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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VERMONT SERVICE CENTER Date: DEC 28 2006
EAC 04 263 52267

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. Wiemann, Chief
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. 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 argues that the petitioner “qualifies to be granted approval of his I-140 immigrant visa petition as an ‘alien of extraordinary ability.’ He is a nationally-known musician as well as having international performances in his repertoire. He has met 8 of the 10 criteria suggested as the framework within which to prove ‘extraordinary ability.’”

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.

Citizenship and Immigration Services (CIS) 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* 56 Fed. Reg. 60897, 60898-9 (November 29, 1991). 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 earned sustained national or international acclaim at the very top level.

This petition, filed on September 18, 2004, seeks to classify the petitioner as an alien with extraordinary ability as a French horn player and composer.

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 pertaining to the following criteria.

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

The petitioner submitted an award diploma reflecting that he won second place at the 1998 Svetoslav Obretenov "National Competition for Young Instrumentalists and Singers" in Bulgaria. The petitioner's award diploma identifies his specialty as "French horn till age of 19."

The petitioner also submitted material relating to the 1996 competition which states: "During the Bulgarian Competition 'Svetoslav Obretenov' . . . the results from the music pedagogic work in the schools, music schools and academies in Bulgaria in a two year interval are shown."

In addressing the preceding evidence, the director's decision stated that this award "was made eligible to a group of up-and-coming young musicians, rather than musicians who are already well established in their field. Thus, this award is not sufficient to establish that the [petitioner] is one of the top . . . French horn players in his field when he was being compared to other young musicians who were not necessarily well-established." We concur with the director's observations.

We find that an award limited to teenagers pursuing musical studies offers no meaningful comparison between the petitioner and experienced music professionals. The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. There is no indication that the petitioner faced competition from throughout his entire field, rather than his approximate age group within that field. The petitioner's receipt of an award restricted to teenagers or students is not an indication that he has reached the "very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2).

On appeal, counsel states: "The [petitioner] wrote the song 'A trip to you,' which won the **Special Prize for Best Original Composition** in the 1999 Discovery International Music Festival, an *international* competition for pop singers" The record, however, includes no contemporaneous evidence showing that the petitioner was a named recipient of a "Special Prize for Best Original Composition" at the 1999 Discovery International Music Festival. 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 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Rather than submitting first-hand evidence showing that he is a named recipient of a Special Prize at the 1999 Discovery International Music Festival, the petitioner instead submitted a July 10, 2004 letter from Dono Tsvetkov, Organizer and President of the Discovery International Music Festival, stating:

I have known [the petitioner] since 1999 as a composer, pianist and a person responsible for the arrangement of the song "A trip to you." The song won the special prize award on [sic] the international competition for pop performers at the "Discovery" festival in 1999. [The petitioner] together with the singer Desislava Dobрева and his group "Unknown" made a record of the song "A trip to you" that left a large impression on me.

The petitioner also submitted the compact disc jacket for a compilation of 18 songs from the 1999 Discovery International Music Festival "First International Song Contest." Item 10 on the compact disc jacket reads as follows: "A TRIP TO YOU - 4:43 [REDACTED] - BULGARIA ([THE PETITIONER]/ [REDACTED] [THE PETITIONER] & [REDACTED])"

Primary evidence of the petitioner's award from this festival, however, would be evidence of the prize itself from 1999 bearing the petitioner's name rather than a letter of support from [REDACTED] issued several years later. While item 10 on the compact disc jacket lists the petitioner's name, there is nothing on the disc jacket indicating that he was singled out for recognition from among the dozens of other artists whose names appear on this compilation. In this instance, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the "Special Prize for Best Original Composition in the 1999 Discovery International Music Festival" presented to him is unavailable or does not exist. The plain language of this criterion requires evidence of "the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." An award presented to [REDACTED] for her pop music performance (rather than to the petitioner for his composition) does not meet this requirement.¹ Aside from the petitioner's failure to submit primary evidence of his Special Prize, there is no evidence of contemporaneous publicity surrounding his receipt of this award or evidence showing that his prize commands a substantial level of recognition. Further, we note that the title of the "Discovery International Music Festival" suggests that this competition is intended for pop musicians seeking to establish themselves rather than for seasoned music professionals who have already risen to the very top of the field.

In light of the above, the petitioner has not established that he meets this criterion.

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.

In order to demonstrate that membership in an association meets this criterion, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the

¹ The petitioner submitted a 1999 article in *Vsychko Za Varna* entitled "The Best in Jazz is the Improvisation" stating: "Desislava Dobрева sang and won the audience award at the VIII International Pop Fest 'Discovery 99.'" This article includes no mention of the petitioner's receipt of a "Special Prize."

national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

On appeal, counsel states that "being a member of an orchestra constitutes being a member of an association." Counsel further states that the petitioner earned the "position of Principal horn with the New Symphony Orchestra, the National Youth Symphony Orchestra, and Opera Verdi Europe." We do not find that playing French horn for an orchestra constitutes membership in association in the field for purposes of this criterion. The petitioner's work for Opera Verdi Europe, for example, is not membership in an association in the field, but rather employment in his field. Nevertheless, the record does not include the membership bylaws or the official admission requirements for the aforementioned organizations. The petitioner has not established that admission to membership in these organizations required outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership. The petitioner's role as a principal musician for these orchestras is better considered under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(viii). Thus, the petitioner has not established that he meets this criterion.

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.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national or international level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.²

The petitioner submitted a 1999 article in *Vsychko Za Varna* entitled "The Best in Jazz is the Improvisation." The record, however, includes no evidence showing that this publication had substantial national readership. Further, the author of the article was not identified as required by this criterion.

The petitioner also submitted a 1989 article entitled "First Steps on the Keyboard," but there is no evidence showing that the publication featuring this article had substantial national readership. This article, which discusses a childhood piano performance of the petitioner in his municipality, states: "[The petitioner] possesses qualities for future development and perfection as a musician." Such comments, however, are not an indication that the petitioner has sustained national acclaim or risen to the very top of his field of endeavor.

The record also includes a March 29, 1999 article in *Standart* and a May 7, 2002 article entitled "Michail Gorbachov" posted at <http://slavishow.com>, but the petitioner is not the primary subject of these articles. The

² Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, cannot serve to spread an individual's reputation outside of that county.

March 29, 1999 article is about singer [REDACTED] and devotes only one sentence to the petitioner while the May 7, 2002 includes nothing about the petitioner. The plain language of this criterion, however, requires the submission of “published materials about the alien.” The petitioner’s March 29, 1999 and May 7, 2002 articles fail to meet this requirement. If the petitioner is not the primary subject of the material, then it fails to demonstrate his individual acclaim at the national level.

The petitioner also submitted a photograph of himself appearing in *24 Chasa* in 1998. There is no indication, however, that the article which this photograph accompanied was primarily about the petitioner. We note that the petitioner’s name was not identified in the photograph’s caption while two other individuals in the picture were specifically named. Such material does not satisfy the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii).

In a March 30, 2005 request for evidence notice issued by the director, the petitioner was specifically requested to submit “evidence of published materials in professional or major trade publications or major media about the alien, relating to the alien’s work in the field for which classification is sought. The evidence should include the title, date and author of such published material, and any necessary translations.” The petitioner was afforded twelve weeks in which to respond to the director’s request for evidence.

The regulation at 8 C.F.R. § 103.2 (b)(8) states, in pertinent part:

Request for evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

- (i) Submit all the requested initial or additional evidence;
- (ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or
- (iii) Withdraw the application or petition.

In a June 21, 2005 letter submitted in response to the director’s request for evidence, counsel for the petitioner requested an additional 60 days “to prepare a thorough response.” The regulation at 8 C.F.R. § 103.2(b)(8), however, specifically states that “additional time may not be granted.” The petitioner failed to submit evidence relating to the criterion at 8 C.F.R. § 204.5(h)(3)(iii) within the time period specified by the director.

On July 25, 2005, the director denied the petition, stating that his “decision will be issued based on the evidence currently in the record.”

On appeal, the petitioner now submits a March 1999 article appearing in *Standart* entitled “Jazz Group Declares War on the Pop Folk.” The record, however, includes no evidence showing that this publication had substantial national readership. Further, the author of the article was not identified as required by this criterion. The petitioner’s appellate submission also included two brief promotional announcements for an April 1, 1999 concert performed by the petitioner’s jazz group “Unknown.” Such promotional announcements, which are not the result of independent journalistic reportage, cannot serve to meet this criterion. This material is simply not indicative of national or international acclaim. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the preceding materials in response to the director’s March 30, 2005 request for evidence and now submits them on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *see also Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). If the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director’s request for evidence. *Id.*

In light of the above, the petitioner has not established that he meets this criterion.

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.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “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). For example, serving as a judge for a national competition involving professional musicians is of far greater probative value than serving as a judge for a local competition involving amateurs or children.

In a March 30, 2005 request for evidence notice issued by the director, the petitioner was specifically requested to submit “evidence of the alien’s participation on a panel or individually as a judge of the work of others in the same or an allied field for which classification is sought.” The petitioner was afforded twelve weeks in which to respond to the director’s request for evidence. The petitioner failed to submit evidence relating to the criterion at 8 C.F.R. § 204.5(h)(3)(iv) within the time period specified by the director.

On appeal, the petitioner now submits two August 19, 2005 letters of reference from [REDACTED] Founder and President of the New Symphony Orchestra. According to the petitioner’s resume, he has performed as a French horn instrumentalist for the New Symphony Orchestra since 1999. In her letters, [REDACTED] states that the petitioner participated as a panelist (or examiner) for evaluation and re-auditioning of New Symphony Orchestra musicians on February 2, 2002 and February 25, 2003. The petitioner’s appellate submission also includes a June 20, 2005 letter of reference from [REDACTED] General Music Director and Manager of the National Youth Symphony Orchestra of Bulgaria, stating that the petitioner served on a “panel of judges for

the competition which took place on 3 February 2002 for the purpose of assessment and reselection of the Bulgarian Youth Philharmonic Orchestra members.” According to his resume, the petitioner performed as a principal French horn for the National Youth Symphony Orchestra from 1999 to 2004.

The preceding reference letters are not adequate to demonstrate that the petitioner meets this criterion. The plain language of this criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others.” Primary evidence of the petitioner’s participation would be contemporaneous paperwork documenting the evaluations performed by him rather than letters of support issued years after the events occurred. In this instance, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding the submission of secondary evidence. Specifically, the petitioner has not demonstrated that the paperwork relating to the evaluations he performed is unavailable or does not exist. The absence of contemporaneous evidence of the petitioner’s participation is a significant omission from the record. There is no evidence showing the names of the musicians evaluated by the petitioner, their level of expertise, and the paperwork documenting his assessments. The benefit sought in the present matter, however, is not the type for which documentation is typically unavailable and the statute specifically requires “extensive documentation” to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act. The regulations governing the present immigrant visa determination have no requirement mandating that CIS specifically accept the credibility of personal testimony, even if not corroborated. The commentary for the proposed regulations implementing this statute provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Thus, this criterion requires specific documentation beyond mere testimony. Aside from an absence of contemporaneous evidence documenting the petitioner’s participation as a judge, we do not find that evaluating one’s fellow instrumentalists in an orchestra in which one performs is indicative of national or international acclaim.

Regarding the aforementioned reference letters submitted on appeal, the petitioner was put on notice of required evidence relating to the criterion at 8 C.F.R. § 204.5(h)(3)(iv) and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the preceding letters in response to the director’s March 30, 2005 request for evidence and now submits them on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N at 764; *see also Matter of Obaigbena*, 19 I&N at 533. As stated previously, if the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director’s request for evidence. *Id.*

In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner submitted promotional announcements, reference letters, and program books relating to concerts in which he participated as an ensemble member. The petitioner also submitted internet printouts relating to Opera Verdi Europe’s 2004 tour of the United States. As principal French horn player for Opera Verdi Europe’s orchestra, the petitioner has performed in college auditoriums at Ball State University, the University of Massachusetts, the Richard Stockton College of New Jersey, Montgomery College, and Pennsylvania State University. The record, however, does not establish that these venues command the same

level of prestige associated with top opera venues such as the Lincoln Center for the Performing Arts or the John F. Kennedy Center for the Performing Arts. Nevertheless, the plain language of this criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for instrumental musicians such as the petitioner. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x). Thus, the petitioner has not established that he meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of his role within the entire organization or establishment and the reputation of the organization or establishment.

The petitioner submitted letters of support and other evidence indicating that he performed as an ensemble member for orchestras such as Opera Verdi Europe, the New Symphony Orchestra, the Academic Symphonic Orchestra, the Sofia Philharmonic Orchestra, and the National Youth Symphony Orchestra. Aside from their own self-serving promotional material, there is no evidence showing that the preceding orchestras have earned distinguished national reputations in the same manner as (for example) the New York Philharmonic, Boston Symphony Orchestra, or Chicago Symphony Orchestra.

The petitioner must also demonstrate that he has regularly performed in a "leading or critical role" as an ensemble member. On appeal, counsel asserts that the petitioner earned the "position of Principal horn with the New Symphony Orchestra, the National Youth Symphony Orchestra, and Opera Verdi Europe." While the petitioner submitted a letter of support from Ivan Kyurkchiev, Artistic Director of Opera Verdi Europe, stating that the petitioner served as the principal French horn player for that organization, there is no evidence showing that he served as a principal instrumentalist for the New Symphony Orchestra or the National Youth Symphony Orchestra. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N at 533, 534; *Matter of Laureano*, 19 I&N at 1; *Matter of Ramirez-Sanchez*, 17 I&N at 503, 506.

Regarding the petitioner's role as a principal French horn player for Opera Verdi Europe, we do not find that such a position is tantamount to a leading or critical role for this opera company. We note here that, aside from its orchestra, Opera Verdi Europe consists of singers, a choir, and ballet dancers. To satisfy this criterion, the petitioner must distinguish himself from the numerous other performing artists of the Opera Verdi Europe organization. Otherwise, the phrase "leading or critical role" is meaningless. The evidence reveals that the petitioner performs as part of an orchestral ensemble for Opera Verdi Europe's traveling productions. However, the evidence does not indicate that the petitioner's role is more notable or important than that of the hundred or so other artists employed by Opera Verdi Europe including its soprano and bass singers, orchestra conductor, artistic director, and ballet dancers. There is no evidence showing that the petitioner's name has received top billing (in the same manner as that of [REDACTED] or [REDACTED], or that the popularity of the opera company increased when the petitioner was known to be performing. Nor is there evidence showing that the petitioner's

contract with Opera Verdi Europe singles him out for greater compensation than that of others in the opera company. In this case, the petitioner's evidence fails to demonstrate that he has performed in a leading or critical role for a distinguished organization, or that his involvement has earned him sustained national or international acclaim. Thus, the petitioner has not established that he meets this criterion.

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

In a March 30, 2005 request for evidence notice issued by the director, the petitioner was specifically requested to submit "evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field." The petitioner was afforded twelve weeks in which to respond to the director's request for evidence. The petitioner failed to submit evidence relating to the criterion at 8 C.F.R. § 204.5(h)(3)(ix) within the time period specified by the director.

On appeal, the petitioner now submits evidence of two payments in the amount of BGN 70 that he received from the Sofia Philharmonic Orchestra in 2002. The petitioner also submits a letter from the "Main accountant for Sofia Philharmonic" stating that "in 2002 the monthly salary in Sofia Philharmonic Orchestra for each instrumentalist was between 180-220 leva." The plain language of this criterion, however, requires the petitioner to submit evidence of a high salary "in relation to others in the field." In this instance, the petitioner has provided salary information that is restricted to his former employer. The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner earns a level of compensation that places him among the highest paid instrumental musicians at the national or international level.

Regarding the evidence of the petitioner's compensation submitted on appeal, the petitioner was put on notice of required evidence relating to the criterion at 8 C.F.R. § 204.5(h)(3)(ix) and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit this evidence in response to the director's March 30, 2005 request for evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N at 764; *see also Matter of Obaigbena*, 19 I&N at 533. As stated previously, if the petitioner had wanted the submitted evidence to be considered, he should have submitted the documents in response to the director's request for evidence. *Id.*

In light of the above, the petitioner has not established that he meets this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

This criterion calls for commercial success in the form of "sales" or "receipts"; simply submitting event programs, letters of support, promotional material, and compact disc recordings indicating that the petitioner participated in various performances cannot meet the plain wording of the regulation. The record includes no evidence of documented "sales" or "receipts" showing that the petitioner's performances drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. In regard to the petitioner's musical recordings, there is no evidence showing that his compact discs had a high national or international sales volume.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, the petitioner has failed to demonstrate his receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Beyond the regulatory criteria, the petitioner submitted multiple letters of support attesting to his skill as a musician. While letters of support may place the evidence for the regulatory criteria in context, they cannot serve as primary evidence of the achievement required by each criterion. Pursuant to the statute and regulations, the classification sought requires documentary evidence of sustained national or international acclaim, and the petitioner cannot arbitrarily replace such evidence with attestations from the petitioner's colleagues, who assert that they find the petitioner's abilities to be extraordinary. Similarly, witness statements to the effect that the petitioner is widely acclaimed throughout the field have minimal evidentiary value without objective evidence from independent sources.

While CIS has previously approved a P-1 nonimmigrant visa petition filed on behalf of the petitioner, a classification that requires the alien to perform with an entertainment group that has been recognized internationally as being outstanding, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard.³ 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).

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).

³ The specific requirements to establish eligibility for P-1 nonimmigrant visa classification are set forth in the regulation at 8 C.F.R. § 214.2(p).

Review of the record does not establish that the petitioner has distinguished himself 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 the 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.

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.