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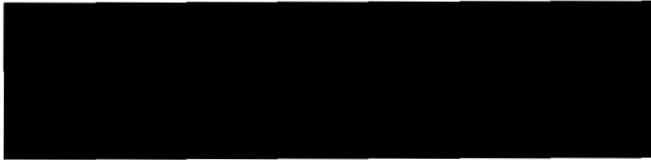
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE:



Office: TEXAS SERVICE CENTER

Date:

OCT 27 2009

SRC 07 246 51388

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 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).

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Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary 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 business. The director determined that the petitioner had not established that the beneficiary had 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 the beneficiary's 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 beneficiary 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 the beneficiary has sustained national or international acclaim at the very top level.

This petition, filed on August 3, 2007, seeks to classify the beneficiary as an alien with extraordinary ability as a Vice President, Senior Account Executive.

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 the beneficiary 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 beneficiary 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).

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

In support of the appeal, the petitioner claims eligibility for this criterion based on three awards:

1. 2007 FiFi Award for Fragrance of the Year;
2. 2007 Cosmetic Executive Women (CEW) Beauty Award; and
3. 2002 *CPC Packaging* Editors' Choice Award.

The petitioner states that the beneficiary's "creation" of Sean John Unforgivable won the 2007 FiFi Award for Fragrance of the Year and the 2007 CEW Beauty Award for Best Scent. The petitioner submitted a self-serving letter from [REDACTED] of Human Resources, North America, for Givaudan Fragrances Corporation, stating:

[The beneficiary's] talent and success have won our company international prestige through prizes won at several of the industry's highest award ceremonies. Two of the products he developed were honored by the 2007 FiFi Awards, the fragrance industry's most celebrated and prestigious honor. [The beneficiary] ran fragrance development and sales for Sean John Unforgivable, a designer perfume made by Estée Lauder for Sean "Diddy" Combs, which was 2007's #1 selling fragrance in the United States. Sean John Unforgivable was named Fragrance of the Year in the Men's Luxe category in the 2007 Fifi Awards, and was also the 2007 CEW Beauty Awards' Best Men's Fragrance. [REDACTED], developed by [the beneficiary] at Givaudan, also won a 2007 Fifi for Best New Fragrance in Limited Distribution for Women in England, Canada and Australia. Thanks to these and other awards earned by [the beneficiary's] accounts, Givaudan has garnered tremendous

international fame and status which guarantee our ongoing success in the highly competitive international fragrance industry.

The petitioner also submitted photographs of the 2007 FiFi Awards and a Web site page from The Fragrance Foundation indicating that Unforgivable by Sean John – Sean John Frangrances/Estée Lauder won Fragrance of the Year – Men’s Luxe. In addition, the petitioner submitted a Web site page from the American Chronicle indicating that Sean John Frangrances/Estée Lauder Unforgivable by Sean John won a 2007 CEW Beauty Award in men’s scent \$30 and over.

Regarding the 2002 *CPC Packaging* Editors’ Choice Award, the petitioner stated that the beneficiary was honored by the magazine for “a styling product he designed for Bumble and Bumble, called Sumotech.” The petitioner also submitted a copy of the magazine article from *CPC Packaging* indicating that Sumotech by Bumble and Bumble won the Editor’s Choice Award for personal care. The article also stated that “the team at salon Bumble and Bumble (New York City) had the product’s distinctive hairstyling concept on which to build.”

The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires evidence of “the alien’s receipt” of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. According to the submitted documentary evidence, the FiFi and Cew awards were presented to Sean Jean Frangrances/Estée Lauder rather than to the beneficiary. In addition, the *CPC Packaging* award was presented to Bumble and Bumble rather than to the beneficiary. We cannot conclude that awards that were not specifically presented to the beneficiary are tantamount to his receipt of nationally recognized awards. It cannot suffice that the beneficiary was one member of a large group or account manager of a product that earned collective recognition.

Accordingly, the petitioner has not established that the beneficiary 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.

At the time the petition was submitted, the petitioner stated that the beneficiary’s membership in the Fashion Group International (FGI) is evidence of eligibility in this criterion. In addition, the petitioner submitted the following:

1. Copy of FGI’s Web site page;
2. FGI’s Executive Membership Application; and
3. FGI membership card for the beneficiary.

While the petitioner did not contest the decision of the director in this criterion on appeal, we will address the beneficiary’s eligibility under this criterion.

FGI’s Web site page indicates that FGI “is a global non-profit association of over 6,000 professionals of achievement and influence representing all areas of the fashion, apparel,

accessories, beauty and home industries.” According to FGI’s Executive Membership Application, a candidate must:

1. Have held an executive, professional, or managerial position(s) in a fashion related industry for at least 3 years; and
2. Be recommended by one executive member who has known the candidate in a professional capacity for at least 1 year.

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the beneficiary’s association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association’s overall reputation.

The requirements listed above, which include at least 3 years in a fashion related position and the recommendation of one executive member, are not outstanding achievements. Other than meeting the minimum qualifying standards, outstanding achievement is not a prerequisite for membership in FGI. The petitioner has failed to establish how FGI’s membership requirements reflect outstanding achievement as judged by national or international experts in the field as an essential condition for admission to FGI.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

The petitioner submitted the following:

1. An article from the *Los Angeles Times Magazine* titled “In Search of Shampoo,” dated February 3, 2002, written by [REDACTED]
2. An article from *Good Housekeeping* titled “365 Great Hair Days,” dated April 2002, written by [REDACTED]; and
3. An article from *CPC Packaging* titled “CPC Packaging Editor’s Choice Awards,” dated May/June 2002.

In the *Los Angeles Times Magazine*, the focus of the article is shampoo products and not the beneficiary. While the beneficiary was quoted a couple of times on behalf of Bumble and Bumble, the article also quoted another person and discussed other products. Therefore, we find that this article is not published material about the beneficiary.

In *Good Housekeeping*, the article discusses picking the perfect shampoo, dandruff shampoos, and four steps in dealing with discontinued shampoos. The article quoted the beneficiary one time stating, "You can expect a lot from your shampoo, a lot." Similar to the *Los Angeles Times Magazine* article, the focus of this article is on shampoo products and not the beneficiary. Therefore, we find that this article is not published material about the beneficiary.

In *CPC Packaging*, as discussed previously, the focus of the article is the editor's choice award for personal care for Sumotech by Bumble and Bumble. While the article quoted the beneficiary twice, the article is not published material about the beneficiary; rather the article is about the product Sumotech. In addition, the petitioner failed to submit documentary evidence establishing that CPC Packaging is a major trade publication or other major media.

Notwithstanding the above, the statute and the regulations require the petitioner to establish that the beneficiary's 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 petition was filed on August 3, 2007, but the above-mentioned articles were from 2002, a period of over 5 years prior to filing. The petitioner has failed to establish the beneficiary's requisite sustained national or international acclaim.

Accordingly, the petitioner has failed to establish that the beneficiary meets this criterion.

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

The petitioner claims eligibility for this criterion based on the beneficiary's participation as a judge in two categories for the 2004 FiFi Awards. The submitted documentary evidence reflects that the beneficiary was a judge, along with eleven others, for the Best National Advertising Campaign of the Year – Print & TV. The beneficiary was also a judge, along with nine others, for the Best Packaging of the Year – Prestige and Popular Appeal (Men's and Women's). The petitioner also submitted a letter from [REDACTED] of The Fragrance Foundation, stating that the beneficiary was selected as a judge "[b]ased on [the beneficiary's] reputation in the field and overwhelming experience and achievements in the fragrance industry."

Nonetheless, the regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the beneficiary's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of

“extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

While we acknowledge the beneficiary’s participation as a judge at the FiFi Awards, the evidence dates from 2004, and is not indicative of sustained acclaim in 2007 when the petition was filed. The petitioner does not claim to have participated as a judge of the work of others in his field at any other events. We do not find evidence that the beneficiary’s participation as a judge at a single event 3 years prior to the filing of the petition is sufficient to establish the level of sustained acclaim required for this highly restrictive classification.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

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

In support of the appeal, the petitioner states:

One of the many examples of [the beneficiary’s] original and significant contributions to the beauty and fragrance industry is his masterful conceptualizations for the production and marketing of the cornerstone fragrance for Sean John Unforgivable, the groundbreaking scent created for Estee Lauder on behalf of Sean John “Diddy” Combs. While working as the Vice President, Sr. Account Executive of the Estee Lauder account [the beneficiary’s] conceptualization for Sean John Unforgivable set an industry trend in 2006: the use of a celebrity brand name to propel a product into stardom. Specifically, the way that [the beneficiary] captured the essence of masculinity and luxury which embodies Sean John “Diddy” Combs has completely redefined prior industry marketing paradigms.

The petitioner also submitted Web site pages from *Shop.SeanJohn.com*, *gnextinc.com*, *fragrancenet.com*, and *shopsafe.com*. All of these Web site pages discuss Sean John Unforgivable and Sean Comb’s involvement and history with the fragrance. In fact, none of the submitted documentary evidence supports the assertions made by the petitioner. The record is absent evidence of the beneficiary’s specific involvement in the fragrance of Sean John Unforgivable. While the petitioner submitted a previously mentioned letter from Sallye Pecker of Givaudan Fragrances Corporation stating that the beneficiary “developed” Sean John Unforgivable, there is no documentary evidence establishing that the beneficiary made an original business-related contribution of a major significance in his field.

The petitioner also submitted a letter from [redacted] of Ralph Lauren Fragrances. While [redacted] praised the beneficiary for “mov[ing] the entire fragrance industry forward into a new century with his innovative marketing strategies and brilliant scent designs,” he failed to mention what they were and how those strategies and designs were evidence of the beneficiary’s original business-related contribution of a major significance in his field.

The petitioner also stated that the beneficiary “led development and marketing initiatives for Surf Spray and Sumotech, two products which have since become staples for every major designer.” The petitioner submitted a Web site page from Bumble and Bumble citing celebrities who have used Bumble and Bumble products. Again, the petitioner failed to establish how the beneficiary’s marketing initiatives for Surf Spray and Sumotech were original business-related contributions of a major significance in his field.

The petitioner also submitted reference letters from individuals in the fragrance industry such as [REDACTED], Estée Lauder Companies; [REDACTED] of Product Development, L’Oréal; and [REDACTED] in Charge of Fine Fragrance USA, Dragoco. In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are all from individuals who have worked or interacted with the beneficiary. While such letters can provide important details about the beneficiary’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates evidence of recognition beyond the alien’s immediate acquaintances. *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). Further, USCIS may, in its discretion, use as advisory opinion statements 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 beneficiary’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795. Thus, the content of the writers’ statements and how they became aware of the beneficiary’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of any immigration petition are of less weight than preexisting, independent evidence or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the beneficiary’s work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contribution of major significance, we cannot conclude that he meets this criterion.

Accordingly, the petitioner has not established that the beneficiary meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

The petitioner claims the beneficiary’s eligibility for this criterion based on the beneficiary’s current position as Vice President, Senior Account Executive for Givaudan Fragrances Corporation. The petitioner states:

[The beneficiary’s] responsibilities as Vice President and Senior Account Executive of the L’Oréal account span every aspect of product development and marketing. He manages the Focus Perfumery resources to develop winning fragrance themes for L’Oréal, and each of his many successes translates into more business and a greater

market share for Givaudan in the highly competitive international designer fragrance market. [The beneficiary] is so critical to our business because his unique talents and extraordinary abilities in the fragrance and marketing aspects of product development enable him to provide comprehensive direction to Givaudan's perfumery staff, and thus enabling Givaudan to expand its overall portfolio at L'Oréal. As the primary liaison between Givaudan and L'Oréal, [the beneficiary] is trusted with developing and nurturing professional relationships with L'Oréal's most senior executives to ensure that Givaudan remains their sole preferred supplier.

The petitioner submitted an article from *The New York Times* titled, "Ahhh, the Seductive Fragrances of Molecules Under Patent," dated February 23, 2008, by Chandler Burr. The petitioner also submitted Givaudan Fragrances Corporation's 2007 Annual and Financial Report. The article discussed the practice of cosmetic companies hiring fragrance consultancies to create new scents. The article did not mention the beneficiary nor did the article establish the beneficiary's leading or critical role for Givaudan Fragrances Corporation.

We acknowledge that Givaudan Fragrances Corporation is a successful organization. However, the petitioner failed to establish how the beneficiary's role was critical or leading to Givaudan Fragrances Corporation's success. The previously mentioned letter from [REDACTED] indicated that there are four other account executives within Givaudan Fragrances Corporation. The petitioner failed to establish how the beneficiary is distinguished from the other account executives or leaders within the corporation as to demonstrate that his role is leading or critical.

The petitioner submitted letters of recommendations highly praising the accomplishments of the beneficiary. However, the letters of recommendations and statements by the petitioner are general and broad in nature when describing the beneficiary's specific roles, responsibilities, and accomplishments. For example, [REDACTED] Global Marketing for L'Oréal, stated:

[The beneficiary] was selected to run our account because of his exhaustive knowledge of the regional and global marketplace with respect to fragrance products, as well as his extraordinary track record developing and promoting the illustrious fragrance and beauty brands he has worked throughout his impressive career.

failed to indicate what "illustrious fragrances and beauty brands" the beneficiary developed and promoted and what role the beneficiary had on those products. The previously mentioned letter from [REDACTED] of Corporate Fragrance Development for [REDACTED] stated that the beneficiary "developed very successfully some beautiful hair care products and his involvement with the brand was strategic to its success." [REDACTED] failed to indicate the specific hair products and what role the beneficiary had in their development.

The petitioner also states that the beneficiary was Vice President of Marketing for Haarmann & Reimer (Symrise). The petitioner submitted the 2007 Symrise Annual Report. However, according to the beneficiary's Form G-325A, Biographic Information, signed by the beneficiary on December

18, 2007, he indicated that he worked for Symrise from January 2003 to December 2003. The petitioner failed to establish the relevance of Symrise's 2007 annual report when the beneficiary stopped working for Symrise at the end of 2003. Nonetheless, the petitioner stated that the beneficiary "coordinated with the research and development divisions to create masterful marketing plans for Symrise-developed products that fully satisfied clients' demands." The petitioner failed to specifically address the critical role or leadership of the beneficiary at Symrise. Instead, the petitioner provided a broad description of the beneficiary's role at Symrise.

The petitioner also states that the beneficiary was Vice President of Product Development at Bumble and Bumble. The petitioner submitted Web site pages from Bumble and Bumble of celebrity testimonials of Bumble and Bumble products. Notwithstanding the fact that the beneficiary worked for Bumble and Bumble from June 1999 to August 2002 and the celebrity testimonials were substantially after 2002, the Web site pages fail to establish the beneficiary's leadership or critical role at Bumble and Bumble. Nevertheless, the petitioner also states:

[The beneficiary] was critical to Bumble and Bumble's mission and success, and this is most readily apparent in the profits he generated for the company. His expert direction resulted in 80% of Bumble and Bumble's profits from its products division, totaling \$30-40 million in annual revenue for the company.

The petitioner is implying that the beneficiary was responsible for 80% of Bumble and Bumble's profits. However, the petitioner failed to submit any documentary evidence supporting these assertions. 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).

The documentation submitted by the petitioner does not establish that the beneficiary's positions were leading or critical to these companies as a whole. For example, the record does not include detailed job responsibilities discussing the nature of the beneficiary's duties and significant accomplishments and the importance of his role to the company's operations. The petitioner relies on the beneficiary's former job titles and submitted documentation that was general in describing the beneficiary's specific roles at various entities. The petitioner failed to establish the nexus between the beneficiary's critical role and the success and accomplishments at any of the companies. Further, the petitioner has not submitted an organizational chart or other similar evidence showing the beneficiary's position in relation to that of the other vice presidents employed by Givaudan Fragrances Corporation, Symrise, or Bumble and Bumble. There is no evidence demonstrating how the beneficiary's roles differentiated him from the other vice presidents who oversaw the companies' product development, let alone the companies' top executives. In this case, the documentation submitted by the petitioner does not establish that the beneficiary was responsible for Givaudan Fragrances Corporation's, Symrise's, or Bumble and Bumble's success or standing to a degree

consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim.

Accordingly, the petitioner has not established that the beneficiary 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 record contains tax documentation and information from the petitioner which indicates an average salary of around \$200,000 from 2004 through 2006. The director concluded that the beneficiary commanded a high salary in relation to others in his field.

We concur with the director’s finding. As such, the petitioner has established that the beneficiary meets this single criterion.

In this case, the petitioner has established that he meets only one of the regulatory criteria, three of which are required to establish eligibility. 8 C.F.R. § 204.5(h)(3). The petitioner has failed to demonstrate the beneficiary’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 national or international acclaim necessary to qualify as an alien of extraordinary ability.

If the above standards do not readily apply to the beneficiary’s occupation, the petitioner may submit comparable evidence to establish the beneficiary’s eligibility. 8 C.F.R. § 204.5(h)(4). The petitioner argues that the beneficiary’s participation in the New Ideas for Export Development Aid, Inc. (NIEDA) is comparable evidence to establish the beneficiary’s eligibility. However, there is no evidence showing that the beneficiary’s participation or involvement in NIEDA is indicative of sustained national or international acclaim at the very top of his field or is in any way on a level comparable to the regulatory requirements.

In this case, there is no evidence showing that the documentation the petitioner requests evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of the beneficiary’s field. Nevertheless, the regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of “comparable evidence” only if the ten criteria “do not readily apply to the beneficiary’s occupation.” The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the beneficiary’s occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, the petitioner has submitted evidence specifically addressing seven of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Finally, the petitioner requests USCIS to approve the petition since USCIS “has consistently recognized and reaffirmed the outstanding accomplishments and extraordinary abilities” of the beneficiary by approving him of O-1 nonimmigrant status.

While USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the beneficiary, that prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

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

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

Review of the record does not establish that the beneficiary 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 beneficiary'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) 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.