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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

JUN 22 2009

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IN RE:

Petitioner:

Beneficiary:



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

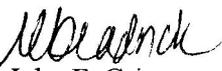
ON BEHALF OF PETITIONER:



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

On appeal, the petitioner argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the director applied incorrect standards in denying the petition.

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 to 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, 60898-9 (November 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 June 18, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a professional cyclist and coach/trainer.¹ 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, international recognized award). Barring the alien's receipt of a major internationally recognized award, the regulation at 8 C.F.R. § 204.5(h)(3) outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence pertaining to the following criteria.

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

The petitioner initially submitted copies of internet pages from various websites indicating his awards, point standings, and official statistics. The petitioner's submission of web pages from [REDACTED] documented his first place win in 2005 of the Belarus National Time Trial Championship and of the Best Young Rider in the 2003 Wachovia USPro race. A website called Velobios also cited the petitioner's awards mentioned above, in addition to indicating the petitioner won the Belarus National Time Trial Championship in 1999. The petitioner also provided photographs of various awards and of his credentials for some of the races.

The director issued a Request For Evidence ("RFE") on March 14, 2008. In his RFE, the director specifically requested copies of the actual awards and accompanying certifications in order to support the internet pages that were provided. Additionally, the director asked for an explanation as to the significance and scope of the awards, the requirements necessary to enter the competitions and the level of competition in which the petitioner participated. In response to the RFE, the petitioner provided a declaration where he stated that he has been a world champion in 1999; a Belarusian champion three times in 1999, 2000, and 2001; a bronze medalist in the European championship in 2003; and that he has had a total of 26 victories where he came in first place in cycling competitions worldwide. To support these statements, he provided another website page from [REDACTED] indicating that he won the world championship in 1999 and that he is from Belarus. From the same website, he provided three additional web pages listing him as a national champion in Belarus in 1999, 2000 and 2001, a third place winner in the European championship in 2003 and a page with a list of his first place wins in other races. However, the website pages do not

¹ It is noted that competitive cycling and coaching and training competitive cyclists are not the same area of expertise. While not binding precedent, the reasoning contained in *Lee v. I.N.S.*, 237 F.Supp.2d 914, 918 (N.D.Ill. 2002), supports this interpretation:

It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or instruct.

provide much information such as the exact race date, the statistics for the race or the other competitors in the race. The petitioner also provided a translation for an article that stated he had “been crowned the new world champion” and appeared to indicate that he won a junior title. However, the translation failed to include the name of the publication, the date of the article or its author. As a result, the article is not probative. The petitioner also resubmitted a photograph of the medal, which, according to the petitioner, he received from the 1999 world championship. However, the medal contains no inscription to make it recognizable as a 1999 world championship award.

On appeal, no new evidence was provided to support this criterion. The director, in his decision, found that the evidence provided fulfilled this criterion. After a review of the record, we do not agree with the findings of the director.

The specific documentation requested by the director in the RFE was never provided. As a result, the record lacks documentary evidence, other than website pages and photographs of medals, that the petitioner won any of the awards claimed. No new evidence was provided to explain, for instance, the significance and scope of the awards, the requirements necessary to enter the competitions, the award criterion, the area from where participants were drawn, the number of entrants, or the percentage of entrants who earned some type of recognition to establish the national or international recognition of the petitioner’s claimed awards.

More importantly, many of the races that the petitioner claims to have won appear to be local or regional competitions or were restricted by the particular status of the competitor such as age or experience. Specifically, the petitioner’s 1999 win was as a “junior” while his bronze was in the “U-23” division. Similarly, the evidence regarding the petitioner’s national championships from 1999 through 2001 were restricted to “elite” classification. As his participation in the “elite” classification coincides with the time period he was competing in the “junior” and “U-23” competition, “elite” status does not indicate the inclusion of cyclists at all levels, including older, more experienced cyclists. The remaining competitions, such as the Mclane Pacific Foothills Road Race, Wente Vineyards Criterium, Four Bridges of Elgin, New York City Cycling Championship and Fitchburg Longsjo Classic, all appear to be regional races. Accordingly, there is no evidence that receipt of an award from these competitions is national or international recognition.

Our finding that these competitions were restricted to lesser experienced cyclists is supported by articles, such as, the newspaper article from Worcester, Massachusetts’ *Telegram & Gazette*, entitled “Rapinski only trails hot Baldwin,” which states that he won a 1999 “junior” world championship and another article from the Elgin, Illinois’ *Courier News* entitled, “Big Game Hunter” states that his competitors in the Elgin National Road race were “under 23.” With regard to awards won by the petitioner in age-group competitions involving only a small number of competitors in his category, we do not find that such awards indicate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced significant competition from throughout his field, rather than mostly limited to a few individuals in age-based competition. 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 a cyclist who has had success in a competition restricted to “junior” competitors 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.”

Finally, it is noted that the previously cited evidence relates to the petitioner as a cyclist; the record contains no evidence related to this criterion regarding his claimed occupation as a coach/trainer.

Accordingly, we withdraw the determination of the director on this issue and find that the petitioner has failed to establish 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.

The petitioner initially submitted evidence to show that he is a member of the Saturn Cycling Team, Phonak, Colavita-Sutter Home and the Navigators. More specifically, the petitioner provided internet printouts from www.navpro.com that indicated he was a 2007 team member of the Navigators Insurance Cycling Team and that provided some general team information. The petitioner also submitted internet pages from www.phonak-cycling.ch demonstrating he was a Phonak team member in 2005. The petitioner also provided photographs of himself in his Phonak's team uniform. In addition, the petitioner's evidence included a web printout from www.world-of-cycling.com, which cited his membership in the Navigators Insurance Cycling Team and the Saturn Cycling Team. After a review of the evidence submitted by the petitioner, the director found that “the record lacks documentation that the beneficiary belongs to an association that requires outstanding achievements of its members.”

On appeal, the petitioner attempted to bolster this evidence, providing new, additional evidence. The petitioner provided a credential for his membership in the International Cycling Union in 2008, as well as background information regarding this organization from internet sites including www.powerseat.com and www.uci.ch. A petitioner must establish eligibility at the time of filing; a

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.

petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1); 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As the petitioner's membership in this organization occurred after his petition was filed, this new evidence cannot be considered. Nonetheless, even if the AAO considered this evidence, we would not find it sufficient to meet this criterion.

In order to demonstrate that membership in an association meets this criterion, the 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 experience, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

In this case, the petitioner failed to provide any evidence, such as membership bylaws or official admission requirements, showing that any of the groups require outstanding achievements of its members, as judged by recognized national or international experts in the petitioner's field or an allied one. The printouts provided of the organizations' websites failed to state the requirements of membership, the types of outstanding achievements necessary for membership, or whether membership is judged by recognized national or international experts in the field. While we acknowledge that some team memberships may satisfy this criterion, such as Olympic team membership, the petitioner has not demonstrated that his membership on any of the aforementioned teams is commensurate with Olympic team membership and therefore, is not sufficient to meet this criterion.

The petitioner submitted no evidence for this criterion regarding his regarding his claimed occupation as a coach/trainer.

As such, we agree with the director that without evidence showing that the petitioner's admission to membership in any of the above-referenced groups required outstanding achievement or that prospective members are evaluated by national or international experts in consideration of their admission to membership, we cannot conclude he meets this criterion.

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

The petitioner initially submitted the following evidence:

1. A newspaper article, dated June 27, 2003, from Worcester, Massachusetts' *Telegram & Gazette* entitled, "Rapinski only trails hot Baldwin;"

2. A newspaper article, dated July 9, 2001, from the Elgin, Illinois' *Courier News* entitled, "Four Bridges of Elgin;"
3. A newspaper article, dated July 8, 2002, from the Elgin, Illinois' *Courier News* entitled, "Big Game Hunter;"
4. A newspaper article from Worcester, Massachusetts' *Telegram & Gazette* entitled, "Rapinski, Mactier prevails for crowns" dated only with the month and day, Monday, June;
5. A newspaper article from the *Milwaukee Journal Sentinel*, without a date, entitled, "Kiwi star speeds through 8th stage;"
6. A newspaper article, dated June 1, 2004, from New Jersey's *Star Ledger* entitled, "Slick Streets, slicker cycling;"
7. A newspaper article, dated June 28, 2003, with no mention of a publication name or city of publication, entitled, "44th Annual Fitchburg-Longsjo Classic;"
8. An article from *VeloNews*, dated October 20, 2003, entitled, "San Rafael Draws Big Field, Big Heat;"
9. An article in *Men's Journal*, dated September 2003, entitled "Hot Bikers Cool Looks;"
10. An article entitled, "No track, no problem" without a translated date or publication name;
11. An article, dated September 14, 2003, was submitted (out of order) with the name of the publication cut off (and written in by hand as the *Marin Independent Journal*) entitled, "Metal to the pedals;"
12. An article, dated July 8, 2002, from the *Daily Herald* entitled, "Bike capital for a day;"
13. An article, dated July 23, 2003, from the *Milwaukee Journal Sentinel* entitled, "Cycling helps Bergman endure after mother's death;"
14. An article without any translation from a Chinese newspaper;
15. A newspaper article, dated July 11, 2002, from the Elgin, Illinois' *Courier News* entitled, "Four Bridges of Elgin;"
16. A newspaper article, dated June 2004, entitled, "An inside look at all four Longsjo stages" without a publication name;
17. An article from Navigator's Insurance providing background information on its 2004 team; and
18. Articles from websites including www.cyclingnews.com, www.velonews.com, and www.dailypeloton.com.

In response to the RFE, the petitioner provided one additional article from a website entitled www.internationalcycling.com, which failed to cure any missing information mentioned in the RFE including a translation and various article dates. Further, no new evidence was provided on appeal. Despite the deficiencies cited in the RFE, the director's decision found that there was sufficient evidence provided to satisfy this criterion. We disagree with the director, and reverse his decision with respect to this criterion.

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 or broadcast, or from a publication printed in a language that the vast majority of the country's population cannot

comprehend. 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

Although the director generally stated that “several” of the petitioner’s articles were published in major publications, we find there is no evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. In fact, many of the articles appear in regional papers, including Items 1 through 7, 11, 12, 13, 15, and 16, rather than nationally or internationally circulated publications. Regional coverage is not indicative of national or international acclaim. Moreover, Item 18 includes articles on various internet sites. No evidence about these sources or the reliability of their contents was provided. We note that in today’s world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the “major media” requirement meaningless. However, we are not persuaded that international accessibility via the Internet by itself is a realistic indicator of whether a given publication is a form of “major media.” The petitioner must still provide evidence, such as, a widespread readership or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or a form of major media in order for us to credit these articles.

Moreover, Item 14 was not submitted with a translation. Without a complete translation, the actual content of the article cannot be ascertained and is of minimal evidentiary value. *See* 8 C.F.R. § 103.2(b)(3). Item 17 also fails to serve as probative evidence, as it comes from his sponsor’s website and is therefore self-serving. Further, Items 2, 5, 9 and 13 were not written primarily about the petitioner. If mentioned at all, the articles only briefly mentioned the petitioner or captioned his name under a photograph. Finally, while the article in Item 9 may have been featured in a prominent magazine, we cannot conclude that the article is primarily about the petitioner or his work. Instead, the article, entitled “Hot Bikers Cool Looks” reflects that it is about fashion and the petitioner’s looks rather than his competition or notoriety. The petitioner also submitted only what appears to be the first page of the article rather than the entire article which contains the photographs of two bikers with captions near their pictures on the page. The petitioner is one of the bikers photographed and his caption states that he has the “type of looks that make modeling agents stop him in the streets.” The caption also mentions the petitioner is a “former junior world champion [who] has the chops to become a great cyclist.” As such, it appears this article, as well as the petitioner’s placement within it, featured the petitioner more for his physical appearance and style than for his “work in the field.” Even if we found this one article to be about the petitioner and his work, which we do not, a single article is insufficient to meet this criterion which requires published “materials [emphasis added].” Similarly, it is also insufficient to meet the statutory requirements which refer to “extensive documentation” of the petitioner’s accomplishments.

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.

It is noted that the previously cited evidence relates to the petitioner as a cyclist; the record contains no evidence related to this criterion regarding his claimed occupation as a coach/trainer.

As the petitioner failed to demonstrate that the preceding articles were published in major media and were primarily about him, we cannot conclude that he fulfills the criterion. We, therefore, withdraw the director's determination on this issue and find the petitioner has failed to establish that he meets this criterion.

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

The petitioner initially submitted various photographs of himself in cycling races and accepting awards, with only some of the pictures containing captions. The petitioner also argued that he contributed athletically to the sport of cycling by his many wins, honors and recognitions, and submitted many printouts from websites documenting his statistics and placements in various cycling races. Following the RFE, the petitioner subsequently provided a reference letter from [REDACTED] the Director of Hot Tubes Cycling Team. In the letter, he states:

I have coached and directed elite cycling teams in the United States for seventeen years and my athletes have won ninety national championships and two world championships and I can say that [REDACTED] was one of the best, most talented, loyal racers I have ever had the privilege to direct.

In his decision, the director states that this recommendation letter attests to the petitioner's talents and accomplishments, but does not provide enough evidence to demonstrate he has made contributions of major significance in his field of cycling. The director also notes that "competing would not be considered a contribution of major significance."

On appeal, the petitioner argues in his brief argues that competition is a contribution in athletics. To this end, the petitioner argues that Babe Ruth contributed to baseball by hitting 60 home runs during competition. Further, in his brief he states,

There is nothing more important to cycling than the winning of the competition. The fact that he can win is no different than the fact that Babe Ruth could hit 60 home runs.

In addition to this argument, the petitioner provided three additional recommendation letters from the former 1976 Olympic cycling gold medalist, [REDACTED] the President of BPG Montanovelo Cycling Team, [REDACTED] and the CEO of Leopard Cycles, [REDACTED]

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. The AAO concedes that the petitioner appears to have a successful cycling career and now competes at a professional level. However, the record,

including the documentation of his racing accomplishments and letters of recommendation, fail to rise to the level of his making a "contribution of major significance" in cycling. The letters of recommendation provided discuss the petitioner's talents, training, and examples of the races that he has won. However, they do not demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original contributions of major significance in the field. Moreover, the record does not indicate the extent of the petitioner's influence on other cyclists nationally or internationally, nor does it show that the field has somehow changed as a result of his participation in competitions. Therefore, there is insufficient evidence to demonstrate that the petitioner has made a contribution of major significance in the field.

The petitioner argued that his competition and his awards in races should be enough to fulfill this criterion. He equated himself with Babe Ruth. This comparison is not persuasive. Babe Ruth was an extremely well-rounded baseball player, who was both a talented pitcher and hitter. This remains quite unusual and original to the sport today. Moreover, Babe Ruth held world records for home runs for decades, and continues to hold world records in many aspects of his game at the major league level. The petitioner, however, has no comparable impact on the field of cycling as a whole, much less at a level commensurate with the major leagues. The record contains no evidence to show, for instance, that his techniques in cycling have been original or that his records have been making contributions of major significance. As such, we cannot conclude that the petitioner has satisfied this criterion either as a cyclist or a coach/trainer.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate the petitioner's receipt of a major internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability.

Finally, the AAO notes that the petitioner is currently in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A).

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 standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See *e.g. Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See e.g. Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

ORDER: The appeal is dismissed.