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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



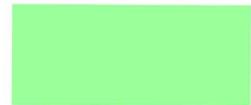
U.S. Citizenship
and Immigration
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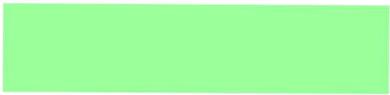
Date: Office: TEXAS SERVICE CENTER

FILE:

JAN 25 2014



RE: Petitioner:
Beneficiary:



APPLICATION: 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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

According to parts 2 and 6 of the June 28, 2012 petition, the petitioner seeks to classify the beneficiary as an alien of extraordinary ability in athletics as a professional athlete. According to counsel's cover letter, however, the beneficiary is currently working as a professional tennis coach. According to the letter from [REDACTED] on behalf of the petitioner, the beneficiary "will perform training programs for athletes, coach tennis players and organize tennis events." The petitioner seeks to classify the beneficiary as an alien of extraordinary ability pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner has not established the beneficiary's sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the beneficiary's "sustained national or international acclaim" and present "extensive documentation" of the beneficiary'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 the petitioner can establish the beneficiary's 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 files an appellate brief and supporting documents. For the reasons discussed below, the petitioner has not established the beneficiary's eligibility for the exclusive classification sought as a tennis coach and fitness trainer. Specifically, the petitioner has not shown evidence that the beneficiary, in her role of a tennis coach and fitness trainer, has attained a one-time achievement that is a major, internationally recognized award, under the regulation at 8 C.F.R. § 204.5(h)(3), or that she meets at least three of the ten regulatory criteria under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that the beneficiary, as a tennis coach and fitness trainer, is one of the small percentage who are at the very top of the field and she has not sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3). Accordingly, the AAO will dismiss the petitioner's appeal.

I. THE 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 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)).

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).

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 at least three types of evidence under the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x), and has not demonstrated that the beneficiary is one of the small percentage who are at the very top in the field, or has achieved sustained national or international acclaim. See 8 C.F.R. §§ 204.5(h) (2), (3).

II. Prior O-1 Visa Petitions

The USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary. First, the nonimmigrant visa petitions are based on the beneficiary's ability as a tennis player. The petitioner now seeks to classify the beneficiary as an alien of extraordinary ability as a tennis coach and fitness trainer. Second, a prior approval of nonimmigrant visa petition does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased, 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. United States Dep't 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.*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, No. 03-1083299, 99 F. App'x 556, 2004 WL 1240482 at *1 (5th Cir. Jun. 2, 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 Int'l*, 19 I&N Dec. 593, 597 (Comm'r 1988). USCIS or any agency is not required to 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 had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 at *3 (E.D. La. Mar. 15, 2000), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 534 U.S. 819 (2001).

III. ANALYSIS

The court in *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002), upheld a conclusion that competitive athletics and coaching are not within the same area of expertise. Specifically, 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. The regulations regarding this preference classification are extremely restrictive, and not expanding "area" to include everything within a particular field cannot be considered unreasonable.

Id. at 918.

In this case, the petitioner provided a June 6, 2012 letter, stating that it "offers fitness services to athletes and [the beneficiary] will perform training programs for athletes, coach tennis players and organize tennis events in the Miami Beach area." The letter further provides that the beneficiary will "conduct athletic services, train tennis players and prepare fitness programs for athletes." This letter makes clear that the beneficiary seeks to enter the United States to work as a tennis coach and fitness trainer, not as a tennis player. Indeed, according to an online printout entitled "Services" from the beneficiary's website at [REDACTED] and an online printout the petitioner submitted from [REDACTED] the beneficiary is a "former Professional Tennis Player."

While a tennis player and a coach certainly share knowledge of tennis, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. *See id.* Nevertheless, there does exist a nexus between playing and coaching a given sport. To assume that every extraordinary athlete's area of expertise includes coaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where the beneficiary has clearly achieved recent national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, USCIS can, in the context of the final merits determination, consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability consistent with a conclusion that coaching is within the petitioner's area of expertise. Specifically, in such a case the level at which the alien acts as coach is a consideration. A coach who has an established successful history of coaching athletes who compete regularly at the national level has a credible claim; a coach of novices does not. In this matter, however, as the petitioner has not submitted qualifying evidence as either a coach or an athlete under at least three criteria, the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence.

A. Evidentiary Criteria²

Under the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner can establish the beneficiary's sustained national or international acclaim and that the beneficiary's 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 her response to the director's request for evidence (RFE), counsel asserts that the beneficiary's participation in "the 1998 Youth Olympic Games" constitutes evidence of a one-time achievement that is a major, internationally recognized award. The director concluded in his July 13, 2013 decision that the petitioner has not made such a showing. The evidence in the record includes but is not limited to (1) a certificate for participation in the World Youth Games, to which the International Olympic Committee (IOC) granted patronage, that does not list the beneficiary's name, (2) a copy of an identification card for the same games that does name the beneficiary, and (3) the article entitled "The World Youth Games in Moscow." This evidence supports the director's decision. On appeal, counsel has not specifically challenged the director's finding. Accordingly, the petitioner has abandoned this issue, as it did not timely raise it on appeal. *Sepulveda v. United States Att'y Gen.*, 401 F.3d 1226, 1228 n.2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the United States District Court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). Barring the beneficiary's receipt of such an award, the regulation outlines ten criteria, at least three of which the petitioner must satisfy to meet the basic eligibility requirements. See 8 C.F.R. § 204.5(h)(3)(i)-(x).

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).

The record does not include evidence of the beneficiary's receipt of any prizes or awards relating to her coaching or fitness training ability. Instead, the record contains evidence of the beneficiary's receipt of prizes and awards during her career as a junior and collegial-level tennis player. These prizes and awards include, but not limited to: (1) first through third place finishes at open championships in the former Yugoslavia in the under age 12, 14 and 16 categories during the 1990's, (2) a first place finish at the [REDACTED] Classic Tournament, and (3) the [REDACTED] International University Presidents Award and Dr. [REDACTED] Outstanding Athletic Achievement Award. In his May 1, 2012 letter, [REDACTED] states that the beneficiary "won everything you can win when it comes to tournaments and competition[s] in 1995, 1996, 1997 and 1998!" In the same letter, Mr. [REDACTED] asserts that the beneficiary "was selected to be part of and [a] proud member of [the] Olympic Team in 1998 in Moscow Russia, where she was competing for our country flag on [sic] Youth Olympic Games." Mr. [REDACTED] then discusses the requirements for selection to a national Olympic tennis team. On appeal, counsel states that the beneficiary "not only

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

participated at the Olympics but also received awards for excellence.” The materials in the record, however, reflect that the 1998 event in Moscow was the first “World Youth Games,” where approximately 7,500 young athletes ages 11 to 18 competed. While the IOC granted its patronage to the event, it was not an Olympic event and those attending were not Olympic team members. As Mr. [REDACTED] has mischaracterized the 1998 event, his letter has diminished probative value.

The petitioner has not established that the beneficiary’s awards and prizes constitute nationally or internationally recognized prizes or awards in coaching or even athletics. First, the petitioner has provided a number of photographs of the beneficiary participating in tennis tournaments and of trophies. The photographs include handwritten notations of unspecified origins. Most of handwritten notations describe the events and trophies featured in the photographs. The actual photographs of the events or trophies, however, do not corroborate the handwritten notations.

Second, with respect to the foreign award certificates, the petitioner has provided English translations of those certificates that do not meet the regulatory requirement under 8 C.F.R. § 103.2(b)(3), which provides that “[a]ny document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” In fact, the petitioner has not provided a certificate of translation for any of these English translations. As such, these English translations do not constitute probative evidence and do not have any evidentiary weight.

Third, even if the petitioner had submitted qualifying translations, the petitioner has not shown that the awards and prizes the beneficiary received during her junior and collegial-level tennis career constitute nationally or internationally recognized prizes or awards for excellence. The evidence shows that most of the beneficiary’s awards and prizes were from age-limited tournaments. While an age-limited tournament may enjoy national or international recognition, it is the petitioner’s burden of proof to document that the distinction the beneficiary received enjoys recognition beyond the organizing entity. The petitioner has not shown that the beneficiary faced significant competition from throughout the field of tennis in these tournaments, which were restricted by age or non-professional status. There is also no evidence showing that the beneficiary’s junior-level competitive accomplishments were announced in major media or in some other manner consistent with national or international acclaim. As such, the beneficiary’s accomplishments at the junior-level are insufficient to show her receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The evidence in the record does not support counsel’s assertion on appeal that the beneficiary is “one of the best tennis players in the world for over a long period of years.” At most, the evidence shows that the beneficiary was at one time a top tennis player in the junior-level, amongst a pool of young players under a specific age.

Similarly, the petitioner has not shown that the beneficiary’s accomplishments at the collegial-level tournaments, where only college students could participate, constitute nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In addition, the petitioner has

provided insufficient evidence showing what criteria the Florida International University used to select the beneficiary for the awards or that these awards enjoy national or international recognition.

Finally, counsel in her appellate brief stated that since the director “recognizes that the beneficiary has performed in a leading or critical role for organization [sic] that have a distinguished reputation then clearly the awards received must be recognized prizes or awards for excellence as well.” Counsel did not cite any legal authority in support of this statement. Indeed, performance in a leading or critical role falls under the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and does not also serve to meet this criterion absent evidence that the beneficiary’s awards and prizes are nationally or internationally recognized for excellence. The distinction between these two criteria is consistent with the statutory requirement for extensive evidence and the regulatory requirement that the beneficiary meets at least three criteria. *See* section 203(b)(1)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(h)(3).

Accordingly, the petitioner has not presented documentation of the beneficiary’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The petitioner has not submitted evidence that meets 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).

The plain language of the criterion requires evidence of the beneficiary’s membership in associations, in the plural, 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. This finding is consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act.

On appeal, counsel asserts that the petitioner has met this criterion because the director concluded that the petitioner met the performance in a leading or critical role criterion. Counsel did not cite any legal authority in support of this statement. As noted, performance in a leading or critical role falls under the criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii) and does not also serve to meet this criterion absent evidence that the beneficiary is a member of qualifying associations. The distinction between these two criteria is consistent with the statutory requirement for extensive evidence and the regulatory requirement that the petitioner meets at least three criteria. *See* section 203(b)(1)(A)(i) of the Act; *see also* 8 C.F.R. § 204.5(h)(3).

Counsel further asserts that the beneficiary meets this criterion because she is a member of the [redacted] the [redacted] and the Women Tennis Association (WTA), and that these “organizations are associations for only the most elite athletes.” The evidence in the record does not support counsel assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec.

533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

First, the petitioner has not shown that membership in either the [REDACTED] or the [REDACTED] constitutes membership in an association in the field for which classification is sought that requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields. According to Mr. [REDACTED] April 29, 2013 letter, the beneficiary was a member of the International Tennis Federation (ITF) tennis team, of which the [REDACTED] is a member. Mr. [REDACTED] further asserts that the beneficiary “was selected by the [REDACTED] based on her extraordinary achievements in the country . . . and abroad to represent Serbia in the most elite tournaments.” Mr. [REDACTED] does not explicitly assert that the beneficiary is or was a member of an entity named the [REDACTED] Tennis Team,” the [REDACTED] Tennis Association,” or the [REDACTED] Tennis Federation.” Rather, he confirms only that she was a member of the ITF and that the [REDACTED] Tennis Federation selected her to compete.

Mr. [REDACTED] further asserts that the ITF “is an international junior singles and doubles competition called the ‘ITF Junior Circuit’”; and that the ITF Junior Circuit is comprised of the best international junior tournaments. As noted by counsel on appeal, Mr. [REDACTED] further stated that the beneficiary represented Serbia in the Category 1-top level junior-level events and “was selected to be part of the Olympic Team and to represent Serbia in 1998 in The World Youth Olympic Games.” The petitioner has not demonstrated that the beneficiary’s selection to compete on behalf of Serbia at international events was based on achievements beyond her junior-level accomplishments. The petitioner has provided insufficient evidence showing that her accomplishments as a junior-level tennis player, namely her competitive success in age-restricted tournaments, constitute outstanding achievements. Further, as discussed above, the materials in the record reflect that the 1998 event was not an Olympic event and the attendees were not Olympic team members; rather the IOC granted patronage to the event.³ Thus, Mr. [REDACTED] discussion of the requirements for Olympic team membership in tennis is not relevant.

Moreover, two expert letters provided on the beneficiary’s behalf contain verbatim language when describing the membership requirements of associations in which the beneficiary claims to belong. Specifically, Mr. [REDACTED] April 29, 2013 letter and the April 29, 2013 letter from [REDACTED] of the [REDACTED] Tennis Federation are two five-page, virtually identical letters, with the only difference in their description of the author’s position in the [REDACTED] Tennis Federation. This similarity suggests that the language in the letters is not the authors’ own. Cf. *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d 145, 148 (2d Cir. 2006) (upholding an immigration judge’s adverse credibility determination in asylum proceedings based in part on the similarity of some of the affidavits); *Mei Chai Ye v. United States Dep’t of Justice*, 489 F.3d 517, 519 (2d Cir. 2007) (concluding that an

³ The 1998 Olympics included only the winter games and were held in Nagano, Japan, not Moscow, Russia. See <http://www.olympic.org/nagano-1998-winter-olympics>.

immigration judge may reasonably infer that when an asylum applicant submits strikingly similar affidavits, the applicant is the common source). Even if the language is similar because it derives from bylaws or other official documentation, that documentation would be the primary evidence of the associations' membership requirements. As the petitioner has not documented that primary evidence (such as the bylaws) and secondary evidence are not available, the petitioner may not rely on affidavits. 8 C.F.R. § 103.2(b)(2).

With respect to the beneficiary's membership in the WTA, neither counsel nor the petitioner has provided sufficient evidence relating to the membership requirements of this association to establish that the beneficiary's membership meets this criterion. On appeal, counsel files for the first time a document entitled "WTA Player Membership," indicating that "[a]ny player who had a WTA Ranking as of the end of the Tour Year of 150 or better in singles" is eligible for WTA full membership and that "[a]ny player who (a) has earned a WTA Singles Ranking of 750 . . . and (b) has participated in a minimum of one (1) WTA Tournament" is eligible for WTA associate membership. The petitioner has not shown that being a top 150 or 750 singles player constitutes an outstanding achievement. Moreover, although the record includes some information about the beneficiary's participation in tournaments organized by the European Tennis Association, the International Tennis Federation, U.S. Association for Professional Tennis, and the WTA, the record lacks documents, such as membership certificates or letters from the organizations, showing that the beneficiary is/was a member of the associations, or that only members may compete in the tournaments.

Finally, the record includes references to the beneficiary's involvement in other tennis organizations, including the World Tennis Association, [REDACTED]

[REDACTED] On appeal, counsel has not continued to maintain that the beneficiary's involvement in these organizations meets this criterion. As such, the petitioner has abandoned this issue, as it did not timely raise it on appeal. *Sepulveda*, 401 F.3d at 1228 n.2; *Hristov*, 2011 WL 4711885 at *9. In addition, some of the evidence the petitioner filed relating to this criterion comes from wikipedia.com. As there are no assurances about the reliability of the content from this open, user-edited Internet site, documents from wikipedia.com have no evidentiary weight.⁴ See *Badasa v. Mukasey*, 540 F.3d 909, 910-11 (8th Cir. 2008).

⁴ Online content from Wikipedia is subject to the following general disclaimer entitled "WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY":

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Accordingly, the petitioner has not presented documentation of the beneficiary's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields. The petitioner has not submitted evidence that meets this criterion. See 8 C.F.R. § 204.5(h)(3)(ii).

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation. 8 C.F.R. § 204.5(h)(3)(iii).

In his July 13, 2013 decision, the director found that the petitioner met this criterion. The evidence in the record does not support this conclusion. An application or petition that does not 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 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

First, the record includes a number of foreign language articles and letters, and their English translations. The English translations of the articles and letters do not meet the requirements under the regulation at 8 C.F.R. § 103.2(b)(3), which provides that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English." The translation certificates that accompany the English translations do not specify that the translator is competent to translate the document from Serbian to English.

Second, some of the articles and their English translations do not include information such as the date or the author of the material, as required by the plain language of the criterion. Specially, the materials entitled "[The Beneficiary] Glittered Again," "The Best Placement for [the Beneficiary]," "Yugoslavia Players in a Good Mood," "[The Beneficiary] – Two Victories," "The Third Triumph of [the Beneficiary]," "Success of [the Beneficiary]," "I'd Like to Meet [redacted]" "[The beneficiary] is in Europe, Despite All" "[redacted] and [the Beneficiary] are the First," "[The

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See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 14, 2013, a copy of which is incorporated into the record of proceeding.

Beneficiary] – the Best Pioneer,” “[The Beneficiary] has Surprised Everyone,” “[The Beneficiary] (Unexpectedly) the First,” “Tennis – Big [The Beneficiary’s] Love,” and “The Best are [Redacted] Boys) and [the Beneficiary] (Girls)” do not include the name of the publication that published the material or the date of publication or the identify the article’s author. Counsel, in her June 1, 2012 letter, initially filed in support of the petition, and in her response to the director’s RFE, repeatedly stated that “Serbian Newspaper reports” on the beneficiary, but did not specify which newspaper published which news article(s) in the record. Moreover, many of the articles consist of a few sentences on the results of a particular tournament in which the beneficiary participated.

Third, the petitioner has not shown that the publication [Redacted] is a qualifying publication or constitutes other major media under the criterion. The petitioner has filed an undated letter from [Redacted] of the publication [Redacted]. As noted, the English translation of this letter does not meet the regulatory requirements under 8 C.F.R. § 103.2(b)(3), and thus does not have any evidentiary weight. In addition, the letter provides that [Redacted] “is a regional weekly newspaper of [Redacted] whose circulation is 13,000 [or] so every Thursday it is delivered to this number of addresses in [Redacted] and the nine surrounding villages.” This letter does not establish that the publication is a professional or major trade publication or constitutes other major media.

Similarly, the petitioner has not shown that the publication [Redacted] is a qualifying publication or constitutes other major media under the criterion. According to an April 24, 2013 letter from [Redacted] is popular among Russians and Eastern Europeans living or traveling in the United States, and distributes 50,000 copies per issue with a readership of 300,000. The letter is insufficient to show that the publication is a professional or major trade publication in the field of tennis playing or tennis coaching or fitness training. The letter, which notes that the publication is popular among specific ethnic groups in the United States and does not include information on the publication’s impact in the United States, is also insufficient to establish that the publication constitutes major media.

In addition, the petitioner has provided insufficient evidence showing that the Serbian publication [Redacted] constitutes a professional or major trade publication or other major media. The petitioner has provided an English translation of an April 29, 2013 letter from [Redacted] Editor of the Tennis Section, which states that the publication is “read by professional athletes, coaches, people who do sports as recreation, fans and other sport supporters.” The English translation of the letter lacks a certificate of translation that meets the requirements under the regulation at 8 C.F.R. § 1032(b)(3). Thus, the English translation is insufficient to establish the publication as a professional or major trade publication or constitutes other major media. Moreover, the English translation of the April 5, 2012 [Redacted] article entitled “[the Beneficiary’s] Successful Work with Young Tennis Players in [Redacted],” includes information that the publication “is a daily sports newspaper” and cites wikipedia.com to support this statement. As noted, as there are no assurances about the reliability of the content from this open, user-edited Internet site, the AAO will not assign evidentiary weight to information from wikipedia.com. See *Badasa*, 540 F.3d at 910-11. Moreover, while this information may confirm that the journal is a

trade publication, the information does not establish that the journal is a major trade publication as required.

Fourth, the record contains a number of materials published on the [REDACTED] website, relating to its tennis team and the beneficiary's competitive achievements. The petitioner has not established that the materials are in professional or major trade publications or other major media. The petitioner has also not provided information relating to the author of the materials.

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

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

On appeal, counsel asserts that the petitioner meets this criterion. As supporting evidence, counsel points to reference or expert letters in the record and asserts that the beneficiary's "international awards are major contributions to the sport of tennis." The evidence in the record does not establish that the petitioner has met this criterion. Although the petitioner has shown that the beneficiary has had some success as a junior-level and collegial-level tennis player, the petitioner has not shown that these accomplishments constitute original contributions of major significance in the field of tennis coaching or fitness training.

First, the competitive accomplishments that relate to the beneficiary's ability as a tennis player do not establish the petitioner meet this criterion, because the petitioner seeks to classify the beneficiary as an alien of extraordinary ability as a tennis coach and fitness trainer, not as a tennis player. Regardless, awards fall under the criterion at 8 C.F.R. § 204.5(h)(3)(i) and cannot, by themselves, also serve as evidence to meet this criterion absent evidence that they are original (for example, record-setting) and of major significance in the field of tennis.

Second, the evidence relating to her competitive success as a tennis player does not establish that the beneficiary has made any contribution to the sport of tennis as a whole, that is either original or that is of major significance. None of the evidence in the record discusses or even mentions the beneficiary's contributions to the sport of tennis as a whole as original – such that she is the first person or one of the first people to have made the contributions. Further, the evidence does not establish that her contributions are of major significance – such that the contributions significantly affected the sport. Indeed, other than making the conclusory statement that the evidence establishes that the petitioner meets this criterion, counsel has provided no legal or factual basis for her assertion. 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).

Third, the evidence in the record does not establish that the beneficiary's coaching methods are original, or that the methods constitute contributions of major significance in the field of tennis coaching. Mr. [REDACTED] April 6, 2012 letter corroborates the beneficiary's positive influence on Mr. [REDACTED] daughter as her coach. In his March 28, 2012 letter, [REDACTED] a former Serbian National Tennis Champion, states that the beneficiary's "experience as a player in tournaments all over the world and preparation make her a unique combination of skill and knowledge that she can pass on to the junior players she is successfully coaching." In his April 3, 2012 letter, [REDACTED] the Head Coach at the [REDACTED], states that the beneficiary's "extraordinary talent as a player along with her preparation in tennis since she was a junior makes her an exceptional coach." In his March 28, 2012, [REDACTED] owner, director and coach of the [REDACTED] states that the beneficiary's "prowess as a player [] makes her a unique coach, as she not only possesses the skills but also the competitive experience fundamental to outstanding coaching." None of these letters or any other evidence in the record identify any specific accomplishment that the beneficiary has done as a tennis coach or even as a player that is original or constitutes a contribution of major significance.

Significantly, Mr. [REDACTED] letter, which counsel asserts establishes that the beneficiary meets this criterion, contains virtually identical passages as the beneficiary's June 3, 2013 statement when describing the beneficiary's impact on Mr. [REDACTED] daughter. Specifically, Mr. [REDACTED] letter provides:

. . . [The beneficiary] brought [REDACTED] up from a recreational tennis player to someone who is taking tennis seriously and wants to bring her game up to a higher and serious level as evidenced by her achievements.

After [the beneficiary] began to coach [REDACTED] she started to participate in individual tennis tournaments, as well as setting off to other cities all around the country with her team. [REDACTED] has become an outstanding tennis player. She is a member of USTA tennis association. She has kept improving and participating more consistently in tournaments and traveling with her coach [the beneficiary] and the tennis team. In 2010 her team won the National Team Tennis competition where [REDACTED] was number 1 player in girls' singles and doubles. [REDACTED] made the draw to participate in one of the most prestigious international junior tennis tournaments where only very well ranked juniors players all over the world get accepted. She played the Junior Orange Bowl 48th International Tennis Championship. Even though she lost in the third round of that tournament, making the draw is an incredible achievement. [REDACTED] has played in some major designated tournaments (which requires [sic] USTA rankings). [The beneficiary] is an essential part of [REDACTED] life. [REDACTED] has a strong will to become a professional tennis player and [the beneficiary] is working

on every aspect of [REDACTED] game: tennis technique, fitness level, confidence on and off the court, tactics, strategy and the mental aspect of the game.

The beneficiary's June 3, 2013 letter includes virtually the same passages:

. . . I brought [REDACTED] up from a recreational tennis player to someone who is taking tennis seriously and wants to bring her game up to a higher and serious level as evidenced by her achievements. After I began to coach [REDACTED] she started to participate in individual tennis tournaments, as well as setting off to other cities all around the country with her team. [REDACTED] has become an outstanding tennis player. She is a member of USTA tennis association. She has kept improving and participating more consistently in tournaments and traveling with her coach (myself) and the tennis team. In 2010 her team won the National Team Tennis competition where [REDACTED] was number 1 player in girls' singles and doubles. [REDACTED] made the draw to participate in one of the most prestigious international junior tennis tournaments where only very well-ranked juniors players all over the world are accepted. She played the Junior Orange Bowl 48th International Tennis Championship. Even though she lost in the third round of that tournament, making the draw is an incredible achievement. [REDACTED] has played in some major designated tournaments (which requires [sic] USTA rankings). I am very well aware that I am an essential part of [REDACTED] life. [REDACTED] has a strong will to become a professional tennis player and I am doing my best working on every aspect of [REDACTED] game: tennis technique, fitness level, confidence on and off the court, tactics, strategy and the mental aspect of the game.

The virtually identical language in the letters raises questions as to the origin of the language. Cf. *Surinder Singh v. Board of Immigration Appeals*, 438 F.3d at 148; *Mei Chai Ye*, 489 F.3d at 519.

Furthermore, vague, solicited letters from colleagues and clients that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient.⁵ *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009), *aff'd in part*, 596 F.3d 1115 (9th Cir. 2010). 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

⁵ 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.

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. 158, 165 (Assoc. Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

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. As stated above, merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd.*, 724 F. Supp. at 1108; *Avyr Associates, Inc.*, 1997 WL 188942 at *5. Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

Finally, the evidence in the record does not establish that athletes the beneficiary has trained have received nationally or internationally recognized prizes or awards for excellence in the field of endeavor. In her May 26, 2013 letter, [REDACTED] the petitioner’s Chief Executive Officer (CEO), states that the beneficiary has trained “[t]wo young and upcoming tennis potential talents from the United States.” The letter lists the two athletes’ competitive accomplishments. None of them, however, constitute nationally or internationally recognized prizes or awards. The beneficiary’s June 3, 2013 letter and the April 6, 2012 letter from [REDACTED] the father of one of the athletes that the beneficiary trains, provide similar information. These athletes appear to have some success in local or regional age-restricted junior-level tournaments, which is not indicative of a coach that has made contributions of major significance in the field.

Accordingly, the petitioner has not presented evidence of the beneficiary’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. The petitioner has not submitted evidence that meets this criterion. 8 C.F.R. § 204.5(h)(3)(v).

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).

In his July 13, 2013 decision, the director, pointing to the beneficiary’s membership in the Serbian junior tennis team and her participation in the 1998 World Youth Games in Moscow, concluded that the evidence met this criterion. The evidence in the record does not support this conclusion. *See Spencer Enterprises, Inc.*, 229 F. Supp. 2d at 1043; *Soltane*, 381 F.3d at 145-46. Specifically, even if the beneficiary’s competitive success while being on the Serbian junior tennis team constitutes her performing a leading or critical role for a qualifying organization, the evidence does not establish that the petitioner has submitted sufficient qualifying evidence to meet this criterion. Specifically, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires evidence of the beneficiary performing a leading or critical role for organizations or establishments, in the plural, that have a distinguished reputation, consistent with the statutory requirement for extensive documentation. *See* section 203(b)(1)(A)(i) of the Act. The record lacks evidence showing that the beneficiary has performed a leading or critical role for a second qualifying organization or establishment.

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

IV. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who 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.⁶ 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 appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner’s burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁶ 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(f)(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).