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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  
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 20 2009  
LIN 07 156 50534

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 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 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 May 3, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a professional dancer. 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).<sup>1</sup>

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

In addressing the petitioner's evidence for this regulatory criterion, the director's decision stated:

The petitioner initially submitted competition results and photographs of awards. The Service advised the petitioner that while meritorious, it has not been established that these constitute lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. The Service requested that for any award the petitioner wished to claim in support of the criterion, he must provide a copy/photograph of the award that clearly identifies the name of the award and the recipient. The Service also requested evidence that establishes the nature and purpose of the award, the significance of the award, its scope, the requirements necessary to compete for the award, and the criteria utilized to select the recipient. In response, the petitioner provided copies of additional award certificates as well as copies of previously submitted awards.

The evidence of record indicates the petitioner has participated in numerous dance competitions. For example, the petitioner placed first in the 1997 Queen Elizabeth 2 Silver Jubilee Commemorative Championship. Further, the petitioner received first place in Amateur Latin at the 2001 Crown International Championships. The record also indicates the petitioner either won awards or was recognized as a finalist at the Essex Latin Amateur Open in 2000 and 2001; the 1994 Thailand International Ballroom Dancing Championships; South Pacific Dancesport Championships in 1998; the Dancesport Ballroom Championships in 1996; among others. However, upon review, the evidence submitted fails to establish that the petitioner meets this criterion. First, while the petitioner has provided information regarding the Queen Elizabeth 2 Silver Jubilee Commemorative Championships, this

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

evidence does not establish the stature and prestige of the relating awards. It is also noted that the petitioner failed to provide evidence that establishes the stature and prestige of his other awards. In the absence of additional evidence, the record fails to establish that the petitioner's awards are indicative of or consistent with national or international acclaim. Second, it appears that many of the petitioner's awards were won in amateur competitions. This does not support a finding that the petitioner has won awards at the highest level in the field. Third, it must be noted that many of the petitioner's awards were received in the mid 1990's and early 2000's. The record does not establish that the petitioner has recently received additional awards. Therefore, even if the petitioner's previous awards could be considered evidence of acclaim, the petitioner has failed to sustain such acclaim through the receipt of additional awards at high-level competitions.

With regard to the 1997 Queen Elizabeth 2 Silver Jubilee Commemorative Championship, the petitioner submitted a March 26, 2008 letter from [REDACTED] Administrative Director for Victoria and South East Asia, Federal Association of Teachers of Dancing (FATD), Ltd., Australia, stating:

This letter is written to certify that [the petitioner] . . . placed first in this Country's most prestigious 10 dance [modern and Latin] Championship the Queen Elizabeth 2 Silver Jubilee Commemorative Championship conducted at this organization's South Pacific Ballroom Dance Championship in Sydney Australia September 1997.

On other occasions at this event in various years they received places in the top 3 of modern ballroom and Latin events – Level 5.

The petitioner also submitted a March 25, 2008 letter from [REDACTED] stating: "This letter certifies that [the petitioner and his partner] were through their dancing career over many years in Australia registered as *amateur* competitors with the Australian Dancing Board the only regulating body of *amateur* dancing competition in this Country." [Emphasis added.] According to the preceding letters from [REDACTED] Level 5 is an amateur-level designation rather than a professional dancing designation. We cannot conclude that registration as an amateur competitor in a field that includes professionals is an indication that the petitioner "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 seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for amateurs who aspire to become professionals at some unspecified future time.

The petitioner's evidence included a list entitled "Queen Elizabeth Silver Jubilee Commemorative Trophies Previous Winners." The winners list has two sections: Amateur and Professional. The petitioner and his partner's name appear in "Amateur" winners section (1997). The record also includes material from the FATD entitled "The Queen Elizabeth Silver Jubilee Commemorative Trophies" stating:

To mark the celebration of the Federal's Diamond Jubilee in 1991 the Directors of the Association resolved to replace the former South Pacific *Amateur* State Representative Championships with the inauguration of State Representative Teams Match so that as from 1991 this very special Commemorative *Amateur* Trophy will continue to be awarded annually . . . to the overall winners of the South Pacific Adult (A) Grade Standard and Latin American Championships.

[Emphasis added.]

The petitioner submitted two Certificates of Honor from the FATD South Pacific Dancesport Championships (1998) reflecting that he qualified among the "Finalists" in the "Adult Open Latin American" and "Adult Open Standard" categories. The petitioner also submitted three Certificates of Honor from the FATD Dancesport Ballroom Championships (1996) reflecting that he was a "Grand Finalist" in the "Interdominion Adult Open New Vogue," "Interdominion Ten Dance," and "Interdominion Adult Open Standard" categories. While it is certainly an honor to be selected as a finalist, the plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized prizes or awards." In this instance, there is no evidence from the FATD showing that the petitioner received a prize or an award at the FATD South Pacific Dancesport Championships (1998) or the FATD Dancesport Ballroom Championships (1996). In addition, the events in which the petitioner competed were for amateurs.

The petitioner submitted a March 26, 2008 letter from [REDACTED] Co-organizer, FATD, stating that he and his partner won the FATD's "Crown" International Dancesport Championship "in the amateur Latin Section . . . on April 1, 2001." In support of this statement, the petitioner submitted a results list for the "2001 Crown International Championships" reflecting that he and his partner placed first in the "Amateur Latin" category. According to the results list, the competition included a more exclusive "Professional Latin" category won by [REDACTED] and [REDACTED].

The petitioner submitted two certificates from the British Dance Council reflecting that he won the "Essex Latin Amateur Open" in 2000 and 2001.

The petitioner submitted another letter from [REDACTED] stating that he "was in Taipei and Bangkok when [the petitioner and his partner] won the *amateur* ballroom and Latin International events in those cities in the late 1990's." [Emphasis added.] In support of this statement, the petitioner submitted a certificate from the 1994 Thailand International Ballroom Dancing Championship stating that he and his partner "placed 1<sup>st</sup> in the Amateur Modern" category. The petitioner also submitted photographs of his 1<sup>st</sup> place amateur trophies from the Thailand International Ballroom Dancing Championship (1994) and the Taipei International Championships (1995).

The petitioner submitted a certificate from the 1994 1<sup>st</sup> Penang International Ballroom Dance Sport Championship stating that he and his partner were the "1<sup>st</sup> Runner-up" in the "Amateur Latin" event. While it is certainly an honor to be selected as 1<sup>st</sup> Runner-up, the plain language of this regulatory criterion requires evidence of the petitioner's receipt of "nationally or internationally recognized

prizes or awards.” In this instance, there is no evidence from the competition’s organizers showing that the petitioner received a prize or an award at this event.

The petitioner submitted a letter from [REDACTED] Secretary, Dance Masters of Australia, stating that he and his partner were “winners of the *Junior* New Vogue, Modern & Latin section at the 1992 Dance Masters of Australia Championships” [emphasis added] and that they “earned the right to represent Victoria at the Australasian Championships in Adelaide.” In support of this statement, the petitioner submitted a plaque stating: “Victorian Representative 1992 Australasia Championships *Junior* Modern. Latin American. New Vogue. [The petitioner].” [Emphasis added.]

The petitioner submitted a results listing for the “Dance and Listen Awards England” (2002) reflecting that he and his partner placed in the top 12 and reached the semifinals in the “Amateur Latin” category. The plain language of this regulatory criterion requires evidence of the petitioner’s receipt of “nationally or internationally recognized prizes or awards.” In this instance, there is no evidence from the competition’s organizers showing that the petitioner received a prize or an award at this event.

The petitioner submitted a results list for the “Blackpool Dance Festival” (2001) reflecting that he and his partner placed 64<sup>th</sup> among 309 couples in the “Amateur Latin” category. There is no evidence from the competition’s organizers showing that the petitioner received a prize or an award at this festival. The petitioner also submitted information obtained from *Wikipedia* regarding the significance of the Blackpool Dance Festival.<sup>2</sup> Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.<sup>3</sup> See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8<sup>th</sup> Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

The documentation submitted by the petitioner indicates that all of the awards submitted for this regulatory criterion were won in “junior” or “amateur” level dancing competitions. We cannot conclude that such awards demonstrate that the petitioner “is one of that small percentage who have

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<sup>2</sup> This information indicates that the Blackpool Dance Festival includes “professional couples” competitive categories.

<sup>3</sup> 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](http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer), accessed on July 10, 2009, copy incorporated into the record of proceeding.

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.<sup>4</sup> Likewise, it does not follow that a dancer who has had success in national or international competition at the junior or amateur 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.” Further, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that petitioner’s awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no evidence establishing that the petitioner’s awards had significant recognition beyond the context of the dance competitions where they were presented. Finally, there is no evidence showing the petitioner’s receipt of nationally or internationally recognized prizes or awards in dance competition during the five years preceding the petition’s filing date. On appeal, counsel acknowledges that the petitioner “retired from competitive dancing in 2003.” Accordingly, the petitioner has not demonstrated that his national or international acclaim as a competitive dancer 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 a dancer.

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

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<sup>4</sup> 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.

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 initially claimed membership in the FATD, the Association of Teachers of Dance (ATD), and the English Amateur Dance Association (EADA).

In response to the director's request for evidence, the petitioner submitted information about the FATD from its internet site stating:

To this day full membership of the Federal Association is available by examination only, to persons over the age of 18 years, in any one of seven dance disciplines covered by the Ballroom Faculty and the Theatre Dance Faculty.

\* \* \*

Membership of the Association is available by examination only and may be attained in either Tap or Modern taking the examinations is strict rotation --- Elementary – Associate Degree : Intermediate – Licentiate Degree : Advanced – Advanced Member Degree.

We cannot conclude that passing an examination in a particular dance discipline is tantamount to outstanding achievements. Nevertheless, the petitioner has not submitted his membership credential for the FATD identifying him as a member of the Association. 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). While the petitioner may have competed at events organized by the FATD,<sup>5</sup> there is no evidence (such as examination results or an identification card) of his membership in the Association.

As discussed, the petitioner submitted a March 25, 2008 from [REDACTED] of Dancesport Victoria stating: "This letter certifies that [the petitioner and his partner] were through their dancing career over many years in Australia registered as amateur competitors with the Australian Dancing Board the only regulating body of amateur dancing competition in this Country." With regard to the petitioner's registration as an amateur competitor with the Australian Dancing Board (now Dancesport Victoria), the petitioner has not established that his registration equates to holding membership in an association. Further, there is no evidence (such as bylaws or official admission

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<sup>5</sup> On appeal, counsel identifies the March 25, 2008 from [REDACTED] of Dancesport Victoria (Exhibit O, item 4) as "F.A.T.D. / Dance Sport Victoria Member Letter." This letter states only that the petitioner and his partner were "registered as amateur competitors with the Australian Dancing Board" (now Dancesport Victoria). It does not state that the petitioner was a member of the FATD as asserted by counsel.

standards) showing that the Australian Dancing Board required outstanding achievements of its registrants, as judged by recognized national or international experts in the petitioner's field or an allied one.

The petitioner's response to the director's request for evidence included a letter from [REDACTED] Chief Executive Officer, ATD, stating:

[The petitioner and his partner] have been members of the ATD for the past 15 years. During that time they completed all levels of medal tests in Jazz Dance: Tap Dancing: Funk/Hip Hop and Show Dance which let to the completion of degrees to Licentiate Level *the second highest in the above styles*.

[Emphasis added.]

On appeal, the preceding letter from [REDACTED] was accompanied by an ATD "Examination Report Form" for the petitioner dated May 7, 1992.<sup>6</sup> This form reflects that the petitioner received a passing grade of 99%, but lists his "Grade" as "Elementary." The preceding information does not establish that attaining the Licentiate Level in the ATD requires outstanding achievements. Further, the petitioner has not established that attaining "the second highest" Licentiate Level is 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).

The petitioner's response to the director's request for evidence included a copy of his "Adult Membership/ Registration Card" for the EADA. The petitioner also submitted a Certificate of Appreciation from Vicdance, Inc. recognizing his "contribution to the growth of Vicdance, Inc.," but the certificate does not state that the petitioner held membership in that organization. The petitioner's response also included a July 29, 2004 advisory opinion letter from the American Guild of Musical Artists (AGMA), but the letter does not state that the petitioner was a member. Nevertheless, there is no evidence showing that the EADA, Vicdance Inc., and the AGMA require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

The petitioner also submitted a February 21, 2007 letter from [REDACTED] Co-Director of Dance Department, McDonald Selznick Associates, Inc. (MSA) stating that her agency represents him. In response to the director's request for evidence, the petitioner submitted his November 6, 2004 "Talent Agency Agreement" with MSA and information about the company from its internet site. The petitioner has not established that his contractual arrangement for MSA to represent him in equates to membership in an association. Further, we cannot conclude that the petitioner's ability to secure employment representation from a talent agency is tantamount to outstanding achievements.

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<sup>6</sup> The petitioner, born on March 3, 1977, was age 15 at that time.

In this case, the petitioner has not established that the preceding organizations require outstanding achievements of their members, as judged by recognized national or international experts in his field or an allied one. 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.<sup>7</sup>

The petitioner submitted a 1999 article in *Australian Gazette* entitled "Dancing siblings to seek fame in London." The author of this article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a "comment" about him and his partner in the March 29, 2001 issue of *Dance News* entitled "Open Essex Amateur Latin Championship." The comment consists of a three-sentence analysis of their dance performance at the amateur competition.

The petitioner submitted a six-sentence article entitled "The right step." The name of the publication and the date and the author of the article were not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a captioned photograph of him and his partner dancing on page 107 of the December 6, 1992 issue of the *Herald-Sun*. The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." A captioned photograph does not meet these requirements.

The petitioner submitted another captioned photograph of him and his partner dancing on page 13 of the February 5, 1992 issue of the *Waverly Leader*. This photograph in the *Waverly Leader* appeared with a "Business Profile" of [REDACTED]; Wendon Dance Academy in the "Leader Advertising Feature." The plain language of this regulatory criterion requires that the published material be "about the alien." The preceding advertisement was not about the petitioner and does not meet the elements of this criterion.

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<sup>7</sup> 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.

The petitioner submitted a nine-sentence article entitled “Young dancers do well” from page 27 of the September 6, 1989 issue of the *Waverly Gazette*. This article discusses the petitioner’s competition “in the under-13 age group.” The author of this article was not identified as required by the plain language of this regulatory criterion.

The petitioner submitted a seven-sentence article entitled “The right step” in the “Community Sport” section of an unidentified newspaper. The name of the publication and the date and the author of the article were not identified as required by the plain language of this regulatory criterion.

In response to the director’s request for evidence, the petitioner submitted an incomplete copy of an August 1989 article in *The Australian*. This article, entitled “Dancesport foxtrots to Olympic stage,” was accompanied by a captioned photograph identifying the petitioner and his dance partner. While the visible portion of the article mentions the petitioner’s dance partner, there is no discussion in the article about the petitioner. Accordingly, this material does not meet the elements of this regulatory criterion.

The petitioner’s response to the director’s request for evidence included an article about singer Vonzell Solomon in the April 2, 2008 issue of *USA Today*, but the petitioner’s name is not specifically mentioned. Aside from this article not being about the petitioner, it was published subsequent to May 3, 2007, the petition’s filing date. A petitioner, however, must establish eligibility at the time of filing the petition. 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 this article in this proceeding.

On page 7 of her letter responding to the director’s request for evidence, counsel provides circulation information for *The Australian*, *Herald-Sun*, *Waverly Leader*, and *USA Today*. Counsel does not identify or provide the source of her circulation information. Without evidence in the record 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). There is no objective evidence showing that the preceding publications qualify as professional or major trade publications or some other form of major media. Even if the petitioner were to submit objective evidence demonstrating that each of the preceding newspapers qualify as major publications, as discussed, the material in those newspapers does not meet the remaining elements of this regulatory criterion.

Aside from the preceding deficiencies, we cannot ignore the lack of evidence for this regulatory criterion from 2001 to 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).

The director’s decision discussed the deficiencies in the petitioner’s evidence for this criterion and concluded that “the record fails to establish that the petitioner has published material about him in

professional or major trade publications or other major media.” We concur with the director’s findings. On appeal, the petitioner does not challenge the director’s observations.

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.*

Executive Vice Chairman, Wayne Foster Entertainment, states:

[The petitioner] has been in our employ since January of 2005 as one of our Specialty Talent Performers, more specifically as a Ballroom Dancer. He and his sister . . . have consistently performed for Wayne Foster Entertainment at numerous Benefits, Galas, Corporate Celebrations, Weddings and other social events that we provide the entertainment for.

His position here at Wayne Foster Entertainment requires a high level of commitment, a cooperative attitude and excellent work ethics. He possesses all of these traits and we consider him to be an outstanding performer and highly respected employee.

He is extremely talented and professional and we consider him to be an indispensable asset to our performances. We plan to continue utilizing [the petitioner’s] talent to its fullest capacity for our upcoming calendar of events.

Entertainment Manager, Golden Nugget Hotel, Las Vegas, states:

[The petitioner] was employed as a dancer in the cast of Simply Ballroom in December 2006.

Simply Ballroom is a Ballroom dance show that after great success in the United Kingdom and London’s West end now has a show that resides in the Golden Nugget Hotel & Casino in Las Vegas.

After an intensive audition process [the petitioner] and his dance partner . . . were selected as one of two couples here in the United States to join the other three couples in the cast brought to Vegas from London. All of the couples in the show including [the petitioner and his partner] are of very high standard and excel in the field of Ballroom Dancing.

[The petitioner] is proving to be of great value to an already high level production. His years of Ballroom dancing experience are essential for the role that he has been given within the company.

QDOS Productions is extremely impressed by [the petitioner’s] talent and input in the show and he has become an essential part of its success.

[REDACTED], President, Scott Stander and Associates, Inc. states:

I am writing this letter to inform you that as a licensed talent agency, we have booked [REDACTED] & [REDACTED] for employment in their professional field of dance on several occasions.

Currently, they are performing in the national tour of Simply Ballroom, starring [REDACTED]. In addition to this, we have booked them on cruise ships as both performers and choreographers of nightly dance shows consisting of different 25 minute sets.

We are pleased to represent the [the petitioner and his partner], as they are in demand as highly regarded performers and choreographers.

[REDACTED], an entertainer, states: "I have been touring with [the petitioner and his partner] in a production show called 'Simply Ballroom.' They are very talented dancers. I feel [the petitioner and his partner] have great potential to perform here in the United States."

[REDACTED], a singer and a member of Strategic Artist Management, states: "I had the pleasure of hiring [the petitioner and his partner], as dancers for my Christmas tour in 2005. [The petitioner] is not only an extremely talented and skilled dancer but he is hardworking, dedicated and dependable; I would not hesitate to hire him again in the future."

[REDACTED], a choreographer, states:

While choreographing the movie RENT, I had the pleasure of hiring [the petitioner].

After a long audition process I selected [the petitioner] to be one of the dancers for the film. [The petitioner] is a strong dancer with an impressive dance background. As an expert in the Tango field [the petitioner] was an asset to have in the show and excelled in the "Tango Maureen" which was a major dance scene within the film.

I have worked with [the petitioner] since RENT and he showed the same professionalism and exceptional talent as he did during RENT.

[The petitioner] is a pleasure to work with and has extraordinary talent and ability and is an asset to any show.

Co-Director of the Dance Department at McDonald Selznick Associates Inc., states:

We are very interested in continuing to work with [the petitioner] and feel he has an extraordinary ability that the choreographers we represent and throughout the industry would be interested in continuing to work with him and help him pursue future endeavors. He has already participated in Clay Aiken's holiday tour 2005 and was a featured dancer in the feature film Rent choreographed by one of our clients Keith Young. His professionalism and etiquette is only matched by the top professionals in the industry and is what Casting

Directors and Producers love. I am confident given the opportunity he could have a long and successful career . . . .

it's Jake, Inc. states:

I have worked with [the petitioner] a number of times and find him to be an extremely gifted and talented performer of truly extraordinary ability. After experiencing [the petitioner] while in rehearsal and performance or filming, I was overwhelmed by his abilities. It is rare to find such a performer who has the endurance and strength of an athlete as well as the technique and passion of an accomplished dancer. Mix those attributes with an amazing vocabulary in Ballroom and Latin Dance styles and you get a talent that rises above the rest! He further cemented my professional opinion of him when I had another chance to choreograph [the petitioner] and his partner on a music video for a Top 40 band, Jack's Mannequin ("Dark Blue" is the title of the video).

We acknowledge the petitioner's submission of reference letters from various individuals praising his talents and discussing his employment as a dancer. The petitioner also submitted evidence documenting his dance performances for productions such as *Simply Ballroom*, the movie *Rent*, and Clay Aiken's *Joyful Noise* musical tour. Talent and the ability to secure employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance. On page 4 of her letter responding to the director's request for evidence, counsel mentions the petitioner's receipt of awards, but this evidence 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. 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. In this case, the record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted his field.

The petitioner submitted digital video disc (DVD) recordings of his past performances. While these DVDs may show the petitioner performing original dance choreographed by him, there is no evidence demonstrating that this work equates to original contributions of major significance in his field.

With regard to the petitioner's dancing achievements, the reference letters do not specify exactly what his original contributions in dancing 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 may have performed admirably in various productions, the documentation submitted by him does not establish that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the

petitioner's influence on other dancers nationally or internationally, nor does it show that the field has somehow changed as a result of his work.

In this case, the reference letters 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 opinions 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 professional 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 a dancer or a choreographer who has sustained national or international acclaim. 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 display of the alien's work in the field at artistic exhibitions or showcases.*

The petitioner initially submitted documentation of his competitive awards and amateur dance results as evidence for this regulatory criterion. The petitioner's participation in amateur dance competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every competitive dancer "displays" his or her work in the sense of competing in front of an audience. The petitioner also submitted evidence showing that he performed onboard various cruise ships. The petitioner has not established the distinguished nature of these cruise liner venues. The record also includes evidence documenting the petitioner's dance performances for productions such as *Simply Ballroom*, the movie *Rent*, and Clay Aiken's *Joyful Noise* musical tour. Evidence submitted by the petitioner, however, casts some doubt on the significance of the latter production. Specifically, a captioned photograph appearing in the December 23, 2005 issue of Raleigh, North Carolina's *News & Observer* states:

Raleigh native and 'American Idol' runner-up Clay Aiken – in town for his Joyful Noise Tour 2005 – performs 'Sleigh Ride' in form of 9,000 fans Thursday evening at the RBC Center. Much to the audience's amusement, [the petitioner] included talent from Raleigh Little Theatre in his holiday act. The show's sentimental nature didn't wow everyone, but as one fan put it, the cheese factor was 'good cheesy.'

The nature of the review in the *News & Observer* suggests that the performance was not particularly significant. Further, the petitioner has not established that Clay Aiken's *Joyful Noise* musical tour was a showcase or an exhibition devoted primarily to his dancing rather than the music of pop singer Clay Aiken. With regard to the petitioner's performance in the "Tango Maureen" scene in the movie *Rent*

and performance as part of the *Simply Ballroom* ensemble at the Golden Nugget, the evidence of record does not establish that the petitioner's participation in these productions was consistent with sustained national or international acclaim at the very top of his field. We cannot conclude that the petitioner's ability to secure employment as a dancer equates to having his work shown at exclusive artistic showcases or exhibitions.

Nevertheless, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for performing artists such as the petitioner. In the performing arts, it is inherent to the occupation of a dancer to perform on stage. National or international acclaim is generally not established by the mere act of appearing on stage, but rather by attracting a substantial national or international audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's stage 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 finding that the petitioner's evidence did not satisfy this criterion, the director's decision stated:

The petitioner references various performances such as *Simply Ballroom*, *Rent*, Clay Aiken's *Joyful Noise Tour*, etc. as evidence in support of this criterion. While the performances demonstrate that the petitioner has been active in the field, it does not support a finding that he has achieved sustained national or international acclaim. The fact remains that the petitioner is a dancer; it is inherent to his field to perform before an audience. The instant criterion is not met simply by demonstrating that the petitioner has performed in the field. In fact, it has not been established that the petitioner was the featured dancer or that his performance was so extraordinary that it places him at the pinnacle of the field. Further, while some of the venues/productions may be well known and have some level of prestige, not every performance can be considered an exhibition or showcase such that it is indicative or consistent with national or international acclaim.

We concur with director's findings. On appeal, counsel argues that the petitioner's contract with the Golden Nugget, recommendation letter from [REDACTED] and photographs of the petitioner performing in *Simply Ballroom* demonstrate that the show is "internationally acclaimed" and that the petitioner and his partner are the "leading couple in the show." The record does not support counsel's conclusions. For example, the "Cast & Crew Contacts" card for *Simply Ballroom* submitted by the petitioner lists eighteen dancers and there is no evidence distinguishing the petitioner's role from that of the other performers. Further, there no evidence showing that the petitioner's name received top billing in the show or that his performance contract singled him out from the other *Simply Ballroom* performers by awarding him higher compensation. Nor is there evidence showing that the production has a distinguished national reputation (such as critical acclaim in major publications as opposed to local promotional media directed to Las Vegas visitors). Finally, we note that the documentation pertaining to the petitioner's dance contract and his role for the *Simply Ballroom* production are far more relevant to the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(viii) and (ix) 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 is indicative of or consistent with national or international acclaim.

In finding that the petitioner's evidence did not satisfy this criterion, the director's decision stated:

As evidence in support of this criterion, the petitioner also references the numerous productions in which he has been involved including *Grease*, *The Wizard of Oz*, *Rent the Movie*, *Simply Ballroom*, Clay Aiken's *Joyful Noise Tour*, . . . etc. The petitioner's involvement in these productions serves as a testament of his talents and abilities as a dancer. It is reasonable to conclude that the petitioner has successfully performed his duties in these productions, which would be expected of any similarly employed individual in the field. However, upon request, the petitioner has not illustrated his position and contributions in relation to all other dancers, performers, production/technical staff, and key employees in the overall production. The record does not otherwise establish that the petitioner's performances and contributions were so extraordinary that he has been responsible for the success and standing of any identifiable organization/establishment to a degree consistent with the meaning of leading or critical. In view of the foregoing, the petitioner does not meet this criterion.

On appeal, counsel argues that the petitioner performed in a leading or critical role *Grease*, *Wizard of Oz*, and *Oklahoma*. According to the petitioner's resume, he performed in the Wendon Dance Academy's productions of *Grease*, *Wizard of Oz*, *Oklahoma*, and *Aladdin*. Aside from the self-serving claims in the petitioner's resume, there is no documentation showing that these productions had distinguished reputations or evidence from the Wendon Dance Academy confirming that his role was leading or critical. 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.

Counsel further argues that the petitioner performed in a leading or critical role for Clay Aiken's *Joyful Noise* musical tour, the movie *Rent*, and *Simply Ballroom*. The petitioner submitted reference letters, event programs, promotional material such as brochures, photographs, payments to him, and performance contracts reflecting his participation in the preceding productions. While the record includes self-serving promotional material for the productions, the record does not include objective evidence of their distinguished reputations. Further, the petitioner's evidence does not establish that his role for the productions was leading or critical. With regard to the petitioner's role for Clay Aiken's *Joyful Noise* musical tour, the evidence submitted fails to specify how his role differentiated him from the other dance performers, let alone Clay Aiken and the members of his band. We cannot ignore that the primary focus of the *Joyful Noise* tour was Clay Aiken's music rather than background dance performances. In regard to the movie *Rent*, while the petitioner may have appeared in one dance

scene and provided guidance to other dancers in that scene, the evidence fails to demonstrate how his role distinguished him from the dancers who appeared in multiple scenes, let alone from more significant roles such as the main actors, choreographer, and director. Regarding the petitioner's role in *Simply Ballroom*, nothing in the record distinguishes the petitioner's role from that of the several other dancers in the cast (such as Crystal Main, "Dance Captain"). For example, there is no evidence showing that the petitioner's name frequently received top billing in the show or that its 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 the preceding productions 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.*

The petitioner submitted copies of his performance contracts and payments he received. In finding that the petitioner's evidence did not satisfy this criterion, the director's decision stated:

First, it must be noted that although the petitioner initially claimed this criterion, no evidence of his remuneration was found amongst the documentation. The Service requested documentary evidence of the petitioner's remuneration such as a W-2 wage statement or tax return. The Service also requested evidence that establishes his remuneration is significantly high in relation to others in the field. In response, the petitioner provided copies of various invoices and contracts.

Upon review, the evidence of record does not establish that the petitioner meets this criterion. Most notably, the petitioner provided no documentary evidence of his yearly remuneration. Second, while the petitioner references information from the Department of Labor regarding the hourly wage of musicians, no such evidence was found amongst the documents. Further, it is unclear how wages of musicians relates to his occupation as a dancer. In essence, the petitioner has not provided sufficient documentary evidence which demonstrates that his salary is significantly high in relation to other similarly employed individuals in the field.

We concur with the director that average hourly pay for musicians is not an appropriate basis for comparison with the petitioner's occupation. On appeal, the petitioner does not challenge the director's observations. 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 other professional dancers. 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.*

As discussed, the petitioner submitted evidence of his dance performances for various productions. For example, the petitioner submitted event programs, contracts, reference letters, photographs, and digital video discs relating to his performances. This regulatory criterion calls for commercial successes in the form of “sales” or “receipts”; simply submitting evidence of the petitioner’s participation in various productions 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. Nor is there evidence showing that the success of the productions in which the petitioner participated was primarily attributable to his dance performances.

In finding that the petitioner’s evidence did not satisfy this criterion, the director’s decision stated:

The petitioner claims that he has achieved commercial success in the field based on his performances in various productions including *Rent the Movie*, Clay Aiken’s *Joyful Noise Tour*, *Grease*, *Wizard of Oz*, . . . etc. However, the petitioner has provided no documentary evidence which demonstrates how the success of any of these productions can be attributed to him. Simply participating in a successful production is not sufficient in itself to meet this criterion.

We concur with the director’s findings. On appeal, the petitioner does not challenge the director’s observations.

In light of the above, 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).

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. Further, we do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis, based 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 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.