



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 03 108 51509

Office: VERMONT SERVICE CENTER

Date: **DEC 21 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



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.

Robert P. Wiemarm, 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 athletics. 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. Regarding the regulatory criterion relating to artistic exhibitions, the director noted that the petitioner is now a coach, not a competitor.

On appeal, counsel makes unsupported characterizations about the petitioner's career. As with the initial brief, counsel discusses the petitioner's accomplishments generally, with little attempt to explain how the petitioner meets at least three of the regulatory criteria, as required.¹ Counsel fails to even address the director's specific concerns as they relate to the regulatory criteria for the classification sought, such as the lack of certified translations of foreign language articles purportedly about the petitioner or evidence of the circulation of the publications that carried these articles, focusing instead on passing comments by the director regarding the petitioner's youth.

While the petitioner's age is not necessarily an issue, especially in athletic sports where the competitors are often young and the alien competes at the top level, we do not find that the director's decision is based on the petitioner's age. Rather, the director unambiguously concluded that the petitioner did not meet any of the regulatory criteria. Thus, the director's passing reference to the petitioner's age is not reversible error. For the reasons discussed below, we concur with the director that the petitioner does not meet at least three of the regulatory criteria.

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.

¹ Initially, counsel quoted the statute and a 1993 non-precedent decision by this office without any attempt to address the pertinent regulations that bind all officers of Citizenship and Immigration Services (CIS).

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 regulation 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.

This petition seeks to classify the petitioner as an alien with extraordinary ability as an ice skating coach. The regulation at 8 C.F.R. § 204.5(h) requires the beneficiary to “continue work in the area of expertise.” While a competitor and a coach certainly share knowledge of ice dancing, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one’s “area of extraordinary ability” as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, [redacted] extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Nevertheless, recently this office has recognized that there exists 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 an alien has clearly achieved national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner’s area of expertise. Specifically, in such a case we will consider the level at which the alien acts as coach. 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. Thus, we will examine whether the petitioner has demonstrated his extraordinary ability as a coach or as an athlete. If the petitioner has demonstrated extraordinary ability as an athlete, we will consider the level at which he has successfully coached.

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 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. The petitioner has submitted evidence that, he claims, meets the following criteria.²

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

Initially, counsel asserts that the Kolibri Ice Theater won the Russian title and the World Championship in Belgium in 1994 and the Russian championship and second place at the World Championship in 1995. While

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

some references attest to the petitioner's participation with this ice theater group, none of them appear to have first hand knowledge of this participation. Counsel further asserts that the petitioner won the following awards:

- (1) Second place at the Kirov Regional Club of Labor Unions in 1994,
- (2) A second degree diploma at the Qualifying Competition of the Specialized Figure Skating School in 1995,
- (3) A first degree diploma, M.S. Podgayevskaya prize in 1996,
- (4) A second degree diploma, "Grandfather Frost" Open Championship in 1997,
- (5) Junior World Championship in 1999, and
- (6) A first degree diploma, M.S. Podgayevskaya prize in 1999.

Counsel also listed test certificates and certificates of participation, which are not awards or prizes. The petitioner submitted certificates for the following awards:

- (1) An undated diploma of "First Degree" for "finishing first among ice dancers competing at the level of candidates of masters of sport in the figure skating competition for the prize of M.S. Podgayevskaya" issued by the City of Perm;
- (2) A 1994 "Diploma" awarded "for finishing second in the club championship of figure skating at the level of candidates of masters of sport" issued by the City of Kirov;
- (3) A 1995 "Diploma of the second degree" awarded "for finishing second at the qualifying competition of the specialized figure skating school of Olympic reserves for children and youth in the category of ice dancing at the level of candidates of masters of sport" issued by the City of Perm Committee on Physical Training and Sports;
- (4) A 1996 "Diploma of the first degree" awarded "for finishing first among ice dancers competing at the level of the first class athletes in the figure skating competition for the prize of M.S. Podgayevskaya" issued by the City of Perm Committee for Physical Training and Sports;
- (5) A 1997 "Diploma of the second degree" awarded "for finishing second in the district's open championship of figure skating for the prizes of "Grandfather Frost" among ice dancers at the level of candidates of masters of sport" issued by the Sverdlovsk District of Perm; and
- (6) A Fourth Place Medalist certificate in Junior Dance at the 2001 Eastern Sectional Figure Skating Championships from the United States Figure Skating Association (USFSA).

The petitioner indicated on his resume that he competed in competitive performances as a member of the Children's Ice Theater [REDACTED] in 1993 through 1995, but failed to submit evidence of the results of these competitions. While some U.S. references attest to [REDACTED] achievements, they do not explain how they have first-hand knowledge of these awards. The letter from the Figure Skating Federation of Perm makes no mention of [REDACTED] achievements. The single translated foreign language article regarding [REDACTED] dated in 1994, asserts that [REDACTED] won the Russian Championship and was "well received" in Belgium, but makes no mention of an award at that competition.

The director concluded that the petitioner had not established that the awards were indicative of preeminence in the field of ice dancing. On appeal, counsel now claims the petitioner won the following awards:

- (1) Russian National Championships (1994), First Place in the Dance Category;
- (2) World Championships (Belgium 1994), First Place;
- (3) Kirov Regionals (Russia 1994), Second Place;
- (4) World Championships (1995), Second Place;
- (5) Russian National Championships (1995), First Place;
- (6) Specialized Figure Skating School Qualifying Competition (1996), First Place;
- (7) Open Championship Figure Skating Championship (1997), First Place;
- (8) Russian national Championships (1997), First Place in Dance Category;
- (9) International Skating Union Junior World Championships (1998), First Place in the Ice Dance Category; and
- (10) Bosnia and Herzegovina National Championship (1998) First Place in Junior Dance.

The petitioner submits no new awards on appeal. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The record contains no evidence of any national or international level awards or prizes as characterized by counsel, for example a "World Championship." Rather, the only awards documented in the record were awarded by the cities of Perm and Kirov and a U.S. association for a sectional fourth place finish. The record contains no evidence that athletes nationwide competed for any of these awards. Moreover, the petitioner failed to submit evidence explaining the levels of competition in Russia. Thus, the petitioner has not established that the "Candidates of Masters of Sport" are the top level of competition in Russia, as claimed by counsel.³ As stated above, the unsupported assertions of counsel do not constitute evidence. *Id.*

In light of the above, the petitioner has not established that he meets this criterion as a competitor. The evidence submitted is not indicative of or consistent with *sustained* national or international acclaim as a competitor.

Moreover, the record lacks comparable evidence to meet this criterion as a coach, his intended occupation. While the petitioner submits some evidence relating to his students' achievements on appeal, the evidence does not indicate that any of his students have won nationally or internationally recognized awards at a senior level of competition. Thus, the petitioner has not established that the petitioner meets this criterion as a coach.

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.

Initially, counsel noted that the petitioner is a member of the United States Figure Skating Association (USFSA). The petitioner submitted his USFSA test certificates and his membership card. The director concluded that the record lacked evidence of membership in associations that require outstanding achievements of their members.

³ Counsel asserts that the Master of Sports in Ice Dancing is the highest level attainable in Russian Ice Dance and "equivalent to a Gold Medal in the U.S." The letter from [REDACTED] School Director of Specialized Figure Skating School of the Olympic Reserve for Children and Youth, asserts only that the petitioner "achieved the qualification of a Candidate of Master of Sports," without specifying its significance. [REDACTED] asserts only that the petitioner was a member of the combined Perm Regional team, not a national team, that competed in Russian Youth Championships.

On appeal, counsel asserts that the petitioner was a soloist with the Ice Theater Company of South Korea and that he received USFSA certification in 18 ice dance components in two months, a process that, according to counsel, usually takes "years." Counsel further asserts that the petitioner competed as a member of the U.S. National Team.

Counsel references a letter by [REDACTED] as evidence of the petitioner's participation in the Ice Theater Company of South Korea. [REDACTED] makes no such assertion. Regardless, [REDACTED] does not indicate any affiliation with that company. Thus, it is not clear how she would have first hand knowledge of the petitioner's participation with that company. [REDACTED] a Russian Olympic ice dancing champion, asserts that in 1997, NBC invited the petitioner "to perform as a soloist with the Ice Theatre in South Korea." [REDACTED] a national ice dancing judge, makes a similar assertion. Neither [REDACTED] nor [REDACTED] explains how they have first had knowledge of this performance. Moreover, nothing in their letters suggests that the petitioner was a "member" of a national team in South Korea.

The record does not contain confirmation from USFSA regarding the length of time it usually takes an experienced ice dancer from another country to get certified in 18 ice dance components.

The petitioner submitted certificates from the USFSA recognizing the petitioner as a United States Figure Skating Team Member competing in the Czech Skate in October 2000 and the Ukrainian Souvenir in September 2000. The petitioner's subsequent participation with USFSA was in sectional and junior competitions.

"Membership" in a national team that competes in the top international competitions, such as the Olympics, can be comparable evidence sufficient to meet this criterion as a competitor. The record does not contain any confirmation from USFSA regarding the number of dancers who were members of the U.S. Figure Skating Team and whether this team is the highest national team the U.S. fields. [REDACTED] a former figure skater and part-time coach who met the petitioner in 2002, asserts that the Czech Skate and Ukrainian Souvenir are Junior Grand Prix competitions. Thus, the petitioner has not established that he meets this criterion as an athlete. Further, the record contains no evidence relating to this criterion involving coaching, the petitioner's intended occupation.

Published materials 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.

Initially, the petitioner submitted numerous foreign language articles in unidentified publications. The petitioner submitted a single translation of a 1994 article about the Kolibri Children's Theater on Ice that does not mention the petitioner by name. The translation does not identify the publication. Finally, the petitioner submitted an interview with a figure skating judge in a U.S. figure skating event program. The interview does not relate to the petitioner or his career.

The director concluded that without complete and literal translations and evidence of the publications' circulation, it could not be determined whether the articles were specifically about the petitioner or that the publication qualifies as major media. On appeal, counsel does not address the director's concerns. The petitioner submits articles about the petitioner in the *Plain Dealer* and unpublished promotional materials for lessons taught by the petitioner.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the materials be “about” the petitioner, that they be “published” and that they appear in “major media.” The regulation further requires that any foreign language materials be supported by “any necessary translation.” The regulation at 8 C.F.R. § 103.2(b)(3) provides:

Any document containing foreign language submitted to the Service 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.

Thus, the director correctly dismissed the foreign language articles based on their lack of complete certified translations and evidence of the publications’ circulation. Despite being placed on notice by the regulation itself and the director’s notice of denial, the petitioner fails to submit the translations and evidence of circulation on appeal. Thus, we must uphold the director’s findings regarding the foreign language articles that were unaccompanied by translations.

The single translation is for an article that does not mention the petitioner by name. Thus, that article cannot be said to be “about” the petitioner, as required by the plain language of the regulation. The articles submitted on appeal appear in the *Plain Dealer*. While they are about the petitioner, the petitioner has not established that this publication has a national distribution. In light of the above, the petitioner has not established that he meets this criterion as an athlete.

The unpublished promotional materials relating to the petitioner’s services as a coach, while *printed*, cannot be said to constitute *published* materials in major media. Thus, the petitioner does not meet this criterion as a coach.

Evidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

Counsel never directly asserts that the petitioner meets this criterion. We acknowledge that the petitioner has performed coaching services for the Brewster Figure Skating Club and the Norwich Figure Skating club. The petitioner seeks to enter the United States to work as a coach. Evaluating one’s students is inherent to the occupation of coach and, thus, is not indicative of or consistent with national or international acclaim. The record lacks evidence that the petitioner has judged significant ice dancing competitions. Thus, the petitioner has not established that he meets this criterion.

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

The petitioner relies on reference letters to meet this criterion. The director concluded that letters cannot serve as the sole basis of eligibility. Rather, the information in the letters must be evaluated by Citizenship and Immigration Services (CIS) and corroborated by the record.

We concur with the director. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19

I&N Dec. 791, 795 (Comm. 1988). However, CIS 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; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS 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 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Given the statutory requirement for "extensive documentation" and the ten regulatory criteria requiring specific evidence of accomplishments, we must conclude that evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

We note that this criterion is separate from awards and prizes. A separate criterion also exists for participation on national teams that compete at the highest international level. If the requirement that a petitioner must meet at least three criteria to establish eligibility is to have any meaning, such athletic achievements cannot be considered contributions of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. *See Walters v. Metro. Educ. Enters.*, 519 U.S. 202, 209 (1997); *Bailey v. U.S.*, 516 U.S. 137, 145 (1995). To be considered a contribution of major significance in the field of athletics, the contribution must influence the field, such as popularizing a new style or setting a new standard to which others aspire, such as a world record. It can be expected that a coach making contributions of major significance will have trained an unusual number of champions.

██████████ Skating Director at Norwich Municipal Ice Rink, attests to the level of the petitioner's training and skills. She asserts that he "will be able to make significant contributions to the future of the sport of figure skating as a skater and more importantly as a coach who will be responsible for training the next generation of American competitors." She does not identify any past contributions of major significance. The other letters from students and colleagues provide similar information.

Wendy Mlinar, a competition judge, asserts that the petitioner's past experience in Ice Theater, a new concept in the United States, is unique. She speculates that the petitioner, currently building a clientele at a skating club, will enhance figure skating programs "in the area." She notes the lack of male ice dancing coaches in the United States, as does ██████████. Assuming that to be true, it does not establish the petitioner's past contributions of major significance to the field as a whole. ██████████ provides general praise of the petitioner's accomplishments and skills, with little explanation of how the petitioner has influenced the field of ice dancing.

The letters on appeal do not focus on the petitioner's contributions as an athlete. We cannot conclude that the petitioner's athletic accomplishments rise to the level of contributions of major significance in the field. The record lacks evidence that the petitioner is renowned for influencing the field as an athlete.

On appeal, the petitioner submits letters from the parents of the petitioner's students attesting to his accomplishments as a coach. They assert that the petitioner has taught his students techniques they did not previously know and successfully trained them to win regional championships and a national championship at the intermediate level. They praise his character and attest to the benefits his students have enjoyed.

The appellate letters do not establish the petitioner's influence beyond his students. The fact that he is teaching children techniques not previously taught *to them* does not indicate that these techniques are unusual in the field or that these techniques have been popularized by the petitioner. The record lacks evidence that he is responsible for coaching an unusual number of national champions in the United States. While counsel asserts that the petitioner is a guest instructor at various clubs, the record lacks evidence that this activity has led to a nationwide influence, as opposed to regional. While the petitioner is clearly a skilled coach, skill alone is not a contribution of major significance to the field. Thus, the petitioner has not established that he meets this criterion as a coach.

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

This criterion is most applicable to visual artists, not athletes. It is inherent to the field of athletics to compete, not every competition is an exclusive artistic exhibition or showcase such that participation is indicative of or consistent with national or international acclaim. That said, participation in an exhibition of top ice dancers could serve as comparable evidence to meet this criterion.

Initially, counsel asserted that in 1997, the petitioner participated as a soloist in ice theater in South Korea. As discussed above, the record contains no confirmation of this participation from officials at NBC or Korean officials. The references that do attest to this participation do not explain their first-hand knowledge of the petitioner's participation. Moreover, the record lacks evidence of the exclusiveness and significance of this event.

Counsel quoted a letter from [REDACTED] attesting to the petitioner's participation in 1999 in a television special honoring [REDACTED] and in the opening ceremonies at the 2000 United States Figure Skating Championships in Cleveland Ohio. While impressive, [REDACTED] credentials⁴ do not explain how he has first hand knowledge of the petitioner's participation in these events.

On appeal, the petitioner submits a letter from [REDACTED] who asserts that the petitioner was selected to skate in the opening ceremonies of the 2000 championship in Ohio [REDACTED] however, asserts that 200 "local" skaters auditioned, suggesting that selection for participation is not indicative of national acclaim. We note that the event was primarily a competition in which the petitioner did not compete, not an exhibition featuring the petitioner.

While counsel reiterates the claim that the petitioner appeared on television in 1999 in a tribute to Scott Hamilton, the record lacks primary evidence to support that assertion. The regulation at 8 C.F.R. § 103.2(b)(2) provides:

Submitting secondary evidence and affidavits. (i) General. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or

⁴ Mr. Sretenski competed at the Olympics, toured with "Starts on Ice," and has coached National, International, World and Olympic ice dance teams. These credentials suggest that the top of the petitioner's field is a higher than the level he has attained.

cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

The petitioner has not established that primary evidence of this performance is unavailable.

In light of the above, the petitioner has not established that he meets this criterion as an athlete. The record contains no evidence relating to this criterion in the area of coaching.

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

The initial job letter, dated December 23, 2002, asserts that Norwich Municipal Ice Rink will pay the petitioner an annual wage of \$35,000. The director concluded that the petitioner had not established that this wage was comparable with the top ice dancing coaches nationally. On appeal, the petitioner submits a letter dated January 12, 2005 from the general manager of Norwich Municipal Ice Rink asserting that the petitioner's hourly rate is \$60. The petitioner submitted evidence that the Level 1 wage for coaches and scouts in Connecticut is \$14,580 and the Level 2 wage in the same area is \$40,010.

The record lacks evidence that \$60 was the petitioner's hourly rate as of the date of filing. The petitioner must establish his eligibility as of that date. See 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). Moreover, the petitioner must establish that the wages he receives are comparable with the top members of his field nationally, not locally. The record lacks evidence that the petitioner receives the full \$60 per hour, or whether that is what his employer charges his students. Moreover, the record lacks evidence of the top wages in the field nationally. In light of the above, the petitioner has not established that he meet this criterion as a coach. The record contains no evidence relating to this criterion as an athlete.

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. The petitioner has not established that he meets three criteria as a coach or even as an athlete. As the petitioner has not established extraordinary ability as an athlete, as defined in the regulations, we need not consider whether he has successfully coached at the national level such that coaching is within his area of expertise.

Review of the record, however, does not establish that the petitioner has distinguished himself as a ice dancing coach, or even a competitor, 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 indicates that the petitioner shows talent as an ice dancing competitor, but is not persuasive that the petitioner's achievements set him significantly above almost all others in her field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Finally, the AAO notes that the petitioner is currently in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an

internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). The current record is devoid of any evidence to indicate that the petitioner is performing as an athlete at an internationally recognized level or that he is in the United States "temporarily and solely" for the purpose of performing as such an athlete.

While CIS approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude CIS 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 CIS approves prior nonimmigrant petitions. See e.g. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

As the petitioner is no longer competing, the AAO finds that the director was justified in departing from the previous nonimmigrant approval by denying the present immigrant visa petition.

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

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director 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 (E.D. La.), aff'd, 248 F.3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001).

The director is instructed to review the previous nonimmigrant approval for possible revocation, pursuant to 8 C.F.R. § 214.2(p)(10)(iii).

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.