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

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PUBLIC COPY

U.S. Citizenship and Immigration Services

B2

[redacted]

DATE: MAR 07 2012 Office: TEXAS SERVICE CENTER FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
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 in athletics. The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel asserts that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, the AAO will uphold the director's decision.

I. Law

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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting at least three of the following ten categories of evidence:

> (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
>
> (ii) 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;
>
> (iii) 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;
>
> (iv) 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 specialization for which classification is sought;
>
> (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
>
> (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
>
> (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
>
> (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
>
> (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.[1] With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

> If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119-20.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

[1] Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. Analysis

A. Evidentiary Criteria

This petition, filed on June 30, 2010, seeks to classify the petitioner as an alien with extraordinary ability as a dressage rider and trainer. At the time of filing, the petitioner was working as [redacted] horse ranch. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).[2]

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

The petitioner submitted a March 27, 1975 "Certificate of Apprenticeship" from the German Riders Association stating that he passed the Apprenticeship examination at the German Riding School in Warendorf. The petitioner also submitted a March 27, 1975 "Certificate of Apprenticeship" indicating that that he passed the final examination for "Professional Rider and Driver" at the German Riding School in Warendorf. The petitioner's initial evidence also included a "Certificate for Instructing Apprentices" from the Agricultural Chamber Westfalen-Lippe stating that he "passed the examination on October 26, 1979 thus proving his knowledge of vocational pedagogics." The petitioner also submitted a "Craftsman's Proficiency Certificate" from the German Riders Association stating that he "passed the examination for Professional Riding Instructor [Berufsreitlehrer (FN)] according to the training and examination regulations in the Westphalian Riding and Driving School on Oct. 25/26, 1979 with the mark *fully satisfactory*." [Emphasis added.] The petitioner's evidence included an additional "Craftsman's Proficiency Certificate" from the German Riders Association stating that on October 25, 1979 he "passed the examination on Craftsman's Proficiency at the Westphalian Riding and Driving School and is therefore entitled to be called 'Professional Riding Instructor.'" The petitioner also submitted an "International Trainer License" from the German Riders Association reflecting his "Berufsreitlehrer" qualification earned on October 25, 1979. The preceding qualification certificates and license constitute educational and professional credentials that permit the petitioner to work as a rider and an instructor rather than nationally or internationally recognized "prizes or awards for excellence" in the field of endeavor. Moreover, the petitioner has not established that earning "fully satisfactory" examination results in a training course equates to "excellence in the field of endeavor."

The petitioner submitted "Horse Score Check" results from the United States Dressage Federation (USDF) for [redacted] that was ridden by him at the "Great American/USDF Region 9 & Southwest Dressage Championships" held October 29 – November 1, 2009. The results from this "Regional Championship" indicate that the petitioner's horse scored 65.877% on the First Level, Test 4. The petitioner also submitted a comprehensive listing of the "Region 9 Results" from the Great American/USDF Regional Dressage Championships,

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

but there is no documentary evidence indicating that the petitioner received a prize or an award by winning a category at the regional championship. The petitioner's documentation also included two Certificates of Rider Achievement from the Great American/USDF Region 9 Dressage Championships indicating that he [redacted] in the "Open (Training)" level. There is no evidence showing that the petitioner's Certificates of Rider Achievement constitute nationally or internationally recognized prizes or awards for excellence in dressage, rather than simply acknowledgments of his participation in the Region 9 Championships.

Regarding the levels of dressage competition, the petitioner submitted information from *Wikipedia*, an online encyclopedia, stating:

> Horses and riders advance through a graduated series of levels, with tests of increasing difficulty at each level, until the most accomplished horse and rider teams compete at the Grand Prix levels, and international competition, such as the Olympic Games.
>
> Dressage consists of the lower levels: First, Second, Third and Fourth. Introductory and Training levels prelude First level in the United States. . . . The FEI [Federation Equestrian International] levels: Prix St. Georges, Intermediaire I, Intermediaire II, and Grand Prix.

The petitioner also submitted USDF results from the "Texas Dressage Classic II" in April 2009 indicating that the event included competition "Levels: Intro – Grand Prix." The results from the event list the petitioner's composite scores riding [redacted] in the Open First Level Test 3 (72.268), [redacted] in the Open Second Level Test 1 (66.053), and [redacted] in the Open Qualifying Training Level Test 4 (74.800), but there is no documentary evidence indicating that the petitioner's horse received a prize or an award for his First Level, Second Level, and Training Level test scores at the Texas Dressage Classic II.

Even if the petitioner were to demonstrate that he received awards by winning competitive categories at the Great American/USDF Region 9 Dressage Championships or the Texas Dressage Classic II, which he has not, awards from the preceding competitions constitute regional recognition rather than "nationally or internationally recognized" prizes for excellence in the field of endeavor.

The petitioner submitted event results posted on the Proud Meadows website indicating that he rode horses that placed first in Training Level tests at the Texas Dressage Classic (April 2010) and that placed first in Training Level and Third Level tests at the San Antonio Spring Dressage event (March 2010). The petitioner also submitted results from the 2009 Dallas Dressage Club Spring Show I and II indicating that his horses placed first out of four entries in the "First Level Test 1" (Show I), first out of four entries in the "Second Level Test 1" (Show I), first as the lone entry in the "Second Level Test 3" (Show I), first as the lone entry in the "First Level Test 3" (Show II), first as the lone entry in the "Second Level Test 3" (Show II), and first out of three entries in the "First Level Test 4" (Show II). The documentation submitted by the petitioner also included results from the 2009 Dallas Dressage Club Yellow Rose Festival II indicating that his

horses placed first out of five entries in the "Training Level Test 4" and first out of two entries in the "Fourth Level Test 1." The petitioner also submitted results for [redacted] Yellow Rose Show I and II indicating that his horses placed first out of three entries in the "Second Level Test 1" (Show I), first out of seven entries in the "Training Level Test 4" (Show I), first out of three entries in the "Second Level Test 1" (Show II), and first out of seven entries in the "Training Level Test 4" (Show II). Even if the petitioner were to demonstrate that he received awards for his horses' first places in basic and intermediate level tests at the Texas Dressage Classic, Dallas Dressage Club Spring Show I and II, 2009 Dallas Dressage Club Yellow Rose Festival II, and [redacted] Yellow Rose Show I and II, awards from the preceding competitions constitute local or regional recognition rather than nationally or internationally recognized prizes for excellence in the field of endeavor.

The petitioner submitted a USDF certificate stating: "2009 All-Breeds Materiale Presented to: [redacted] Champion Four- and five-year-old Stallion or Gelding FPZV USA." The petitioner submitted another USDF certificate stating: "2009 All-Breeds Dressage Sport Horse Breeding Presented to [redacted], Champion Four-year-old and older FPZV USA." Neither of these certificates from the USDF specifically recognizes the petitioner as an award recipient. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires evidence of the "alien's receipt" of nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner submitted a January 19, 2009 article in *Dressage Daily* entitled "Jamaica Named 2008 FARNAM® / PLATFORM® · USEF Horse of the Year." The article briefly mentions that [redacted] horse ridden by the petitioner, was among the five finalists for the preceding award. Selection as a finalist does not constitute receipt of a prize or an award and does not fall within the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i). The plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence showing that the petitioner's horse received a 2008 FARNAM® / PLATFORM® · USEF Horse of the Year Award.

On appeal, the petitioner submits a USDF 2010 Bronze Medal certificate presented to him "For Achievement at First, Second and Third Levels." The petitioner also submits information from the USDF website stating: "Rider medals (bronze, silver, and gold) are awarded based on attaining the required scores at the necessary levels." According to the USDF website's list of "Rider Award Recipients," 867 riders have attained the required scores to receive Gold medals, 3,279 riders have attained the required scores to receive Silver medals, and 5,559 riders have attained the required scores to receive Bronze medals.[3] The AAO cannot conclude that qualifying for a lower-level honor ("For Achievement at First, Second and Third Levels") that is conferred upon a substantial number of riders is indicative of national or international recognition for excellence in the sport of dressage.

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[3] *See* http://www.usdf.org/awards/performance/rider.asp, accessed on February 22, 2012, copies incorporated into the record of proceedings. "USDF Rider Awards are based strictly on the scores the rider achieves over time and need not be earned in one competition year." *Id.*

Regarding the USDF 2010 Bronze Medal certificate, the other USDF certificates discussed above, and the event results submitted by the petitioner, the record does not include evidence of the national or international *recognition* of his particular awards, such as national or widespread local coverage of his awards in equestrian-related publications or the general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's 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 documentary evidence demonstrating that the awards received by the petitioner are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

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

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted an April 1, 2008 recommendation letter from [redacted] stating that the petitioner's activities include "membership in the examination board for craftsmen and master craftsmen," serving as a "delegate for the Bavarian professional riders in the German Association for Professional Riders," and "membership in the sports committee of the Swabian Riders' and Drivers' Association."[4] [redacted] letter fails to specify the membership requirements for the preceding organizations. There is no evidence demonstrating that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted an April 1, 2008 letter from the Association of Riding and Driving Clubs Swabia stating:

> Being a successful instructor of young professional riders, [the petitioner] was nominated to the official examination board – horse craftsmen and master horse craftsmen – where he is actively participating in vocational training at present.

[4] Swabia is one of the seven administrative regions of Bavaria, Germany.

> The Association of Riding and Driving Clubs Swabia has assigned [the petitioner] the task of Responsible for Dressage. This comprises working with high-performance riders as well as organizing single-handedly and annual series of tournaments including final tournaments, i.e. the competition for the Swabian Dressage Cup. He is responsible for all further training of amateur instructors for trainers level C, B and A.

The preceding letter from the Association of Riding and Driving Clubs Swabia does not specify the requirements for admission to membership in the association or for participation on its examination board. There is no evidence demonstrating that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted four certificates from the Bavarian State Research Center for Agriculture nominating him as "an ordinary member . . . to the examination board for the intermediate and final examination for professional riders" (January 2008 – December 2011), "an ordinary member . . . to the examination board for the examination for professional riders (masters) – section for riders' instructions" (January 2008 – December 2011), a "deputy member . . . to the examination board for the final examination for professional riders" (June 2004 – December 2007), and "an ordinary member . . . to the examination board for the examination for professional riders (masters) – section for riders' instructions" (June 2004 – December 2007). The petitioner also submitted a March 6, 2001 letter from the Bavarian Department for Animal Breeding nominating him "as member and/or deputy of the examination board for professional riders – main subject: riding education for the duration of three years." None of the preceding certificates specify the requirements for becoming an examination board member or deputy member. There is no evidence demonstrating that the board requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field.

In response to the director's notice of intent to deny (NOID), the petitioner submitted a July 29, 2010 letter from [redacted] Center for Agriculture (LFL), stating:

> The LFL only asks the top professional trainers and instructors with master degree to serve on the examination board.
>
> * * *
>
> Due to his level of expertise in our field, [the petitioner] was nominated and elected in April 2001 to serve on the examination board with about fifteen other experts for the LFL. His election to the board would be valid until at least 2011.
>
> * * *

> [The petitioner's] service as a member of our examination board us an indication of his outstanding achievement and excellent reputation in our field.

Merely repeating the language of the statute or regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). [redacted] does not define the specific achievements required for classification as a "top professional" trainer and instructor. Passing the standardized examinations necessary to earn advanced professional training certificates and a master degree that permit the petitioner to work as a rider and an instructor is not tantamount to outstanding achievements. The documentation submitted by the petitioner fails to demonstrate that the LFL's examining board requires outstanding achievements of its members, as judged by recognized national or international experts in his field.

The petitioner also submitted a July 29, 2010 letter from [redacted] stating:

> [The petitioner] was elected in November 2004 to serve as one of two delegates from circa 500 members from Bavaria to the Bundesvereinigung der Berufsreiter (BBR). We are an organization that represents professional and amateur trainers and instructors.
>
> * * *
>
> As a delegate to the BBR, among [the petitioner's] duties are to represent the membership of the BBR in all matters relating to professional riders.

[redacted] further states that the petitioner's election as a delegate "was due to his outstanding qualifications as an expert rider, trainer and instructor in the field of Dressage," but he does not specifically identify the "outstanding qualifications" required for being a delegate to the BBR. With regard to the letters from [redacted] and [redacted], USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990). The documentation submitted by the petitioner fails to demonstrate that his election as a delegate to the BBR required outstanding achievements, as judged by recognized national or international experts in his field.

The petitioner's response also included an August 4, 2010 letter from [redacted] stating:

> [The petitioner] has successfully worked as master horse craftsman, focus: riding, as an experienced instructor and as judge for horse performance examinations in Bavaria.
>
> * * *

> The Bavarian Riders' and Drivers' Association is the third largest state-association in Germany and represents circa 100,000 members . . . and includes the State Committee for horse performance examinations in Bavaria.

[redacted] letter does not specify the requirements for admission to membership in the Bavarian Riders' and Drivers' Association or for participation on its State Committee for horse performance examinations in Bavaria. There is no evidence demonstrating that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The petitioner also submitted evidence of his "Senior Professional" membership in the United States Equestrian Federation (USEF) and his "Participating membership" in the USDF, but there is no documentary evidence showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

On appeal, counsel argues that the director inappropriately discounted the letters of support submitted by the petitioner. As previously discussed, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States,* 745 F. Supp. 9, 15 (D.C. Dist. 1990). Moreover, depending on the specificity, detail, and credibility of a letter, USCIS may give the document more or less persuasive weight in a proceeding. The Board of Immigration Appeals (the Board) has held that testimony should not be disregarded simply because it is "self-serving." *See, e.g., Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing cases). The Board also held, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Id.* If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998). In the present matter, the claims in the reference letters are unsupported by documentary evidence (such as bylaws or official rules of admission) showing that the associations in which the petitioner holds membership require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

In light of the above, the petitioner has not established that he meets this regulatory 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 petitioner submitted general information about the required training to become a judge for the USEF, but there is no documentary evidence indicating that he has completed the USEF licensing requirements or participated as a judge at USDF or USEF competitions in the United States.

The petitioner submitted an April 1, 2008 recommendation letter from [redacted] stating that the petitioner "qualified as a judge for many years" and that he held "membership in the examination board for craftsmen and master craftsmen." Similarly, the petitioner submitted an

April 1, 2008 letter from [redacted] stating that the petitioner "worked as a qualified judge for many years" and that he actively participated on the official examination board for horse craftsmen and master horse craftsmen. The petitioner also submitted training credentials from the Bavarian Riders' and Drivers' Association and the German Riders Association indicating that he qualified "for judging dressage up to third level," but there is no documentary evidence showing the specific competitions in which he participated as a judge.

As previously discussed, the petitioner submitted four certificates from the Bavarian State Research Center for Agriculture nominating him as "an ordinary member . . . to the examination board for the intermediate and final examination for professional riders" (January 2008 – December 2011), "an ordinary member . . . to the examination board for the examination for professional riders (masters) – section for riders' instructions" (January 2008 – December 2011), a "deputy member . . . to the examination board for the final examination for professional riders" (June 2004 – December 2007), and "an ordinary member . . . to the examination board for the examination for professional riders (masters) – section for riders' instructions" (June 2004 – December 2007). The petitioner also submitted a March 6, 2001 letter from the Bavarian Department for Animal Breeding nominating him "as member and/or deputy of the examination board for professional riders – main subject: riding education for the duration of three years."

The petitioner submitted an April 2, 2008 letter from [redacted] stating that the petitioner "is among the decision-makers for the granting of medals" and that he nominates BBR members for medals. [redacted] also comments that the petitioner is a member of the examinations board. The July 29, 2010 letter from [redacted] submitted in response to the NOID states:

> [The petitioner's] role as a delegate includes granting medals to members based on achievement in our field. Professional riders within the BBR who achieve an extremely high level of training, expertise and achievement in the field are granted medals from the BBR. This is the equivalent of the BBR's "lifetime achievement award." As a delegate, [the petitioner] is among the few decision makers able to grant such an award.

[redacted] letters do not specifically identify the BBR professional riders judged by the petitioner or the dates of his participation as a decision-maker.

The petitioner submitted a July 29, 2010 letter from [redacted] stating:

> Due to his level of expertise in our field, [the petitioner] was nominated and elected in April 2001 to serve on the examination board with about fifteen other experts for the LFL.
>
> * * *
>
> In this role, [the petitioner] judged the rigorous examination process for the applicant riders in practice and theory.

The petitioner submitted an August 4, 2010 letter from [redacted] stating that the petitioner "has worked as an official judge until higher levels, and also head judge (LK-Beauftragter) at several jumping and dressage competitions," but there is no documentary evidence identifying the specific competitions in which the petitioner participated as a judge and his dates of participation.

The petitioner submitted an April 10, 2008 letter from [redacted] stating:

> Between January 18 and March 10, 2008, [the petitioner] was responsible for preparing and carrying out the stallions' efficiency examination for our association in Waxahachie, TX, USA. His tasks consisted of training the ten test candidates as regards [sic] dressage and cross-country riding, followed by carrying out their examination.

The petitioner also submitted material printed from the Proud Meadows ranch's website stating:

> Since 1997 we have hosted the Stallion Performance Test for the Friesenpferde-Zuchtverband (FPZV), who also assists us in communicating with and adhering to the standards of the FN [Federation Nationale].
>
> * * *
>
> The FPZV Stallion Test is fifty days in duration. Each stallion is judged on temperament, manners, and trainability during the first part of this period. At the end the stallions must pass each of four parts of the Performance Test with a minimum score of 5.0 in each and a minimum collective score of 6.5.

The AAO finds that the preceding documentation appears to meet the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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

The petitioner submitted an article in *Dressage Today* from 2002 entitled "Getting a German Dressage Education" that discusses the rigorous training program at the International Academy of Equestrian Studies in Warendorf, Germany. The preceding article does not mention the petitioner, his training methodologies, or any of his original contributions in the field of dressage.

The petitioner submitted several recommendation letters discussing his training qualifications, his talent as a rider and an instructor, and his activities in the field, but they do not specify exactly what his "original" contributions in dressage have been, nor is there an explanation indicating how any such contributions were of "major significance" in his field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major

significance in the field." Here, the evidence must be reviewed to see whether it rises to the level of original athletic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

[redacted]

Maryland, states:

> I had the pleasure to meet [the petitioner] on several occasions, while teaching seminars at Proud Meadows Farm.
>
> I was able to observe him as a very effective and talented rider as well as teacher. With the extensive background of his German education in the field of equestrian performance and training, his unique abilities in all aspects of the field are obvious. His extensive knowledge and qualifications that include even judging and organizing are hard to match. He was clearly well known in his field in Germany and is getting fast recognition in the U.S. due to his immediate success in his new position. It is very hard to find instructors and competitors of that level anywhere, but the U.S. is still very much developing the sport of dressage.

[redacted] comments on the petitioner's unique abilities, qualifications, and training background. Assuming the petitioner's skills and knowledge are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment certification process. *See Matter of New York State Dep't. of Transp.*, 22 I&N Dec. 215, 221 (Comm'r 1998). It is not enough to be skillful and knowledgeable and to have others attest to those talents. An alien must have demonstrably impacted his field in order to meet this regulatory criterion.

Christophe Hess states:

> I have known [the petitioner] for many years. He had an excellent training during his apprenticeship at the Hannover Riding and Driving School in Verden/Aller and during his time as a professional rider on the Haidehof in Hamburg/Wesel with [redacted] which was followed by a good success in the examination for professional riding instructor FN.
>
> I appreciate him as a highly competent and thus extremely experienced instructor, who has qualified as a Judge for many years, too.
>
> He is a very successful trainer, especially regarding fundamental work, he is very reliable and has a strong awareness of his responsibilities. Furthermore, I know that he is a successful and committed member of various committees thus doing a great service to horse riding and to horses, in particular due to his pleasant and correct manner. These

activities include, among others, membership in the examination board for craftsmen and master craftsmen, focus: riding, in Munich-Riem for Bavaria, as well as being delegate for the Bavarian professional riders in the German Association for Professional Riders and membership in the sports committee of the Swabian Riders' and Drivers' Association.

[redacted] fails to provide specific examples of how the petitioner's original contributions have significantly impacted the equestrian field or otherwise equate to original athletic contributions of major significance in his sport.

[redacted], and [redacted] state:

Since 1982 [the petitioner] has worked in our region as master horse craftsman and Instructor of professional riders and trainer of horses. [The petitioner] is a very experienced and successful instructor and has worked as a qualified judge for many years. Even in dressage, he has been highly successful up to the Difficult Level, on which the his [sic] work as an instructor focuses at the same time. He excels especially in solid fundamental work with young horses.

Owing to his extraordinary skills, his experience and his reliability as well as his correct manner, [the petitioner] was nominated to various responsible positions and honorary positions.

Being a successful instructor of young professional riders, he was nominated to the official examination board – horse craftsmen and master horse craftsmen – where he is actively participating in vocational training at present.

The [redacted] has assigned him the task of [redacted]. This comprises working with high-performance riders as well as organizing single-handedly an annual series of tournaments including final tournaments, i.e. the competition for the Swabian Dressage Cup. He is responsible for all further training of amateur Instructors for trainers level C, B and A.

The letter from [redacted], and [redacted] does not specify exactly what the petitioner's "original" contributions in the sport of dressage have been, nor does it explain how any such contributions were of major significance in his field. While the petitioner's activities as an instructor, judge, examination board member, and organizer of local Swabian dressage tournaments were beneficial to his regional equestrian association, there is no evidence demonstrating that his original work was recognized beyond his local projects such that his work constitutes original contributions of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the petitioner's contributions be "of major significance in the field" rather than limited to his locality or immediate projects. Although the petitioner has earned the admiration of his references, there is no evidence demonstrating that he has made original athletic contributions of major significance in the field.

For example, the record does not indicate the extent of the petitioner's influence throughout his field, nor does it show the field as a whole has specifically changed as a result of his work.

As previously discussed, the petitioner submitted an April 10, 2008 letter from [redacted] stating: "Between January 18 and March 10, 2008, [the petitioner] was responsible for preparing and carrying out the stallions' efficiency examination for our association in Waxahachie, TX, USA." The petitioner also submitted general information about the FPZV Stallion Performance Test and the FPZV registry. The petitioner's evidence also included material printed from the Proud Meadows website indicating that the ranch has hosted the Stallion Performance Test for the FPZV since 1997 and discussing the ranch's testing program. There is no evidence showing that the petitioner was the original creator of the FPZV Stallion Performance Test or evidence demonstrating that his activities as a trainer or examiner equate to original contributions of major significance in the field.

The petitioner submitted material printed from the website of Woodridge Farm in Claremore, Oklahoma advertising its horses for breeding. Entries in the "Highlights" and "Breeders Sale" sections of the farm's website indicate that [redacted]y, a horse ridden by the petitioner, won awards competing in the Second Level at the Dallas Dress Cup and Green County Dressage events. There is no documentary evidence demonstrating that having one's name appear in a sales entry on a horse breeder's website and that winning local Second Level dressage competitions constitute original contributions of major significance in the field.

Furthermore, the AAO notes that the petitioner's dressage awards and his participation as an efficiency examiner for the FPZV Stallion Performance Test have already been separately addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i) and (iv). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards, participation as a judge, and original contributions of major significance, USCIS clearly does not view these three categories of evidence as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria.

The reference letters submitted by the petitioner are not without weight and have been considered above. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). 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 that one would expect of a dressage rider and trainer who has made original contributions of "major significance." Without additional, specific evidence

showing that the petitioner's original work has been unusually influential, that his original instructional techniques have been widely applied throughout his field, or that his work has otherwise risen to the level of original contributions of major significance, the AAO cannot conclude that he meets this regulatory 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 a letter from [redacted] providing general information about her Friesian ranch and stating that the petitioner has served as the ranch's "Head Rider/Trainer." The petitioner also submitted information about Proud Meadows posted on the ranch's website. Regarding the self-serving statements from the owner of Proud Meadows and the material posted on the ranch's website, USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 317 Fed. Appx. 680 (9th Cir. 2009) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Accordingly, the petitioner has not submitted sufficient documentary evidence demonstrating that Proud Meadows has a distinguished reputation.

In response to the director's NOID, the petitioner submitted an August 4, 2010 letter from [redacted] stating:

> The Bavarian Riders' and Drivers' Association herewith confirms that [the petitioner] has successfully worked as master horse craftsman, focus: riding, as an experienced instructor and as judge for horse performance examinations in Bavaria.
>
> * * *
>
> The Bavarian Riders' and Drivers' Association is the third largest state-association in Germany and represents circa 100,000 members . . . and includes the State Committee for horse performance examinations in Bavaria.
>
> * * *
>
> [The petitioner] has worked as an official judge until higher levels, and also head judge (LK-Beauftragter) at several jumping and dressage competitions with much commitment and knowledge.

There is no supporting documentary evidence showing the Bavarian Riders' and Drivers' Association that has a distinguished reputation. Further, the petitioner failed to submit an organizational chart or other evidence from the association documenting where his various positions fell within the association's general hierarchy. A conclusion that the petitioner played a leading or critical role for the association simply by competently working in a position that needed to be filled would render this criterion meaningless. Specifically, it can be presumed that associations do not typically select individuals to fill roles that serve no purpose for their

organization; yet not every worker for a distinguished association meets this regulatory criterion. The petitioner's evidence does not demonstrate how his positions differentiated him from the other staff working for the Bavarian Riders' and Drivers' Association, let alone the association's executive officers and top managers. The evidence submitted by the petitioner does not establish that he was responsible for the association's success or standing to a degree consistent with the meaning of "leading or critical role."

The petitioner's response to the director's NOID also included a July 29, 2010 letter from [redacted] stating:

> [The petitioner] was elected in November 2004 to serve as one of two delegates from circa 500 members from Bavaria to the Bundesvereinigung der Berufsreiter (BBR). We are an organization that represents professional and amateur trainers and instructors.
>
> * * *
>
> As a delegate to the BBR, among [the petitioner's] duties are to represent the membership of the BBR in all matters relating to professional riders.
>
> * * *
>
> [The petitioner's] role as a delegate includes granting medals to members based on achievement in our field. Professional riders within the BBR who achieve an extremely high level of training, expertise and achievement in the field are granted medals from the BBR. This is the equivalent of the BBR's "lifetime achievement award." As a delegate, [the petitioner] is among the few decision makers able to grant such an award.

[redacted] letter does not indicate how many other delegates serve for the BBR. Further, there is no evidence demonstrating how the petitioner's position differentiated him from the other delegates in the BBR, let alone the association's executive officers and top managers. The evidence submitted by the petitioner does not establish that he was responsible for the BBR's success or standing to a degree consistent with the meaning of "leading or critical role. As the documentation submitted by the petitioner fails to demonstrate that he has performed in a leading or critical role for organizations or establishments that have a distinguished reputation, the petitioner has not established that he meets this regulatory criterion.

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

The petitioner submitted a letter from [redacted] stating that the petitioner "received income in 2009 exceeding $100,000." The petitioner also submitted his and his spouse's 2009 Form 1040, U.S. Individual Income Tax Return, reflecting "total income" of $75,570. The petitioner's tax return also included his 2009 Form 1040, Schedule C, reflecting that his business "Von Hassler Horse Training LLC" generated $101,825 in "gross income" and a "net profit" of $75,570 (which appears as "business income" on the first page of his Form 1040). The submitted tax

documents do not indicate the amount of income on Form 1040 attributable to the petitioner's spouse. In response to the director's NOID, the petitioner submitted letters from three of his clients indicating that they "pay a premium," "pay more," and "gladly write" a check for his services, but they do not provide specific remuneration amounts or comparisons.

As evidence that the petitioner earns "a high salary or other significantly high remuneration for services, in relation to others in the field," the petitioner submitted salary survey results from mysalary.com for "Horse Rider/Exerciser" in the Waxahachie, Texas area showing that the top ten percent earn a base salary of $64,716 and above. The petitioner also submitted U.S. Department of Labor "Prevailing Wage" search results indicating that the Level 4 (fully competent) wage for "Animal Trainers" in the Dallas-Plano-Irving metropolitan area is $33,093 per year. The petitioner has not established that the preceding wage results are relevant to those who perform similar work as a "Head Rider/Trainer" or as the proprietor of a horse training business.[5] Moreover, the petitioner's reliance on data limited to local wages in Texas is not an appropriate basis for comparison in demonstrating that his earnings constitute a "*high* salary or other *significantly high* remuneration for services, in relation to *others in the field.*" [Emphasis added.] The record is void of reliable earnings data showing that the petitioner has received a "high salary" or "significantly high remuneration" in comparison with those performing similar work. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). In the present matter, the documentary evidence submitted by the petitioner does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field.

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

Summary

The AAO concurs with the director's determination that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3).

B. Final Merits Determination

The AAO will next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian,* 596 F.3d at 1119-20. In the

[5] As previously noted, the petitioner's tax return identifies him as proprietor of Von Hassler Horse Training LLC.

present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO's discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iv), (v), (viii), and (ix).

With regard to the evidence submitted for 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted documents do not rise to the level of nationally or internationally recognized awards for excellence in the field of endeavor. The evidence discussed above is also not indicative of or consistent with sustained national acclaim or a level of expertise indicating that the petitioner is one of that small percentage who have risen to the very top of his field. For instance, unlike the petitioner, two of his references, [redacted] and [redacted], indicate that they have successfully competed at "the highest level" of the sport, the Grand Prix level. The AAO cannot conclude that petitioner's awards and results in competitions well below the Grand Prix level demonstrate 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). USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. at 953, 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that an equestrian who has had success competing only in lower and intermediate levels of dressage competition should necessarily qualify for approval of an extraordinary ability employment-based immigrant visa petition. While the AAO acknowledges that a district court's decision is not binding precedent, the AAO notes 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 [redacted] ability with that of all the hockey players at all levels of play; but rather, [redacted] 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 USCIS' interpretation of the regulation at 8 C.F.R. § 204.5(h)(2) is reasonable. 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."

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner's associations require outstanding achievements of their members, as judged by recognized national or international experts in his field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for 8 C.F.R. § 204.5(h)(iv), the nature of the petitioner's judging experience is a relevant consideration as to whether the evidence is indicative of his

recognition beyond his own circle of collaborators. *See Kazarian*, 596 F. 3d at 1122. The petitioner submitted his training credentials from the Bavarian Riders' and Drivers' Association and the German Riders Association indicating that he qualified "for judging dressage up to third level." According to the documentation submitted by the petitioner, more advanced levels of qualification (such as Fourth Level, Prix St. Georges, Intermediate 1, Intermediate 2, and Grand Prix) are above the judging level that he has attained. The petitioner has not established that his level of judging qualification demonstrates he is among that small percentage who have risen to the very top of the field of endeavor. *Cf., Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899 (USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard). The petitioner has not established that his level of judging participation is indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v), as stated above, the petitioner has not established that his original work rises to the level of contributions of "major significance" in the field. Demonstrating that the petitioner is a qualified rider and instructor is not useful in setting him apart from other equestrians through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." In this case, the record does not contain sufficient evidence that the petitioner's original work had major significance in the field, let alone an impact consistent with being nationally or internationally acclaimed as extraordinary. Aside from the petitioner's failure to submit evidence demonstrating that the petitioner has made original business-related contributions of major significance in the field, the AAO notes that the petitioner's claim is based partly on reference letters. While such letters can provide important information about the petitioner's work, they cannot form the cornerstone of a successful extraordinary ability claim. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). The classification sought requires "extensive documentation" of sustained national or international acclaim. *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). The commentary for the proposed regulations implementing the statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Primary evidence demonstrating that the petitioner's original work was majorly significant to his field is of far greater probative value than opinion statements from references selected by the petitioner. The documentation submitted by the petitioner for the category of evidence at 8 C.F.R. § 204.5(h)(3)(v) is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has not established that he has performed in a leading or critical role for organizations that have a distinguished reputation. The documentation submitted by the

petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ix), there is no reliable evidence demonstrating that petitioner's remuneration is "significantly high" in relation to others performing similar work or that his level of compensation places him among that small percentage who have risen to the very top of the field. The documentation submitted by the petitioner is not indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field.

In this matter, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a dressage rider and trainer, or being among that small percentage at the very top of the field of endeavor. The submitted evidence is not indicative of a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). The conclusion the AAO reaches by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate 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 the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained.

C. Prior P-1 Nonimmigrant Visa Status

The AAO notes that the petitioner has been in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." *See* section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). While USCIS has approved a prior P-1 nonimmigrant visa petition filed on behalf of the petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must decided on a case-by-case basis upon review of the evidence of record. 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 the alien's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of*

Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that 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 has approved a nonimmigrant petition on behalf of the alien, 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).

III. Conclusion

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 and 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 a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.