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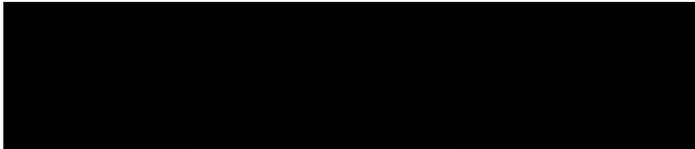
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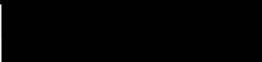
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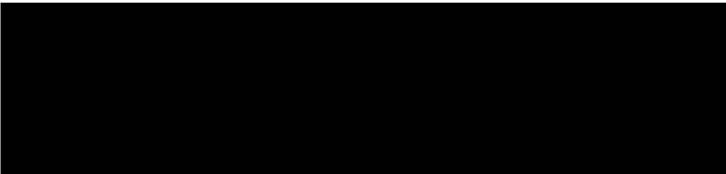
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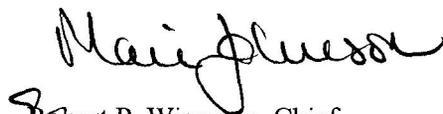
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

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, Vermont 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 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, counsel states: “[The petitioner] has sustained international acclaim in the field of athletics, more specifically in the field of foot and ski orienteering, which serves as a foundation for his current occupation as Head Trainer for the internationally renowned Radu Physical Culture” Counsel argues that the petitioner 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 September 12, 2005, seeks to classify the petitioner as an alien with extraordinary ability as a “physical training coach.” The petitioner submitted a September 2, 2005 letter from [REDACTED], Creator and Founder, Radu Physical Culture (RPC), New York, stating that the petitioner has

worked for RPC as Head Physical Trainer since December 2002. The petitioner also submitted a September 20, 2002 letter from the Romanian Orienteering Federation stating that he won several national and international foot and ski orienteering competitions in the early 1990s.

In the decade preceding the petition's filing date, there is no evidence indicating that the petitioner remained active in national or international athletic competition. Further, according to Part 6 of the Form I-140 petition, "Basic information about the proposed employment," and the September 2, 2005 letter from Radu Teodorescu, the petitioner (age 31 at the time of filing) is seeking work in the United States as a physical training coach rather than as a competitive orienteering 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 an orienteering athlete and a physical training coach may share knowledge of physical fitness, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. 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 orienteering achievements in the decade preceding the petition's filing date. Further, the evidence is clear that the petitioner intends to work as Head Physical Trainer for RPC. While the petitioner's competitive accomplishments as a foot and ski orienteer 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 physical training coach.

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 a such an 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.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

As discussed previously, the petitioner submitted a September 20, 2002 letter from the Romanian Orienteering Federation stating that he won several national and international foot and ski orienteering championships in the early 1990s. The petitioner also submitted photocopies of his gold, silver, and bronze medals from these competitions. The record also includes the petitioner's award diplomas which provide further information regarding the preceding orienteering championships. These award diplomas reflect that the petitioner achieved the following:

1. First place in the Men's 21 year old relay at the [REDACTED] (1994)
2. First place in the Men's 15-18 year old relay at the [REDACTED] (1992)
3. First place in the Men's 20 year old [REDACTED] (1994)
4. First place in the Men's 20 year old [REDACTED] (1993)
5. First place in the Men's 20 year old [REDACTED] (1993)
6. First place in the Men's 15-18 year relay at the [REDACTED] (1991)
7. First place "[REDACTED]" from the "[REDACTED]" [REDACTED] (1991)

The latter trophy, item 7, reflects local recognition rather than national or international recognition. Further, with regard to the awards won by the petitioner at the age-group level (items 1-7), 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 60899.¹ Likewise, it does not follow that an orienteering athlete who has had success in national or international competition limited to individuals age 21 and under 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." Finally, there is no evidence showing the petitioner's receipt of nationally or internationally recognized orienteering prizes or awards in the decade preceding the petition's filing date. Thus, the petitioner has not demonstrated that his national or international acclaim as an orienteering 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).

¹ 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.

On appeal, the petitioner submits an October 21, 2006 letter from [REDACTED], Delaware Valley Orienteering Association (DVOA), stating that the petitioner “won 1st place at the [REDACTED] [REDACTED] and 2nd place at the [REDACTED].” The petitioner also submitted DVOA competition results and rankings from 2006 and a copy of a 2006 third place DVOA medal. The petitioner competed in the preceding competitions subsequent to the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner’s 2006 awards and competitive results in this proceeding. Nevertheless, the preceding orienteering awards reflect regional recognition rather than national or international recognition.

As discussed previously, even if the petitioner were to establish that he earned national or international recognition at the very top of the orienteering field, ultimately he must satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(i) through his achievements as a physical training coach. As such, the petitioner’s national and international awards demonstrating his past success as a competitive orienteer in the early 1990s cannot serve to meet this regulatory criterion. Nationally or internationally recognized prizes or awards won by competitive athletes coached primarily by the petitioner can be considered for this criterion. The record, however, does not include such evidence.

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.

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 submitted a May 17, 2006 letter from [REDACTED], President, Romanian Orienteering Federation, stating:

This is to confirm that [the petitioner] was selected to become a member of the Romanian Orienteering Team for six consecutive years, between 1992 – 1998, the premier organization in the field of orienteering in Romania. . . . Members are chosen from the top three athletes for each age category, who compete regionally and nationally for the privilege of representing Romania internationally.

[REDACTED] letter indicates that Romanian Orienteering team members are chosen from “each age category” rather than limited to those at the very top of the field who have shown outstanding achievements.² As

² The petitioner became a Romanian Orienteering Team member at age 18 and the record reflects that his national victories were limited to age group categories of 21 and under.

discussed previously, 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.³ Further, we cannot consider a 1992 – 1998 athletic team membership to be evidence of the petitioner’s sustained national acclaim, as this membership terminated seven years 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, there is no evidence relating to this criterion involving coaching or personal training, the petitioner’s 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).

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.⁴

The petitioner submitted orienteering results from the 1980s and 1990s published in the local newspaper *Maramures' Voice*. The plain language of this regulatory criterion requires that the published material be “about the alien . . . relating to the alien’s work in the field for which classification is sought.” None of this published material is primarily about the petitioner and it does not relate to his work as a physical training coach. Further, the author of the material was not provided and there is no evidence (such as circulation statistics) showing that *Maramures' Voice* qualifies as a professional or major trade publication or some other form of major media.

The petitioner submitted a 2005 article in *Seventeen* entitled “Get a flat belly fast! Get your heart pumping with these moves from celeb trainer [REDACTED].” This didactic article provides instruction for performing exercises developed by [REDACTED] and is not primarily about the petitioner. The petitioner also submitted a 2003 article in *The New York Sun* entitled “Redefining Hard Core: If You’re Still Standing After [REDACTED]s, You Cheated.” This article is primarily about [REDACTED] and his exercise program

³ For example, according to the September 20, 2002 letter from the Romanian Orienteering Federation, the petitioner placed 7th in the “Ski Orienteering World Championships for juniors” [emphasis added] in 1994.

⁴ 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.

rather than the petitioner and his work. Further, there is no evidence showing that the preceding publications qualify as professional or major trade publications or some other form of major media.

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 submitted several letters of recommendation in support of the petition.

A September 9, 2005 letter from [REDACTED], Chairman of the Ski Orienteering Committee of the United States Orienteering Federation (USOF), states:

[The petitioner] has reached the top of his field in two forms of the sport, foot orienteering and ski orienteering, having won the National Championship in Romania several times in each discipline. In addition, he has won World Championships and other major international events in both. It is extremely unusual for an athlete to excel in two disciplines; most athletes only reach the top level of international competition by specializing in one. [The petitioner's] outstanding achievements in two disciplines demonstrate his extraordinary ability in our field.

The September 20, 2002 letter from the Romanian Orienteering Federation states that the petitioner placed 7th in the "Ski Orienteering World Championships for juniors," but there is no evidence that he "won World Championships" as claimed in [REDACTED] letter. In the same manner as [REDACTED]'s letter, a July 21, 2005 letter from [REDACTED], Board Member, USOF, mentions the petitioner's "national and international awards" as an orienteering athlete. The petitioner's orienteering awards, however, have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance in the field, CIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Further, as discussed previously, the petitioner's competitive achievements as an orienteering athlete do not relate to 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).

[REDACTED], Editor-in-Chief, *Seventeen* magazine, states:

[The petitioner] can successfully demonstrate aerobics and weight training as good therapy to develop muscle groups, and to physically maintain the body. His ability to integrate dietary, exercise, and sports as well as other movements as a means to improving strength and endurance is what has solidified his relationship with *Seventeen*.

His monthly contributions to our health and fitness section—the most popular editorial section of our successful magazine brand—are critical to our publication's future. I have relied on [the petitioner's] expertise in creating our 2006 Fitness Challenge, the newest chapter in our wildly successful

franchise (over 100,000 young women have signed up to be a part of it). Most recently [the petitioner] also helped us successfully develop a fitness program for the contestants that will appear on our new television show, *Miss Seventeen* (premiering on MTV in the Fall). I'm so proud to work with such an accomplished professional on both of these very important projects.

We acknowledge that the petitioner provided input for *Seventeen's* 2006 Fitness Challenge and MTV's *Miss Seventeen*, but there is no evidence demonstrating that his work was tantamount to original athletic contributions of major significance in the fields of physical training or personal fitness.

[REDACTED], Special Events Director for *Men's Health* magazine, states:

I have been familiar with [the petitioner's] work for some time now, and know him to be a leader in his field. In my role as Special Events Director for the magazine, it is important for me to be able to identify the key players in the physical training field. Our readers rely on our magazine to provide them with up to date advice from the best and the brightest, and [the petitioner] clearly falls into that category.

Our publication recently had the opportunity to send approximately 40 of our top clients to Radu Physical Culture for a two-month "Boot Camp["] program. We had the option of choosing any physical trainer in the country to assist us; we ultimately decided to go with [the petitioner] because he is a truly remarkable and talented trainer, and we knew that we would achieve the best results with him. There are very few trainers in the country who have [the petitioner's] unparalleled ability – he has demonstrated over the years to be a first class trainer.

[The petitioner] has a reputation as a leader in his field – he has upheld that reputation time and again through his invention of novel training techniques and work out programs.

[REDACTED]'s letter does not specifically identify the petitioner's novel training techniques and work out programs or the extent of their national or international acclaim. The evidence submitted by the petitioner does not establish that his novel training techniques and work out programs were original athletic contributions of major significance in his field.

[REDACTED], Executive Account Director, *SELF* magazine, states:

Because one of the main focuses of our magazine is to provide our audience with up-to-date fitness information, it is our business to know those trainers who are on the cutting edge. [The petitioner] has shown us time and again that, drawing on his world championship training and experience in the field of orienteering, he is able to come up with innovative work outs and strategies for improved fitness.

In 2004, our magazine invited [the petitioner] to teach a training class to our employees and clients - - [the petitioner] was selected as the trainer based on his extraordinary ability to demonstrate the key physical and mental components necessary to being fit.

[The petitioner] is one of only a few trainers in the country who has broken out of the mold, and has become known as “the” trainers to work with. He has been at the top of his field for quite some time, and he will remain there for years to come.

The record, however, does not include supporting evidence showing that the petitioner’s innovative work outs and strategies for improved fitness were original athletic contributions of major significance in his field.

[REDACTED], President, [REDACTED], states:

I have been involved in the fitness and physical training field for 20 years. My work has been featured in top magazines such as *Cosmopolitan*, *US Weekly*, *Shape*, *Glamour*, *Allure*, and many well known publications. I authored a recent book, *Body Express Makeover*, which outlines a revolutionary training system. My clients include Meg Ryan, Reese Witherspoon, Christian Slater, and Tobey Maguire.

In our business, a major sign of success is our client list. Industry leaders and celebrities expect to receive the best service possible, and are in the fortunate position of being able to choose the top trainers in the field to be their personal trainers. [The petitioner’s] client list, which includes [REDACTED] and [REDACTED] clearly signifies that he is one of the preeminent trainers in our field.

* * *

There have been very few trainers who have been able to create fitness systems which break the mold. I am familiar with the training technique developed by [the petitioner] in his capacity as Head Trainer with Radu Physical Culture, which is based on the principle of applying sport and athleticism to physical training. [The petitioner] is the only individual I know who has successfully applied orienteering techniques to his physical training regimen – as one of his competitors, I am more than aware that his system is nothing short of extraordinary. He is clearly one of a small number of individuals who has achieved such success in our business.

[The petitioner] has unmistakably made his mark on our field, and has demonstrated without a doubt that he is of extraordinary ability.

While [REDACTED] states that the petitioner has “successfully applied orienteering techniques to his physical training regimen,” there is no evidence demonstrating the national or international success of the petitioner’s program such that it can be considered an original athletic contribution of major significance in his field.

[REDACTED], President, Columbus Place Fitness, New York, states:

I have been involved in the fitness and training field for more than twenty years. I have been featured on major television stations, including FOX, NBC, ABC, and CNN. I have been featured in, and made contributions to such publications as *Shape*, *Fitness* magazine, *New York Times*

* * *

[The petitioner] has always demonstrated to be on the cutting edge of fitness and physical training, constantly developing new techniques that are copied throughout the industry. The approach towards physical training that [the petitioner] takes is unique, stemming from a multidisciplinary methodology that draws from his championship orienteering career. I have consistently been impressed with his extraordinary talent, and have marveled at his innovations, which have led our field in new directions.

* * *

The techniques that he developed participating in world championship level orienteering competitions have enabled him to launch a unique form of physical fitness that I have not otherwise encountered. I greatly admire [the petitioner's] work, and count him as one of only a small percentage of trainers who have risen to the top of our field.

letter does not specify which of the petitioner's physical training techniques are "copied throughout the industry" or which of his innovations have led the "field in new directions."

With regard to the petitioner's achievements as a physical training coach, the letters of recommendation do not specify exactly what the petitioner's original athletic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field. Further, the record does not indicate the extent to which the petitioner has developed his own original physical training techniques, as opposed to methodologies he learned while working for Radu Teodorescu. 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 has helped his clients improve their physical conditioning, there is no evidence to demonstrate that his techniques have had major significance in the field. For example, there is no evidence indicating that the petitioner's physical training techniques have been widely adopted by personal trainers nationwide or have otherwise significantly influenced the field.

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 a physical training coach 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 that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The September 2, 2005 letter from [REDACTED] states:

[The petitioner] was hired to work at RPC as Head Trainer. As Head Trainer, he is responsible for instructing new trainers, supervising trainers during testing sessions, and running weekly workshops. His individual training time is reserved for our top clients. His employment with RPC is based on his prior extensive background as a world-class athlete in the field of orienteering. The focus of his employment as head trainer is his "transfer of techniques" whereby he adapts the methods and movements from his training as a ski and foot orienteer to training techniques which can be used at RPC.

Time and again, [the petitioner's] expertise has been sought by business leaders, celebrities, and politicians. He has applied the theory of training and sport, and the theory of training and methodology of physical education, perfected while training as a world class athlete, to the training techniques he uses with our clients.

[The petitioner] has continually played a principal role in leading RPC in new directions. Last year he designed plans for an outdoor class in Central Park, consisting of specific exercises drawn from the sport of orienteering. The class was so successful that we are going to start a new version of the program in the spring in the new gym we are opening in the Hamptons.

The letter from [REDACTED] and the recommendation letters discussed under the preceding regulatory criterion are sufficient to demonstrate that the petitioner performed in a leading role or critical role as Head Trainer for RPC. Further, the record includes published material showing that RPC has a distinguished reputation. As such, the petitioner has established that he meets this single criterion.

In this case, we find that the petitioner meets only one of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained national or international acclaim necessary to qualify as an alien of extraordinary ability. The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased standard. 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).

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.