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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: EAC 02 083 53004 Office: VERMONT SERVICE CENTER Date: FEB 10 2004

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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

On appeal, counsel alleges procedural violations. We will address these allegations before we turn to the merits of the petition.

The petitioner filed the petition, Form I-140, on January 7 (All dates in this chronology refer to 2002). Secondary materials indicate that an approval notice was mailed to the petitioner on March 5, although the record contains no copy of this notice. When an employment-based immigrant visa petition is approved, it is standard procedure to mark the Form I-140 with a large rectangular stamp, which reads "APPROVED," in red ink. The date of approval is written in the stamped area as well. There is no "Approved" stamp, and no accompanying date, on the Form I-140 in the record.

Computerized Citizenship and Immigration Services (CIS) records show that, on March 1, the director requested further evidence. The next two entries in the computerized records, both dated March 5, read "APPROVED" and "APPROVAL NOTICE SENT." The records report no action on this purported approval. The next entry, dated June 19, 2002, reads "CANCEL PREVIOUS ACTION."

A month later, on July 19, 2002, the director requested further evidence to support the petitioner's claim. The director added "[p]lease disregard the approval notice, which was electronically generated and mailed to you in error on March 5, 2002. . . . We apologize for the error." Counsel responded on September 25, stating:

> On March 5, 2002, the Service approved [the petitioner's] petition.
>
> On separate occasions during Spring 2002 Counsel contacted both the National Visa Center ("NVC") and the Vermont Service Center ("VSC") for verification that the VSC had forwarded notice of the approval to the NVC to initiate consular processing. Counsel learned that the VSC had sent [the petitioner's] file "off-site" and was in the process of retrieving the file. Through telephone conversations on both June 10 and June 21, 2002, the VSC informed Counsel of their intent to notify the NVC. Shortly thereafter, the VSC revoked [the petitioner's] approval and issued the instant RFE. . . .
>
> Counsel fully understands that computer malfunctions occur.

The remainder of counsel's letter discusses the merits of the petition. Counsel did not, at that time, demand a notice of intent to revoke or contest the director's actions. Counsel stipulated that a "computer malfunction" was responsible for any inadvertent mishandling of the petition.

The director denied the petition on November 21, in a notice that contained no reference to the March 5 approval notice. In the appeal, filed on December 23, counsel states that the director had approved the petition, and then impermissibly revoked that approval. Counsel states:

> On March 5, 2002, the Service approved [the petitioner's] petition. . . .

> In addition to revoking [the petitioner's] approved petition due to a "computer error," the Service requested additional evidence in support of [the petitioner's] petition. . . .
>
> The Service lacks the authority to deny [the petitioner's] petition based on the merits of his approved petition. Because [the petitioner] holds an approved petition subject to revocation only through revocation proceedings, [the petitioner] continues to hold a valid I-140 approval. Therefore, [the petitioner] pleads the AAU to compel the VSC to notify the NVC of [the petitioner's] approval.

Counsel then discusses the statute and regulations governing revocations, and cites *Matter of Estime*, 19 I&N Dec. 450 (BIA 1987), to state that a revocation "will not be sustained where the notice of intention to revoke was not properly issued." Counsel asserts "[t]he Service has failed to properly initiate revocation proceedings against" the petitioner.

The key question, then, is whether the director "properly" approved the petition in the first place. If the petition was never truly approved, then there was no approval to revoke and *Matter of Estime* does not apply. When considering this question, it is highly relevant to observe that there is no approval stamp on the Form I-140, which is standard procedure when approving a petition of this kind. A CIS officer, not a computer, would apply this stamp. On the other hand, a simple data entry error could easily result in the erroneous issuance of an approval notice. The approval of an immigrant visa petition is not a single action, but rather a *process* consisting of several distinct actions. Any one of those actions is necessary, but not sufficient by itself, to establish the approval of a given petition. Counsel has argued at length that a revocation has no force unless proper procedure is followed. The same reasoning demands that an approval, too, is valid only if proper procedure is followed.

Counsel states that the petitioner "has neither received a Revocation Notice outlining the specific reasons and evidence why his petition should be revoked nor been given an opportunity to respond to 'such facts and evidence.'" Counsel cites *Matter of Arias*, 19 I&N Dec 568 (BIA 1988). Once again, this argument rests upon counsel's presumption that the director's denial is a *de facto* revocation. The director, who never used the words "revoke" or "revocation" when discussing the disposition of the petition, did issue a request for evidence on July 5, 2002, which contained detailed and specific observations rather than a simple "boilerplate" advisory that the initial evidence was insufficient. The director's November 21, 2002 denial notice outlined specific findings involving several of the issues first raised in the July 5 request for evidence. There can be no dispute that the petitioner received both of these notices, because counsel replied to both of them. Counsel, therefore, cannot credibly argue that the director failed to warn the petitioner of deficiencies before a final decision was rendered, nor can counsel credibly argue that the director failed to apprise the petitioner of the grounds for denial. Thus, counsel's complaint in this regard boils down to the absence of the word "revocation" from these notices.

Counsel states:

> Assuming arguendo that the Service's "computer error" justification is sufficient to amount to revocation proceedings, such a statement is conclusory and violative of the substantive laws governing revocations.

> Under the Act, all revocations must be based on "good and sufficient cause." 8 U.S.C. § 1155. Revocations based on conclusory or unsupported statements lack good and sufficient cause.

Counsel quotes *Matter of Arias, supra*: "where a notice of intention to revoke is based upon an unsupported statement or an unstated presumption . . . revocation of the visa petition cannot be sustained even if the petitioner did not make a timely response to the notice of intention to revoke." In *Arias*, the "unsupported statement or unstated presumption" derived from a consular officer's claim that the beneficiary's neighbors were unaware of the beneficiary's remarriage. More generally, the "presumption" involved claims that were material to the adjudication and outcome of the petition. Counsel does not explain how a computer error is an unsupported statement or unstated presumption in the sense contemplated in *Arias*. Counsel's argument seems to be that the director's reference to a computer error is an "unsupported statement," insofar as the director has never proven that the computer error occurred.

Counsel had earlier stated that he "fully understands that computer malfunctions occur." On appeal, however, counsel states that he "fully appreciates that electronic errors occur, but the instant facts are more complex." Counsel observes that the petitioner's "file had been sent off-site for storage. . . . Thus, the case officer adjudicating [the petitioner's] petition clearly relinquished control of the case." Another explanation for the physical transfer of the file could be that Service Center personnel transferred the file, relying on erroneous computer records that reflected approval of the petition.

Counsel adds, in a footnote, that he "is of the unfortunate opinion that a 'computer error' did not occur, but that a Service Officer has engaged in an ultra vires action by personally revoking a previously approved petition." Counsel suggests that the motive for this action was the adjudicator's dissatisfaction with the petitioner's reliance on the "comparable evidence" clause at 8 C.F.R. § 204.5(h)(4). If the claim of a "computer error" is an "unsupported statement" as counsel claims, then surely counsel's allegation of malicious conduct by a CIS officer is unsupported to at least the same degree. Unproven allegations of malfeasance do not shift the burden of proof to CIS or create a presumption of eligibility.

Furthermore, counsel's baseless allegation appears to be refuted by the absence of an "Approved" stamp, and accompanying date, on the petition form. The stamp and date would have been applied at the Service Center, immediately upon approval of the petition, *before* the record of proceeding was "sent off-site for storage." The date accompanying the "Approved" stamp would have been, at the very latest, March 5, 2002, the date of the computer-generated approval notice. The transfer of the file (verified by counsel) with an unstamped Form I-140 is entirely consistent with Service Center file handlers' reliance on erroneous computer records, whereas the unstamped Form I-140 itself is not consistent with an unauthorized, after-the-fact reversal of a proper approval. We add that adjudicators' decisions, especially denials, are subject to routine supervisory review and therefore no adjudicator could unilaterally deny a petition in the manner postulated by counsel.

Counsel states, on appeal:

> Counsel is left with the presumption that the Service was negligent in adjudicating the case, but diligent with filing the case for storage. Presuming that normal Service procedures were followed and one officer was assigned to the case, why would this officer mistakenly approve the case, but then send it out for storage? It seems incongruous to suggest that the Service can be both negligent and diligent in the same instance.

The above argument relies on the presumption that the record would have been in the hands of only "one officer" throughout its time at the Service Center. The computer records described above show a number of different user IDs, demonstrating that counsel's presumption is incorrect.

Considering what little evidence the record contains regarding the March 5 approval notice and subsequent correspondence, the conclusion that is most reasonable and most consistent with the record appears to be that there was indeed a computer error, which counsel did not originally dispute. The record is not consistent with counsel's unsupported, speculative claim of malicious interference with an approved petition. Therefore, we conclude that the petition was never properly approved, and that the director did not act improperly by issuing a notice of denial instead of a notice of revocation.[1]

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 to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the pertinent regulations at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

The petitioner is an entrepreneur who has managed or invested in several Chinese businesses.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring

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[1] We further note that appeals of revocations must be filed within 15 days, pursuant to 8 C.F.R. § 205.2(d). This appeal was not filed within that period. Therefore, it can be considered timely as an appeal of a denial, but not as an appeal of a revocation. Therefore, if the director's decision were considered to be a revocation rather than a denial, as counsel contends, then the AAO would have no jurisdiction over the matter. At best, it would be rejected and returned to the director for consideration as a motion to reopen, pursuant to 8 C.F.R. § 103.3(a)(2)(v)(B)(*2*).

the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Counsel states:

> [The petitioner] satisfies more than three of the ten criteria enumerated in the [regulations.] However, *this is not necessary* to establish entitlement for [the petitioner's] occupation. The conventional requirements under [8 C.F.R.] § 204.5(h)(3)(i)-(x) pertain to occupations where success is measured by alien's acclaim through his scholarly articles, exhibitions, memberships, panel participations, etc. Alternatively, most occupational tasks for entrepreneurs do not conform to the conventional requirements per the [regulations] because an entrepreneur's success is determined financially, not scholastically. Therefore, [the petitioner] is entitled to demonstrate his extraordinary ability under [8 C.F.R.] § 204.5(h)(4), which reads: "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." . . .
>
> "Entrepreneur" is not defined in the Dictionary of Occupational Titles (DOT). . . . Actual occupations, which are not defined in the DOT, cannot be held to the conventional requirements for adjudicating extraordinary ability.

(Emphasis in original.) Counsel's argument is not wholly persuasive. The regulation cited at the end of the above passage indicates that comparable evidence may be submitted only when the ten specified criteria "do not readily apply to the beneficiary's occupation." In this case, counsel claims that the beneficiary satisfies four of the ten criteria (discussed below), which necessarily interpolates the stipulation that some of the criteria do, in fact, readily apply to the occupation. Counsel correctly observes that some of the ten criteria are not germane to the petitioner's field, but there seems to be no single field of endeavor in which all ten criteria apply; some of the criteria specifically apply only to the arts, others to the sciences, and so on. The existence of *some* inapplicable criteria is inevitable and, therefore, not sufficient to trigger the "comparable evidence" clause to the exclusion of the original ten criteria.

Furthermore, counsel offers no support for the arbitrary statement that "occupations, which are not defined in the DOT," are exempt from consideration under the ten listed regulatory criteria. For that matter, counsel has not demonstrated that the petitioner's activities are inherently unclassifiable under the DOT. Counsel's or the petitioner's preference for the term "entrepreneur" is largely a semantic issue.

Evidence that does not fit the specified regulatory criteria will receive due consideration, provided that such evidence logically supports a finding of sustained national or international acclaim. It cannot suffice for counsel simply to discuss a piece of evidence and declare it to be evidence of extraordinary ability. Discussion of this evidence will follow a discussion of the regulatory criteria.

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

Counsel states that the petitioner satisfies this criterion because "[t]he PRC [People's Republic of China] honored two of [the petitioner's] companies with awards for having very good reputations in the field." Counsel identifies various exhibits as "[a]ward[s] for excellence in the field." None of the cited exhibits appear to be national awards as claimed. Two claimed awards are certificates, awarded by the Municipal Administration of Industry and Commerce, awarding two of the petitioner's companies "[t]he title of 'Very

Good Reputation' Enterprise." A municipal award is neither national nor international, and the record contains nothing to establish the prestige or recognition of the title conferred on the companies. Furthermore, the "Very Good Reputation" certificates were issued not to the petitioner, but to companies of which the petitioner is a minority shareholder.

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

Counsel states that the petitioner's "company, Hongda Engineering, participated in key national road and railway projects. In fact, for his individual contributions to the Yuehai Railway Construction Project, [the petitioner] received an honor for his excellence." The Yuehai Railway Co., Ltd., issued an "Honor Certificate" indicating that the petitioner "is elected as Excellent Project Manager for the year 1999." The record contains no further information about this certificate or its significance.

The petitioner submits letters from local officials, stating that the petitioner's companies have provided valuable construction services within Jiangxi Province. Other witnesses states that the petitioner's companies have earned very good local reputations; for example, [redacted] director of the Railway Construction Branch of the China Construction Branch states "[i]n Nanchang City, [the petitioner] is a well-known successful entrepreneur." These letters establish the petitioner's competence in his chosen field, but customer satisfaction is not an original business-related contribution of major significance in the field. The petitioner submits nothing to distinguish his companies from other firms in the same industries.

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

Counsel observes that the petitioner has served as a top officer of each of the companies that he has founded, and that the "companies are firmly established." An executive undoubtedly serves in a leading role for his or her company, but the petitioner must also establish that his companies have distinguished reputations at the national or international level. As noted above, the petitioner's evidence shows, at best, that the petitioner's companies are recognized at the municipal or provincial level. The record contains no objective documentation to allow any reliable comparison between the petitioner's companies and their rivals throughout China. Evidence such as contracts, articles of incorporation, and so on establish that the companies are active businesses, but they are not evidence of a distinguished reputation.

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

Counsel contends "as general manager/entrepreneur, [the petitioner's] income exceeds that of general managers in the U.S. For instance, in 1999 [the petitioner] earned US$257,956. . . . In 2001, the average *U.S.* general manager would expect to earn US$101,234." Counsel notes that "the U.S. and China are *absolutely not* economies of scale," purportedly making the petitioner's earnings all the more impressive.

The only sources cited for the petitioner's claimed earnings are exhibits 1 and 25 of the initial filing. Exhibit 1 is an accountant's report drawn from vaguely-identified sources, and exhibit 25 consists largely of untranslated documents. 8 C.F.R. § 103.2(b)(3) requires that any document containing foreign language submitted to CIS must 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.

Counsel's figures for U.S. general managers derive from the "overall mean" for all "chief executives" in the United States. The petitioner, as the record shows, is an executive of four different companies, presumably drawing four salaries. The petitioner has not established how his remuneration compares with that of other executives in China who are employed under comparable circumstances. The general statement that the *per capita* income is lower in China than in the United States cannot suffice.

Counsel states that the petitioner's companies "generated an investment return of 120% since inception in the 1990s. This is very high remuneration by any field's standard." The record contains no translated documentation to support this claim. Furthermore, counsel provides no statistics to show that this rate of return substantially exceeded that of most other Chinese businesses during the same period. Also, the company's income is not equivalent to the petitioner's own remuneration, unless the petitioner is able to show that he personally receives all of that income. This appears to be highly unlikely, given that the petitioner is not the sole owner of the companies in question. Corporate profits are not equivalent to remuneration by any reasonable standard.

The rate of investment return is the first of three means by which counsel invokes the "comparable evidence" clause. The other two are "job creation" and "extraordinary recognition." Counsel asserts that from 1992 to the filing date in early 2002, the petitioner's business investments have yielded a 120% rate of return. Counsel states "[c]omparatively, the average performance of a U.S. company over the past five years has been –2.38% and a 120% return would guarantee your placement in the top 1% of *all* performers." Counsel thus compares the ten-year yield of the petitioner's investments in China to the five-year yield of businesses in the United States. It would be far more useful to compare the petitioner's activities in China to the achievements of other entrepreneurs in China during the same period, but counsel offers no evidence along these lines.

Counsel states that the petitioner "has directly created over 760 jobs for Chinese workers in Jiangxi Province. . . . An entrepreneur who creates *over 700 jobs*, on a comparative basis, is extraordinary." Counsel then modifies this claim by stating that the petitioner's "investments created 220 jobs" out of the above 760 jobs, because the petitioner owns 29% of the companies that employ those workers. Counsel then notes that "Congress created a permanent residency category for alien entrepreneurs that requires an alien to create a new enterprise with . . . ten jobs." This classification, set forth at section 203(b)(5) of the Act, 8 U.S.C. § 1153(b)(5), is an entirely separate classification from the one the petitioner seeks, with wholly different requirements. There is nothing in the statute or regulations to indicate that creating 700 jobs in a country of over one billion people is inherently indicative of sustained acclaim. The petitioner must produce relevant comparative evidence, to show that the petitioner's achievements far exceed those of other entrepreneurs who operated under comparable initial conditions.

Counsel states that the petitioner "has received a substantial amount of recognition and acclaim from senior government officials and business leaders in Jiangxi Province." The statutory and regulatory standard is *national* or *international* acclaim. Counsel fails to explain how recognition at a lower, *provincial* level is comparable to national or international acclaim.

As noted above, the director, on July 19, 2002, instructed the petitioner to submit further evidence to establish eligibility. The director also noted various shortcomings in the petitioner's evidence (such as the provincial, rather than national, nature of the petitioner's awards) and flaws in counsel's arguments (such as what the director deemed an "apples-to-oranges comparison" between the classification sought and the separate classification established alien entrepreneurs).

In response, counsel repeats previous arguments regarding the "comparable evidence" clause at 8 C.F.R. § 204.5(h)(4), stating that the regulatory criteria "do not readily apply" to the petitioner's occupation. Counsel simultaneously repeats the claim that the petitioner satisfies four of these supposedly inapplicable provisions. Counsel does not acknowledge or explain the obvious contradiction between these two incompatible positions.

Counsel elaborates upon previous arguments, attempting to establish, through the use of statistics, that the petitioner is more successful than most U.S. entrepreneurs. Leaving aside the issue of whether counsel's statistics provide a reasonable basis for comparison, it remains that the petitioner must establish sustained national or international acclaim. The petitioner cannot arbitrarily substitute a new standard by claiming to be more successful than other entrepreneurs; "success" is not synonymous with "acclaim."

Counsel asserts that references to the entrepreneur visa, established by section 203(b)(5) of the Act, are appropriate because the petitioner's "job creation skills substantially exceed the requirements of a standard U.S. entrepreneur defined under immigration law. A comparison of a foreign entrepreneur's job creation skills abroad and a foreign entrepreneur's job creation skills in the U.S. is definitely analogous." If the petitioner believes his "job creation skills" to warrant an immigrant visa, he is free to invest in a United States business and thereby create jobs within the United States. As it stands, the petitioner seeks a classification that is based not on job creation, but on sustained national or international acclaim. It is a weak argument to observe that the petitioner would have qualified under a different classification had he chosen to seek it; such an observation is irrelevant to the classification that the petitioner does, in fact, seek.

The director denied the petition on November 21, 2002. In the decision, the director discussed the petitioner's evidence in detail and acknowledged that the petitioner's "achievements do seem considerable," but concluded that the evidence does not establish the petitioner's role in his various companies, or that the petitioner deserves the bulk of the credit for the success of those companies. The director stated that some of counsel's arguments appeared to be "calculatedly misleading." For instance, counsel had indicated that a particular government official "governs 40 million people," whereas the director had stated "[i]t seems more accurate to say that he is one of a large number of government officials in a political subdivision having a population of 40 million people."

Counsel maintains, on appeal, that the petitioner has satisfied four of the ten criteria listed at 8 C.F.R. § 204.5(h)(3). The arguments offered in this regard are, by and large, similar to counsel's previous arguments. Counsel argues, for instance, that the petitioner earns "52% more" than "[t]he average Chief Executive Officer in China," but counsel does not factor in the fact that the petitioner is an officer of four companies and thus draws multiple salaries. Counsel asserts that the petitioner won a national award because he won an "Excellent Project Manager" award "for his work on the *national* Yuehai project." As noted above, this certificate was presented by Yuehai Railway Co., Ltd., and thus competition for the certificate was limited to project managers employed by that one company. Thus, the award cannot show that the petitioner is among China's top entrepreneurs; at most, it shows that he is among the top project managers who have worked for that particular company.

Counsel then repeats the argument that the petitioner should be able to establish eligibility under the "comparable evidence" clause at 8 C.F.R. § 204.5(h)(4). Beyond our finding, above, that the "comparable evidence" clause does not apply here, we reiterate that running a successful business is not tantamount to sustained national or international acclaim. There is no attention that the petitioner's creation of jobs, return on investment, or other accomplishments have won him national or international acclaim, and even then many of counsel's data derive from untranslated documents or otherwise unattested evidence, usually with no basis

for meaningful comparison against other similarly situated business figures. The evidence of record indicates that the petitioner's recognition in business is predominantly at the provincial level, and no quantity of provincial awards and letters of appreciation from provincial officials can alter that finding.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor. Review of the record, however, does not establish that the petitioner has distinguished himself as an entrepreneur to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved. We further find that the director never approved the petition, notwithstanding the accidental issuance of an approval notice, and that therefore the director acted properly by issuing a notice of denial rather than a notice of revocation.

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.