this criterion. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

Accordingly, the AAO finds that the petitioner has not presented evidence of published material about him in professional or major trade publications or other major media, relating to his work in the field for which classification is sought. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(iii).

³ Online content from Wikipedia is subject to the following general disclaimer entitled "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY":

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on August 19, 2012, a copy of which is incorporated into the record of proceeding.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v).

On appeal, counsel asserts that the petitioner meets this criterion because (1) the petitioner has coached [REDACTED] and [REDACTED] and (2) the petitioner has coached and trained at [REDACTED]. Counsel concludes in his appellate brief that the petitioner "has had a significance impact on the field of Table Tennis. He has specifically coached two young athletes that are now among the best in the United States and his original coaching methods and dedication to his athletes and the sport have allowed the [REDACTED] to grow into the best Table Tennis club in the United States."

Based on the evidence, the AAO finds that the petitioner has not met this criterion. First, the evidence does not demonstrate that the petitioner uses any "original coaching methods." [REDACTED] father stated in his August 18, 2011 affidavit that the petitioner assisted in [REDACTED] competitive success due to his "Elite" level of athletic skill and his natural ability as a high level coach." and taught [REDACTED] "how to read her opponent and to utilize different styles and techniques to defeat her opponent." [REDACTED] father stated in his August 10, 2011 letter that the petitioner "has developed a unique and effective training method on how to apply the best practices from China to the young players in the U.S." and he "understands his students well, and can motivate them to achieve their maximum potentials." Neither the affidavit nor the letter discusses, or even mentions, any "original coach methods," as stated in counsel's brief. Indeed, although the evidence shows that the petitioner is an able coach, the evidence is insufficient to show that his training methods constitutes original contributions of major significance in the sport of table tennis.

Second, the evidence does not establish that the petitioner's involvement with the [REDACTED] named the "Best Club of the Year" by USATT Magazine in January 2008, constitutes original contributions of major significance in the sport of table tennis. According to [REDACTED] the petitioner "is largely responsible [for] the success of [REDACTED] and is why [REDACTED] has been so successful." According to [REDACTED], "[i]n 2008 [the petitioner] was one of the first full time coaches and trainers [REDACTED] which coincides with [REDACTED] being named club of the year in 2008. [The petitioner] was also a member of [REDACTED] league team and was instrumental in the growth and success of [REDACTED] both in its competitions with two national championships and with the club's ability to attract other top athletes such as [REDACTED]" According to [REDACTED] the petitioner competed as a member of the [REDACTED], which won the 2009 and 2010 U.S. National Table Tennis League Championships. According to [REDACTED] the petitioner is "one of the top athletes and has brought a major amount of attention to the [REDACTED] The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of an original contribution of major significance in the field, not to an organization. Neither counsel's brief nor any evidence in the record, however, explains how the petitioner's involvement with [REDACTED] including competitive successes and employment as a coach, constitutes original contributions of major significance in the sport of table tennis.

Moreover, the Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is “self-serving.” See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board has also held, however, “[w]e not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available.” *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). Vague, solicited letters from local colleagues that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff’d in part*, 596 F.3d 1115 (9th Cir. 2010).⁴ The opinions of experts in the field are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron Int’l*, 19 I&N Dec. 791, 795 (Comm’r 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may, as this decision has done above, evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to “fact”). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

The letters considered above primarily contain bare assertions of acclaim and vague claims of contributions without specifically identifying contributions and providing specific examples of how those contributions rise to a level consistent with major significance in the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. See *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); *Ayvr Associates, Inc. v. Meissner*, No. 95 Civ. 10729, 1997 WL 188942 at *5 (S.D.N.Y. Apr. 18, 1997). Similarly, USCIS need not accept primarily conclusory assertions. See *1756, Inc. v. United States Att’y Gen.*, 745 F. Supp. 9 (D.C. Dist. 1990). The petitioner has also failed to submit sufficient corroborating evidence in existence prior to the preparation of the petition, which could have bolstered the weight of the reference letters.

Accordingly, the AAO finds that the petitioner has not presented evidence of his original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the sport of table tennis. The petitioner has not met this criterion. See 8 C.F.R. § 204.5(h)(3)(v).

⁴ In 2010, the *Kazarian* court reiterated that the AAO’s conclusion that “letters from physics professors attesting to [the alien’s] contributions in the field” were insufficient was “consistent with the relevant regulatory language.” 596 F.3d at 1122.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii).

On appeal, counsel asserts that the petitioner meets this criterion because he has performed in a leading or critical role for the [REDACTED] tennis team. Specifically, counsel states, “[the petitioner] has been an integral part in the success of this elite Table Tennis team and has been a major component in their national championship wins in 2009 and 2010.”

Based on the evidence, the AAO finds that the petitioner has not shown to have performed in either a leading or critical role for the [REDACTED] tennis team. To establish a leading role, the petitioner should provide evidence relating not only to his title but also his duties within the [REDACTED] table tennis team. To establish a critical role, the petitioner should provide evidence relating to his impact on the [REDACTED] table tennis team as a whole. The petitioner, however, has not submitted an organization chart demonstrating how his role fits within the hierarchy of the [REDACTED] tennis team. In fact, as the director pointed out in his November 1, 2011 decision, the petitioner has provided no documentation from the [REDACTED] stating that he has performed in any role, let alone in a leading or critical role, for the organization or establishment.

Moreover, although the evidence shows that the petitioner competed as an athlete with the [REDACTED] team and that the team won the 2009 and 2010 U.S. National Table Tennis League Championships, the evidence is insufficient to show that his role as a competitor for the team constitutes either a leading or critical role for the team. Counsel states in his appellate brief that the petitioner was one of twenty-one [REDACTED] athletes who competed in 2009, and that he was one of an unspecified number of [REDACTED] athletes who competed in 2010. The record, however, lacks evidence on what specifically the petitioner’s contributions were to the team during the two years. In short, a person’s role as an athlete on a winning team that in 2009 had over twenty athletes of varying abilities and levels of contributions is insufficient to establish that he has performed in either a leading or critical role for the team.

Furthermore, although the evidence shows that the petitioner worked as a coach for the [REDACTED] tennis team, the evidence is insufficient to show that his role as a coach constitutes either a leading or critical role for the team. Specifically, the petitioner has not provided any information on the number of coaches [REDACTED] hired, or whether the petitioner’s duties were the same or substantially similar to those performed by any other coaches. In short, the AAO cannot conclude that the petitioner’s role as a coach, even one who worked with promising young athletes, in a club with unspecified number of coaches sufficient to establish that he has performed in either a leading or critical role for the team.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the petitioner has performed in a leading or critical role for organizations or establishments, in the plural, that have a distinguished reputation. This requirement is consistent with the statutory requirement for extensive documentation. See section 203(b)(1)(A)(i) of the Act. As such, even if the AAO were to conclude that the petitioner has performed in a leading or critical role for [REDACTED]

table tennis team, the AAO would not find that the petitioner has met this criterion because the evidence fails to show that he has performed in a similar role for a second organization or establishment that has a distinguished reputation.

Accordingly, the AAO finds that the petitioner has not presented evidence that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. The petitioner has not met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix).

In his November 1, 2011 decision, the director found that the evidence does not establish that the petitioner has met this criterion. On appeal, counsel has not challenged the director's adverse finding. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

If the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility. 8 C.F.R. § 204.5(h)(4).

In his November 1, 2011 decision, the director found that the petitioner has not established his eligibility for the petition through comparable evidence. On appeal, counsel has not challenged the director's adverse finding. As such, the AAO concludes that the petitioner has abandoned this issue, as he did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9.

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 have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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 field of endeavor," 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)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion

in a final merits determination.⁵ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting three types of evidence. *Kazarian*, 596 F.3d at 1122.

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.

⁵ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(1)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).