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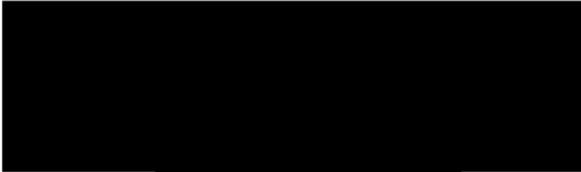
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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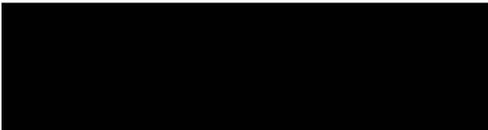
Petitioner:



Beneficiary:

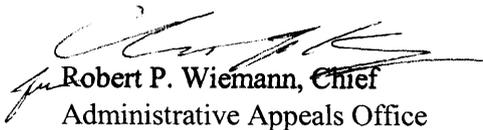
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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, Texas Service Center, and is now before the Administrative Appeals Office (AAO) 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 “meets four of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).”

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 sustained national or international acclaim at the very top level.

This petition, filed on February 22, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a “Senior Middleware Architect/Developer.” Counsel states:

[The petitioner] is co-founder, Director and VP of Technology of AgilePartner SA Luxembourg
[The petitioner's] accomplishments include being a contributor of *Software Development* magazine,

being the lead developer and project administrator of a main open-source project called NxBRE (a .NET business rule engine), . . . and judging and speaking in his field.

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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

The director's decision concluded that the evidence submitted for this criterion was not primarily about the petitioner. We concur with the director's finding. On appeal, although counsel does not challenge this finding, we will address the petitioner's evidence for this criterion below.

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.¹

The petitioner submitted a June 2005 article published in *Software Development* entitled "Fresh Faces" that primarily discusses the winners of the 15th Annual Jolt and Productivity Awards. At the conclusion of the article, 26 individuals are identified as competition judges, one of whom is the petitioner. The petitioner also submitted evidence showing that the six authors of *The Practical Guide to Enterprise Architecture* listed the petitioner's name in the guide's "Acknowledgments" section along with 13 other contributors who provided feedback for the publication. The preceding published materials, however, are not primarily about the petitioner. The plain language of the regulatory criterion requires "published material about the alien." If the petitioner is not the primary subject of the material, then it is insufficient to meet this criterion.

¹ 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, for instance, cannot serve to spread an individual's reputation outside of that county.

In response to the director's request for evidence, the petitioner submitted an article by Caspar Fall appearing in the January 2006 issue of *Business Rules Journal* that discusses the rationale for selection of petitioner's NxBRE software from among a list of three low-cost forward-chaining rule engines that were considered for a project for the Health Section of the Swiss Federal Statistics Office. The record, however, includes no evidence showing that *Business Rules Journal* has substantial national or international circulation or other evidence to demonstrate that this publication is considered to be a professional, major trade publication or other major media. Further, as the petitioner is not actually named in the article, we cannot conclude that it constitutes published material about him.

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 petitioner submitted evidence showing that he served as judge for the 14th and 15th Annual *Software Development* magazine's Jolt and Productivity Awards in 2004 and 2005. Information in the record states that "*Software Development* is the leading magazine for software development managers *Software Development* is a monthly publication reaching over 100,000 subscribers." A page from the June 2005 issue of *Software Development* states: "The Esteemed Judges – *Software Development* thanks these 26 gurus for dedicating three months to the evaluation process." The petitioner's name is listed on the page as one of the 26 judges.

The petitioner also submitted information printed from TechWeb's internet site stating: "The *Software Development* Jolt Product Excellence and Productivity Awards are presented annually to products and books that have 'jolted' the industry by helping to create faster, easier and more efficient software."

Information submitted by the petitioner from PR Newswire's internet site states: "For the past 15 years, *Software Development* Jolt Product Excellence and Productivity Awards have been presented annually to products, books and websites that have 'jolted' the industry by helping to create faster, easier and more efficient software."

The director's analysis for this criterion concluded by stating: "The petitioner has not clearly established that he has judged internationally recognized competitions in his field." The criterion at 8 C.F.R. § 204.5(h)(3)(iv), however, includes no requirement that the petitioner judge an internationally recognized competition. Section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3) specifically allow for evidence establishing "national" acclaim. Thus, the director's implication that international recognition is required to establish eligibility under this criterion is in error and the director's finding must therefore be withdrawn. We find that the petitioner's evidence meets this criterion.

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

We withdraw the director's finding that the petitioner meets this criterion.

The petitioner submitted evidence showing that he is the lead developer and project administrator of NxBRE, “a lightweight Business Rule Engine (aka Rule Based Engine) for the .NET platform, composed of a forward-chaining inference engine and an XML-driven flow control engine.” The record reflects that the petitioner utilized SourceForge.net as an internet host site for the preceding Open Source software development project.² An electronic message from SourceForge.net to the petitioner submitted in response to the director’s request for evidence reflects that his project registration for the NxBRE software was approved in December 2003. The electronic message further states:

SourceForge.net maintains a large amount of documentation about the SourceForge.net site and services offered to hosted projects.

* * *

SourceForge.net provides hosting solely for Open Source software development projects

* * *

SourceForge.net provides a donation system that allows users and projects to accept donations on an opt-in basis.

² Using the internet address for SourceForge.net identified in the documentation submitted by the petitioner, the AAO accessed information about its web site at <http://sourceforge.net/docs/about> on July 12, 2007, which states:

SourceForge.net is the world’s largest Open Source software development web site, hosting more than 100,000 projects and over 1,000,000 registered users with a centralized resource for managing projects, issues, communications, and code. SourceForge.net has the largest repository of Open Source code and applications available on the Internet, and hosts more Open Source development products than any other site or network worldwide. SourceForge.net provides a wide variety of services to projects we host, and to the Open Source community.

SourceForge.net provides free hosting to Open Source software development projects. The essence of the Open Source development model is the rapid creation of solutions within an open, collaborative environment. Collaboration within the Open Source community (developers and end users) promotes a higher standard of quality, and helps to ensure the long-term viability of both data and applications.

Open Source software is also gaining increased momentum in the enterprise. Commonly cited reasons for the growing interest, acceptance, and even preference for Open Source products include low cost, high value, quality and reliability, security, increased freedom and flexibility (both hardware and software), and adherence to open standards. Additional information regarding the Open Source concept can be found on the Open Source Initiative (OSI) web site.

* * *

The Project Admin page for your project is the best place to start. Please ensure that you have established a suitable Public Description for your project, and have categorized your project with in the Trove

* * *

Enjoy the system, and please tell others about SourceForge.net.

The petitioner submitted statistics printed from SourceForge.net's internet site reflecting 20,919 "downloads" relating to the petitioner's NxBRE project since its inception in December 2003. These statistics may indicate that the petitioner's software has been downloaded by potential users for evaluation, but there is no evidence of its widespread implementation or any indication that the field at large has somehow changed as a result of his software development work. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. The record here does not establish that the petitioner's work has made scholarly or scientific contributions of major significance to his field in a manner consistent with sustained national or international acclaim.

The petitioner also submitted a page consisting of seven brief testimonials that he compiled from alleged users of his NxBRE software, but their full names, employers, and contact information were "withheld per request of the users." For example, one of the testimonials states: "Our company is looking at various options for implementing a rules engine. We have done a cursory inspection of NxBRE and believe that it could meet our needs." Another testimonial states: "I want to use visio file (.vdx) to express my business rules. But I don't know what NxBRE supports." There is no indication that either of the preceding organizations actually utilized the petitioner's software for their business operations. Further, there is no means through which CIS may contact the seven individuals offering the testimonials to confirm their statements. Nevertheless, we do not find that these seven testimonials selected by the petitioner are adequate to demonstrate that his NxBRE software qualifies as a contribution of major significance in the software development field.

The petitioner's submission also included what he identifies as a "web reference" from TheServerSide.NET stating: "Csharp-Source.Net has published a categorized list of C# based open source projects and their locations. The lists includes [sic] well knows [sic] projects such as NUnit, NAnt, and NHibernate as well as lesser know [sic] projects like NChart, iTextSharp, and NxBRE." The observation that the petitioner's project is "lesser" known is not consistent with "sustained national or international acclaim" or a contribution of "major significance in the field."

In response to the director's request for evidence, the petitioner submitted two letters of support that specifically address the petitioner's eligibility for this criterion.

Caspar Fall, a consultant for ELCA, an information technology consulting company in Lausanne, Switzerland, states:

[The petitioner] has made an original technical contribution of major significance to the field. As the administrator and lead developer of the NxBRE project, [the petitioner] has delivered the first open source business rules engine for the .NET platform. He has performed an exceptional work as a Software Engineer in order to guarantee the best possible quality for his product. He has also invested a tremendous amount of energy to support and help others to implement this rules engine, including me. This has contributed to make the result of his work a solid rule engine that companies can consider using for their best benefit. As a matter of fact, rules engine [sic] increase the flexibility of software applications by better allowing business needs to be translated into executable actions. Companies using such technologies can expect a significant improvement of their capacity to react to changes of existing business rules or to the need to introduce new rules because a business rules engine encourages Software Engineers not to include business rules in their code. NxBRE allows programmers and companies to achieve this objective of separation of code and rules.

Since the inception of the NxBRE project in December 2003, [the petitioner] has regularly released source code and running software in SourceForge, making his work available for usage and review by his peers. It is to be noted that [the petitioner] has also contributed code to other projects like Egothor or jinFORM, making his work available for the community of Software Engineers. The process of contributing code to the open source community helps to improve the overall quality of projects and permits to add new features, as found required by Software Engineers. Generally speaking, the IT industry beneficiates [sic] from this kind of contribution, as code re-use allows saving time and money.

As stated under a previous criterion, the petitioner's response to the director's request for evidence included a paper authored by Caspar Fall discussing ELCA's selection of a rule engine for managing online annual questionnaires submitted to the Health Section of the Swiss Federal Statistics Office. The petitioner's NxBRE software was chosen from a list of three low-cost forward-chaining rule engines that were initially considered by ELCA. However, the petitioner has not shown how the greater field has changed as a result of his work, beyond the incremental improvements in business processes that are expected from an original software product. Nor is there substantive evidence showing that NxBRE has accrued substantial benefits to numerous organizations beyond the Health Section of the Swiss Federal Statistics Office as would be expected of an original contribution of major significance in the software development field. We accept that the petitioner's NxBRE software is original and presents incremental benefits to its users, but there is no evidence showing that this work or his having "contributed code to other projects" rise to the level of a contribution of major significance in his field.

[redacted] an Information Technology Project Manager for Sogeti-Transiciel and a software consultant for the European Parliament, states that he is "currently working with [the petitioner] and can attest to the extraordinary level of his work." Matthieu Razafindrakoto further states:

[The petitioner] has made an original technical and business contribution of major significance to the field in his region. As a Co-Founder of AgilePartner S.A. in Luxembourg and a personal member of the Agile Alliance, [the petitioner] was among the very firsts [sic] to promote the Agile Methods in his region. These recent methodologies contribute to make software engineering more efficient and

contribute to a greater satisfaction of the customers. Unfortunately, resistance to change and ignorance are preventing the full adoption of these methods: trusted local experts are needed to remove these barriers. [The petitioner], leveraging the international recognition he gained from his writings and open source projects, has been able to put forward these new ideas in a credible manner. [The petitioner] has also launched the *Agile Interest Group of Luxembourg* to better promote these practices among Software Engineers and business-decision makers.

The letter from [REDACTED] does not specifically or adequately explain the technology involved in “the Agile Methods,” nor does he credit the petitioner as being the original creator of these software engineering methodologies. Promoting technological innovations developed by others does not constitute an original contribution of major significance in the field attributable to the petitioner. Even if the petitioner were to establish that he invented “the Agile Methods,” according to [REDACTED] the methodologies put forward by the petitioner have not been fully adopted in his region. Nor is there independent evidence establishing the national or international significance of these methodologies.

In this case, the letters of support provided by the petitioner’s professional contacts are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. 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. Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a software developer who has sustained national or international acclaim.

The petitioner’s response to the director’s request for evidence included a printout from a Google internet search of “NxBRE” that identified 854 results which counsel claims shows the “popularity” of the petitioner’s software. Such search results are often duplicative or not primarily about the particular object of the search. For these reasons, the number of results generated from an internet search is generally not a reliable gauge of impact in one’s field. Moreover, as section 203(b)(1)(A)(i) of the Act requires “extensive documentation” of sustained national or international acclaim, we find that the petitioner’s failure to provide the actual documentation for the vast majority of the 854 results identified the Google search is a significant omission from the record. Without reviewing the original documents identified in the search, we cannot conclude that the petitioner’s NxBRE software is a contribution of major significance in the software development field. Further, aside from SourceForge.net, the petitioner does not provide information regarding the stature of the websites in which his software product is mentioned.

Without extensive documentation showing that the petitioner’s work has been unusually influential or highly acclaimed throughout the greater field, we cannot conclude that his work rises to the level of a contribution of major significance. Thus, the petitioner has not established that he meets this criterion.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence of his authorship of a scholarly article appearing in the March 2002 issue of *Software Development* magazine entitled "Losing the Coding Millstone." As stated previously, information in the record states that "*Software Development* is the leading magazine for software development managers *Software Development* is a monthly publication reaching over 100,000 subscribers." Therefore, we find that this one article appears to constitute qualifying evidence for this criterion.

However, none of the remaining published materials (petitioner's exhibits K, L, M, N, O, P, and Q) written by the petitioner for *Software Development* constitute scholarly articles. All of these exhibits consist of no more than a half page of text. "All roads Lead to Rome" (exhibit K) is a twelve-sentence anecdotal piece about "bad" programming code. "SOAPscope 2.0" (exhibit L) is an eight-sentence product evaluation. "He Who Must Not Be Named" (exhibit M) is a seventeen-sentence anecdotal piece about a problematic billing system on which the petitioner worked. This piece appeared under the heading "Project Horrors" in the October 2004 issue. "Outsourcing in Europe" (exhibit N) was a letter to *Software Development* written by the petitioner appearing in the magazine's "Feedback" section.³ "Hibernate 2.1" (exhibit O) is a nine-sentence product evaluation in which Jboss' receipt of a Jolt Award is announced. Similarly, "Census 6.0" (exhibit P) is a five-sentence product evaluation in which MetaQuest Software's receipt of a Jolt Award is announced. We find that exhibits "O" and "P" are far more relevant to the judging criterion at 8 C.F.R. § 204.5(h)(3)(iv), a criterion that we find the petitioner has already met.⁴ Finally, "The Invisible DBA" (exhibit Q) is a thirteen-sentence anecdotal piece about a database administrator who swindled his clients by billing them for time not worked. We find that the preceding exhibits are not scholarly articles in the field of software development.

The plain language of this regulatory criterion requires the authorship of "scholarly" articles in the field. However, the above described materials are anecdotal narratives rather than academic or "scholarly" articles. In contrast, the article contained in *Software Development* is considered to be scholarly. However, a single scholarly article does not satisfy the plain language of this criterion which specifically requires evidence of "scholarly articles." Moreover, as the one scholarly article is from March 2002, it is not indicative of "sustained" national or international acclaim in the petitioner's field. 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.

³ Underneath the petitioner's comments, it states: "EXPRESS YOURSELF: *Software Development* welcomes readers' letters. Writers must provide their full name, title, company, mailing address, and telephone number. . . . [W]e value the views of readers who send us their comments. Send letters to FEEDBACK, *Software Development* magazine"

⁴ It should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for judging the work of others and authorship of scholarly articles, CIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

The director found the petitioner had failed to establish that he performed in a leading or critical role for an organization or establishment with a distinguished reputation.

On appeal, counsel states: “The petitioner played a leading role for Dennemeyer & Company, a leading worldwide Intellectual Property services provider, by developing, optimizing and customizing intellectual property management software In addition, the petitioner played a leading role for the European Parliament as a Lead Java Architect.”

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.

We accept that the European Parliament is an organization with a distinguished reputation, however, the self-serving material printed directly from Dennemeyer & Company’s internet site is not adequate to demonstrate that it has a distinguished reputation.

As evidence of the nature of the petitioner’s role for the European Parliament and Dennemeyer & Company, he submitted letters of support dated April 3, 2006 from [REDACTED] of Sogeti-Transiciel, who is not an official representative of the European Parliament, and [REDACTED] now a Senior Developer at FTI Consulting, whose resume indicates that he has not worked for Dennemeyer & Company since 2000, when he worked there as a “Software Engineer Team Member.”

[REDACTED] states:

[The petitioner] has been a Lead Java Architect for the last four years at the European Parliament. I can attest that there is a “before” and an “after” his arrival, as his action has tremendously improved the work of nearly two hundred Software Engineers. On top of that, [the petitioner] is in charge of evaluating and giving a go/no-go on all Java middleware projects done in Belgium, Luxembourg and France; this position allows him to guarantee the consistence and alignment of all the strategic development in the Parliament. His outstanding contribution to the central information technology department has helped the European Parliament to rationalize and optimize software development activities, leading to cost reduction and quality increase. His natural leadership and the trust he inspires in his peers have made him an authoritative figure in this transnational organization.

The record includes no evidence originating from an official of the European Parliament indicating that the petitioner performs in a leading or critical role for that organization. For example, there is no evidence indicating that the petitioner’s role was of significantly greater importance than that of the numerous other information technology professionals employed there. While we accept that the petitioner has provided Java software support for the European Parliament, the record falls well short of demonstrating that his role for this governmental body was leading or critical.

[REDACTED] states:

[The petitioner] was a Software Development Manager for Dennemeyer & Co. (a leading worldwide Intellectual Property services provider). He played a leading role in developing, optimizing and customizing an intellectual property management software that has been installed worldwide to handle critical data. Organizations that have benefited from his work include, but are not limited to: GE, BMW, L'Oreal and Nestle.

While the petitioner may have contributed to an intellectual property management software project at Dennemeyer & Company, the record does not establish that his role for this organization was leading or critical. The record includes no evidence originating from the company itself indicating the petitioner's dates of employment or job title. Nor is there evidence showing that his role was of significantly greater importance than that of the other software developers employed by the company (including individuals such as [REDACTED]).

In the preceding instances, the record does not demonstrate that the petitioner was responsible for the organizations' success or standing to a degree consistent with the meaning of "leading or critical role" or indicative of sustained national or international acclaim. Thus, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that 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 national or international acclaim necessary to qualify as an alien of extraordinary ability.

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)(i) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.