U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: MAY 26 2009

WAC 08 006 51490

IN RE: Petitioner: [redacted]
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:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

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

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we concur with the director that the petitioner must establish that the occupation listed on the Form I-140 petition is within his area of expertise. Regardless, we uphold the director's findings that the record does not establish the beneficiary's national or international acclaim in any occupation.

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.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-9 (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.

According to Part 3 of the petition, the petitioner seeks classification as an alien with extraordinary ability as a "Teacher of Dramatic Arts." Thus, the director determined that the petitioner needed to demonstrate national or international acclaim in that occupation. On appeal, counsel asserts that the petitioner's abilities and accomplishments as a director, actor, teacher and screenwriter are "inextricably intertwined and depend on the same skills, training and abilities." Counsel cites *Gülen v. Chertoff,* 2008 WL 2779001 *2 (E.D. Pa. 2008) and *Buletini v. INS,* 860 F. Supp. 1222, 1229 (E. D. Mich. 1994) for the proposition that USCIS cannot overly narrow an alien's field.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, in *Buletini,* 20 I&N Dec. at 1230-31, the court was mostly concerned that the legacy Immigration and Naturalization Service (INS), now USCIS, made a factual error in characterizing the alien's occupation as a researcher in nephrology when he was employed as a physician who performed research in multiple areas of medical science including but not limited to nephrology. Moreover, the *Buletini* court was willing to narrow the alien's field to "medical science" as opposed to "science." *Id.* In *Gülen*, 2008 WL 2779001 at *2, the court was concerned that USCIS constructed the statutorily permissible fields of endeavor too narrowly, considering only the alien's accomplishments in the field of education rather than as a religious leader. That court did not consider the issue of whether an alien can seek to enter the United States to work in a different occupation than the one in which he has demonstrated expertise.

The AAO is bound by the Act, agency regulations and precedent decisions of the agency.[1] The regulation at 8 C.F.R. § 204.5(h)(5) requires the petitioner to establish that he will "continue work in the area of expertise." While an actor/screenwriter and dramatic arts teacher certainly share knowledge of the dramatic arts, the two rely on very different sets of basic skills. Thus, acting/screenwriting and teaching are not the same area of expertise. This interpretation as applied to athletes and coaches has been upheld in federal court. *See Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002). While also a non-binding district court decision, the court persuasively 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

[1] The AAO is also bound by published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.,* 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit). Counsel, however, has not suggested that any federal circuit court has ruled on this issue.

> 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 and we are persuaded that the court's decision is consistent with the regulation at 8 C.F.R. § 204.5(h)(5).

We acknowledge that there exists a nexus between participating in the dramatic arts and teaching the dramatic arts. To assume that every extraordinary actor's area of expertise includes teaching, however, would be too speculative. To resolve this issue, the following balance is appropriate. In a case where an alien has clearly achieved national or international acclaim as an actor and has sustained that acclaim as a teacher at a nationally distinguished institution, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability such that we can conclude that coaching is within the petitioner's area of expertise. Specifically, in such a case we will consider the level at which the alien acts as teacher. A teacher who has an established successful history of teaching the top tier of dramatic arts students nationally has a credible claim; a teacher of local novices does not. Thus, we will first examine whether the petitioner has demonstrated his extraordinary ability in the dramatic arts. We will next consider the level at which he has taught.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence that, he claims, meets 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.*

[redacted] President and Chief Executive Officer of Baez Entertainment 2000, asserts that the petitioner produced and starred in the company's 12 minute film "Racket." The petitioner submitted a certificate from The Director's Cut film festival that provides:

> This is to certify that Racket has been recognized by the Director's Cut Panel to be a filmmaker *of great potential*, demonstrating his/her art by technical, creative and original means as to set them apart from other filmmakers. We endorse their future in the film industry as they have officially made The Director's Cut.

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

(Emphasis added.) Promotional materials for the festival provided by the petitioner state that the festival, held quarterly, was "created purely as a vehicle to promote and further the careers of new filmmaking talent."

The director requested additional evidence, inquiring as to what awards the petitioner himself was awarded, the pool of candidates for such awards and the criteria for those awards. In response, counsel did not assert that the Director's Cut certificate served to meet this criterion. Rather, counsel asserts that the petitioner meets this criterion through a 1993 Best Leading Actor award from the National Academy for Theater and Film Arts (NATFA) in Benidorm, Spain. The petitioner submitted the award and a letter from [redacted], Director of the Benidorm International Theatre Festival, advising that he visited Bulgaria in 1992 and was so impressed with the beneficiary's performances as a student at the National Academy for Theatre and Film Arts, that he invited the petitioner's class to perform at Benidorm. This letter strongly suggests that the Benidorm festival is a student competition.

While not discussed by counsel under this criterion, the petitioner submitted a letter from [redacted], founder and President of Dirt Road Films, which produced "The Definition of Sanity." Mr. [redacted] asserts that he cast the petitioner in the movie and that the petitioner "also agreed to work as our on-set acting coach and artistic consultant." The record contains no evidence that the petitioner was officially credited with these duties. [redacted] lists several film festivals where the film was shown and several film festival awards. The petitioner also submitted materials listing the awards and containing excerpts of several favorable reviews. None of the reviews mention the petitioner by name.

The director concluded that the record lacked evidence that the NATFA Best Leading Actor award was nationally or internationally recognized. The director further concluded that the Director's Cut certificate was issued to the film, not the petitioner, and that the petitioner had not demonstrated the significance of this award.

On appeal, counsel asserts that the petitioner's role as producer for and lead actor in "Racket" demonstrate that the accolades won by the film are attributable to him. Counsel further asserts that the national recognition of the competition is evidenced by its judging panel. Counsel further notes that "Racket" was selected for presentation at other film festivals. Next, counsel asserts for the first time that the petitioner should be credited with prizes awarded to "The Definition of Insanity" because the petitioner served as the on-set artistic consultant and acting coach. Finally, counsel asserts that the NATFA award meets this criterion and cites *Buletini,* 860 F. Supp. at 1230, for the proposition that an award need not be recognized internationally to meet this criterion.

According to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner must provide evidence of "the alien's receipt" of qualifying prizes or awards. Thus, it is not sufficient to demonstrate that the petitioner worked on an award-winning project if he himself is not the recipient of the award, whether individually or as part of a team as when a team of writers wins a writing award. As such, the awards won by "Racket" and "The Definition of Insanity" cannot meet this criterion.

Moreover, we concur with the director that the Director's Cut is not a nationally recognized award for excellence as it is limited to new filmmakers and, thus, is not an award for which the most experienced and renowned filmmakers compete.

The "display" at film festivals of the films in which the petitioner appears will be considered below under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(vii). The selection for display at a film festival is not an award or prize.

Finally, despite the director's request for evidence regarding the significance of any awards, the petitioner has failed to provide any evidence as to the significance of the NATFA award. While the award need not be internationally recognized as noted on appeal, the award must be at least nationally recognized according the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). The materials about the Shakespeare Foundation of Spain make no mention of the NATFA award. As stated above, [redacted] strongly implies that the award was limited to students. Thus, once again, the most experienced and renowned members of the field do not aspire to win this award. Moreover, the award was issued in 1993 and cannot be considered evidence of sustained acclaim in 2007 when the petition was filed.

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

Counsel does not challenge the director's conclusion in the request for additional evidence that the petitioner's membership in the Screen Actor's Guild (SAG) cannot serve to meet this criterion and we concur with the director that the record lacks evidence that SAG membership is limited to those with outstanding achievements as judged by recognized national or international experts in the field.

In response to the director's request for additional evidence, counsel asserts that the petitioner is a "member" of the Harlem Arts Alliance Dramatic Writing Academy, which has a long waiting list. The petitioner submitted a letter from [redacted] Founder and Director of the academy, asserting that entry into the academy requires "an extraordinary gift for screenwriting and the extraordinary stamina, passion, and commitment it takes to keep working on a script through many drafts and revisions." [redacted] further asserts that the academy faculty members are nationally renowned. Finally, [redacted] praises the beneficiary's screenplay, "Green Light."

The director concluded that the petitioner had submitted insufficient evidence of the academy entry requirements and the stature of the faculty and noted that the record contained no evidence that "Green Light" was recognized beyond the academy.

On appeal, counsel asserts that the petitioner was admitted to the academy based on the impressive nature of "Green Light." Counsel cites a non-precedent decision by this office reversing a finding that the Japan Artists Association and the Dokuritsu Art Association could not serve to meet this criterion.

The petitioner submits a letter from [redacted], Founding Member and Executive Producer of the Harlem Arts Alliance asserting that the petitioner "has been enrolled" in the Columbia University School of the Arts' Writers Guild of America East in association with Harlem Arts Alliance's New Heritage Theatre Group Screenwriting Workshop and is one of the permanent members of the alliance's Dramatic Writing Academy.

While 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Regardless, counsel has not explained how the academy is similar to the two Japanese art associations listed above.

While the academy may be a competitive dramatic arts program, it remains that it is an educational and training program that admits promising students rather than an association that admits members based on their outstanding achievements in the field. As acceptance as a student or trainee is not a "membership," it cannot serve to meet this criterion.

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

The petitioner submitted (1) a February 26, 1995 article in *Duma* about the petitioner's student movie, "Wake up the Bride," selected for the Valencia Cinema Festival, a youth festival; (2) a May 8, 1995 issue of *Standart* containing an interview with the petitioner; (3) a review of "The Secret Gospel of John, Mystery #1" in the May 10, 1995 issue of *24 Hours*; (4) a photograph of the petitioner appearing on the television program "The New Yorkers" and (5) an article about the Lake Placid Film Festival characterizing the petitioner as "a student at New York's Writers Guild East" in the June 11, 2000 edition of the *Times Union*.

The director requested evidence that the published materials appeared in professional or major trade publications or other major media. In response, the petitioner did not submit circulation data for the above publications or other evidence suggesting that they are major media. Rather, the petitioner submitted reviews of "Marco the Prince" that all postdate the filing of the petition. The petitioner must establish eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l. Comm'r. 1971).

The director concluded that the petitioner had not demonstrated that the original published materials appeared in professional, major trade or other major media and that the new materials were not about the petitioner. On appeal, counsel no longer asserts that the petitioner meets this criterion.

We concur with the director that the petitioner has not established that he meets this criterion because the older materials have not been demonstrated to have appeared in professional, major trade publications or other major media (and cannot demonstrate sustained acclaim in 2007 when the petition was filed) and the newer materials are not "about" the petitioner and postdate the filing of the petition.

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 initial submission included no evidence relating to this criterion. In response to the director's request for additional evidence, the petitioner submitted a letter from [redacted], Artistic Director for Drama Theatre ([redacted]) Rousse. [redacted] asserts that when the petitioner decided to leave the production of "The Secret Gospel of John" in 1996, he headed the panel to select his replacement for the role of Jesus from among the 300 actors from all over Bulgaria who competed for the role.

The director concluded that this experience did not involve judging the work of other drama teachers. As discussed above, counsel asserts on appeal that the director should have considered the petitioner's acting and screenwriting accomplishments.

While we are willing to consider the petitioner's acting accomplishment at this stage in our analysis, the petitioner has not demonstrated that the beneficiary's service on the casting panel is sufficient to meet this criterion. Specifically, the beneficiary's selection to head up the panel casting his replacement at the theater where he had been performing is not reflective of his acclaim beyond that theater. Regardless, the petitioner served on this panel in 1996, 11 years before filing the petition. Thus, it cannot be considered evidence of the petitioner's sustained national or international acclaim in 2007 when the petition was filed.

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.

In response to the director's request for additional evidence, counsel asserted that the petitioner is "an outstanding actor, exceptional dram teacher and accomplished screenwriter, whose original work is in great demand, as evidenced by the numerous commitments that he had secured with leading theater and movie production companies." Counsel references the beneficiary's recent supporting role in "Marco the Prince," which postdates the filing of the petition; the beneficiary's role in the "The Definition of Insanity"; the interest of independent film producer [redacted] in making a feature length

production of "Racket"; and the petitioner's work with Impact Repertory Theatre of Harlem, an outreach youth program operated by Columbia University, where, according to [redacted] the petitioner "has been" a student.

The director concluded that the petitioner had not established that his work has had "major significance to his occupation." On appeal, counsel no longer asserts that the petitioner meets this criterion.

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. To be considered a contribution of major significance it can be expected that the contributions will have had a demonstrable impact in the field. We concur with the director that the petitioner has not demonstrated that he is known for an influential original acting or screenwriting method or has otherwise impacted the field at the national or international level. The petitioner's roles for various productions and the display of his films will be considered below and are not presumptive evidence to meet this criterion.

Finally, an October 25, 2008 letter from indicates that the production of the feature length version of "Racket" is on hold for economic reasons. Thus, this project is not even underway, let alone complete and distributed nationally or internationally. As such, the petitioner cannot demonstrate the impact of this project.

In light of the above, we concur with the director's uncontested conclusion that the petitioner does not meet this criterion.

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

As stated above, the petitioner has appeared as a lead role in the 2004 short film "Racket" and in a supporting role in the 2004 "The Definition of Insanity." Both of these films have been showcased at film festivals. The petitioner also director productions for Impact Repertory Theatre of Harlem. While [redacted] Founder and Director of the group, attests to the prestigious venues where the group has performed he does not state that the petitioner directed those productions. As stated above, the petitioner's performance in "Marco the Prince" postdates the filing of the petition, the date as of which the petitioner must establish eligibility. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49. Historically, in the 1990's the petitioner appeared as Jesus in "The Secret Gospel of John."

The director concluded that the evidence meets this criterion in the field of acting, but not as a dramatic arts teacher. On appeal, counsel reiterates previous claims.

This criterion is primarily for the visual arts. The petitioner is a performing artist. It is inherent to the field of performing arts to perform. Not every performance is a "display" at an artistic exhibition or showcase. The petitioner's appearance in "The Secret Gospel of John" relates far more to the leading or critical role criterion at 8 C.F.R. § 204.5(h)(3)(viii) than this one. Moreover, these performances

ended in 1996, 11 years before the petition was filed. As such, they are not indicative of sustained acclaim in 2007 when the petition was filed.

The petitioner had only a supporting role in "The Definition of Insanity." None of the reviews mention his influence on the film. Thus, the displays of this film at film festivals cannot serve to meet this criterion. More persuasive are the showings of "Racket" at film festivals given the petitioner's role in that film.

In view of the film festival showings of "Racket," a 12-minute short film, the petitioner has demonstrated that he minimally meets this criterion.

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

In response to the director's request for additional evidence, counsel referenced the petitioner's role as Jesus in "The Secret Gospel of John" and his supporting role in "Marco the Prince." As stated above, the petitioner's performance in "Marco the Prince" postdates the filing of the petition and cannot establish his eligibility as of that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

The director concluded that the petitioner had not demonstrated the reputation of the theater that produced "The Secret Gospel of John," "Racket" and the Impact Repertory Theatre of Harlem. The director also questions the leading nature of the petitioner's role for the Impact Repertory Theatre of Harlem. On appeal, counsel asserts that the petitioner meets this criterion by directing shows for the Impact Repertory Theatre of Harlem and his role in "Marco the Prince."

While the petitioner may have played a leading role in "The Secret Gospel of John," that role predates the petition by 11 years and is not evidence of sustained acclaim when the petition was filed. Moreover, counsel does not respond to the director's concerns regarding the national reputation of the theater that produced this show.

[redacted] asserts that the Impact Repertory Theatre of Harlem has performed at Lincoln Center, the Public Theater, the Apollo Theater, the New York City Marathon and the Kennedy Center in Washington and has been featured on Good Morning America and Nightline. [redacted] further asserts that the group has appeared in HBO movies. [redacted] further asserts that students trained by the petitioner have gone on to earn admission and scholarships into college-level dramatic arts programs. [redacted] explains that the petitioner directed "a number of Impact productions," two of which were recognized locally by the Harlem Arts Alliance, AUDELCO and the Union Square Award, which is not in the record. Finally, [redacted] asserts that the petitioner has arranged international performance tours for the student productions.

The factors for this criterion are the role the petitioner was selected to fill for an organization and the reputation of that organization. The petitioner did not provide programs from the repertory group establishing his role for specific productions or an organizational chart demonstrating his role within the group as a whole or the number of other volunteer trainers and directors. While [redacted] affirms that the petitioner has fulfilled his assigned role successfully, it is less clear that selection for this role is indicative of the petitioner's national or international acclaim. As stated above, according to Ms. [redacted], the petitioner "has been" a student at Columbia University, which sponsors the repertory group.

For the reasons discussed above, the petitioner's role in "Marco the Prince" cannot be considered evidence of eligibility as of the date of filing since it postdates that date. *See* 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak,* 14 I&N Dec. at 49.

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.

asserts that increased the petitioner's compensation to 1,000 Bulgarian leva per performance, averaging 25,000 leva per month, 10 percent higher than the typical actor's salary. The director concluded that the petitioner did not corroborate these claims. Counsel no longer asserts that the petitioner meets this criterion on appeal. The petitioner left this theater in 1996. Thus, any compensation earned at that theater cannot establish the petitioner's sustained acclaim 11 years later in 2007 when he filed the petition.

In light of the above, the petitioner has not provided evidence consistent with sustained acclaim to meet this criterion.

Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

also asserts that the would sell out performances of "The Secret Gospel of John." The petitioner did not submit box office receipts as required under 8 C.F.R. § 204.5(h)(3)(x). Thus, the petitioner has not submitted the required initial evidence to meet this criterion.

In addition to the above evidence relating to the regulatory criteria, the petitioner submitted several reference letters praising the petitioner's talent. While we have considered the statements in these letters as they relate to the above criteria, general and necessarily subjective affirmations of the petitioner's talent by those asked to support the petition cannot demonstrate sustained national or international acclaim. Ultimately, evidence in existence prior to the preparation of the petition carries greater weight than new materials prepared especially for submission with the petition. An individual with sustained national or international acclaim should be able to produce unsolicited materials reflecting that acclaim.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

Review of the record, however, does not establish that the petitioner has distinguished himerself as an actor/screenwriter 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 indicates that the petitioner shows talent as an actor/screenwriter, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

Even if the petitioner had demonstrated national or international acclaim as an actor or screenwriter, the record does not suggest that teaching is within his area of expertise. We have reviewed the nonimmigrant visa petitions filed in the beneficiary's behalf as of 2003. These petitions all indicate that the petitioner would teach local Latino and African-American students at Baez Entertainment 2000, Inc. full-time for between $500 and $577 per week. Baez Entertainment 2000 indicated that it employed between two and three employees. On the Form G-325A accompanying the petitioner's Form I-485 Application to Register Permanent Residence or Adjust Status, the petitioner indicated that he had worked solely as an actor for Baez Entertainment 2000. Significantly, the June 11, 2000 issue of the *Times Union* submitted in support of the petition indicates that the petitioner was a "student at New York's Writer's Guild East." The evidence submitted with the initial Form I-140 petition before us reveals that a professor at Columbia University, where the petitioner was and possibly still is a student, utilizes the petitioner as "an assistant instructor" and that the petitioner "began volunteering as a drama instructor at IMPACT Repertory Theater." All of the beneficiary's teaching experience is either highly questionable (the record contains no evidence that Baez Entertainment 2000 with its three employees operates a teaching facility in addition to the production company formed to produce the founder's short films) or is aimed at youth at a very local level.

While we acknowledge that the record contains some evidence that the petitioner also seeks to continue acting, the proposed employment on the Form I-140 petition is teaching. Any amendment to this claim would be a material claim. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998).

Finally, we acknowledge that the petitioner was previously awarded non-immigrant O-1 visas as an alien of extraordinary ability. The regulatory requirements for an immigrant and non-immigrant alien of extraordinary ability *in the arts* are dramatically different. 8 C.F.R. § 214.2(o)(3)(ii) defines extraordinary ability in the arts (including the performing arts) as simply "distinction," which is further defined as follows:

> Distinction means a high level of achievement in the field of arts evidenced by a degree of skill and recognition substantially above that ordinarily encountered to the extent that a person described as prominent is renowned, leading, or well-known in the field of arts.

As discussed above, the regulation at 8 C.F.R. § 204.5(h)(3) sets forth ten criteria as evidence of sustained national or international acclaim, of which a petitioner must meet at least three. While these ten criteria appear in 8 C.F.R. § 214.2(o), they refer only to aliens who seek extraordinary ability in the fields of science, education, business or athletics. The distinction between these fields and the arts, which appears in 8 C.F.R. § 214(o) does not appear in 8 C.F.R. § 204.5(h). As such, the petitioner's approval for non-immigrant visas under the lesser standard of "distinction" is not evidence of his eligibility for the similarly titled immigrant visa.

Moreover, the prior approval of nonimmigrant visas does not preclude USCIS 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 USCIS 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 USCIS 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 USCIS from denying an extension of the original visa based on a reassessment of 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'r. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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.