

PUBLIC COPY

data deleted to
prevent clearly unwarranted
of personal privacy

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



U.S. Citizenship
and Immigration
Services

B2

[REDACTED]

FILE:

[REDACTED]
LIN 07 116 51907

Office: NEBRASKA SERVICE CENTER

Date:

APR 02 2009

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). The director also determined the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that he will “continue work in his area of extraordinary ability.”

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, 60898-99 (Nov. 29, 1991). As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on March 12, 2007, seeks to classify the petitioner as an alien with extraordinary ability in the field of semiconductor metrology. At the time of filing, the petitioner was employed as a Senior Director of Strategic Marketing, WIN Division, KLA-Tencor Corporation.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of 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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria.¹

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 "Diana Nyssonen Memorial Award for Metrology Best Paper of 2002" from the Metrology, Inspection, and Process Control program Conference Chair of SPIE, the International Society for Optical Engineering. The record does not include specific information about this award from SPIE (such as the official selection criteria). Rather, the petitioner submitted letters of support from his professional associates briefly mentioning his receipt of the award.

Individual Contributor, Lithography/Etch Department, California Technology and Manufacturing, Intel Corporation, states: "The high caliber of [the petitioner's] work was . . . recognized by the Metrology Program Conference Committee who awarded him the prestigious Dianna N. Nyssonen Memorial Award for the Best Paper of the year."

Scanning Electron Microscope Project Leader, Nanometer-Scale Metrology Group, National Institute of Standards and Technology, states:

[The petitioner] is one of the few experts who have been recognized by the scientific and technical community with the prestigious Diana Nyssonen Memorial Award for Metrology Best Paper. He, for his unique and valuable contribution to the field of semiconductor metrology, was rewarded with this award for in [sic] 2001.

, Senior Member of the Technical Staff, Silicon Technology Development, Texas Instruments, Inc., states: "[The petitioner's] presentation at 2001 SPIE meeting underlined his

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

unique contribution to the field of AFM [Atomic Force Microscope] and CD [Critical Dimension] metrology and won the prestigious Diana Nyysonen Memorial Award for Metrology Best Paper of 2001.”

Senior Program Manager and Fellow of the Advanced Measurement Technology Group, Advanced Micro Devices, Inc., states: “[The petitioner’s] presentation underlined his unique contribution to the field of AFM and Dual Beam metrology and won him the prestigious Dianna Nyysonen Memorial Award for Metrology Best Paper of 2001.”

, President and Chief Executive Officer, Xidex Corporation, states: “[The petitioner’s] presentations display his unique contribution to the field of semiconductor metrology and have won him the prestigious Dianna Nyysonen Memorial Award for Metrology Best Paper of 2001.”

The above statements from the preceding individuals indicate that the petitioner received his award for “Metrology Best Paper of 2001.” However, the language on the petitioner’s award certificate states that it was “for Metrology Best Paper of 2002.” It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director found that the preceding evidence did not establish that the petitioner’s award “enjoys significant national or international stature.” The director further noted that the record lacked documentation from the awarding entity “confirming essential details such as the specific criteria applied and the scope of candidates considered.”

On appeal, counsel argues that “the importance and recognition of the award are well attested by independent experts in the field.”² The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this instance, the information provided by the petitioner’s professional associates was limited and contradicted the date appearing on the petitioner’s award certificate. All five of the preceding individuals state that the Diana Nyysonen Memorial Award for Metrology Best Paper is “prestigious,” but their letters provide no substantive information regarding the award or its specific requirements. The plain language of the regulatory criterion 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 independent and objective evidence showing that the petitioner’s award had a significant level of recognition beyond the presenting SPIE

² Counsel refers to the preceding individuals as “independent” experts, but their letters all state that they first met the petitioner during the 1990s at meetings or through business relationships.

conference committee.³ For example, there is no evidence demonstrating that recipients of this award were announced in professional journals or in some other manner consistent with sustained national or international acclaim. The documentation submitted by the petitioner does not establish that his award constitutes a nationally or internationally recognized prize or award for excellence in the field.

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

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

The petitioner submitted several letters of recommendation praising his expertise and discussing his activities in the field. We cite representative examples here. Expertise and activity in the field, however, are not necessarily indicative of scientific contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

states:

As Veeco Technical Director or later as Zygo Atomic Force Microscopy (AFM) project director, [the petitioner] was an excellent contributor in solving the challenges integrated circuit technology is facing such as critical dimension metrology, three-dimensional imaging and AFM technology. I was impressed by [the petitioner's] outstanding knowledge of his field, which extends from semiconductor process control to nano-metrology, and I am convinced, that he is one [sic] the best experts in the field.

former President and Chief Executive Officer of Advanced SAW Products, states that the petitioner worked for his former company as Research & Development and Manufacturing Director since its creation. further states:

Advanced SAW Products grew rapidly and developed leading edge products for supply to the mobile telephone industry. The components, developed and made under the control of [the petitioner] were the best cellular telephone frequency filters to be found on the worldwide market. This attracted the attention of the major players in the mobile industry and the company was bought by the Nokia Corporation in 1996

* * *

The technology developed under [the petitioner's] direction has subsequently spread to companies like Nokia Corporation, Micronas Inc., Motorola Corporation, CTS Corporation,

³ The official internet site of SPIE provides a listing of thirteen of the Society's awards, but the "Diana Nyssonen Memorial Award" is not among those identified. See "SPIE Awards Program" at <http://spie.org/x2958.xml>, accessed on March 27, 2009, copy incorporated into the record of proceeding.

Temex SA and Telefilter GmbH all of which are fighting for leadership in the supply of components applied to the telecommunications industry.

There is no evidence identifying the petitioner as an inventor of the aforementioned cellular telephone frequency filters or letters of support from top research and development executives from Nokia Corporation, Micronas Inc., Motorola Corporation, CTS Corporation, Temex SA, and Telefilter GmbH affirming that they adopted original technology that was specifically attributable to the petitioner.

President, MetroBoost, states:

I worked closely with [the petitioner] when he was in Oregon in 2001. He was directing the semiconductor metrology of FEI Company, and more specifically all efforts driving the Dual Beam systems towards in-line metrology.

My interaction with [the petitioner] allowed MetroBoost to develop and launch its flagship product, MetroCal reference wafers. These are substrates used for characterization and calibration of metrology tools in semiconductor industry. The launch of this product and its subsequent success are in no small measure due to his guidance and also his support as an early adopter. His unique contribution won MetroBoost a product that still thrives as advertised in our web site at www.metroboost.com. MetroCal wafers have had much success since introduction. It is public information that FEI Company has been a customer of ours to this date. Several other semiconductor metrology tool suppliers have also adopted MetroCal wafers for their systems.

We acknowledge that the petitioner has contributed to the success of projects undertaken by his employers, but there is no evidence demonstrating that his work constitutes original scientific contributions of major significance in the field. While the petitioner's employer, FEI Company, may have relied on MetroBoost as its supplier of MetroCal wafers, there is no evidence showing that the success of this product was primarily attributable to the petitioner's work or that he invented the technology.

Vice-President, WAFR/WIN, KLA-Tencor, states:

Since joining the company, [the petitioner] directed multiple scientifically oriented projects. Main examples are:

- 07/2006 to 7/2007: "gap" project. The "gap" project is a project aimed at solving any unsolved defect detection out of the worldwide installed based [sic] of customers or application engineers. The intrinsic complication of the exercise is extreme, as most customers do not share all the technical details needed. Process variations and light propagation modes are intervened in thousands of possibilities from which one and only one is the best. And [the petitioner's] role was to close on the one of importance, or

invent the missing one required to “close the gap” [The petitioner’s] work during this period generated one patent in his sole name as inventor.

Since 07/2007, [the petitioner] is in charge of developing what we foresee as one of our most promising new inspection techniques. In this function, [the petitioner] is leading a team of Ph.D. [sic] in mathematics, physics, electronics and computer sciences. This new development is in the process of generating four new patents (to be disclosed), in addition to a deeper and more systematic understanding of the behavior of the light used for our inspection in different mediums used during semiconductor processing. The personal involvement of [the petitioner] ranges from hands on work on various specialized equipments to building hypothesis and experiments allowing further development and progress of a new product that will modify and improve the way semiconductor manufacturing is performed.

states that the petitioner’s work for KLA-Tencor’s “gap” project from June 2006 to July 2007 “generated one patent in his sole name as inventor,” but the record does not include a copy of this patent. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, there is no supporting evidence demonstrating that the technology specified in the patent constitutes a contribution of major significance in the field.

The petitioner submitted a September 11, 2003 United States Patent Application Publication listing him as inventor of an “Integrated Measuring Instrument.” On appeal, the petitioner submits an August 24, 2006 patent application filed as a continuation of the preceding patent application. There is no evidence from the United States Patent and Trademark Office showing that the petitioner has been granted a patent for this invention. Even if the petitioner were to submit such evidence, the grant of a patent demonstrates only that an invention is original. Regarding any patents attributable to the petitioner, this office has previously stated that a patent is not necessarily evidence of a track record of success with some degree of influence over the field as a whole. *See Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 221 n. 7, (Commr. 1998). Rather, the significance of the innovation must be determined on a case-by-case basis. *Id.* In this case, there is no evidence showing substantial commercial interest in the petitioner’s original inventions, the widespread marketing and licensing of his patented technologies, or that they have otherwise risen to the level of contributions of major significance in the field.

With regard to discussion of the “promising new inspection technique” that the petitioner has been working on since July 2007, this work for KLA-Tencor post-dates the filing of the petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO is not required to consider the petitioner’s work for the latter project in this proceeding. We acknowledge that the petitioner has performed admirably for KLA-Tencor and his other employers, but the evidence of record does not establish that he has made original scientific contributions of major significance in his field.

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the admiration of those offering letters of support, the record lacks evidence showing that his work constitutes original contributions of major significance in his field consistent with sustained national or international acclaim. For example, the record does not indicate the extent to which his work has impacted others in his field nationally or internationally, nor does it show that the field of semiconductor metrology has significantly changed as a result of his work.

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

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner submitted evidence showing that he coauthored articles published in various SPIE conference proceedings. We take administrative notice of the fact that authoring scholarly articles is inherent to scientific research. For this reason, we will evaluate a citation history or other evidence of the impact of the petitioner's articles when determining their significance to the field. For example, numerous independent citations would provide solid evidence that other researchers have been influenced by the petitioner's work and are familiar with it. On the other hand, few or no citations of an alien's work may indicate that his work has gone largely unnoticed by his field. On appeal, the petitioner submits evidence of six articles that cite to his published work. While these citations demonstrate a small degree of interest in his published articles, they are not sufficient to demonstrate that his articles have attracted a level of interest in his field consistent with sustained national or international acclaim.

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

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

We withdraw the director's finding that the petitioner meets this regulatory criterion. At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

In response to the director's request for evidence, counsel argues that the petitioner "has a leading role of Senior Director at KLA-Tencor." The record adequately demonstrates that KLA-Tencor Corporation has a distinguished reputation. With regard to the petitioner's role for the company, [REDACTED] states:

This is to confirm that [the petitioner] is employed at KLA-Tencor as Senior Director Strategic Marketing.

Strategic Marketing covers multiple side of the components required to envision, evaluate, develop and realize a new product. KLA-Tencor line of product encompasses inspection and metrology equipment used in the field of high technology to manufacture chips, displays and various components of the electronic industry.

* * *

Requirements for an individual to be employed in strategic marketing are high. Within the WIN division of KLA-Tencor, only two highly-skilled employees (over 185 employees in the division) are entrusted to this position.

While the petitioner has performed admirably as a division manager, the documentation submitted by him does not establish that his position is leading or critical to the company as a whole. There is no evidence demonstrating how the petitioner's role differentiated him from the seven other directors in the WIN division, let alone the company's top executives (such as [REDACTED] Chairman of the Board, [REDACTED], Chief Executive Officer, or [REDACTED], Chief Operating Officer). With regard to the positions held by the petitioner prior to his employment with KLA-Tencor, there is no evidence showing that that these roles were leading or critical and that his past employers had a distinguished reputation. The documentation submitted by the petitioner does not establish that he was responsible for his companies' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, 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.

The petitioner initially submitted a January 18, 2007 letter from [REDACTED], Senior Global Mobility Specialist, KLA-Tencor Corporation, stating that the petitioner earns a salary of \$160,000

as a Senior Director in the WIN Division. On appeal, the petitioner submits his Form W-2, Wage and Tax Statement, reflecting earnings of \$245,602.95 in 2007. The petitioner also submits information from "O-Net OnLine" indicating that the national "median" wage for "Material Scientists" in 2006 was \$74,610. The petitioner's reliance on "median" salary statistics for Material Scientists is not an appropriate basis for comparison for two reasons. First, the petitioner must submit evidence showing that his salary is significantly high in relation to that of other Senior Strategic Marketing Directors or Technology Directors rather than in relation to that of material scientists.⁴ Second, the petitioner must submit evidence showing his salary places him among that small percentage at the very top of the field rather than in the top half of his field. *See* 8 C.F.R. § 204.5(h)(2). Accordingly, the petitioner has not established that his salary is significantly high in relation to others in the field.

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

In this case, we concur with the director's finding that the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

The director also found that the petitioner had not submitted clear evidence that he would continue to work in his area of expertise in the United States. The director's decision stated:

The regulations clearly indicate that the alien must be seeking to enter the United States to continue work in the area of extraordinary ability. Counsel asserts that the alien petitioner is a scientist of extraordinary ability. The record does not establish that the alien seeks to enter the United States to continue work as a scientist. It appears the alien will be employed as a Senior Director of strategic marketing for KLA-Tencor. The duties associated with a Senior Director of strategic marketing may include research, but the record fails to establish the majority of the alien's time will not be spent as a manager or in business development.

We withdraw the director's finding regarding this issue. The regulation at 8 C.F.R. § 204.5(h)(5) requires "clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States." In response to the director's request for evidence, the petitioner submitted a January 16, 2008 letter from Brenda Brown outlining the scientific and technical nature of the petitioner's position as Senior Director of Strategic Marketing. We note here that KLA-Tencor's line of products include inspection and metrology equipment used to manufacture semiconductors. On appeal, the petitioner submits a March 27, 2008

⁴ The petitioner's curriculum vitae states that he has "10 years in senior executive positions in the field of semiconductor metrology."

letter from [REDACTED] providing further clarification of the scientific expertise and the research and development activities required of the petitioner's position. For example, [REDACTED] states that the petitioner worked in research and development and generated a patent "as sole inventor." The petitioner also submits a company cost center management survey showing that the petitioner spent 70 percent of his time on technological development activities in 2007 for the "gap" project. Accordingly, the preceding evidence establishes that the petitioner intends to continue working in his area of expertise in the United States.

While USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval 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 the beneficiary'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 beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.