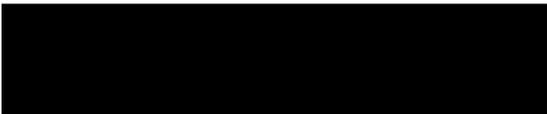




U.S. Citizenship
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IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

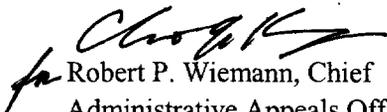
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, Nebraska 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. The director also determined the petitioner had not submitted clear evidence that she would continue work in her area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director improperly characterized her area of expertise.

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, 60898-99 (Nov. 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 she has earned sustained national or international acclaim at the very top level.

This petition, filed on October 20, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a "Synchronized Swimming Specialist." At the time of filing, the petitioner was competing and coaching for the AquaSprites synchronized swimming team in Des Plaines, Illinois. 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, internationally 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.

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 photographs of the front and back of synchronized swimming medals she earned in Bulgaria in the 1980s. For example, the petitioner received a "Gold Medal for National Competition from the Bulgarian Sports Federation – 1988" and a "Silver Medal for National Synchronized Swimming Championship of Bulgaria – 1985."

An August 30, 2005 letter of support from [REDACTED] Executive Director, United States Synchronized Swimming (USSS),¹ states: "[The petitioner] has been internationally ranked, and has participated in numerous international and European synchronized swimming championships. As a member of the Bulgarian National Team, she is one of the best synchronized swimmers in her homeland."

A June 5, 2006 letter of support from [REDACTED] President and Chief Executive Officer, International Swimming Hall of Fame, states:

[The petitioner] was a member of the first ever Bulgarian National Synchronized Swimming Team Among her numerous achievements, her team won the Bulgarian National Championship for three consecutive years and she placed in the top three as a solo or duet performer four years in a row.

As a member of the Bulgarian National Team, [the petitioner] is one of the best synchronized swimmers in her homeland, and a top three finish in an event at the World Championships ranks her as one of the best in the World.

[REDACTED] letter does not identify the date of the petitioner's top three finish in the World Championships or the name of the specific synchronized swimming event in which she competed, nor is there first-hand

¹ According to [REDACTED]'s letter, USSS "is the National Governing Body for the Olympic sport of synchronized swimming in the United States, appointed as such by the United States Olympic Committee."

evidence, such as a medal or official results from the International Swimming Federation (FINA),² showing that she received a prize or an award at the World Championships. In fact, the record includes no evidence showing that the petitioner has won any nationally or internationally recognized awards as a member of the Bulgarian National Team subsequent to 1990. The absence of such awards in the 15 years immediately preceding the petition's filing date is not consistent with *sustained* national or international acclaim as required by the section 203(b)(1)(A) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3). The director's decision noted that the letters of recommendation submitted by the petitioner's associates "indicate that [she] has 'retired' from competing." For example, a letter of support from ██████████ of the Bulgarian National Sport Academy and the petitioner's former Bulgarian National Team coach for synchronized swimming, states: "Now that [the petitioner] has *retired* from competition, [she] has become a well-recognized trainer . . ." [Emphasis added] Another letter from ██████████ "Senior Level Synchronized Swimming Competitor," states: "[The petitioner] was an accomplished competitor before she *retired* from competitive swimming." [Emphasis added] Further, a letter from ██████████ Coach, AquaSprites and AquaSprites Masters Swim Clubs, refers to the petitioner as a "former competitor."

On appeal, counsel states: "The Director's decision is . . . flawed in that it contains conclusions and assumptions without citing any specific evidence in the record. For example, the Director states that there is evidence that [the petitioner] is 'retired' from competition. . . . In fact, none of the letters or evidence state that she is retired." Counsel's observation regarding the director's decision is incorrect as the director's conclusion was based on the statements contained in the letters from Professor Dimitrova and ██████████

Nevertheless, we acknowledge that the petitioner has competed at the "Masters" level in synchronized swimming since coming to the United States. The petitioner submitted evidence of her receipt of various awards as a member of the AquaSprites "Masters" synchronized swimming team in Des Plaines, Illinois from 2003 to 2005. The petitioner's evidence included photographs of various medals and ribbons from U.S. Masters Synchronized Swimming Championships, but the photographic evidence did not include information identifying the specific dates of the awards shown or the event categories in which she earned them. Further, the record includes no evidence showing the number of Masters participants who competed in the specific age group event categories in which the petitioner received an award. We note here that it is typical for nationally recognized competitions to distribute programs listing the order of events and the names of the participating athletes. At a competition's conclusion, official results are usually provided indicating how each participant performed in relation to the other contestants in his or her competitive event. For example, the record includes results for the "2004 ESYNCHRO 16-17/18-19 AGE GROUP" championships in Indianapolis, Indiana, in which the petitioner did not compete. The record, however, includes no such results for any of the petitioner's Masters synchronized swimming competitions in the United States. The burden is on the petitioner to establish that her "Masters" awards constitute nationally or internationally recognized prizes or awards for excellence in synchronized swimming and that her receipt of such awards is consistent with an athlete who has "risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). We find that the petitioner's evidence does not meet these requirements. For example, the petitioner submitted a 2003 article printed in *Pioneer Press*, a local newspaper, stating:

² The August 30, 2005 letter of support from ██████████ identifies FINA as "the International Federation for the aquatic Olympic sports."

Members of the Lattof YMCA AquaSprite Masters synchronized swimming team took first place honors at the national United States Masters Synchronized Swimming Championships held recently in Cleveland. Members of the team were [five other individuals] and [the petitioner] of Mount Prospect. . . .

The AquaSprites also earned a number of other honors in the 29th annual competition. [redacted] took gold among grand masters in solo and technical solo competition in the 70-79 age group. Moyer took first place in C figure competition in the 40-49 age group, while teammates Ramberg and Schalk took seventh [sic] and ninth respectively.

In other technical competition, Grzeszczak placed fifth in B figures in 40-49; [the petitioner] placed fifth in C figure competition in the 30-39 group; and Seguine took 13th in the 40-49 technical routines.

The 40-49 age group trio of Moyer, Seguine and [the petitioner] earned second place. In 40-49 solo competition, Moyer placed second and Seguine claimed sixth. In addition, [the petitioner] placed second among grand master 30-39 soloists.

The competition was held Oct. 23-26 at Cleveland State University. Approximately 260 swimmers ages 21 to 85 competed at the event, which combines the athleticism of swimming and gymnastics with the artistry of music and choreography.

The AquaSprite Masters practice twice weekly and new members are welcome. No prior synchronized swim experience is required.

Based on information contained in the preceding article, it appears that the petitioner's competitors were limited to those age 30 and over, that she competed in both the 30-39 and 40-49 age groups although she was age 34 at the time of the competition, and that "[n]o prior synchronized swim experience is required" to participate in the Masters competitive program. Further, according to a "2003 USSS Calendar of Events" submitted by the petitioner, in addition to the U.S. Masters Synchronized Swimming Championships reserved for older recreational competitors, the following competitions also took place in 2003: 2004 Olympic Team Trials, Junior and Senior Team Trials Phase III, U.S. Collegiate Synchronized Swimming Championships, U.S. National Synchronized Swimming Championships, United Airlines Open, FINA World Championships, and the Pan American Games. Unlike victories at competitions such as the 2004 Olympic Team Trials or the U.S. National Synchronized Swimming Championships, the petitioner's age-based "Masters" awards at competitions such as the U.S. Masters Synchronized Swimming Championships are not nationally recognized awards for excellence consistent with her being "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). There is no evidence that the petitioner faced competition open to her entire field of endeavor rather than competition limited to recreational swimmers over the age of 30. Nor is there evidence showing the number of swimmers she outperformed in her age group events in order to earn her awards.

Thus, the petitioner has not established that her receipt of age-group specific Masters synchronized swimming awards in the United States meets this criterion, nor is there evidence showing that she has received any

nationally recognized awards in Bulgaria subsequent to 1990. The fact that the petitioner has not won any nationally recognized awards open to all ages and skills in her field (rather than limited to recreational competitors age 30 and over) in recent years indicates that the acclaim she may have earned as a synchronized swimmer at the top national level in Bulgaria has not been sustained.

In light of the above, the petitioner has not established that she 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.

The petitioner submitted her membership card for Synchro Swimming USA. In a June 7, 2006 letter responding to the director's request for evidence, counsel asserts that the petitioner has also "been an active member of the International Association of 'Women in Science.'" The record, however, includes no evidence of the petitioner's membership in the latter association. 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 Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Further, as the petitioner's field is athletics (synchronized swimming), there is no indication that the International Association of Women in *Science* is an association "in the field for which classification is sought" as required by the plain language of this regulatory criterion. Finally, there is no evidence (such as membership bylaws or official admission requirements) demonstrating that admission to membership in the preceding organizations required outstanding achievements, as judged by recognized national or international experts in the petitioner's or an allied field. As such, the petitioner has not established that she meets this criterion.

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.

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.³

In addressing the petitioner's evidence for this criterion, the director's decision stated:

³ 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.

The record contains several articles which appear to have originated from newspapers reporting results of swim meets. None of the articles was primarily about the petitioner. Most simply mentioned the petitioner in conjunction with other competitors and their results, and some did not mention the petitioner at all. . . . Articles in local or regional newspapers show a small measure of acclaim but would not fulfill this criterion, as such publications are not major publications with national or international distribution.

We concur with the director's findings. The petitioner does not challenge the above findings on appeal. The petitioner has not established that the articles she submitted were primarily about her and that they appeared in professional or major trade publications or other major media.

In light of the above, the petitioner has not established that she 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 top athletes is of far greater probative value than judging a local or regional competition for recreational youth participants.

In addressing the petitioner's evidence for this criterion, the director's decision stated:

The petitioner initially claimed this criterion, but did not provide any clear or specific evidence regarding participation as a judge. Several of the witness letters make vague allusions to participation as a judge of the work of others, but none list any specific events nor were they accompanied by documentary evidence of any such participation. The record was also absent information regarding any criteria for selection as a judge.

The petitioner was requested to document any such participation along with the criteria for selection. In response, the petitioner submitted two statements from different organizations which state . . . that the petitioner “has been invited to judge numerous events since coming here including the 2005 Synchro Meet and 2005 Association Regional B-NZ Synchronized swimming championships.” No information was provided regarding either of these meets, and it is not clear whether these meets were youth, junior, amateur, professional, or other level events. Judging amateur or youth events would generally not be commensurate with this criterion.

We concur with the director's finding that "vague" witness statements indicating that the petitioner served as a judge cannot serve to meet this criterion. The benefit sought in the present matter 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; 8 U.S.C. § 1153(b)(1)(A)(i). Further, 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). 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.

In response to the director's request for evidence, the petitioner submitted pages 19 and 23 of what appears to be a USSS publication. The top of page 19 states:

USA Synchro Judges

Judges as listed by [REDACTED] Association and Rating. . . . Please check Appendix G of 2004-2005 *Official Rules* for requirements for ratings.

- Level I-F: Basic Figure Judge
- Level II-F: Association Figure Judge
- Level III-A: Association Judge
- Level IV-F: Regional Figure Judge
- Level V-R: Regional Judge
- Level V-F: Zone Figure Judge
- Level V-Z: Zone Judge
- Level VI-F: National Figure Judge
- Level VI-N: National Judge
- Level VII-I: USSS International Judge
- Level VIII: FINA, ASUA Judge

A listing of numerous individuals qualified to serve as USA Synchro judges then follows. The petitioner's name is listed on Page 23 of this directory along with her judge's rating. The petitioner's entry identifies her rating as "3A" which corresponds with "Level III-A: Association Judge" above. We cannot ignore that the petitioner holds only a Level 3 rating on this eight-level judge's rating scale. Further, there is no indication that the petitioner is qualified to judge at the regional, zone, national, or international level. This evidence shows that the top of the petitioner's field is a level far above her own level of qualification and there is nothing to demonstrate that her Level 3 rating is consistent with sustained national or international acclaim.

As discussed by the director, the petitioner also submitted a June 6, 2006 letter from [REDACTED] of USSS stating that the petitioner "has been invited to judge numerous events since coming here including the 2005 Synchro Meet and 2005 Association Regional B-NZ Synchronized swimming championships." Terry Harper's letter states that the petitioner "has been invited to judge numerous events," but the record includes no evidence documenting the petitioner's actual *participation*, either individually or on a panel, as a synchronized swimming judge. An invitation to judge is not tantamount to "participation" as a judge. For example, there is

no contemporaneous evidence of the petitioner's participation (such as judging slips, a judge's identification badge, or an event program identifying her as a judge) in the 2005 Synchro Meet or the 2005 Association Regional B-NZ Synchronized swimming championships. The record also lacks evidence showing the names of the individuals evaluated by the petitioner, their level of expertise, the specific competitive categories she judged, and significance of the competitive events in which she allegedly participated as a judge. Without evidence of the petitioner's actual participation as a judge of the work of others in her or an allied field that is consistent with sustained national or international acclaim, we cannot conclude that she meets this criterion.

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

In addressing this criterion, the director's decision stated:

The petitioner did not initially claim this criterion. In response to the Service's request for additional evidence, the petitioner now claims the criterion, but does not clearly document such contributions. The petitioner references a letter which claims that the petitioner "helped develop an experimental off-shoot of synchronized swimming" involving performing with dolphins for which the petitioner "won national acclaim and a unique experience." The record lacks any documentary evidence regarding this claimed contribution, and lacks documentation regarding what, if any, significance this contribution has had on the field. Contributions of major significance ought to be verifiable by objective documentary evidence in existence irrespective of whether the filing of an immigrant petition is contemplated. Taken as a whole, including for the reasons discussed elsewhere, the documentation is not persuasive that the petitioner's impact and influence on the field of synchronized swimming are such that her contributions are recognized as having major significance to the field.

We concur with the director's findings. The petitioner does not challenge the above findings on appeal. Thus, the petitioner has not established that she meets this criterion.

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

The plain language of this criterion indicates that it applies to artists rather than to competitive athletes such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. Even if we were to accept synchronized swimming as art rather than athletics (which we do not), there is no evidence showing that the petitioner meets this criterion.

In addressing this criterion, the director's decision stated:

The petitioner did not initially claim this criterion. In response to the Service's request for additional evidence, the petitioner is now stating that synchronized swimming is also considered an art form and referencing the documentation previously provided which shows that her "work has been displayed in many places around the world." However, the record lacks specific information regarding the venues at which the petitioner performed or any other information documenting the significance of the exhibitions. Without such information, the record does not

adequately demonstrate that the petitioner's competition performances have been on a level commensurate with those contemplated by these regulations.

We concur with the director's findings. The petitioner does not challenge the above findings on appeal. Thus, the petitioner has not established that she 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 addressing this criterion, the director's decision stated:

The petitioner did not initially claim this criterion. In response to the Service's request for additional evidence, the petitioner now claims that she meets this criterion by virtue of participation on the Technical Synchronized Swimming Committee for Ligue Europeenne de Natation (LEN) in 1992 and 1993 as well as serving on scientific panels at the National Academy of Bulgaria. The only evidence regarding these roles was a statement from [REDACTED] which briefly mentions the petitioner's involvement. It does not appear that [REDACTED] is in any way affiliated with LEN or the National Academy, and therefore does not appear that he would have first hand knowledge of the petitioner's role within either organization. Third party attestations are insufficient to document a leading or critical role within a specific organization. Further, the statement provided no specific information regarding the petitioner's role, and there is nothing to show how her role was either leading or critical. Therefore, the record is insufficient to demonstrate that the petitioner meets this criterion.

We concur with the director's findings. We further note that there is no evidence showing that the organizations identified in [REDACTED] letter have distinguished reputations. The petitioner does not challenge the director's findings on appeal. Thus, the petitioner has not established that she 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 addressing this criterion, the director's decision stated:

The initial submission contained a statement indicating that the petitioner is "funded through private grants and thus far total \$28,915 per year." The record contained no documentation of such grants or other remuneration, and no information regarding the salaries or remuneration of others in the field. The Service requested clear documentation of the petitioner's salary, documentation of the salaries and remuneration of others in the field, and documentation regarding how the petitioner's remuneration is significantly high. The petitioner does not address this criterion in her response and submits no additional evidence relating to this criterion. Therefore, the record does not demonstrate that the petitioner has commanded a high salary or other significantly high remuneration.

We concur with the director's findings. The petitioner does not challenge the above findings on appeal. Thus, the petitioner has not established that she meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). Further, there is no evidence of achievements or recognition (during the years immediately preceding the filing of the petition) showing that the petitioner has sustained national or international acclaim as a synchronized swimmer in recent years.

On appeal, counsel notes that the petitioner is the beneficiary of an approved O-1 nonimmigrant visa filed in her behalf in 2002. While CIS has approved one 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 the immigrant visa extraordinary ability category. *See* 56 Fed. Reg. 30703, 30704 (July 5, 1991).

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).

As stated previously, the director also determined the petitioner had not submitted clear evidence that she would continue work in her area of expertise in the United States. The director's decision stated:

Part 6 of the petition listed the petitioner's proposed occupation as Synchronized Swimming Specialist, which was described as "Trains for and participates in professional competitive athletic events involving synchronized swimming." This suggests that the petitioner would continue as a competitive performer. However, several of the letters provided indicate that the petitioner has "retired" from competing and is currently coaching, and the documentation provided indicates that she is currently acting as an assistant coach for the AquaSprites swim team. None of the documentation provided addresses any claimed extraordinary ability as a coach, and the record lacks documentation indicating that she would be primarily acting as an athlete as opposed to a coach.

We agree with the director that the petitioner's evidence is not adequate to demonstrate her extraordinary ability as a coach.⁴ However, the record adequately demonstrates that the petitioner has continued work in synchronized swimming as both a competitor and an assistant coach for the AquaSprites in recent years. As the evidence of record shows that the petitioner is still active as a competitor, it is reasonable to conclude that her area of expertise includes both competition and coaching.⁵ The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." The petitioner's initial submission included a January 6, 2002 letter from [REDACTED] Head Coach of the AquaSprites, discussing the petitioner's work for the team. In response to the director's request for evidence, the petitioner submitted correspondence from her agent, [REDACTED] dated February 1, 2003 and June 7, 2006 discussing her plans for work in the United States. The petitioner also submitted a draft contract and itinerary for the period of September 10, 2005 through September 9, 2008. We find that the preceding documentation is adequate to demonstrate the petitioner intends to continue work in her area of expertise in the United States. Therefore, we withdraw the director's finding on this issue.

Nevertheless, review of the record does not establish that the petitioner has distinguished herself to such an extent that she may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of her field. The evidence is not persuasive that the petitioner's achievements set her significantly above almost all others in her field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.

⁴ The petitioner has not established that her coaching achievements meet any of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

⁵ The record includes published material, an athlete's identification badge, photographs, awards, and letters of support from Bruce Wigo and Terry Harper reflecting the petitioner's involvement in various Masters competitions from 2003 to 2005.