

identifying data deleted to
prevent clearly unwarranted
invasion 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

PUBLIC COPY

B2

FILE: [REDACTED]
LIN 07 231 50364

Office: NEBRASKA SERVICE CENTER

Date: JUL 16 2009

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

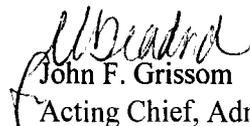
PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:

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 athletics and 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. 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).

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate “sustained national or international acclaim” and present “extensive documentation” of his or her achievements. 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 implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten criteria that call for the submission of specific objective evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). Through the submission of required initial evidence, at least three of the ten regulatory criteria must be satisfied for an alien to establish the sustained national or international acclaim under the regulation.

Counsel’s appellate brief focuses on the appropriate standard of proof. Counsel argues that the director applied “a higher standard of proof than that allowed by law” and that the petitioner “was able to demonstrate by *at least* a preponderance of evidence that he is an alien of extraordinary ability.” However, the petition must be filed with the initial evidence required by regulation. 8 C.F.R. § 103.2(b)(1). Determinations regarding the standard of proof arise only after the petitioner submits the required initial evidence. For this reason, the AAO will first address the regulatory criteria and the submitted evidence and then turn to the standard of proof.

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 July 2, 2007, seeks to classify the petitioner as an alien with extraordinary ability as an acrobat. The petitioner submitted a December 10, 2006 letter from [REDACTED] Head Coach for Cirque du Soleil’s “Mystere” production in Las Vegas, stating that the petitioner has worked as an acrobat for the show since 2005. The letter further states:

[The petitioner] performs trampoline solo, which is a very important part of the show. His solo consists of a combination of the most complex tricks, which he performs one after another in a row, without stopping. . . . [The petitioner] performs this combination two times daily, five times a week in the show “Mystere” in Las Vegas.

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 under 8 C.F.R. § 204.5(h)(3).¹

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

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 evidence showing that he won several awards in trampoline competition from 1992 to 2001. Many of these awards were received in youth or junior level competition. For example, the petitioner submitted a May 1997 Diploma from the Belarus Ministry of Sports and Tourism stating that he placed “2nd in individual event at the Championship of Republic of Belarus among *young men born in 1980 or later.*” [Emphasis added.] The petitioner also submitted an award diploma dated November 1997 stating that he placed “second in synchronized event at the XXIV Traditional *Youth Competitions commemorating [REDACTED], Hero of the Soviet Union.*” [Emphasis added.] The record also includes a March 1994 Diploma stating that the petitioner placed first in an individual event at the “Trampoline Championship of Republic of Belarus among children-youth sports schools within candidate for Master of Sports Program.” With regard to acrobatic awards won by the petitioner in youth or junior level 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). 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 athlete who has had success in national competition at the youth or junior level 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.”

The petitioner submitted two letters of support from [REDACTED], President of the Belarusian Federation of Trampoline and Acrobatics, and a document from the “Vitebsk State Specialized Children-Youth School of Olympic Reserve No. 2” listing his various awards. The petitioner also submitted photographs of his prizes and awards. Even if the petitioner were to establish that some of his awards were not limited to youth or junior-level competition, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that his 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 evidence establishing the magnitude of the competitions in which the petitioner received awards or evidence demonstrating that they commanded significant recognition beyond the context

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.

of the sporting event where they were presented. For instance, there is no evidence showing that the awards received by the petitioner were announced in national sports media or in some other manner consistent with national or international recognition. With regard to the petitioner's Master of Sport Certificate in Trampoline (1995), the petitioner has not submitted evidence of its selection requirements or national significance. Further, there is no evidence showing the petitioner's receipt of nationally or internationally recognized prizes or awards in the six years preceding the petition's filing date. Accordingly, the petitioner has not demonstrated that his national or international acclaim as a competitive 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). Finally, there is no evidence showing that the petitioner has received any nationally or internationally recognized prizes or awards for circus acrobatic performance, the area of expertise in which the petitioner seeks to continue to work in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5).

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 his Master of Sport Certificate in Trampoline (June 8, 1995) issued by the State Committee for Physical Education and Sports. The petitioner has not established that this certification equates to membership in an association in the field for which classification is sought. Further, there is no evidence indicating that this certification obtained by the petitioner at the age of fourteen required outstanding achievements, as judged by national or international experts in his field or an allied one. Nevertheless, this document has already been addressed under the awards 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 association memberships, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

The petitioner also submitted two letters of support from [REDACTED] stating that the petitioner was a member of the national team of the Republic of Belarus from 1998 to 2001. We acknowledge that membership on an Olympic team or a major national team such as a World Cup soccer team may

serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. Without evidence showing, for instance, the selection requirements for the petitioner's national team, we cannot conclude that the petitioner meets the elements of this regulatory criterion. Further, we cannot consider a 1998 – 2001 athletic team membership to be evidence of the petitioner's sustained national acclaim, as this membership terminated six years before the petition's filing date. As previously noted, the statute and regulations require the petitioner to demonstrate that his national or international acclaim 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). Finally, the athletic team membership claimed by the petitioner is unrelated to his work as a circus trampoline performer, his intended occupation in the United States. See section 203(b)(1)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(1)(A)(ii), and 8 C.F.R. § 204.5(h)(5). 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 a four-line entry mentioning him in *Who is Who in the Republic of Belarus Sport Encyclopedia* (1999). The petitioner's brief biographical entry appears on page 193 along with the profiles of 22 other athletes. The petitioner has not established that this comprehensive athletic directory, or any significant portion of it, is about him. Further, there is no evidence showing that this publication qualifies as a professional or major trade publication or some other form of major media. For example, there is no evidence showing that this directory had substantial national or international readership, that it had significantly higher sales relative to other national sports publications, or that it was otherwise circulated in a manner such that publication in the directory would be consistent with sustained national or international acclaim.

The petitioner submitted a letter from [REDACTED] Reporter for the Foundation of Independent Radio Broadcasting, stating that she interviewed the petitioner "for the program 'Questions of Vital

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.

Importance' . . . which was aired in October, 2000. The program was dedicated to the II Festival-Contest of the Circus Art in Saratov." The record does not include a recording or transcript of the radio broadcast. Without such evidence, the petitioner has not established that the program was about him rather than about "the II Festival- Contest of the Circus Art in Saratov." 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." A radio interview of the petitioner does not meet these requirements. Aside from the preceding deficiencies, we cannot ignore the lack of evidence for this regulatory criterion from 2001 through the petition's filing date. As previously noted, the statute and regulations require the petitioner to demonstrate that his national or international acclaim 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." 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).

The petitioner submitted a July 20, 2005 letter from [REDACTED] stating:

I am an Honored Coach of the Republic of Belarus, Chief Coach of the National Trampoline Team, and a Judge of International Category. I am writing this letter to certify that [the petitioner] is a Trampoline Judge of the First Category, which allows him to participate on a judicial panel at competitions of such rank as: championships and tournaments of junior schools, championships and tournaments of a city and a region, as well as national competitions.

[The petitioner] participated as a judge on the following competitions: Championship of Republic of Belarus, Championship of City of Vitebsk, Championship and Cup of Belarus.

The letter from [REDACTED] does not specify the number of judging categories that exist or their official requirements. For example, [REDACTED] states that he is “Judge of the International Category” while the petitioner is only a “Judge of the First Category.” The petitioner has not established that his level of judgeship is an indication that he “is one of that small percentage who have risen to the very top of the field of endeavor” rather than an entry-level judging designation. *See* 8 C.F.R. § 204.5(h)(2). Further, unlike the other initial documents in the record (such as the award diplomas) which bear the actual stamp of Russian Language Services, the July 20, 2005 letter from [REDACTED] does not bear the translator’s stamp. Although the record contains a general “Translator Certification” from Russian Language Services for the “package of documents attached to I-140 Immigrant Petition for Alien Worker,” the blanket translation certification does not specify which of the initial documentation to which it pertains. The submission of a single translation certification that does not specifically identify the document or documents it purportedly accompanies does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that 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. Accordingly, without a proper certified English language translation, we cannot accord any weight to [REDACTED]’s July 20, 2005 letter.

Nevertheless, 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 for which classification is sought.” Rather than submitting primary evidence of his participation as a judge in the aforementioned competitions, the petitioner instead submitted a brief letter from [REDACTED] attesting to his involvement. 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. at 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, the petitioner has not overcome the absence of primary and secondary evidence of his participation as a judge for the preceding competitions. Further, the record lacks evidence such as the level of acclaim associated with judging these competitions, the names of the athletes judged by the petitioner, their level of expertise, the dates of the competitions, or documentation of his assessments. Aside from the preceding deficiencies, there is no evidence showing that the petitioner has judged any competitive trampoline events during the five-year period preceding the petition’s filing date. As discussed, the statute and regulations require the petitioner to demonstrate that his national or international acclaim 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). Without evidence showing, for example, that the petitioner’s activities involved judging top athletes or performers in his field or were otherwise consistent with sustained national or international acclaim at the very top level of his field, we cannot conclude 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.

The petitioner submitted letters of support from [REDACTED] and [REDACTED], the petitioner's "personal coach," indicating that he competed for Belarus national team, but there is no evidence showing that his role for the team was leading or critical, or that his trampoline team had a distinguished reputation. For example, there is no evidence showing that the petitioner's competitive achievements differentiated him from those of the other national team members (such as a tally of medals earned by each team member).

The petitioner also submitted evidence of his employment with the "Incredibly Odd Circus" Company in Moscow and Cirque du Soleil's "Mystere" at Treasure Island in Las Vegas. The director's decision noted that the petitioner did not provide "specific documentary evidence of the distinguished reputations" of his employers. On appeal, counsel cites information obtained from *Wikipedia* regarding Cirque du Soleil's annual revenues, awards, and its performance at Superbowl XLI. Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁴ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

Nevertheless, the content of the letters of support from representatives of the "Incredibly Odd Circus" Company in Moscow and Cirque du Soleil do not establish that the petitioner's role for them was leading or critical. In addressing the petitioner's role in the teeterboard act, [REDACTED] Producer, Stage Manager, and Director, "Incredibly Odd Circus" Company, Moscow, states: "During [the petitioner's] employment with this company, [the petitioner] revealed his quick-wittedness and coordination, speedy memorization and mastering skills. With his performance, a technically difficult

⁴ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on June 30, 2009, copy incorporated into the record of proceeding.

flight turns into an act of art and beauty.” [REDACTED], Artistic Director of Mystere and Luxor, Cirque du Soleil (United States), states: “The petitioner’s role as a jumper demands a lot of responsibility since he is involved in the most difficult part of the act and he consistently performs excellently. As a jumper, [the petitioner] performs one of the most important parts of the show.” The petitioner’s evidence fails to specify how his role differentiated him from the other performers in Mystere or his circus teeterboard act, let alone the numerous other entertainers employed by Cirque du Soleil and the “Incredibly Odd Circus” company. For example, there is no evidence showing that the petitioner’s name frequently received top billing in his shows or that their popularity increased when he was known to be performing. Accordingly, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing of his employers 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.

In response to the director’s request for evidence, the petitioner submitted a January 31, 2008 letter from [REDACTED] Immigration Technician, Resident Shows Division, Cirque du Soleil (United States), Inc., stating that the petitioner “currently earns a yearly salary of \$50,494.08.” There is no evidence showing the petitioner’s yearly earnings as of the petition’s filing date. 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 will not consider the petitioner’s salary for 2008 in this proceeding. Nevertheless, the plain language of this regulatory criterion requires the petitioner to submit evidence showing that he has commanded a high salary “in relation to others in the field.” The petitioner offers no basis for comparison showing that his compensation was significantly high in relation to others in his field. Thus, the petitioner has not established that he meets this criterion.

In this case, we concur with the director’s determination that the petitioner has failed to demonstrate 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). Further, there is no evidence showing 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). Specifically, the record does not include evidence of his nationally or internationally acclaimed achievements and recognition in acrobatics subsequent to the conclusion of his competitive career in Belarus in 2001.

The petitioner submitted documentation showing that he is currently 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 be 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).

On appeal, counsel argues that the director “erred in applying fundamental standards and burdens of proof.” Counsel asserts that the correct standard is “preponderance of the evidence,” which requires only that eligibility be “more likely than not” to be true and cites to *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987). In that case, the court held that an alien’s withholding of deportation required “a showing that ‘it is more likely than not that the alien would be subject to persecution’ in the country to which he would be returned.” Although the instant case involves the adjudication of an employment based immigrant visa petition, not withholding of deportation, we do agree with counsel that the correct standard of proof is a preponderance of the evidence. Except where a different standard is specified by law, a petitioner or applicant in administrative immigration proceedings must prove by a preponderance of evidence that he or she is eligible for the benefit sought. See e.g., *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997) (noting that the petitioner must prove eligibility by a preponderance of evidence in visa petition proceedings). The “preponderance of the evidence” standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the applicant is required to submit that evidence. 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) and (4). In this case, the documentation submitted by the petitioner failed to demonstrate by a preponderance of

the evidence that the petitioner has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor. The specific deficiencies in the petitioner's evidence was addressed in our discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

Section 291 of the Act provides:

Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document, or is not inadmissible under any provision of this Act, and, if an alien, that he is entitled to the nonimmigrant; immigrant, special immigrant, immediate relative, or refugee status claimed, as the case may be.

The law goes on to assert that the evidence must establish eligibility "to the satisfaction" of the adjudicating officer. This burden is confirmed in *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965) and *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966).

A petitioner cannot establish eligibility for classification as an alien of extraordinary ability merely by submitting evidence that simply relates to at least three regulatory criteria at 8 C.F.R. § 204.5(h)(3). Rather, in determining whether a petitioner meets a specific regulatory criterion, the evidence itself must be evaluated in terms of whether it meets all of the elements required by that criterion and whether the evidence is consistent with sustained national or international acclaim. Further, in contrast to *INS. v. Cardoza-Fonseca*, the benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. See section 203(b)(1)(A)(i) of the Act. The regulations governing the present immigrant visa determination have no requirement mandating that USCIS specifically accept the credibility of personal testimony, even if not corroborated. The regulations provide that eligibility may be established through a one-time achievement or through documentation meeting at least three of ten criteria. 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing this statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

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.