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PUBLIC COPY

U.S. Citizenship and Immigration Services

B2

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 0 2 2009

LIN 07 152 50144

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The 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. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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

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

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 30, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a visual artist and an art director. 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 letter from Director of "l Fellowship Program, stating that he was awarded a Fellowship to pursue graduate studies leading to a Masters in Computer Art at the School of Visual Arts in New York from 1998 to 2000. This fellowship represents financial support for the petitioner's graduate studies rather than a nationally or internationally recognized prize or award for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. The petitioner's receipt of the " Fellowship, limited by its terms to students, is not an indication that he "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). Receipt of such a fellowship offers no meaningful comparison between the petitioner and artists working in the field who have long since completed their educational training.

The petitioner submitted a July 6, 2001 letter from , the International Society for the Arts, Sciences and Technology, stating that he was "the 2001 recipient of the Leonardo Award for Excellence. The Leonardo Award for Excellence recognizes excellence in an article published in the journal *Leonardo*." The petitioner also submitted a press release by Andrea Blum stating:

> Leonardo/ISAT is pleased to announce that the 2001 Leonardo Award for Excellence has been presented to multimedia artist [the petitioner] and for their innovative article "' ' published in *Leonardo* Vol. 33, No. 5 (2000). The article discusses [the petitioner's] work , in which digital video, 3D animations and interactivity merge in a series of installations.

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* and it is his burden to establish every

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

element of this criterion. In this instance, there is no evidence showing that the petitioner's 2001 Leonardo Award for Excellence had a significant level of recognition beyond the presenting organization.

The petitioner submitted a November 16, 2001 letter from , Director of the Foundation, stating that the petitioner received "t for the Arts" in 1999. This grant funded the petitioner's project ' " A March 30, 2007 letter from Mr. states that the focus of the petitioner's project was "new researches in technologies applied to the arts." On appeal, the petitioner submits an October 2002 Picasso Foundation press release about the t stating: "An international panel comprised by gallery and museum directors, reviews the applications. The selection is based on the merits of previous work of the artists, and a proposed project to be executed and exhibited in the Picasso Art Museum . . . ."

With regard to the Picasso Grant and the other art project grants for which the petitioner applied and received funding (such as INCIARTE), it is noted that such grants are primarily intended to fund future work rather than to recognize past achievement. The past achievements of the artist are a factor in receiving project grants. The funding institution has to be assured that the artist is capable of performing the proposed work. Nevertheless, a grant is principally designed to fund future work, and is not a nationally or internationally recognized prize or award for excellent achievement. Furthermore, we note that funding for many of the petitioner's projects was awarded not through independent nomination, demonstrating the field's regard for his ability, but upon his application to the organization providing the grant. Finally, we note that it is not unusual for artwork to be funded by grants from a variety of public and private sources. Therefore, receipt of a project grant does not automatically elevate an artist to the very top of his field.

The petitioner submitted an April 7, 2004 letter from the New York Foundation for the Arts (NYFA) stating that he was "awarded a $7000 NYFA Fellowship in the category of Video." The letter states: "We hope that this assistance from NYFA will be of great value in furthering your work as an artist." The petitioner also submitted a May 27, 2004 NYFA press release stating: "This year 148 fellowships were awarded to 151 New York State artists . . . ." On appeal, the petitioner submits information from NYFA stating: "Each year, NYFA provides more than $11 million in grants and services and offers fellowships to as many as 170 New York State originating artists." Aside from the large number of NYFA fellowships granted annually, we note that eligibility for these fellowships is limited to "artists living and working in the state of New York" as stated in the April 2, 2007 letter from NYFA. As such, the petitioner's receipt of a NYFA fellowship reflects regional recognition rather than national or international recognition.

The petitioner submitted a January 31, 2007 document from the Government of Andalusia's Public Company for Management of Cultural Programs stating that it agreed to grant him 13,500 euros in support of his education and training (specified as "Course of Training in N.Y."). In discussing this funding, an April 16, 2007 letter from , Director of Museums, Cultural Ministry of the Andalusian Government states:

> This year the Spanish government, through INCIARTE, has dedicated 900,000 euros to artistic and cultural endeavors within Andalusia, throughout Spain, and abroad. . . . Of the nearly 500 highly qualified applicants, only one third received funding. [The petitioner's] project was among these. . . . [The petitioner] was granted $13,500 euros towards the realization of his project. Some of these funds are dedicated to tuition at New York University where [the petitioner] is involved in research and study of Applied Arts . . . .

There is no evidence showing that the petitioner's receipt of such governmental funding constitutes a nationally or internationally recognized prize or award for excellence rather than financial support for his ongoing training and education.

The petitioner submitted letters from the Institute of Youth of the Spanish Ministry of Work and Social Affairs, the Government of Youth for the City Hall of Malaga, and the Andalusian Institute of Youth in Malaga informing him that his work was selected for project funding, prizes, or exhibition. 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. The English language translations accompanying the preceding letters were incomplete and were not certified by the translator as required by the regulation. Further, the letters from the Government of Youth for the City Hall of Malaga and the Andalusian Institute of Youth in Malaga reflect local or regional recognition rather than national or international recognition. With regard to the letters that discuss "young artist" contests in which the petitioner earned recognition and the July 13, 2001 letter discussing project funding from the Institute of Youth, we do not find that this documentation indicates 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 evidence showing that the petitioner faced competition from throughout his field, rather than limited to his approximate age group. 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] Likewise, it does not follow that an artist who has had success in age-restricted artistic 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

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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.

percentage of individuals that have risen to the very top of their field of endeavor." There is no evidence showing that the awards and project funding cited in the preceding governmental letters qualify as nationally or internationally recognized prizes or awards for excellence in the petitioner's field.

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

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

The petitioner submitted articles about him in publications such as *ABC*, *Sur*, *El Mundo*, and *El Pais*. In response to the director's request for evidence, the petitioner submitted circulation statistics and Spanish newspaper rankings showing that these publications qualify as major media. As such, the petitioner has 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." Evidence of the petitioner's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. 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). For example, judging a national competition for top artists is of far greater probative value than judging a regional youth or student competition.

The petitioner submitted a March 15, 2007 letter from [redacted], Alumni Society of the School of Visual Arts, New York, stating:

> I have . . . had the pleasure of working with [the petitioner] when he served, at my invitation, on the jury for our Alumni Scholarship Awards. He is the most acclaimed computer artist that we have had serve on our jury, and his contributions were invaluable. He has a commanding knowledge of his field, which combined with his amazing intellect and vast professional experience raised the quality of the whole jury to the highest level. And he committed a tremendous amount of time as a volunteer to prepare for the jury and to judge the work during a lengthy session.

In response to the director's request for evidence, the petitioner submitted a May 19, 2007 letter from Alumni Affairs, School of Visual Arts, New York, stating:

> [W]hen we choose individuals to serve on our Alumni Scholarship Awards panel and rely on their artistic expertise to judge applications and work samples, [the petitioner] was our top choice. In light of his achievements and given the fact that he was our choice among countless numbers of other qualified candidates, [the petitioner] is clearly recognized among his peers as an individual of extraordinary ability as a media artist.

We cannot ignore that the petitioner attended the School of Visual Arts from 1998 to May 2001. The petitioner has not established that evaluating student candidates for scholarships at his alma mater is indicative of national or international acclaim at the very top of his field.

The petitioner also submitted a May 25, 2007 letter from Coordinator, Andalusian Institute of Youth in Malaga, stating:

> The Andalusian Government contest in Spain is a yearly art event, which attracts applicants from all over the country. Typically, 600 individuals submit their work for review by the evaluation committee.
>
> * * *
>
> The fact that [the petitioner] was requested to serve as a juror on the Andalusian Government Contest clearly signifies his national recognition as a [sic] artist of extraordinary ability.

The plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others in the same or an allied field of specification." The petitioner has not established that evaluating student scholarship applicants for his alma mater and for youth in an art contest sponsored by a regional government, who have not yet begun working in the field, meet this requirement. Further, the record does not include supporting evidence establishing the level of acclaim associated with his involvement. Nor is there evidence showing the dates of the petitioner's participation, the specific work judged by him, the names of those he evaluated, or documentation of his assessments. Without evidence showing, for example, that the petitioner has judged artists already working in the field in a manner consistent with sustained national or international acclaim, we cannot conclude 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.*

We acknowledge the petitioner's submission of several reference letters praising his talent as an artist. Talent in one's field, however, is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

of Spain Center, New York University, states:

> I have known [the petitioner] for the past eight years and I feel I can strongly recommend him for his outstanding talent.
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> * * *
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> At the professional level, [the petitioner] has been working as an Art Director for the King Center of New York University for the past four years . . . .
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> * * *
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> [The petitioner's] artworks are always of an original and surprising quality to be such a young artist. His resume is impressive with more than 40 worldwide shows and several prestigious scholarships, among them, one of the great renowned in Spain from the Picasso Foundation.
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> * * *
>
> With so much success so early in his career and knowing [the petitioner] personally and for a long while, I am sure that he has great potential and he will reach the top of the international art world in years to come.

Cultural Counselor of the Embassy of Spain in the United States, states: "[The petitioner] is a young artist with an impressive curriculum of international exhibitions, awards and recognitions. . . . We hold no doubts that [the petitioner] will become an important figure in modern Contemporary art history." Similarly, Borusan Art Gallery Director, states that the petitioner "stands out as one of the most promising artists of his generation."

With regard to the witnesses of record, many of them discuss what may, might, or could one day result from the petitioner's work, rather than how his past achievements already qualify as original contributions of major significance in the field. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The petitioner seeks a highly restrictive visa classification, intended for aliens already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. *See* 8 C.F.R. § 204.5(h)(2).

Chair, Master of Fine Arts Computer Art, and Director of Computer Education, School of Visual Arts, states:

> I first met [the petitioner] when he entered the MFA Computer Art Program . . . . [The petitioner] graduated in 2001 with a specialization in digital fine art and installation art. His thesis project was titled , and explored the topics of reality,

> artificial reproduction, and sexuality. He wrote an essay about the artwork, which was published . . . in *Leonardo* . . . .
>
> * * *
>
> I recent[ly] published *Art of the Digital Age*, the first illustrated survey of digital art, with Thames & Hudson and included [the petitioner's] creative work in the book. [The petitioner's] work was one of over one hundred artists selected for the book . . . .

While the petitioner published an essay about his thesis project and his work was included in a book by his academic supervisor at the School of Visual Arts, there is no evidence showing that his work constitutes a contribution of major significance in contemporary art.

, Malaga, Spain, states:

> I have known [the petitioner] for six years now. . . . In 2006, I had the honor of hosting a solo show of his new work at my gallery.
>
> * * *
>
> [The petitioner] is one of the few Spanish artists that always constantly search for new mediums of expression. His work stands out for its innate intelligence and obsessive meticulousness in addition to its powerful contents and technique. Although technology plays an important part in [the petitioner's] work, his method and beauty of the pieces he carefully creates, is what really makes him a force to be reckoned with the art world.

Assistant Professor of Fine Arts, Pace University, states: "[The petitioner's] work is highly regarded in the various New York digital art communities. . . . His works – which are gaining a local, national, and international reputation, are masterful from both technical and conceptual standpoints."

The evidence submitted by the petitioner does not establish that his artistic achievements constitute original 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's artwork has earned the admiration of those providing letters of recommendation, there is nothing to demonstrate that his work has had major significance in the field at large. For example, the record does not indicate the extent of the petitioner's influence on other artists nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. These letters, 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 artist who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

As part of his thesis project at the School of Visual Arts, the petitioner wrote an essay about his artwork which was published in *Leonardo*. There is no evidence (such as circulation statistics) showing that *Leonardo* qualifies as a professional or major trade publication or some other form of major media. The petitioner submitted a November 4, 2005 letter from [redacted] Managing Editor, *Leonardo*, asserting that her journal "is considered internationally to be the premier scholarly journal in the art-science-technology field," but there is no supporting evidence for this self-serving statement from the journal's editor.[3] Further, the plain language of this regulatory criterion requires the petitioner's authorship of more than one article.

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

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

The petitioner submitted evidence showing that his work was displayed at the Sundance Film Festival in Utah. The petitioner also submitted evidence showing that his work has been displayed at museums such as the Seoul Museum of Art in South Korea and at solo exhibitions such as the Picasso Foundation Museum in Spain. Published media reports confirm the significance of the preceding exhibitions. As such, the petitioner has established that he meets this second criterion.

In this case, we find that the petitioner meets only two of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

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[3] For example, there is no evidence showing that the journal has significant national or international distribution.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability.

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 petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 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 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 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.