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

(b)(6)

DATE: MAR 13 2015 OFFICE: NEBRASKA 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 (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, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner, a tennis center, seeks to classify the beneficiary as an "alien of extraordinary ability" in athletics, as its director of junior high performance, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to aliens who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of the beneficiary's one-time achievement or evidence that meets at least three of the ten regulatory criteria at 8 C.F.R § 204.5(h)(3).

On appeal, the petitioner asserts that the director erred because the United States Citizenship and Immigration Services (USCIS) approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary. In addition, the petitioner asserts that the director:

> . . . fail[ed] to understand the significance of the evidence provided, and failed to understand the parameters of the field of athletics which the Petitioner and the Beneficiary operate within and not only the significance of the awards [the] Beneficiary has received but the results which have obtained as a result of his work to date.

Within the brief, the petitioner discusses the beneficiary's awards and contributions. Absent a finding that the beneficiary's coaching award, which postdates the filing of the instant petition, is a qualifying one-time achievement, the petitioner's assertions in the alternative relate to two of the regulatory criteria whereas the regulation at 8 C.F.R. § 204.5(h)(3) requires evidence that satisfies three criteria.

For the reasons discussed below, we agree with the director that the petitioner has not established the beneficiary's eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of the beneficiary's a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies 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 petitioner has not demonstrated that the beneficiary is one of the small percentage who are at the very top in the field of endeavor, and that the beneficiary has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will 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.

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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate the beneficiary's sustained acclaim and the recognition of the beneficiary's achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then a petitioner must submit sufficient qualifying evidence showing that the beneficiary meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination); *see also Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers,* 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Previous O-1 Petition

While USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, the prior approval 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 Bros. Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). We are 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). We are 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, our 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, we would not be bound to follow the contradictory decision of a service center as the law is clear that an agency is not bound to follow an earlier determination as to a visa applicant where that initial determination was based on a misapplication of the law. *Glara Fashion, Inc. v. Holder*, 11 CIV. 889 PAE, 2012 WL 352309 *7 (S.D.N.Y. Feb. 3, 2012); *Royal Siam v. Chertoff*, 484 F.3d 139, 148 (1st Cir. 2007); *Tapis Int'l v. INS*, 94 F. Supp. 2d 172, 177 (D. Mass. 2000) (Dkt. 10); *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 1999), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 534 U.S. 819 (2001).

B. Evidentiary Criteria[1]

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 response to the director's Request for Evidence (RFE), the petitioner asserts that the beneficiary's receipt of the Coach of the Year Award constitutes a qualifying one-time achievement under the regulation at 8 C.F.R. § 204.5(h)(3). The evidence in the record does not support this assertion. According to an October letter from the United States Tennis Association (USTA) the USTA selected the beneficiary as the recipient of Coach of the Year Award. The letter states that the award, which USTA would issue at a December ceremony, "recognizes the outstanding individual efforts of a coach in the ' and it congratulates the beneficiary

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner claims to meet or for which the petitioner has submitted relevant and probative evidence.

on "all of [his] hard work in lifting up the game, not only in Nevada, but also throughout the entire [redacted]." A document entitled "USTA [redacted] Honorees" similarly provides that the beneficiary received the [redacted] Coach of the Year Award in recognition of his "outstanding efforts of a developmental coach in the USTA [redacted]."

First, the petitioner filed the petition on September [redacted] Mr. [redacted] letter is dated October [redacted] and the award ceremony was December [redacted] all after the date of filing. A petitioner must establish the beneficiary's eligibility at the time of filing; a petition cannot be approved at a future date after the beneficiary becomes eligible under a new set of facts. *See* 8 C.F.R. § 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). Moreover, USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1998) (adopting the reasoning in *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981)).

Regardless, the evidence in the record shows that the beneficiary's award is regional in nature. The petitioner has not submitted evidence showing that the award is recognized on an international, or even a national, level, or that individuals not associated with the award-issuing organization recognize the award. *See Braga v. Poulos*, No. CV 06-5105 SJO 10, 2007 WL 9229758, at *1, 6-7 (C.D. Cal. July 6, 2007), *aff'd*, 317 F. App'x 680 (9th Cir. 2009) (concluding that we did not have to rely on the promotional assertions on the cover of a magazine as to the magazine's status as major media). The petitioner has not shown that the beneficiary's award, issued by a regional section within the USTA, is a major, internationally recognized award, as required under the regulation.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739 (Sept. 19, 1990). Congress' example of a one-time achievement is a Nobel Prize. *Id.* The regulation is consistent with this legislative history, stating that a one-time achievement must be a major, internationally recognized award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which a petitioner must meet at least three. *See* 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the beneficiary's field as one of the top awards in that field. Congress entrusted the decision of which awards other than the Nobel Prize constitute a major, internationally recognized award to the administrative process, where USCIS does not abuse its discretion provided it reaches a rational decision after considering all of the evidence the petitioner submits, including the level of media coverage of the event. *See Visinscaia*, 4 F. Supp. 3d at 133; *Rijal*, 772 F. Supp. 2d at 1345-46.

In this case, the petitioner has not shown through its evidence that the beneficiary's Coach of the Year Award, issued by the USTA constitutes a major, internationally recognized award at a level similar to that of the Nobel Prize. Barring the beneficiary's receipt of such an award, the regulation outlines ten criteria, at least three of which the petitioner must show the beneficiary satisfies 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 director concluded that the petitioner met this criterion. The evidence in the record does not support this conclusion. We may deny an application or petition that does not comply with the technical requirements of the law even if the director 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. Dep't of Justice*, 381 F.3d 143, 145-46 (3d Cir. 2004) (noting that we conduct appellate review on a *de novo* basis).

The record shows that the beneficiary received a Coach of the Year Award from the USTA As discussed, this award postdates the filing of the petition and is regional in nature. The petitioner has not submitted evidence showing that the beneficiary's award is recognized on a national or international level. Indeed, in his June letter, Senior Counsel, USTA, does not discuss the beneficiary's Coach of the Year Award from the USTA as one of the beneficiary's accomplishments as a tennis coach. Similarly, a coach for the USTA also does not mention the beneficiary's receipt of this award as one of his coaching accomplishments.

The record includes evidence of the beneficiary's receipt of certificates and awards when he was a tennis player for the . While a tennis player and 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 Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (upholding a conclusion that competitive athletics and coaching are not within the same area of expertise).[2] Regardless, the petitioner has not shown that the certificates and awards are nationally or internationally recognized. Rather, they appear to be collegiate level certificates and awards limited to the "Mountain West" and "Mountain" regions. Because the beneficiary's awards that predate the filing of the petition are for his accomplishments as a competitor and are regional, the beneficiary's accomplishments do not satisfy this criterion.

[2] USCIS does recognize a nexus between playing and coaching. Specifically, in cases where a beneficiary demonstrates recent acclaim as an athlete by satisfying three criteria as an athlete, USCIS will look at whether other evidence confirms that coaching is within that beneficiary's area of expertise for purposes of 8 C.F.R. § 204.5(h)(5). The petitioner in this matter, however, does not contend that the beneficiary satisfies three criteria as an athlete and the beneficiary's awards as an athlete are not recent.

Accordingly, the petitioner has not submitted 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 met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(i).

> *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).

In support of this criterion, the petitioner has submitted a number of reference letters. The evidence in the record, including the reference letters, however, does not establish that the petitioner meets this criterion. The petitioner must demonstrate that the beneficiary's contributions are both original and of major significance. 8 C.F.R. § 204.5(h)(3)(v). The term "original" and the phrase "major significance" are not superfluous and, thus, they have some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3d Cir. 1995) (quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2d Cir. 2003). Contributions of major significance connotes that the beneficiary's work has already significantly impacted the field. *See Visinscaia*, 4 F. Supp. 3d at 135-136.

a tennis coach, states that the USTA which "is responsible for identifying, training and developing the best young tennis talent in the country," granted the beneficiary, as one of a select number of coaches, access to the division's Fair Play Athlete Management panel, a central exchange of data and resources. Mr. further asserts that USTA "utilizes a number of [the beneficiary's] online lesson plans through the Fair Play System; and the national coaches and players have benefited greatly thereby." The petitioner has not submitted sufficient evidence showing that the beneficiary's lesson plans are original, such that he has developed or created the lessons plans, or that he is the first person or one of the first people to have used the lesson plans. Moreover, the petitioner has not submitted sufficient evidence showing the impact of the lesson plans in the sport of tennis as a whole. The evidence in the record does not indicate how many tennis coaches and players have used the lesson plans, how frequently they have used the lesson plans or how substantially the lesson plans have improved the players' games, which might show the impact of the lesson plans. Mr. conclusory statement that coaches and players "have benefited greatly" from the lesson plans is insufficient to show the lesson plans' impact in the sport. Going on record without supporting documentary evidence is not sufficient for the purposes of meeting the burden of proof in these proceedings. *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)). We need not accept primarily conclusory assertions. *See 1756, Inc. v. United States Att'y Gen.*, 745 F. Supp. 9, 17 (D.C. Dist. 1990).

The remaining reference letters praise the beneficiary's ability and qualification as a tennis coach, they do not, however, establish that the beneficiary meets this criterion, because they do not provide sufficient evidence showing the beneficiary has done anything original as a tennis coach, such that he is the first or one of the first people to have done it, or that what he has done is of major significance in the sport of tennis, such that it fundamentally changed or significantly advanced the sport as a whole. According to a top ranking U.S. professional tennis player, the

beneficiary's "training acumen and technical expertise are equal to or greater than other professional coaches [Mr. has] seen and worked with." According to , a tennis coach and a former professional tennis player, the beneficiary "brings a trained eye and feel for the game as a result of his unique playing and coaching experiences and overall dedication to learning and teaching the game at the highest level." According to , a former professional tennis player, the beneficiary "is amongst the best coaches in the tennis profession." Mr. states that the beneficiary "is a cream of the crop coach who would add significant knowledge, experience and expertise to the regional training center in the , and in turn to American junior tennis in general." The reference letters, including those not specifically mentioned, do not establish that the beneficiary's coaching methods are original or unique, or that they are of major significance in the sport. The reference letters lack specificity and detail and are mostly conclusory in nature. *See 1756, Inc.*, 745 F. Supp. at 17 (we need not accept primarily conclusory assertions).

The evidence in the record shows that the beneficiary coached , who was a former number one tennis player in the world when she signed a contract with the beneficiary. The petitioner initially submitted an unsigned statement indicating that Ms. ranking rose from 16 to 14 under the beneficiary's tutelage. This unsigned statement is not probative evidence. Mr. states that the beneficiary "made a positive difference in 's game in a very short amount of time and she had very good results during their partnership." Mr. states that the beneficiary "did a superb job" when he worked with Ms. . Mr. states that the beneficiary was "able to make improvements in [Ms. game when there was very little room to do so because development at the highest levels is difficult to achieve." The petitioner has not shown that coaching a former number 1 tennis player for an unspecific length of time is original, as Ms. had other coaches when she was ranked number one before working with the beneficiary. Regardless of the field, the plain language of the phrase "contributions of major significance in the field" requires evidence of an impact beyond one's employer and clients or customers. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole).

We may consider major prizes and awards an athlete received under the primary tutelage of a coach as comparable evidence in determining whether the coach has submitted sufficient initial evidence. In this case, however, the petitioner has not presented any evidence showing that Ms. received any major prizes or awards while under the beneficiary's tutelage.

On appeal, counsel asserts that the beneficiary coached in early The record, however, lacks evidence substantiating counsel's claim. 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 Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the petitioner has not presented any evidence showing that Ms. received any major prizes or awards under the beneficiary's tutelage.

Vague, solicited letters from 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).[3] 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 the beneficiary'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. *Matter of Caron Int'l*, 19 I&N Dec. 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 reference letters in the record primarily contain 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 sport. 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, *aff'd*, 905 F. 2d 41 (2d Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y. 1997). Similarly, we need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

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 met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(vii).

> *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).

To establish that the beneficiary meets this criterion, the petitioner must establish the beneficiary has performed a leading or critical role for qualifying organizations or establishments. A leading role should be evident based not only on the beneficiary's title but his duties associated with the position. A critical role should be apparent from the beneficiary's impact on the organizations or establishments as a whole. To show the beneficiary's role in an organization or establishment, the petitioner may submit an organization chart demonstrating how the beneficiary's role fits within the hierarchy of the organization or establishment.

[3] In 2010, the *Kazarian* court reiterated that our conclusion that "letters from physics professors attesting to [the petitioner's] contributions in the field" were insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122.

Although the petitioner has not specifically asserted that the beneficiary meets this criterion, the record includes some evidence that might be relevant to this criterion. For example, according to Mr. the beneficiary "has served as a Lead Regional Training Center Coach at the [the petitioning tennis center], and has worked extensively with USTA towards developing the next generation of American tennis professionals." The petitioner has submitted an employment contract, showing that the petitioner has offered the beneficiary $8,500 a month to serve as its Director of Junior High Performance. The record also includes evidence showing that in USTA named the petitioner as one of its Certified Regional Training Centers, with present at the press conference that garnered some media attention. The petitioner has hosted USTA camps for players ages 10-14 in the USTA The evidence shows that the beneficiary has performed a role for the petitioner and for USTA's The petitioner, however, did not submit specific evidence relating to the beneficiary's duties in these two organizations and/or the impact, if any, that the beneficiary has had on these organizations. The record, as it stands does not establish that the petitioner has met this criterion.

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 met this criterion. *See* 8 C.F.R. § 204.5(h)(3)(viii).

C. Summary

The evidence shows that the beneficiary has coached a former No. 1 tennis player and the Tennis Team. For the reasons discussed above, however, we agree with the director that the petitioner has not submitted the requisite initial evidence in this case, evidence of a one-time achievement or evidence that satisfies three of the ten regulatory criteria.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the beneficiary has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her 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 [beneficiary] is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the [beneficiary] 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. As the petitioner has not done so, the proper conclusion is that the petitioner has not satisfied the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set

forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence on which the petitioner relies on appeal in the aggregate supports a finding that the petitioner has not demonstrated, through the submission of extensive evidence, that the beneficiary has attained the level of expertise required for the classification sought.[4]

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.

[4] We maintain *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, we maintain 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).