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FILE:

EAC 05 249 51497

Office: TEXAS SERVICE CENTER Date:

OCT 28 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:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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

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

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

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

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

Citizenship and Immigration Services (CIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (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.

This petition, filed on March 30, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a "Cossack Dzhigit Rider." The petitioner submitted a letter from [REDACTED], Production Manager, Ringling Brothers and Barnum & Bailey, stating: "[The petitioner] is presently working as a performer for the 2006-2007 tour of the 136<sup>th</sup> edition of Ringling Brothers and Barnum & Bailey. He is under a two-year contract, which began January 4, 2006 and will end approximately November 2007, with the Kassaev Riders and is earning \$650 per week." The petitioner also submitted evidence showing that he won several awards

in acrobatics competition in Azerbaijan and Russia from 1982 to 1997. On appeal, the petitioner submits a letter of support from the Azerbaijan Gymnastics Federation stating that he trained with the federation from 1980 to 1998 and that he was a member of the Republic National Team from 1992 to 1998.

In the seven years preceding the petition's filing date, there is no evidence indicating that the petitioner has remained active in national or international acrobatic competition. Further, according to Part 6 of the Form I-140 petition, "Basic information about the proposed employment," letters from representatives of Ringling Brothers and Barnum & Bailey, and his 2006-2007 employment contract, the petitioner (age 31 at the time of filing) is seeking work in the United States as a horse rider and circus performer rather than as a competitive athlete. The statute and regulations require the petitioner's national or international acclaim to be *sustained* and that he seeks to continue work in his area of expertise in the United States. See sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a competitive acrobat and a Cossack Dzhigit Rider may both employ acrobatic techniques (such as performing somersaults), we cannot conclude that competitive athletics and performing horse riding stunts for a circus are the same area of expertise. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

*Id.* at 918. The court noted a consistent history in this area. In the present matter, there is no evidence showing that the petitioner has sustained national or international acclaim through competitive acrobatic achievements in the seven years preceding the petition's filing date. Further, the evidence is clear that the petitioner intends to work as Cossack Dzhigit Rider for Ringling Brothers and Barnum & Bailey. While the petitioner's accomplishments as a competitive athlete are not completely irrelevant and will be given some consideration, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through his achievements as a horse rider and circus performer, his area of intended employment in the United States.

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). In response to the director's request for evidence, the petitioner submitted a May 21, 1994 certificate from the President of the International Olympic Committee certifying that he "has taken part in" the "Championship of the Azerbaijan State Physical Culture and Sport Academy on Sport Acrobatic." The petitioner argues that this certificate is evidence of a one-time achievement that satisfies the regulation at 8 C.F.R. § 204.5(h)(3). There is no evidence showing that this certificate is a major, internationally recognized award, rather than simply an acknowledgment of petitioner's participation in the event.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.A.N. 6710, 1990 WL 200418 at \*6739. Given that the House Report specifically cited to the Nobel Prize as an example of a

one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). Significantly, even a lesser internationally recognized award could serve to meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field.

In addressing the May 21, 1994 certificate, the director's decision stated that "the certificate does not indicate that the [petitioner] won any award. Rather, the certificate merely states that the [petitioner] took part in the competition. As such, the certificate is not evidence of a . . . major, internationally recognized award." We concur with the director's finding.

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.<sup>1</sup>

*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 the petitioner meets this regulatory criterion.

As discussed, the petitioner submitted evidence showing that he won several awards in acrobatics competition from 1982 to 1997. Many of these awards were received in junior level competition. For example, the petitioner submitted a September 1987 award diploma stating that he won first place in the "Championship of Russian Council Department Physical Culture Sports Society of the Trade Union's [sic] on sports acrobatics among *youths and girls not older than 1969 birth* in the . . . category man's [sic] couples exercises." [Emphasis added.] The petitioner also submitted an award diploma dated May 24, 1986 stating that he won second place in the "Championship of Soviet Army and Navy on sports acrobatics in the Man's [sic] couples exercises among *youths*." [Emphasis added.] In response to the director's request for evidence, the petitioner

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

submitted an April 1996 award diploma stating that he won second place in the men's pair exercises at the "Moscow *Junior Olympic Games*." [Emphasis added.]

The petitioner's response also included a July 25, 2006 letter from [REDACTED], Coach of the Azerbaijan National Junior Team, stating: "From 1985 till 1993 [the petitioner] was a member of Junior National Acrobatics Team of Republic." With regard to acrobatic awards won by the petitioner in junior level competition, we do not find that such awards indicate 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). CIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>2</sup> Likewise, it does not follow that an athlete who has had success in national or international at the junior level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Even if the petitioner were to establish that some of his awards were not limited to junior competition, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that his awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence establishing the magnitude of the competitions in which the petitioner received awards or evidence demonstrating that they commanded significant recognition beyond the context of the sporting event where they were presented. For instance, there is no evidence showing that the awards received by the petitioner were announced in national sports media or in some other manner consistent with national or international acclaim. With regard to the petitioner's Master of Sport Certificate in Acrobatics (1989), the petitioner has not submitted evidence of its selection requirements or national significance. Further, there is no evidence showing the petitioner's receipt of nationally or internationally recognized awards in the eight years preceding the petition's filing date. Thus, the petitioner has not demonstrated that his national or international acclaim as a competitive athlete has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Finally, there is no evidence showing that the petitioner has received any nationally or internationally recognized awards for horse riding or circus performance, the petitioner's current field of endeavor.

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

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<sup>2</sup> While we acknowledge that a district court's decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine's ability with that of all the hockey players at all levels of play; but rather, Racine's ability as a professional hockey player within the NHL. This interpretation is consistent with at least one other court in this district, *Grimson v. INS*, No. 93 C 3354, (N.D. Ill. September 9, 1993), and the definition of the term 8 C.F.R. § 204.5(h)(2), and the discussion set forth in the preamble at 56 Fed. Reg. 60898-99.

Although the present case arose within the jurisdiction of another federal judicial district and circuit, the court's reasoning indicates that CIS's interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable.

*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 initially submitted his employee identification for Ringling Brothers and Barnum & Bailey, his credential for the Russian State Circus Company (1995), and his Master of Sport Certificate in Acrobatics (1989). We do not find that the petitioner's employment credentials and Master of Sport Certificate are tantamount to memberships in associations requiring outstanding achievement. Further, there is no evidence demonstrating that obtaining these documents required outstanding achievements as evaluated by national or international experts in the petitioner's field or an allied one.

The petitioner also submitted a letter of recommendation from the "Baku Main Educational Complex, Children's Youth School of the Grammar School, Specialized on Olympic Base," Azerbaijan, stating that he was a member of the board of judges in internal competitions of the Republic. There is no evidence (such as membership bylaws or official admission requirements) showing that this board required outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. This evidence will be further addressed under the "judge of the work of others" criterion at 8 C.F.R. § 204.5(h)(3)(iv).

In response to the director's request for evidence, the petitioner submitted a letter from the "Baku Main Board of Education, Children's and Youth Sport School of the Olympic Reserve, Specialized in Gymnastics" stating that he has been a member of the "RS DFSO 'Trudovye Reseruy' – an All-Union voluntary sports association (DSO), which unites students, sportsmen and vocation training workers" since 1986. The petitioner also submitted information about the association printed from <http://www.ezi.ru/1/80/792.htm>, but there is no evidence indicating that it requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

The petitioner's response also included a September 16, 2004 letter from the Russian State Circus Company stating that it "has more than 8,000 employees, including 3,000 in the circus conveyor, who work in 830 acts and 48 rides, most of which are international rank." The evidence submitted by the petitioner does not establish that the company requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one.

As discussed, the petitioner also submitted a July 25, 2006 letter from \_\_\_\_\_ Coach of the Azerbaijan National Junior Team, stating: "From 1985 till 1993 [the petitioner] was a member of Junior

National Acrobatics Team of Republic.” Membership on an Olympic Team or a major national team such as a World Cup soccer team can serve to meet this criterion. Such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner’s burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national “team” is sufficiently exclusive.

The petitioner has not established that his membership on Azerbaijan’s *Junior* National Acrobatics Team meets this regulatory criterion. Membership on this team is restricted to youth competitors rather than limited to those at the very top of the field who have shown outstanding achievements. As discussed, CIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. at 953, 954; 56 Fed. Reg. at 60899. As such, the petitioner cannot establish that he meets this criterion based on his achievements as a junior athlete. Further, we cannot consider a 1985 – 1993 athletic team membership to be evidence of the petitioner’s sustained national acclaim, as this membership terminated more than a decade before the petition’s filing date. The statute and regulations require the petitioner to demonstrate that his national or international acclaim has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Finally, the athletic memberships claimed by the petitioner are unrelated to his work as a horse riding circus performer, his intended occupation in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5).

We concur with the director’s analysis indicating that the preceding evidence could not serve to meet this regulatory criterion. The petitioner does not specifically challenge the director’s findings on appeal. Rather, the petitioner states that “being a leading acrobat of the Azerbaijan Gymnastic Federation” and a member of the “Nougzarov horse riding show” render him eligible under this criterion. The record, however, does not include evidence showing that these organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field or an allied one.

In light of the above, the petitioner has not established that he 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 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.<sup>3</sup>

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<sup>3</sup> 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 petitioner submitted articles about his horse riding troupe and the Ringling Brothers and Barnum & Bailey circus in the *Abilene Reporter-News*, *The Saginaw News*, *The Sedalia Democrat*, *Asheville Citizen-Times*, *Pelican Press*, *Cannstatter Zeitung*, *The Press of Atlantic City*, *Cape May County Gazette*, *Zerkalo*, *The Bright Side* newspaper, *Cape May County Herald*, *Arizona Tribune*, *Spectacle*, *New York Post*, *Orange County Weekly*, *The Sun Herald*, *New York Times*, *Manhattan Living Magazine*, *Pasadena Star-News*, *Inside Bay Area* newspaper, *Greeley Tribune*, *New York Daily News*, *The Patriot News*, and the *Arizona Daily Star*. None of these articles were about the petitioner. The plain language of this regulatory criterion requires that the published material be “about the alien.” Further, many of the preceding publications are local newspapers rather than major media.

The director’s decision stated that the local articles and the articles that did not mention the petitioner by name could not serve to meet this regulatory criterion. The petitioner does not specifically challenge the director’s findings on appeal and we concur with the director that 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 acrobats is of far greater probative value than judging an age-group competition at the local level.

As discussed, the petitioner submitted a letter of recommendation from the “Baku Main Educational Complex, Children’s Youth School of the Grammar School, Specialized on Olympic Base,” Azerbaijan, stating that he was a member of the board of judges in internal competitions of the Republic. The petitioner also submitted an undated recommendation letter from E.A. Narimanov, President of Acrobatic Gymnastics Technical Committee, Azerbaijan Gymnastics Federation, stating: “During study in the Azerbaijan State Academy of Physical Training and Sports, [the petitioner] has begun activity of the judge. [The petitioner] at competitions spent every year among students of the first course, in Republican championship, championship of city Baku among teenagers has proved to be as the active judge.” The plain language of this regulatory criterion requires “[e]vidence of the alien’s participation . . . as a judge of the work of others in the same or an allied field of specification.” We cannot conclude that judging students, who have not yet begun competing at the very top level of the sport, meets this requirement.

In response to the director's request for evidence, the petitioner submitted an additional letter from E.A. Narimanov indicating that the petitioner judged ten local and regional competitions from 1990 to 1992.<sup>4</sup> In addressing the preceding evidence, the director's decision stated:

According to the evidence, the [petitioner] began working as a judge while he was a student. According to Mr. [REDACTED], the competitions which the beneficiary judged took place while the [petitioner] was between 15 and 17 years of age. Thus, on its face, such evidence would suggest that the [petitioner] was judging other students. However, while identifying the events which the [petitioner] judged, the petitioner provided no evidence describing the competitors, their ages, or their level of proficiency. Therefore, the evidence does not demonstrate that the [petitioner] has ever judged the work of other professional acrobats. . . . In order to satisfy this criterion, the petitioner would have to provide evidence demonstrating that [he] has a history of judging professional adult acrobats, at least at a level of proficiency comparable to his own. Again, the evidence provided does not satisfy this criterion.

On appeal, the petitioner submits a letter from E. [REDACTED], Vice President, Azerbaijan Gymnastics Federation, stating that competitors in the ten local and regional competitions judged by the petitioner from 1990 to 1992 included "masters of sport." There is no supporting evidence establishing the level of acclaim associated with serving as a judge at the preceding events. Nor is there evidence showing the names of the athletes evaluated by the petitioner, the specific acrobatic events he judged at the ten competitions, 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. Finally, there is no evidence showing that the petitioner has judged any competitions in his field since 1992 at the age of 17. As such, the petitioner has not demonstrated that his national or international acclaim has been sustained. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

In light of the above, the petitioner has not established 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.*

The petitioner did not address this regulatory criterion initially or in response to the director's request for evidence. On appeal, the petitioner asserts that the letters of recommendation submitted by those with whom he has worked and by representatives of organizations such as the Azerbaijan Gymnastics Federation, the Baku Main Board of Education Specialized Gymnastic Children's and Youth Sport School of Olympic Reserve, the Russian State Circus Company, and Field Entertainment, Inc. (Ringling Brothers and Barnum & Bailey) meet this criterion. We acknowledge the reference letters praising the petitioner's performance skills and athletic qualities. Skill and athletic ability in one's field, however, are not necessarily indicative of contributions of major significance.

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<sup>4</sup> The record reflects that the petitioner was born on March 14, 1975. We cannot ignore that the petitioner judged these competitions when he was age 15 to 17 years old.

The letter from [REDACTED] states that “[o]ther acrobats of our federation adopted [the petitioner’s] skills and technique of acrobatic performance,” but it does not specify which skills and technique or establish that they were original.

The petitioner’s appellate submission also included a letter from [REDACTED], Head of Human Resources, Russian State Circus Company, stating:

[The petitioner] performed difficult and rare stunts in the show, i.e. thrusts off the ground and getting back into the saddle, thrusts done at the same time as the grasp of the rear arch on the pommel, scissors and picking up different items from the stage on galloping horse from one side of the horse, Ural twirl, shoulder stands and thrusts to the rhythm.

There is no evidence showing that the preceding stunts were the petitioner’s own original techniques, as opposed to those he learned from other riders with whom he trained or performed.

With regard to the petitioner’s achievements as an athlete and a circus performer, the letters of recommendation do not specify exactly what the petitioner’s original athletic and artistic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field. 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. Even if the petitioner’s acrobatic and horse riding stunt techniques were found to be original, there is nothing to demonstrate that his particular methods and techniques were of major significance to his field. For example, there is no evidence showing the extent of the petitioner’s influence on other acrobats or circus riders. Nor is there evidence showing that circus horse riding or the sport of acrobatics have somehow changed as a result of his accomplishments.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (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 from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. Thus, the content of the experts’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of an athlete or performer who has sustained national or international acclaim. Without extensive documentation showing that the petitioner’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

The petitioner submitted photographs from his circus performances and athletic competitions. The plain language of this regulatory criterion, however, indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists or athletes such as the petitioner. The petitioner seeks to continue his work in the United States as performing artist for a circus. It is inherent to his occupation to perform. Not every circus performance is an artistic exhibition designed to showcase the performer's art.

With regard to the petitioner's circus performances, the director's decision stated:

None of the events identified were orchestrated specifically to exhibit the work of the [petitioner]. Further, none of the evidence identifies the [petitioner] by name. Rather, segments of the Ringling Brothers Circus involve the performance of the Cossack Troupe within the Ringling Brothers, Barnum and Bailey Circus. Therefore, according to the evidence, the petitioner has not satisfied this criterion.

We concur with the director that 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.*

The petitioner submitted evidence that he competed and judged for the Azerbaijan Gymnastics Federation, but there is no evidence showing that his role for this organization was leading or critical. The petitioner also submitted evidence of his employment with the Russian State Circus Company as a member of the Dzhigits of Azerbaijan and with Ringling Brothers and Barnum & Bailey as a member of the Igor Kassaev Riders. The letters of support from representatives of these distinguished circuses do not indicate that his role for the circuses was leading or critical. The petitioner's evidence fails to demonstrate how the petitioner's role differentiated him from the other performers in his riding troupes, let alone the other entertainers who performed different circus acts. For example, there is no evidence showing that the petitioner's name frequently received top billing in the circus or that the popularity of his riding troupes increased when he was known to be performing. Thus, the petitioner has not established that he was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

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

As discussed, the petitioner submitted a letter from \_\_\_\_\_ of Ringling Brothers and Barnum & Bailey stating that he earns "\$650 per week." The plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary "in relation to others in the field." The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. There is no indication that the petitioner has earned a level of compensation that places him

among the highest paid circus performers in the United States or any other country. As such, the petitioner has not established that he meets this criterion.

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

The record reflects that CIS approved at least three P-1 nonimmigrant visa petitions filed on behalf of the petitioner to perform as a member of an internationally recognized entertainment group. 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 petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director 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.