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

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: **DEC 03 2009**
LIN 08 135 51073

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).

Perry Rhew
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 arts and athletics. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. 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).

On appeal, counsel argues that the petitioner qualifies as an alien of extraordinary ability based on his receipt of major, internationally recognized awards and through meeting at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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 April 3, 2008, seeks to classify the petitioner as an alien with extraordinary ability as an acrobat. 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). On page 15 of her appellate brief, counsel states that the petitioner's "Golden awards and Honor certificates alone clearly establish more than a one-time achievement or major, internationally recognized awards in his chosen field of Circus performance." While the petitioner submitted information about some of the competitions in which he received awards from the competitions' organizers and from various unidentified sources, the record lacks evidence demonstrating his awards' significance and their level of international recognition. The specific deficiencies pertaining to each of the awards and honor certificates submitted by the petitioner will be addressed below in our discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723, 59 (Sept. 19, 1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of [redacted] the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. In this case, the petitioner has not submitted evidence establishing that any of his awards equate to major, internationally recognized awards.

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

field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[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 the following:

1. Honor Certificate from the stating that the petitioner "won the honorary performer award in the first annual youth acrobat competition in Henan Province" (February 1997);
2. Honor Certificate stating that the petitioner and eight other individuals from the performed the and won the (November 1997);
3. Honor Certificate from the stating that the petitioner "performed at the We have decided to record this individual achievement and issue this special certificate." (July 1998);
4. Certificate from the " in Paris stating that the petitioner received a (January 1998);
5. Award Certificate from the tating that the petitioner "performed 'autumn son [sic] in the air' at the third national youth acrobat competition and won the (September 1998);
6. Honor Certificate from the stating that the petitioner "had an outstanding evaluation in the work year of 1997" and "was also named the most progressive worker" (March 1998);
7. Undated certificate from the stating that the petitioner is "An honored member . . . for both his moral and artistic abilities;"
8. Excerpt from a document entitled ' 1978-1995, The First [sic] reflecting that the petitioner and three others received a
9. Award Certificate from the stating: Your group performed 'color ropes flying hat' at the award third youth acrobat national competition and won the (September 1999);
10. Certificate from the stating that the petitioner "performed 'Shaolin pole climb' at the fourth acrobat competition in won the (December 1999);
11. Certificate from the stating that the petitioner "performed at the fourth acrobat competition in and won the (December 1999);

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

12. Certificate stating that the petitioner "performed at the eighth acrobat festival competition and won the award" (November 2001);
13. Certificate from the in Paris stating that the petitioner received a Silver Medal (February 2002);
14. Certificate from the stating that the petitioner "performed 'passing through earth circle' at the fifth acrobat competition in Henan Province and won the (May 2002); and
15. Award Certificate from the stating that the petitioner "performed 'swinging pole flying ropes' at the third national youth acrobat competition and won the (August 2002).

In regard to items 1, 3, 6, 8, 10, 11, and 14, these awards reflect local, internal, or provincial recognition rather than nationally or internationally recognized prizes or awards for excellence. Regarding item 9, the award certificate does not specifically name the petitioner.

With regard to items 4 and 13, these certificates in the French language were unaccompanied by certified English language translations. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. Without a proper translation, we cannot assign any weight to this evidence. Moreover, in response to the director's request for evidence, the petitioner submitted a document entitled "Paris, France 'Tomorrow' The document provides general information about the acrobatics festival, but the author or source of this document is not identified. Further, the document does not bear organizational letterhead, an official seal, or some other type of certification demonstrating its reliability. The document notes that the festival has separate competitive sessions targeting young performers in the categories. Regarding items 4 and 13, we note that both certificates indicate that the petitioner competed in the "Future" session rather than the "Tomorrow" session. The document specifically states that the Future category "targeted performers under the age of 16." However, documentation submitted by the petitioner on appeal about the internet site clearly states that the category was "for acrobats from 12 to 17 years old inclusive." The documentation further states that the category was "for acrobats over 18 and less than 25 years old." Thus, the petitioner has submitted conflicting information regarding the age of the competitors in the Future category in which he competed. 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). With regard to the document for which no source was specified and which had content that was inconsistent with other evidence in the record, doubt cast on any aspect of the petitioner's proof may, of course, lead to a

reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

Regarding item 2, the petitioner's response to the director's request for evidence included a document entitled which provides general information about the competition. The translation identified the source of this document as the ut the document does not include a name, address, telephone number, or any other information through which the committee may be contacted. Further, the document does not bear organizational letterhead, an official seal, a signature, or some other type of certification demonstrating its reliability and sufficiency. *Matter of Ho*, 19 I&N Dec. at 591. We further note that the petitioner's Honor Certificate (item 2) indicates that he shared this award with eight other individuals from the

With regard to item 15, the petitioner's response to the director's request for evidence included a document entitled "" which provides general information about the competition. Although the translation identifies the source of this document as the the document itself does not include a name, address, telephone number, or any other information through which the organization may be contacted. Further, the document does not bear Ministry of Culture letterhead, an official seal, a signature, or some other type of certification demonstrating its reliability and sufficiency. *Matter of Ho*, 19 I&N Dec. at 591. We further note that the petitioner's award certificate (item 15) indicates that he won the award in the "youth acrobat competition."

With regard to items 1 through 15, we note that the petitioner was born on November 15, 1984 and that the submitted awards were all won prior to his eighteen birthday. With regard to awards won by the petitioner in amateur or "youth" competition, we do not find that such awards indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." *See* 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout his field, rather than being limited to his approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.[2]

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

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

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

Likewise, it does not follow that an acrobat who has had success in age-restricted competition should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

In regard to items 1, 2, 4, 5, and 8 – 15, the record does not include supporting evidence demonstrating the significance and magnitude of the specific competitive events won by the petitioner. 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. For instance, there is no evidence of the official comprehensive results from the preceding competitions indicating the number of entrants in the petitioner's competitive category. Moreover, a competition may be open to athletes from throughout a particular country or countries, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized." The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his awards. In this case, there is no documentary evidence demonstrating that the petitioner's awards had significant recognition beyond the presenting organizations and therefore are commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

Finally, even if the petitioner were to demonstrate that his awards from 2002 and earlier were sufficient to meet this criterion, there is no evidence demonstrating that he is the recipient of a nationally or internationally recognized prize or award in acrobatics during the five years preceding the petition's April 3, 2008 filing date. Accordingly, the petitioner has not demonstrated that his national or international acclaim as an acrobat has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The preceding evidence is not consistent with sustained national or international acclaim as of the date of filing of this petition and, thus, is insufficient to meet this criterion without additional evidence under this criterion or other criteria documenting the petitioner's more recent acclaim as an acrobat.

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

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

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 undated certificate stating that he is an honored member of the but there is no evidence (such as membership bylaws) showing the admission requirements for this committee.

The petitioner submitted his dentifying his qualification as "First class actor" (2003). There is no evidence that this qualification constitutes membership in an association in the field for which classification is sought rather than an employment qualification credential issued by the government of Henan Province. In response to the director's request for evidence, the petitioner submitted a document entitled ' which lists the principle standards for designation as a First-Class Performer. Item 5 of the document states that the standards "are made and delegated by the provincial nd Personnel Office of the autonomous region." The source of this document is not identified. For example, the document does not specify which provincial Office of Human Resources Management or regional Personnel Office generated the document. Further, the document does not bear organizational letterhead, an official seal, a signature, or some other type of certification demonstrating its reliability and sufficiency. The earlier inconsistency involving a document in which the source was not specified, combined with the preceding deficiencies, casts doubt regarding the reliability and sufficiency of the document submitted by the petitioner. *Matter of Ho*, 19 I&N Dec. at 591. Moreover, the petitioner has not established that his qualification was judged by recognized national or international experts in his field

The petitioner submitted membership certificates dated October 6, 2004 indicating that he is a "First class" member of the In response to the director's request for evidence, the petitioner submitted documents entitled ' nd ' The "Guidelines for Membership" for the state:

> All members must have high levels of talent in the circus arts of creation performance, directing, music, stage effects, teaching, theoretical research, organization and management areas, have high achievement with certain influences, and is completely voluntary.
>
> With the application and referral by two members, examination and approval of the Council, one can successfully become a member of the association.

The preceding guidelines do not define what consitutes "high levels of talent" or "high achievment." Thus, the petitoner has not established that these requirements equate to "outstanding achievements." Further, as provincial council members examine an applicant's qualifications, the petitoner has not established that his membership was judged by recognized national or international experts in his field.

Rule Three of the states: "All acrobats who are a citizen of China, over the age of 16, have considerable achievements in the field of acrobatics, and two referrals from current members can become members of the association after the approval of their application by

the board." The preceding rule does not define what consitutes "considerable achievements" Accordingly, the petitoner has not established that the requires "outstanding achievements" for admission to membership. Further, the documentation submitted does not indicate that the petitoner's membership was judged by recognized national or international experts in his field.

Aside from the preceding deficiences, the documents entitled do not include an address, telephone number, or any other information through which the associations may be contacted. Further, the documents do not bear association letterhead, an official seal, a signature, or some other type of certification demonstrating their reliability and sufficiency. *Matter of Ho*, 19 I&N Dec. at 591. In this case, there is no evidence demonstrating that the preceding associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Moreover, the preceding evidence does not establish that the petitioner's national or international acclaim as an acrobat has been sustained since his departure from China. *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). Accordingly, the petitioner has not established that he meets this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[3]

The petitioner submitted an article entitled in *Time Newspaper Forum*. The date of this article was not provided as required by the plain language of this regulatory criterion. Further, there is no evidence (such as circulation statistics) showing that this publication qualifies as professional or major trade publication or some other form of major media.

The petitioner submitted an untitled four-sentence piece about him in the October 26, 2004 issue of the The author of this material was not provided as required by the plain language of this regulatory criterion. The petitioner also submitted a captioned photograph of the petitioner and four others performing on stage in the November 9, 2004 issue of the *Newspaper*. The plain language of this regulatory criterion requires the submission of "[p]ublished

[3] Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual's reputation outside of that county.

material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The captioned photograph does not meet these requirements. In response to the director's request for evidence, the petitioner submitted a document entitled "Zhengzhou is one of the major medias [sic] in nd that it has "a daily circulation of 560 thousand copies." The source of this document is not identified and it does not bear organizational letterhead, an official seal, or some other type of certification demonstrating its reliability and sufficiency. The earlier inconsistency involving a document in which its source was not specified casts doubt regarding the reliability and sufficiency of the document submitted by the petitioner. *Matter of Ho*, 19 I&N Dec. at 591.

The petitioner submitted an article entitled the petitioner]." The author of the article, the name of the publication, and its date were not provided as required by the plain language of this regulatory criterion. The petitioner also submitted a June 27, 2005 article in An " but the author of the article was not provided. The record also includes event programs from various performances that included the petitioner, but such material does not equate to "[p]ublished material about the alien in professional or major trade publications or other major media."

In response to the director's request for evidence, the petitioner submitted documents entitled " The source of these documents is not identified and they do not bear organizational letterhead, an official seal, or some other type of certification demonstrating their reliability and sufficiency. *Matter of Ho*, 19 I&N Dec. at 591. Nevertheless, neither the petitioner nor counsel specifies as to which of the preceding articles the information in the two documents relates. We note that none of the translated material submitted by the petitioner for this criterion bears the name of the '

In this case, aside from the deficiencies specific to the petitioner's individual articles, the record lacks evidence (such as objective circulation information from an independent source) showing the distribution of the preceding publications relative to other national media to demonstrate that the submitted articles were published in professional or major trade publications or other major media. Moreover, as the most recent news media article about the petitioner is from 2005, the preceding evidence does not establish that the petitioner's national or international acclaim as an acrobat has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3).

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

> *Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.*

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and

that his or her achievements have been recognized in the field of expertise." The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.[4] 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).

On appeal, counsel states: "The only judging that [the petitioner] does is to choose acrobats for his production as needed and train them to perform with the team." The record, however, does not include documentary evidence of the petitioner's participation as a judge in this capacity. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Nevertheless, we cannot conclude that judging the work of one's subordinates or trainees meets the requirements of this regulatory criterion. *See Kazarian v. USCIS*, 580 F.3d 1030, 1035 (9th Cir. 2009). (Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion.)

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 various reference letters in support of the petition. We cite representative examples here.

states that the petitioner "is a polished performer and a master of many skills in the circus arts. He consistently displays a high degree of talent in all areas."

states: "[The petitioner] is an outstanding employee and responsible team captain. He is a hardworking and responsible employee.... I believe [the petitioner] has become one of the most admired successful acrobat today."

On appeal, the petitioner submits two letters from Ontario, Canada. One of the letters from was undated and unsigned and therefore is of minimal probative value in this proceeding. The signed letter from dated May 29, 2008, states that the petitioner toured with the nd was an outstanding

[4] We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS,* 2006 WL 778623 *9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.,* 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

performer. Additional letters submitted on appeal from discuss the petitioner's talent, past training regimen, performances, and awards. With regard to the petitioner's awards, counsel argues that they also meet this regulatory criterion. The evidence pertaining to the petitioner's acrobatic awards has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, USCIS clearly does not view these criteria 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. In this case, the record lacks evidence identifying specific original artistic or athletic contributions that have significantly influenced or impacted the petitioner's field.

We acknowledge the petitioner's submission of the preceding reference letters praising his talent as an acrobat. Talent in one's field, however, is not necessarily indicative of original contributions of major significance. With regard to the petitioner's acrobatic achievements, the reference letters do not specify exactly what his original contributions have been, nor is there an explanation indicating how any such contributions were of major significance in his field. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has earned the respect and admiration of those offering letters of support, the documentation submitted by him does not establish that he has made original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other acrobats nationally or internationally, nor does it show that the field has somehow changed as a result of his work so as to demonstrate the petitioner's significant contribution to his field.

The reference letters submitted by the petitioner, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts 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. Thus, the content of the writers' 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 acrobat who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's achievements have been unusually influential, highly acclaimed throughout his field, or have otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

On appeal, counsel argues that the petitioner's acrobatic programs and competitions meet this criterion. This criterion applies to visual artists rather than to performing artists such as the petitioner. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. It is inherent to the petitioner's occupation to perform. Thus, his performances are not considered to be artistic exhibitions designed to showcase his art. For instance, the petitioner has not identified any events that were orchestrated specifically to exhibit his work. Rather, segments of the circuses or acrobatic competitions in which the petitioner participated involved his acrobat troupe. The petitioner's participation in acrobatic competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Further, there is no evidence establishing that the acrobatic performances of the petitioner were consistent with sustained national or international acclaim at the very top of the field or that his performances equate to the exclusive showcases of an artist's work that are contemplated by this regulation for visual artists. The petitioner's acrobatic performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x) and will be further addressed there.

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.*

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.

On appeal, counsel states that the petitioner "performed in a leading role as the star performer for the The record, however, does not include evidence showing that this circus has a distinguished reputation. Counsel's claim that the s "as distinguished as a circus can be" is not sufficient. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Further, while the signed letter from dated May 29, 2008, states that he "would not hesitate to employ" the petitioner again, it does not indicate that the petitioner's role for the was leading or critical. The petitioner's evidence fails to demonstrate how his role differentiated him from the other acrobatic performers, let alone the entertainers who performed different circus acts. For example, there is no evidence showing that the petitioner's name frequently received top billing in the circus or that its popularity increased when he was known to be performing. Accordingly, the petitioner has not established that he was responsible for the success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

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

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

On appeal, counsel states that the petitioner "won a that had attached to it . . . prize money of 50,000 Yuan." This evidence has already been addressed under the prizes and awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Moreover, the record does not include evidence of the petitioner's receipt of 50,000 Yuan in prize money. 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)). While the petitioner submitted an Honor Certificate stating that the petitioner and eight other individuals from the performed the ' program and won the "Golden Lion Award" at the in November 1997, the certificate does not state that the petitioner received any prize money or indicate how the money was divided among the nine performers. Finally, the petitioner has not established that winning prize money at an art festival equates to earning "a high salary or other significantly high remuneration for services."

Counsel further argues that payment for the petitioner's travel expenses relating to his acrobatic tour in cities throughout North America represents additional evidence for this criterion. The record, however, does not include documentation of these expenses. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Nevertheless, the petitioner has not established that having one's travel expenses paid equates to earning "a high salary or other significantly high remuneration for services."

The plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has "commanded a high salary or other significantly high remuneration for services, *in relation to others in the field*." [Emphasis added.] The petitioner offers no basis for comparison showing that he has received compensation that was significantly high in relation to others in his field. Accordingly, the petitioner has not established that he meets this criterion.

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

On appeal, counsel states that the letter from is evidence of the petitioner's commercial success. This regulatory criterion calls for commercial successes in the form of "sales" or "receipts"; simply submitting a letter which expresses opinion regarding the petitioner's talent cannot meet the plain language of this regulatory criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. For example, there is no evidence showing that the petitioner's performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner.

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 his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 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). Moreover, the petitioner has not submitted evidence showing that his acclaim as an acrobat has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record does not include evidence of nationally or internationally acclaimed achievements and recognition in recent years.

The petitioner submitted documentation indicating that he is in the United States as a P-1 nonimmigrant, a visa classification that requires him to perform "with an entertainment group that has been recognized internationally as being outstanding in the discipline for a sustained and substantial period of time." *See* section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). While USCIS approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the 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 on 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).

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 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.