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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date:
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OCT 28 2009

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

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Perry Rhew
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 as a chess player and coach. 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 qualifies as an alien of extraordinary ability based on his international master title and through his fulfillment of 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.

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). The petitioner submitted a certificate from the World Chess Federation (FIDE) stating that he "obtained the title of International Master in the year 2000." On appeal, counsel argues that the petitioner's "title of International Master" is a major, internationally recognized award. This title, however, is attained through "specific results in specific Championship events" or through "achieving a rating" as specified in the regulations of the FIDE Handbook.¹ For example, FIDE may confer the International Master designation on a player based on his "achieving norms in internationally rated tournaments" rather than his actually winning those tournaments.² As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) clearly defines a one-time achievement as a major, internationally recognized *award*, we cannot conclude that attaining an International Master ranking meets the requirements of the regulation. Further, we cannot ignore documentation submitted by the petitioner demonstrating the existence of the higher title of "Grandmaster." A Grandmaster is the highest ranking conferred by FIDE upon chess players.³ Accordingly, the Grandmaster title, rather than the International Master designation, represents a ranking at the very top of the petitioner's field of endeavor. 8 C.F.R. § 204.5(h)(2). Moreover, more than one thousand players hold FIDE's Grandmaster designation and more than two thousand players hold its International Master designation at any given time.⁴ The petitioner also submitted documentation from *Wikipedia*, an online encyclopedia, stating: "An International Master is usually in the top 0.25% of all tournament players at the time he or she receives the title. The July 2005 FIDE rating list records over 2500 players holding the IM title." It has not been established that the phrase "all tournament players" excludes youth, novice, and casual chess tournament players. 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 60899.⁵ Thus, we cannot conclude that a

¹ See <http://www.fide.com/fide/handbook?id=57&view=article>, accessed on October 19, 2009, copy incorporated into the record of proceeding.

² See <http://www.fide.com/fide/handbook?id=58&view=article>, accessed on October 19, 2009, copy incorporated into the record of proceeding.

³ The United States Chess Federation (USCF) defines a Grandmaster as "The most distinguished title in chess, awarded by FIDE. A grandmaster is usually rated between 2500 up to 2851." The USCF defines an International Master as "the ranking just below Grandmaster, usually rated between 2400 and 2500, and also awarded by FIDE." See <http://main.uschess.org/content/view/7327>, accessed on October 19, 2009, copy incorporated into the record of proceeding.

⁴ See <http://ratings.fide.com/topfed.phtml>, accessed on October 19, 2009, copy incorporated into the record of proceeding.

⁵ 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

statistical universe including youth, novice, and casual chess tournament players is an appropriate basis for comparison. Nevertheless, regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source.

Given Congress' restriction of this category to aliens with sustained national or international acclaim, the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a **major, internationally recognized award**. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in major media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be global in scope and internationally recognized in the alien's field as one of the top awards in that field. In this instance, while the petitioner's International Master designation demonstrates his attainment of an advanced FIDE chess rating (below that of Grandmaster), it does not constitute his receipt of a major, internationally 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

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.

⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

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

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on October 19, 2009, copy incorporated into the record of proceeding.

On appeal, the petitioner submits tournament results from the 6th World University Championships (2000) in Varna reflecting that his Mongolian team placed 3rd in the team competition (the petitioner placed 9th in the men's individual competition). With regard to the petitioner's team bronze medal from the World University Championships, it has not been established that receiving an award in a competition limited to university students 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). As discussed, 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. at 953, 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that a chess player who has had success in a team competition limited to university students should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." The petitioner also submits results from the "110th Scottish Chess Championships incorporating the Edinburgh Congress" listing the petitioner among multiple 1st place "Edinburgh Chess Congress 2003 Prize Winners." The record does not include supporting evidence demonstrating the significance and magnitude of the competitive category won by the petitioner at Edinburgh Chess Congress so as to demonstrate that his prize was nationally or internationally recognized. A competition may be open to participants from throughout a particular country or region, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized."⁸ The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his Edinburgh Chess Congress prize. A victory in an event category with a limited pool of entrants or talent is not evidence of national or international recognition.

Aside from the results from the 2000 World University Championships and the 2003 Edinburgh Chess Congress, the record does not include evidence showing that the petitioner received "prizes or awards" at the remaining tournaments and championships specified in May 1, 2004 letter. 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). Moreover, with regard to the competitive achievements cited in the May 1, 2004 letter from [REDACTED] there is no evidence demonstrating the significance of the preceding competitions or the petitioner's awards. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* 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 a significant level of recognition beyond the context of the events where they were presented, or that they are commensurate with nationally or internationally recognized prizes or awards for excellence in the field. Finally, even if the petitioner were to demonstrate that his competitive achievements from 2003 and earlier were sufficient to meet this criterion, there is no evidence demonstrating that he is

⁸ The record indicates that the petitioner was residing in Newcastle, United Kingdom at that time.

The petitioner initially submitted an identification card indicating that he is a "regular" member of the U.S. Chess Federation, but there is no evidence (such as membership bylaws) showing the admission requirements for this organization. The petitioner also submitted a May 1, 2004 letter from [REDACTED] stating that he "was employed at the chess club 'Monchess' . . . as a trainer and a leading player." The record also includes documentation showing that the petitioner organized the Monshatar Chess Club in Los Angeles. There is no evidence demonstrating that the petitioner's work for the preceding chess clubs equates to "membership in associations in the field." Further, there is no evidence demonstrating that the U.S. Chess Federation, Monchess, or the Monshatar Chess Club require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one.

On appeal, the petitioner submits documentation showing that he competed for Mongolia's national chess team at the 34th Chess Olympiad in Istanbul, Turkey (2000) and at the World University Championships (2000). The petitioner also submits "General ratings statistics for Mongolia" from FIDE reflecting that the country has 52 active players, including 3 Grandmasters and 4 International Masters. The record, however, does not include supporting evidence showing that membership on the Mongolian team required outstanding achievements. We acknowledge that membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. We will not presume that every national "team" is sufficiently exclusive. Without documentary evidence showing the selection requirements for the Mongolian team, we cannot conclude that the petitioner meets the elements of this regulatory criterion.

On appeal, counsel argues that the petitioner's International Master designation by FIDE also meets this regulatory criterion. The petitioner has not established that attainment of this title or rating equates to membership in an association in the field. Further, while the petitioner met the requirements necessary to attain this ranking in 2000, there is no evidence demonstrating that FIDE requires such a rating for admission to membership. For instance, there is no evidence showing that novices and casual chess players are excluded from FIDE's membership body. Moreover, as previously discussed, the Grandmaster designation is the highest ranking conferred by FIDE upon chess players and thus it is more indicative of outstanding achievement. Finally, we note that the petitioner's appellate submission includes his most recent chess player rating from FIDE as of 2004, which had declined to 2392, a level below the usual rating for International Masters.⁹

Even if the petitioner were to submit evidence demonstrating that his International Master designation or Mongolian national team participation suffice to meet the plain language of this criterion, there is no evidence showing that he has maintained a FIDE rating above 2400 or

⁹ Information from the USCF indicates that an International Master is "usually rated between 2400 and 2500." See <http://main.uschess.org/content/view/7327>, accessed on October 19, 2009, copy incorporated into the record of proceeding.

competed for the Mongolian national team during the three years preceding the petition's January 16, 2008 filing date. Accordingly, the petitioner has not demonstrated that his national or international acclaim as a chess player 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 chess player or coach.

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.¹⁰

The petitioner submitted an April 30, 2004 letter from the Editor-in-Chief of the *Century News*, a Mongolian publication, stating: "[The petitioner], an international master of the national team of Mongolia and one of the most promising chess players of the country, has been performing for our chess club called 'MONCHESS' at the *Century News* between 1998 and 2000." On appeal, counsel argues that this letter constitutes evidence for this regulatory criterion. Nothing in the letter from the Editor-in-Chief of the *Century News* indicates that this newspaper published material about the petitioner. The plain language of this regulatory criterion requires the submission of "[p]ublished material about the alien in professional or major trade publications or other major media" including "the title, date, and author of the material." The letter from the Editor-in-Chief of the *Century News* does not meet the preceding requirements. Regarding the comment that the petitioner is among "the most promising chess players of the country," we note that the petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time.

On appeal, the petitioner submits a book review of *Test Your Chess with* posted at www.jeremysilman.com. The book review, written by in 2005, includes only two sentences about the petitioner discussing one of his matches at the 34th Chess Olympiad in Istanbul 2000 (which was among twenty games analyzed in book).¹¹ This book review and the *Test Your Chess with* book were not about the petitioner. The plain language of this

¹⁰ 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.

¹¹ The record does not include a copy of the section of *Test Your Chess with Daniel King* that mentions the petitioner.

regulatory criterion, however, requires that the published material be "about the alien." Further, there is no evidence (such as sales figures or readership statistics) showing that [REDACTED] book and [REDACTED] qualify as professional or major trade publications or other major media. The petitioner also submits a "reader commentary" posted in the "Kibitzer's Corner" section of www.chessgames.com internet site, but the commentary is a duplicate of the two sentences in the John Donaldson book review and does not meet the requirements of this criterion. The petitioner's appellate submission also includes a December 2, 2003 article about the 110th Scottish Chess Championships which incorporated the Edinburgh Chess Congress. The article entitled, "First Woman to be Scottish Champion," was posted by the Director of Chess Scotland on the internet site of the British Chess Federation and includes only a single sentence mentioning the petitioner. Aside from not being about the petitioner, there is no evidence showing that the preceding internet site qualifies as professional or major trade publication or some other form of major media. Finally, the petitioner submits event results for the 2003 Edinburgh Chess Congress, the 34th Chess Olympiad in Istanbul (2000), and the 6th World University Championships (2000), but these results do not meet the requirements of this criterion. Accordingly, the petitioner has not established that he meets this criterion. Moreover, the preceding evidence does not establish that the petitioner's national or international acclaim as a chess player or coach 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).

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

The regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The evidence submitted to meet this criterion, or any criterion, must be indicative of or consistent with sustained national or international acclaim.¹² 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).

In response to the director's request for evidence, the petitioner submitted a February 24, 2009 letter from [REDACTED] Mongolian Youth International, San Francisco, states:

[The petitioner] has been a volunteer since 2007 for the Mongolian Youth International Non-Profit Organization in San Francisco Bay Area. He is a [*sic*] enthusiastic and thoughtful individual who never hesitated to help for our children's events.

* * *

¹² We note that although not binding precedent, this interpretation has been upheld in *Yasar v. DHS*, 2006 WL 778623 *9 (S.D. Tex. March 24, 2006) and *All Pro Cleaning Services v. DOL et al.*, 2005 WL 4045866 *11 (S.D. Tex. Aug. 26, 2005).

[The petitioner] is [sic] been integral part of our foundation and has partaken in the Chess and Checker tournament during International Children's Day 2008 event. [The petitioner] anticipated [sic] as of the judged [sic] of the tournament.

The petitioner's participation as a judge at the International Children's Day 2008 event post-dates the filing of this petition. A petitioner, however, must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider the petitioner's participation as judge at this event in this proceeding. Nevertheless, the plain language of this regulatory criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others in the same or an allied field of specification." We cannot conclude that judging children at a recreational youth tournament meets this requirement. Further, the record does not include supporting evidence establishing the level of acclaim associated with judging at this youth event. Internal review of student work is not indicative of or consistent with national or international acclaim and, thus, cannot serve to meet this criterion. *Kazarian v. USCIS*, 2009 WL 2836453, *5 (9th Cir. 2009). Accordingly, the petitioner has not established that he meets this criterion. Moreover, the preceding evidence does not establish that the petitioner's national or international acclaim as a chess player or coach 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).

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

The petitioner submitted various reference letters in support of the petition. We cite representative examples here.

states that the petitioner "is a talented and strong chess player. He has good performance and skills for a chess trainer."

██████████ Mechanics' Institute, San Francisco, states that the petitioner "is one of the strongest chess players in Northern California and a well-known chess coach." While the petitioner may be a strong player in the Northern California region, the statute and regulations require sustained national or international acclaim.

██████████ a chess player residing in Walnut Creek, California, states:

I am 14 years of age. I have been playing chess for over three years now. My USCF rating is about 1400. [The petitioner] has been coaching me for a year and he is an excellent coach/teacher. I haven't competed in a tournament since December 2008 but my next big tournament is the first weekend of March. [The petitioner] has been coaching for a long time and his coaching techniques are great. He teaches me many new things and coaches me to think outside the box.

We acknowledge the petitioner's submission of reference letters from various individuals praising his talent as a chess player and coach. Talent in one's field, however, is not necessarily indicative of original contributions of major significance. With regard to the petitioner's competitive and coaching achievements, the reference letters do not specify exactly what his original contributions in chess 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 helped various players improve their chess skills, the documentation submitted by him does not establish that he has made original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other chess players or coaches nationally or internationally, nor does it show that the field has somehow changed as a result of his work so as to demonstrate the petitioner's significant contribution to his field.

The reference letters submitted by the petitioner, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a chess player or coach who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's achievements have been unusually influential, highly acclaimed throughout his field, or have otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the 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). Moreover, the petitioner has not submitted evidence showing that his acclaim as a chess player and coach has been sustained. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Specifically, the record does not include evidence of nationally or internationally acclaimed achievements and recognition subsequent to the petitioner's arrival in the United States in August 2003.

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

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

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). Review of the record does not establish that the petitioner has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.