



U.S. Citizenship
and Immigration
Services

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FILE:



Office: TEXAS SERVICE CENTER Date:

SRC 05 072 50655

IN RE:

Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



copy

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 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.

On appeal, counsel states: "The [petitioner] is truly one of the small percentage of competitors to have risen to the very top of the field of natural body building. . . . [The petitioner] has satisfied five of the ten criteria necessary to determine that he is an alien of 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 January 18, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a bodybuilder. As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that his national or international acclaim has been sustained. The record reflects that the petitioner has been residing in the United States since September 2002. Given the

length of time between the petitioner's arrival in the United States and the petition's filing date (more than two years), it is reasonable to expect him to have earned national acclaim in the United States during that time. The petitioner has had ample time to establish a reputation as a bodybuilder in this country.

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.

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

The petitioner submitted an award diploma issued by the Bulgarian Amateurs Bodybuilding and Fitness Association (BABBFa) of Sofia, Bulgaria reflecting that the petitioner placed 1st in the 90 kilogram weight class at the Republican Championship of Bodybuilding and Fitness on May 9, 1999. The petitioner, however, has not shown that this award is widely recognized beyond the presenting organization. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), however, specifically requires that the awards or prizes be nationally or internationally *recognized* and it is the petitioner's burden to establish every element of a given criterion. In this instance, there is no evidence of contemporaneous publicity surrounding the petitioner's receipt of an award at this amateur-level competition or evidence showing that his award commands a substantial level of recognition throughout Bulgaria.

The petitioner also submitted a July 3, 2003 reference letter issued by the BABBFa stating that he achieved the following competitive results:

- 1997: 3rd place in the Republican Championship up to 90 Kg
- 1998: 2nd place in the Republican Championship up to 90 Kg
- 1998: 4th place in the Balkan Championship, Thessaloniki, Greece
- 1999: 1st place in the Republican Championship up to 90 Kg
- 1999: 3rd place in the 2nd International Tournament "Apollo" Cup
- 2000: 2nd place in the Balkan Championship up to 90 Kg, Didimotico, Greece

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." Aside from submitting the 1999 award diploma for 1st place in the BABBFa's Republican Championship, the petitioner has not submitted evidence of his receipt of a "prize" or "award" at the remaining competitive tournaments listed above. Regarding the remaining tournaments, rather than submitting first-hand evidence showing that he is a named recipient of a prize or award, the petitioner instead submitted a July 3, 2003 letter from the BABBFa issued years after those events took place. Primary evidence showing that the petitioner received a prize or award at the preceding tournaments, however, would be evidence of the actual prizes or awards themselves (issued by the appropriate presenting organization and bearing the petitioner's name) rather than a July 3,

2003 reference letter issued years later. 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 prizes or awards from the remaining competitive tournaments listed above are unavailable or do not exist. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The petitioner submitted evidence showing that he won the overall title at the 2004 National Physique Committee (NPC) Tampa Bay Classic (an amateur bodybuilding competition). An article submitted by the petitioner from the August 2004 issue of *Southern Muscle Plus* magazine states: “The 22nd Annual NPC Tampa Bay Classic was held on June 12 at the Chamberlain High School Auditorium in Tampa [The petitioner], 29, of Tampa scored a unanimous decision to take the lightweight class and moved into the finals to once again take all first place votes from the judges for the overall win.” We find that the petitioner’s first-place victory at the 2004 Tampa Bay Classic reflects local or regional recognition rather than national or international recognition. According to the *Southern Muscle Plus* article, all ten of the bodybuilding competitors receiving honors at this event came from places in Florida such as Tampa, Bradenton, Belleair, Clearwater, Balm, Parrish, Port Richey, and Spring Hill. The petitioner has not submitted evidence showing that a substantial percentage of the entrants for this competition were bodybuilders from outside of the state of Florida.

The petitioner submitted competitive results printed from the internet showing that he placed third in the amateur men’s welterweight division at the 2003 Musclemenia World Tour in Los Angeles, California. These results reflect that the Musclemenia touring championships also include a men’s “professional” division. The record, however, includes no evidence showing that the petitioner has received a nationally or internationally recognized prize or award at the professional level.

We do not find that the petitioner’s participation in “amateur” body building competitions such as the BABBFA’s Republican Championship in 1999, the 2004 NPC Tampa Bay Classic, and the 2003 Musclemenia World Tour in Los Angeles is an indication that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). According to the Musclemenia 2003 results, beyond the “amateur” level, there exists the “professional” level in which individuals such as [redacted] and [redacted] competed. There is no indication that the petitioner has competed at their same level and earned a nationally or internationally recognized prize or award in bodybuilding. We note here that CIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. See 56 Fed. Reg. 60897, 60899 (November 29, 1991). Likewise, it does not follow that an amateur body builder whose primary source of income derives from a different occupation should necessarily qualify for an extraordinary ability immigrant visa. To find otherwise would contravene Congress’ intent that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.”

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 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.

The petitioner submitted evidence of his participation in events sponsored by the BABBFA, Musclemania, and the NPC, but no evidence of his official "membership" credential for these associations. Nor is there evidence of the membership bylaws or the official admission requirements for the latter two organizations. In a January 17, 2006 letter responding to the director's request for evidence, counsel acknowledges: "There are no membership certificates to provide for Musclemania and the NPC. A membership fee and attendance at a competition is all that is required." According to a document entitled "RULES OF THE BULGARIAN AMATEURS BODY-BUILDING AND FITNESS ASSOCIATION," the criteria for participation in contests sponsored by this association is "a dully paid membership fee for the current contest season." In this case, there is no evidence showing that the petitioner holds "membership" in an association requiring outstanding achievement or that he was evaluated by national or international experts in consideration of his admission to membership. 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 or a publication with limited circulation. 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 material indicating that his photographs appeared in advertisements in magazines such as *The Best of Men's Workout* and *Exercise and Health*. Advertising material, which is not the result of

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

independent journalistic reportage, does not satisfy the plain language of the criterion at 8 C.F.R. § 204.5(h)(3)(iii). The petitioner also submitted evidence showing that his photographs appeared in *Men's Exercise*, but the date of this material was not provided and it was not about the petitioner as required by this criterion.

The petitioner submitted articles about him appearing in magazines such as *Men's Workout*, *Southern Muscle Plus*, *24 Hours*, and *Olymp*. On October 19, 2005, the director issued a request for evidence instructing the petitioner to submit the "circulation" figures for magazines in which he appeared. The petitioner's response included a letter from [REDACTED] Publisher and Editor of *Olymp* magazine, stating that his publication has a monthly circulation of 3,800 to 3,900 copies. This letter includes no address, telephone number, or any other information through which this individual may be contacted. Further, we do not find that a magazine with a monthly circulation of less than four thousand copies qualifies as a major trade publication or other major media. The petitioner's response included no circulation statistics showing that the remaining magazines featuring him had substantial national or international readership. Without evidence showing that the magazines featuring the petitioner had substantial national or international readership, we cannot conclude that the petitioner 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, judging a national competition for professional athletes is of far greater probative value than judging a local age-group competition among youth.

The July 3, 2003 reference letter issued by the BABBFBA states:

In September 2000 [the petitioner] successfully took the examinations for international referee and was referee as follows:

- 2001: 3rd International Tournament Apollo Cup
- 2001: Republican Championship, Sofia, Bulgaria
- 2001: Balkan Championship, Bitola, Macedonia

In response to the director's request for evidence, the petitioner submitted a November 6, 2005 letter issued by the Chairman of the BABBFBA stating:

As it has been mentioned in the regulations of the BABBFA, the criteria for the participation as a judge in these tournaments, or a separate tournament, organized by the Federation, are:

- Extensive knowledge and proven qualifications in heavy athletics
- Successful passing of the inspection, performed by the committee of judges at the BABBFA of the professional qualifications of the candidate in the respective field [sic]

On appeal, the petitioner submits an April 3, 2006 letter from [REDACTED], Chairman of the BABBFA, describing the three competitions from 2001 for which the petitioner served as one of several participating judges. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS shall be accompanied by a full English language translation that 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. The English language translation accompanying [REDACTED] April 3, 2006 letter was not certified as required by the regulation.

We do not find that the preceding letters of support are 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 is of greater probative value than letters of support prepared years after the tournaments occurred. In this instance, there is no evidence showing the names of the athletes evaluated by the petitioner, their level of expertise, and the paperwork documenting his assessments. The absence of contemporaneous evidence of the petitioner's participation (such as judging slips, tournament programs identifying him as a judge, or a judge's credential from the events) is a significant omission from the record. The record also lacks evidence of national publicity surrounding the tournaments in which the petitioner served as a judge. 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).

In addition to the preceding deficiencies, we note that the statute and regulations require the petitioner's acclaim to be sustained. Subsequent to 2001, there is no indication that the petitioner has served as a bodybuilding judge in the United States, Bulgaria, or any other country.

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

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

The petitioner submitted copies of articles that he authored for *Olymp* magazine in November 2003, December 2003, and January 2004. The first two articles discuss a nutritional plan recommended by the petitioner and the third defines different types of carbohydrates and identifies the basic food sources containing them. The

petitioner's articles containing nutritional recommendations are instructional rather than "scholarly" in nature. As stated previously, the petitioner's response to the director's request for evidence included a letter from [REDACTED], Publisher and Editor of *Olymp* magazine, stating that his publication has a monthly circulation of 3,800 to 3,900 copies. This letter includes no address, telephone number, or any other information through which this individual may be contacted. Further, we do not find that a magazine with a monthly circulation of less than four thousand copies qualifies as a major trade publication or other major media.

In light of the above, 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 the petitioner's role within the entire organization or establishment and the reputation of the organization or establishment.

The July 3, 2003 reference letter issued by the BABBFA states: "From December 2000 to December 2001, [the petitioner] was coach of the junior's National Team of BABBFA."

The November 6, 2005 letter issued by the Chairman of the BABBFA states: "Under his management our young athletes have achieved considerable success on the home and on various international stages, the most impressive of which was the first place, taken by [REDACTED] [sic] in the 'Fitness' category at the prestigious international contest UNIVERSE '03, held in Nordheim, Germany."

On appeal, the petitioner submits documents entitled "Affidavit of [REDACTED]" and "Affidavit of [REDACTED]" but neither document bears a certification indicating that they were executed and sworn before an officer authorized to administer oaths. The petitioner also submits March 23, 2006 letter of support from [REDACTED]. The English language translations accompanying [REDACTED]'s March 28, 2006 signed statement and [REDACTED]'s March 23, 2006 letter were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony in visa proceedings. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

In his appellate brief, counsel states: "The Service . . . determined [the petitioner] had not established the BABBFA is an organization with a distinguished reputation. In response to this, appellant attaches the Affidavit of [REDACTED]." As noted above, [REDACTED] submitted a signed statement rather than an affidavit as claimed by counsel. [REDACTED]'s statement lists a Culver City, California address and identifies him as a world class Sumo wrestler and Bulgarian national champion in power lifting, hand ball, free style wrestling, and track and field. [REDACTED] asserts that the BABBFA "enjoys a distinguished reputation within the field of bodybuilding," but fails to explain how his own past achievements qualify him as an expert in the sport of bodybuilding. Nor does [REDACTED]'s statement provide specific examples of achievements that have earned the BABBFA a distinguished reputation.

Counsel further states: “As further evidence of the distinguished reputation enjoyed by BABBFA, we attach the statement of [REDACTED] [REDACTED]’s letter, which identifies her as a power lifting judge and “expert in the field of Heavy Athletics,” states that she has “had the opportunity to repeatedly meet and communicate with [REDACTED] – Chair of the Bulgarian Amateurs Bodybuilding and Fitness Association as well as with many of the top-competitors and activists under his leadership including [the petitioner].” [REDACTED] further states:

[REDACTED] is a person with well-pronounced leadership qualities. Under his ruling the BABBFA produced several top competitors in the sport of bodybuilding and fitness, [the petitioner] being one of them. In my personal opinion BABBFA’s competitors owe their success on a national and international level mainly on [sic] a person like [REDACTED] as a leader with great communication skills and qualities

While [REDACTED]’s letter praises [REDACTED] for his leadership qualities as chairman, it fails to provide specific examples of competitive “success on a national and international level” that have earned the BABBFA a distinguished reputation. Nor does it provide sufficient information detailing the petitioner’s specific role and his relative importance when compared to others in the BABBFA organization.

To satisfy the specific requirements of 8 C.F.R. § 204.5(h)(3)(viii), the petitioner must submit competent objective evidence establishing the BABBFA’s distinguished reputation. Evidence in existence prior to the preparation of the petition carries greater weight than witness statements prepared especially for submission with the petition. As previously discussed under the criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (iv), we note the witnesses’ statements in this proceeding are not adequately supported by contemporaneous evidence. Where the regulations require specific, objective evidence in support of a petition, the petitioner’s burden of proof is not satisfied by submitting unsupported testimony. *See* 8 C.F.R. § 103.2(b)(1). Aside from the BABBFA’s own self-serving promotional material (i.e.- the document entitled “Facts about the Bulgarian Amateur Body Building and Fitness Association”) and the vague statements of Svetoslav Binev and Rumania Tseneva, the record includes no evidence showing that the BABBFA (founded in 1997) or its junior national team had a distinguished national or international reputation during the petitioner’s tenure as a coach. For example, the record includes no official comprehensive competitive statistics for the BABBFA’s athletes from December 2000 to December 2001 or published media reports about the junior team’s successes during that period.

Regarding the petitioner’s leading or critical role for the BABBFA’s junior national team, [REDACTED]’s signed statement states: “Under the close direction of [the petitioner] in June 14, 2003, I won the first place prize in the ‘Fitness’ category at the International UNIVERSE ’03 Championship [The petitioner] was instrumental in my first place finish due to his outstanding leadership of our Junior National team.” The record, however, includes no evidence of [REDACTED]’s “first place prize” from this competition. More importantly, there is no evidence showing that the petitioner, who, according to the July 3, 2003 reference letter issued by the BABBFA, coached the junior national team only “from December 2000 to December 2001,” was the principle coach of [REDACTED] immediately prior to the International UNIVERSE ’03 Championship on June 14, 2003. Further, there is no evidence indicating that the petitioner accompanied [REDACTED] to this competition as her primary coach. We find no evidence showing that during the petitioner’s tenure as coach for the BABBFA individuals under his direct tutelage competed successfully at the national or international level.

In light of the above, the evidence submitted by the petitioner is not adequate to demonstrate that he performed in a leading or critical role for the BABBFA, or that his involvement earned him sustained national or international acclaim as a coach or bodybuilder. 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 acclaim necessary to qualify as an alien of extraordinary ability.

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. In publishing the proposed rule, legacy INS specifically distinguished the O-1 nonimmigrant category from the high standard set for immigrant visa extraordinary ability category. See 56 Fed. Reg. 30703, 30704 (July 5, 1991). 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 beneficiary'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).

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).

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.