

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

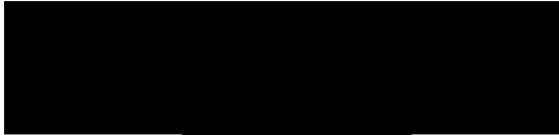
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B2



FILE:

LIN 06 153 51149

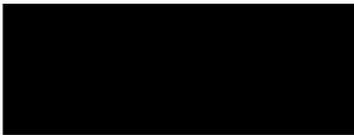
Office: NEBRASKA SERVICE CENTER

Date: OCT 22 2008

IN RE:

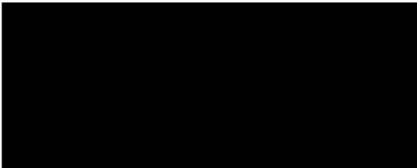
Petitioner:

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:



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.¹ The director determined that 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 found the petitioner had not established that he is one of that small percentage who have risen to the very top of his field of endeavor.

On appeal, counsel argues that the petitioner has sustained national or international acclaim and reached a level of expertise indicating that he is one of that small percentage who have risen to the very top of the field of endeavor.

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 he has sustained national or international acclaim at the very top level.

¹ The petitioner was initially represented by attorney [REDACTED]. In this decision, the term "previous counsel" shall refer to [REDACTED].

This petition, filed on April 21, 2006, seeks to classify the petitioner as an alien with extraordinary ability in taekwondo. At the time of filing, the petitioner was working as an instructor for Pil-Sung Inc., Lake Worth, Florida. In the petitioner's appellate brief, counsel states: "[The petitioner] is employed as a Taekwondo instructor and coach in the United States. Also, he continues to excel through his own athletic pursuits, through consistent promotion in black belt levels, referee levels, and athletic competitions."

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). On appeal, counsel argues that the petitioner's coaching of "an Olympic Gold Medalist through the Athens Olympics in 2004" is evidence of a one-time achievement that satisfies the regulation at 8 C.F.R. § 204.5(h)(3). The petitioner submitted an undated declaration from [REDACTED] 2004 Olympic gold medalist in taekwondo for South Korea, stating:

I hereby testify that under the tutelage of [the petitioner], I have successfully competed for Olympic Game [sic] at Athens, Greece in 2004 and won Gold Medal in Taekwondo.

[The petitioner's] smooth and confident approach to leading Martial Arts has allowed me to train with confidence under him through my Gold Medal at Olympic Game.

The Olympic gold medal was awarded to [REDACTED] than to the petitioner. As such, the Olympic medal won by [REDACTED] demonstrates his receipt of a major, internationally recognized award for his athleticism. As the regulation at 8 C.F.R. § 204.5(h)(3) specifically defines a one-time achievement as a major, internationally recognized award and the petitioner himself received no such award, we cannot conclude that he satisfies the regulation based on his coaching. The regulation at 8 C.F.R. § 204.5(h)(3) is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. The House Report specifically cited to the Nobel Prize as an example of a one-time achievement. In this case, there is no evidence showing that the petitioner is the recipient of a major, internationally recognized award. Further, even if we were to consider coaching an Olympic medalist as evidence of a one-time achievement, there is no evidence indicating that the petitioner accompanied [REDACTED] to the 2004 Olympics in Athens as his primary coach, that the petitioner was named as a Korean Olympic team coach, or the specific dates he coached [REDACTED] prior to the 2004 Olympics. Without substantive evidence showing that the petitioner was [REDACTED] primary coach during his training and preparation for the 2004 Olympics, we cannot conclude that [REDACTED] gold medal was attributable to the petitioner's coaching.

Barring the alien's receipt of a major, internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) 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.²

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 a Certificate of Merit stating: “[The petitioner] has been awarded this citation for his/her excellent sportsmanship at the 2nd anniversary of the treaty of amity between Korea and China Taekwondo Championships, Beijing, China 2004.” There is no evidence showing that this citation is a nationally or internationally recognized award for excellence in taekwondo rather than simply an acknowledgment of the petitioner’s participation and sportsmanship at the event.

The petitioner submitted two Certificates of Merit for achieving first place in the “Poomsae (Form)” and “Weapon” categories at the “6th Korean National Taekwondo Bong (Staff) Championships held by Korean Taekwondo Art of Staff Association” in 2004. There is no evidence demonstrating the significance and magnitude of this competition.

The petitioner submitted a Certificate of Merit issued by the Mayor of Siheung City “for his outstanding performance at the [redacted] Mayor Cup Taekwondo for Life Championships” and “International Demonstrations Competition” held by the Community Sports Committee of Siheung City. There is no evidence showing that this award reflects national or international recognition rather than local recognition.

The petitioner also submitted citations for dedicated service, letters of commendation, certificates of appreciation, and certificates of participation, but there is no evidence showing that they constitute nationally or internationally recognized prizes or awards for excellence in taekwondo.

With regard to the preceding honors and awards, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that they be nationally or internationally *recognized* and it is the petitioner’s burden to establish every element of this regulatory criterion. In this case, the petitioner has not submitted evidence demonstrating that his awards commanded significant recognition beyond the presenting organizations. For instance, there is no evidence showing that the awards he received were announced in national sports media or in some other manner consistent with national or international acclaim. Further, 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 translations accompanying the petitioner’s honors and awards were not certified as required by the regulation.

Counsel asserts that the petitioner meets this regulatory criterion through his coaching of a 2004 Olympic gold medalist. As discussed, there is no evidence specifying the dates when the petitioner served as [redacted] primary coach or showing that the petitioner accompanied him to the 2004 Olympics.

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

Without further documentation establishing the nature of his coaching role for ██████████, we cannot conclude that ██████████ Olympic gold medal was attributable to the petitioner's coaching.

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. Further, 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 a certificate from the Korea Taekwondo Association indicating that he attained the rank of 8th Dan in 2004. The petitioner also submitted a certificate from the World Taekwondo Headquarters reflecting that he attained the rank of 7th Dan in 2001.³ While the petitioner has met the appropriate age and testing requirements to obtain these rankings, there is no evidence showing that either of the preceding organizations require a 7th or 8th Dan to become a member.⁴ On appeal, the petitioner submits the promotion test regulations as posted on the World Taekwondo Headquarters internet site.

"Article 7: Test Performance" states:

1. Each test will consist of practical testing and theoretical study and it will be carried out in the following ways:

* * *

(2) Over 6th Dan promotion testing shall conduct the practical and theoretical test. However, for a [sic] applicants staying abroad, practical test shall be conducted and recommended by the instructor who is recognized by the Kikkiwon or Member National Association. However one should submit a treatise not less than 10 page of A4 size . . . paper in Korean, English, French, German or Spanish with the application forms. Subject will be determined separately.

* * *

³ The petitioner attained his 7th Dan from the World Taekwondo Headquarters in 2001 at the age of 41.

⁴ For example, there is no evidence showing that lower Dan rankings are excluded from membership in the Korea Taekwondo Association and the World Taekwondo Federation.

4. Applicants worldwide for 8th and 9th Dan promotion should take physical performance test at the Kukkiwon.

“Article 8: Time & Age Limits for Poom or Dan Promotion” states:

Poom/Dan	Minimum Time Required for Promotion	Age Limits for Promotion
	* * *	
6 th to 7 th Dan	6 year	36 years and above
7 th to 8 th Dan	8 year	44 years and above
	* * *	

Remarks:

(1) All applicants should have passed the minimum time and age required for promotion.

“Article 10: Subjects of Promotion Test” states:

1. Test of Techniques

- (1) Poomsae (Forms)
- (2) Kyorugi (Sparring)
- (3) Kyokpa (Power check)
- (4) Special technique

2. Test of theoretical study (over 4th Dan applicant)

- (1) Written examination
- (2) Thesis

We cannot conclude that satisfying practical testing requirements, theoretical testing requirements, and minimum time and age of promotion requirements are tantamount to outstanding achievements.

On appeal, counsel asserts that the petitioner’s referee qualification certificates also relate to this regulatory criterion. The petitioner submitted the following:

- 1. Certificate of Qualification from the Korea Taekwondo Association stating that the petitioner passed the test for a Level Three Referee (1990).
- 2. Certificate of Qualification from the Korea Taekwondo Association stating that the petitioner passed the “level one judgeship qualification test” (2002).
- 3. Certificate of Hapkido Referee from the World Hapkido Martial Arts Federation stating that the petitioner “qualified as a Hapkido referee at the 3 class training workshop and the qualifying examination” (2004).

4. 3rd Class Certificate from the World Taekwondo Headquarters stating that the petitioner “has attained the qualification in the International Referee qualification test” (2005).
5. Graduation Certificate from the World Taekwondo Headquarters stating that the petitioner “participated in the International Referee Seminar conducted . . . 29 – 30 Oct. 2005.”
6. Certificate of Participation, Graduation Certificate, and International Referee Certificate reflecting that the petitioner successfully completed the 48th International Referee Seminar conducted by the World Taekwondo Federation (2005).

The English language translations accompanying items 1 and 2 were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, with regard to items 1 through 6, there is no evidence showing that earning these qualifications is tantamount to “membership in associations in the field . . . which require **outstanding achievements of their members.**” The record does not include evidence showing the requirements that must be satisfied to receive items 1 through 5. With regard to the requirements for the three certificates identified at item 6, the petitioner’s appellate submission includes information printed from the World Taekwondo Federation’s internet site stating:

How can one become an International Referee in Taekwondo?

The WTF has conducted International Referee Seminar to foster International Referees to officiate international Taekwondo competitions since 1974. The WTF grants WTF International Referee qualification to those who have passed the prescribed examination at an International Referee Seminar conducted by the WTF and have registered with the WTF.

Qualification for application to attend the IR Seminar is as follows:

- 1) 25 years old or older
- 2) Holder of Kukkiwon/WTF certificate of 4th Dan or higher
- 3) Holder of national referee certificate issued by the pertinent member national association of the WTF
- 4) One recommended by the pertinent member national association of the WTF
- 5) One who has command of the oral and written English language
- 6) One who has no physical defect and chronic disease

After becoming a WTF-registered International Referee, one should attend International Referee Refresher Course conducted by the WTF, especially after amendment to the Competition Rules is made.

We cannot conclude that the preceding requirements for applying to attend the international referee seminar are tantamount to outstanding achievements.

Counsel also argues that the petitioner’s Certificates of Participation from “World Cup Taekwondo 2002” and the “Seoul Cup International Taekwondo Championships 2002” relate to this regulatory criterion and should be treated as comparable evidence pursuant to 8 C.F.R. § 204.5(h)(4). With regard to these certificates, counsel states: “Certainly, one must have ‘outstanding achievements’ in order to *compete* at an international

competition.” [Emphasis added.] The record, however, includes no supporting evidence showing that the petitioner competed at these events. For example, the petitioner’s Certificate of Participation from “World Cup Taekwondo 2002” identifies him as a “Referee” rather than as a competitor. Participation and achievement as a competitor is far more relevant to the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i), but there is no evidence showing that the petitioner won a prize or award in competition at the preceding events. Nevertheless, the petitioner has not established that his receipt of Certificates of Participation is tantamount to “membership in associations in the field . . . which require outstanding achievements of their members.” Further, there is no evidence showing that the petitioner’s receipt of these participation certificates constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of his field. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

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

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that “a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). For example, judging a national competition for top athletes is of far greater probative value than judging a regional youth competition.

In addition to the referee qualification certificates and the certificates of participation discussed under the preceding regulatory criterion, the petitioner submitted the following:

1. Experience Certificate stating that the petitioner served as a “Certified Referee” for the Kyung Gi Do Taekwondo Association from 1994 – 1997.
2. Letter of Appointment naming the petitioner Vice Chairman of the Judging Committee of the Kyung Gi Do Taekwondo Association (1997).
3. Letter of Appointment naming the petitioner Vice Chairman of the Judging Committee of the Kyung Gi Do Taekwondo Association (1998).
4. Letter of Appointment naming the petitioner “Certified Referee” of the Kyung Gi Do Taekwondo Association (1999).

5. "Certificate of Entrusting" identifying the petitioner as a juror of the Hanmi Gymnasium (2004)
6. Certificate of Qualification from the Korea Taekwondo Association stating that the petitioner passed the "level two judgeship qualification test" (1996).

The English language translations accompanying the preceding documents were not certified as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, these documents include no substantive information regarding the petitioner's activities and those he judged. The petitioner also submitted letters of recommendation from representatives of the Siheung City Taekwondo Association, Korea Taekwondo Association, Korean Taekwondo Art of Staff and Sword Association, and World Hapkido Martial Arts Federation. These individuals state that the petitioner refereed numerous taekwondo competitions, but the only competition they specifically identify is the World Taekwondo Grand Festival in Seoul, Korea in 2005. With regard to the preceding letters of recommendation and certificates stating that the petitioner has served as a "referee," the record lacks official competition rules showing that serving as a referee is tantamount to participation as a *judge* of the work of others.⁵ While the petitioner qualified as a level three referee⁶ and an international referee, the documentation specific to his qualifications as a *judge* from the Korea Taekwondo Association indicates that he passed the "level one judgeship qualification test" in 2002 and the "level two judgeship qualification test" in 1996. With regard to these judgeship levels, the petitioner has not established their standing in comparison to "Top Grade Judge" of the World Taekwondo Federation, a position held by who provided a letter of recommendation.

Aside from the certificate identifying the petitioner as a referee at the "World Cup Taekwondo 2002," the recommendation letters stating that he participated in the World Taekwondo Grand Festival in Seoul, Korea in 2005, and a photograph showing the petitioner refereeing at the 17th President of Kyunkido Taekwondo Association Cup in 1995, there is no further evidence specifying the other competitions in which the petitioner has participated as a judge or referee. With regard to the preceding taekwondo competitions that were identified, there is no supporting evidence establishing the level of acclaim associated with serving as a judge or referee at these events and the means by which the petitioner was selected to participate. Further, there is no evidence showing the names of the athletes evaluated by the petitioner, their level of expertise, the specific competitive categories he judged, and the significance and magnitude of the competitions. Without evidence showing, for example, that the petitioner's activities involved judging top athletes in national level competition or were otherwise consistent with sustained national or international acclaim at the very top level of his sport, we cannot conclude that he meets this criterion.

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

We acknowledge the petitioner's submission of recommendation letters from the representatives of the Siheung City Taekwondo Association, Korea Taekwondo Association, Korean Taekwondo Art of Staff and Sword Association, and World Hapkido Martial Arts Federation. With regard to the petitioner's athletic and

⁵ The petitioner's appellate submission includes information printed from reference.com indicating that judges and referees perform different roles in taekwondo competition.

⁶ For example, the petitioner submitted a Certificate of Qualification from the Korea Taekwondo Association stating that he passed the test for a Level Three Referee in 1990.

coaching achievements, the letters of support do not specify exactly what the petitioner's original contributions in taekwondo have been, nor is there an explanation indicating how any such contributions were of major significance to his sport. 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. While the petitioner is described as a talented competitor and instructor, there is nothing in the recommendation letters to suggest that he has developed original training techniques, as opposed to methodologies passed down from his own tutelage in the sport. Further, even if the techniques taught by the petitioner were found to be original, there is nothing to demonstrate that these techniques have had major significance in taekwondo. For example, there is no evidence to indicate that the petitioner's techniques have been widely adopted throughout his sport or have significantly influenced other taekwondo competitors and instructors.

In this case, the letters of support submitted by the petitioner are not sufficient to meet this criterion. These letters, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 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 of support from the petitioner's personal contacts 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. Thus, the content of the writers' 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 that one would expect of an individual who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his sport, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

In this case, the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

The record reflects that CIS approved two P-1 nonimmigrant visa petitions filed on behalf of the petitioner to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. These prior approvals do not preclude CIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after CIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because CIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude CIS from denying an extension of the original visa based on a reassessment of the alien'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 has approved a nonimmigrant petition 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).

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.