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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 and Immigration Services

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 21 2009
LIN 07 210 54547

IN RE: Petitioner:
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:

[redacted]

INSTRUCTIONS:

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

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

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. 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 states that neither he nor the petitioner received the service center's May 1, 2008 request for evidence. The record, however, includes a copy of the request for evidence addressed to counsel's current address of record. Counsel further argues that the petitioner meets the regulatory requirements set forth at 8 C.F.R. §§ 204.5(h)(2) and (3). At this point, the director's decision already having been rendered, the most expedient remedy for counsel's complaint regarding non-receipt of the request for evidence is the full consideration on appeal of any evidence which the petitioner would have submitted in rebuttal to the director's observations in the notice of denial. The petitioner has in fact supplemented the record on appeal as of November 2008 (six months later), and therefore it would serve no useful purpose to remand the case simply to afford the petitioner the opportunity to supplement the record with new evidence.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for

individuals seeking immigrant visas as aliens of extraordinary ability. *See* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition, filed on July 17, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a writer, an editor, and a journalist. 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). On page 9 of his appellate brief, counsel states that "major international and national award nominations" received by publications for which the petitioner worked as a journalist and writer "can also be attributed to and directly credited to the lead work of [the petitioner]." Counsel identifies various awards and a nomination received by publications such as *Men's Health*, *Later*, *GuardianUnlimited*, and *Arena*:

1. 1999, Magazine of the Year Award for *Men's Health,* as described by the Production Editor, [redacted] [the petitioner] "played a crucial and leading role, not least in securing the award;"
2. 1999, winning the Launch of the Year, *Later* magazine;
3. 2000-2001, *GuardianUnlimited,* winner of Best Online News Story, Best Travel Site, Best Use of New Media by a Media Owner, Best Entertainment Award; and
4. 2006, *Arena,* for Best Consumer Magazine of the Year, 2006.

With regard to item 1, the letter from [redacted] states that the Magazine of the Year Award reflected "achievement in UK magazine publication." The petitioner submitted a May 19, 1999 "COMAG Consumer Magazine of the Year" award certificate presented to "*Men's Health* (Rodale Press)" by the Periodical Publisher's Association of the United Kingdom. The COMAG Consumer Magazine of the Year award from the Periodical Publisher's Association of the United Kingdom has not been shown to constitute a major, internationally recognized award. Further, we cannot conclude that an award that was not specifically presented to the petitioner constitutes his receipt of a major, internationally recognized award. The evidence submitted by the petitioner is not sufficient to demonstrate that the award was primarily attributable to his work. Aside from a single article the petitioner wrote for *Men's Health* in June 1999, there is no further evidence in the record of the petitioner's published work for that magazine. We further note that the "COMAG Consumer Magazine of the Year" award given to "*Men's Health* (Rodale Press)" was conferred on May 19, 1999, one month before the petitioner's June 1999 article was published. Furthermore, there is no evidence from the Periodical Publisher's Association of the United Kingdom indicating that its award focused on the petitioner's work.

Regarding item 2, the petitioner submitted a February 11, 2000 press release from *Later* magazine's Press Office stating that the magazine won the British Society of Magazine Editors' (BSME) Launch

of the Year award in 1999. The petitioner also submitted a letter from *FHM Bionic*, stating that he worked with the petitioner on the launch of *Later* and that the BSME award for 1999 "would not have been won without [the petitioner's] insight and talent." Rather than submitting evidence of the actual award, the petitioner instead submitted a self-serving press release issued by the recipient and a third-party letter attesting to its existence. The record does not include primary evidence of the award or evidence from the BSME indicating that the award focused primarily on the petitioner's work. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the BSME Launch of the Year award has not been shown to constitute a major, internationally recognized award. Moreover, we cannot conclude that an award that was not specifically presented to the petitioner is tantamount to his receipt of a major, internationally recognized award.

In regard to item 3, the petitioner submitted promotional material from *GuardianUnlimited* listing more than a dozen online awards received by the publication from 1999 to 2001. The promotional material from *GuardianUnlimited* does not identify the petitioner as an award recipient. The awards mentioned by counsel from the *GuardianUnlimited*'s promotional material include the "Best Online News Story (Foot & Mouth Special Report)" and "Best Travel Site" from the "Net Media European Online Journalism Awards 2001," "Best Use of New Media by a Media Owner" from the "Revolution Awards 2000," and "Best Entertainment Award (Film Unlimited)" from the "Net Media Online Journalism Awards 1999." Rather than submitting evidence of the actual awards from the presenting organizations, the petitioner instead submitted self-serving promotional material prepared by their recipient. The record does not include primary evidence of the preceding awards or evidence that they were primarily attributable to the petitioner's work. As discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, there is no evidence showing that the petitioner wrote the *GuardianUnlimited*'s "Foot & Mouth Special Report" and the travel site material that was recognized in 2001. Moreover, there is no indication that the petitioner wrote material for *GuardianUnlimited*'s "Film Unlimited" site that was recognized in 1999 or that the 2000 "Best Use of New Media by a Media Owner" award was primarily attributable to his work. In fact, the record does not include evidence showing that the petitioner wrote any articles for *GuardianUnlimited* prior to 2002. For example, the petitioner submitted evidence that he wrote articles for the *Guardian* that were published in October 2002, August 2003, January 2005, July 2005, and February 2006, but the awards cited by counsel from the *GuardianUnlimited*'s promotional material were from 1999 to 2001. We cannot conclude that an award that was not specifically presented to the petitioner constitutes his receipt of a major, internationally recognized award.

With regard to item 4, the petitioner submitted material from Periodical Publisher's Association of the United Kingdom's internet site reflecting that Emap East's *Arena* magazine was one of eight publications nominated for COMAG's Consumer Magazine of the Year in 2006. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3) specifically defines a one-time achievement as a major, internationally recognized award. An award "nomination" from a trade group in the United Kingdom's publishing industry is not tantamount to a major, internationally recognized award. Moreover, there is no evidence showing that the nomination was primarily attributable to the petitioner's work.

On appeal, counsel cites *Muni v. INS*, 891 F. Supp. 440 (N.D. Ill. 1995), for the proposition that awards and accolades given to publications or companies for which the petitioner worked can be "directly accorded to [the petitioner]" or "attributed to him." In the cited matter, the court held that a National Hockey League (NHL) team's performance reflects a key player's individual ability. *Id.* at 444. First, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719.

Regardless, the facts of *Muni v. INS*, 891 F. Supp. at 440, are clearly distinguishable from the present matter. In the matter cited by counsel, the alien was the starting defenseman for a professional hockey team that won three Stanley Cup victories. Further, during those seasons, the alien had one of the team's top plus-minus ratios demonstrating that he was a key player. *Id.* at 444. In the present matter, the record lacks objective evidence showing that the petitioner played a key role in achieving the awards received by his publications or companies. It cannot suffice that the petitioner was one member of a large group that earned collective recognition. Further, the petitioner has not established that the awards for which he specifically claims responsibility have a comparable level recognition in his field as the Stanley Cup has in the field of professional hockey. Moreover, in *Muni v. INS*, the alien achieved individual recognition rather than relying solely on recognition as part of a larger group. For example, the alien had the "fourth best plus-minus ratio in the entire NHL" in 1988-89, "*Goal* magazine (an NHL publication) rated him the 'most underrated defensemen' in the League in 1990," and "*Hockey Digest* named him one of the top ten hitting defenseman" in 1991. *Id.* at 441.

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small number 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). Significantly, even a lesser internationally recognized award could serve to

meet only one of the ten regulatory criteria, of which an alien must meet at least three. 8 C.F.R. § 204.5(h)(3)(i). 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 case, there is no evidence showing that the petitioner himself is the recipient of a major, internationally recognized award. Items 1 through 4 above will be further addressed below in our discussion of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i).

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. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).[1]

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

The petitioner submitted the following:

1. A February 11, 2000 press release from *Later* magazine's Press Office stating that the magazine won the BSME Launch of the Year award in 1999;
2. A letter from [redacted] FHM Bionic, stating that he worked with the petitioner on the launch of *Later* and that the BSME award for 1999 "would not have been won without [the petitioner's] insight and talent;"
3. Promotional material from *GuardianUnlimited* listing more than a dozen online awards received by the publication from 1999 to 2001;
4. A May 19, 1999 "COMAG Consumer Magazine of the Year" award given to "*Men's Health* (Rodale Press)" by the Periodical Publisher's Association of the United Kingdom;
5. A letter from [redacted] *Men's Health*, stating that the petitioner "played a crucial and leading role . . . in securing the Magazine of the Year Award in 1999;" and

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

6. Material from the Periodical Publisher's Association of the United Kingdom's internet site reflecting that Emap East's *Arena* magazine was one of eight publications nominated for COMAG's Consumer Magazine of the Year in 2006.

With regard to items 1 and 2, rather than submitting evidence of the 1999 BSME award, the petitioner instead submitted a self-serving press release issued by its recipient and a third-party letter attesting to its existence. The record does not include primary evidence of the award or evidence from the BSME indicating that the award focused primarily on the petitioner's work. As discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, 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 press release and [redacted] letter, the BSME Launch of the Year award was presented to *Later* magazine (which had multiple contributors) rather than to the petitioner. We cannot conclude that an award that was not specifically presented to the petitioner is tantamount to his receipt of a nationally recognized award. It cannot suffice that the petitioner was one member of a large group that earned collective recognition.

In regard to item 3, rather than submitting evidence of the actual awards, the petitioner instead submitted a self-serving list of the awards (1999 through 2001) prepared by *GuardianUnlimited*. The promotional material from *GuardianUnlimited* does not identify the petitioner as an award recipient. Further, the record does not include evidence of the awards originating from the presenting organizations or evidence that they were primarily attributable to the petitioner's work. As discussed, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). In this instance, as previously discussed, there is no evidence showing that the petitioner wrote the *GuardianUnlimited*'s "Foot & Mouth Special Report" and the travel site material that was recognized in 2001. Moreover, there is no indication that the petitioner wrote material for *GuardianUnlimited*'s "Film Unlimited" site that was recognized in 1999 or that the 2000 "Best Use of New Media by a Media Owner" award was primarily attributable to his work. In fact, the record does not include evidence showing that the petitioner wrote any articles for *GuardianUnlimited* prior to 2002. While the petitioner submitted evidence that he wrote articles for the *Guardian* that were published in October 2002, August 2003, January 2005, July 2005, and February 2006, the awards identified in the *GuardianUnlimited*'s promotional material were from 1999 to 2001. We cannot conclude that awards that were not specifically presented to the petitioner are tantamount to his receipt of nationally or internationally recognized prizes or awards.

Regarding items 4 and 5, 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 "COMAG Consumer Magazine of the Year" award certificate and letter, the award was presented to "*Men's Health* (Rodale Press)" (which had multiple contributors) rather than to the petitioner. We cannot conclude that an award that was not specifically presented to the petitioner is tantamount to his receipt of a nationally recognized award. It cannot suffice that the petitioner was one member of a large publishing group that earned collective recognition. Moreover, as previously discussed, the evidence submitted by the petitioner is not sufficient to demonstrate that the award was primarily attributable to his work. Aside from a single article the petitioner wrote for *Men's Health* in June 1999, there is no further evidence in the record of the petitioner's published work for that magazine. We further note that the "COMAG Consumer Magazine of the Year" award given to "*Men's Health* (Rodale Press)" was conferred on May 19, 1999, one month before the petitioner's June 1999 article was published. Furthermore, there is no evidence from the Periodical Publisher's Association of the United Kingdom indicating that its award focused on the petitioner's work.

With regard to item 6, 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. A nomination is not tantamount to a prize or an award. Further, according to the material submitted by the petitioner from the Periodical Publisher's Association of the United Kingdom's internet site, the nomination for COMAG's Consumer Magazine of the Year (2006) was accorded to Emap East's *Arena* magazine rather than to the petitioner. Moreover, there is no evidence showing that the nomination was primarily attributable to the petitioner's work.

In light of the above, the petitioner has not established that he meets this criterion.

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.*

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

The petitioner initially submitted 29 letters from various editors, journalists, producers, directors, and executives who have worked with the petitioner in the past or who are familiar with his work. In addressing these letters, the director's decision stated:

> Several supporting letters were submitted, primarily from editors of publications to which the petitioner has contributed. These writers praise the petitioner's work as a contributing writer

> and editor. However, employment in the field of endeavor does not generally qualify as membership in an association as envisioned under this criterion. Any employer will hire the most qualified employees that it can attract or afford, but the hiring process cannot be compared to an association's membership rules which require outstanding achievements of all members. The evidence does not demonstrate the petitioner's membership in an association of this kind.

We concur with the director's observations. On appeal, the petitioner does not contest the director's findings for this regulatory criterion. The petitioner has not established that his ability to secure employment as a journalist or an editor for various publications equates to "membership in associations in the field for which classification is sought." In this case, there is no evidence showing that the petitioner holds membership in an association requiring outstanding achievements of its members, as judged by recognized national or international experts in his field or an allied one. Accordingly, we concur with the director's finding that the petitioner does not meet this criterion.

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

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.[2]

The petitioner submitted an "Audit Report" for *Golf Punk* magazine. The director's decision noted that "the report was not prepared for public consumption and cannot be considered a trade publication or other major media." We concur with the director's finding. Further, the date of this report was not identified as required by the plain language of this regulatory criterion. The third paragraph on page 8 of the 17-page Audit Report briefly refers to a feature article written by the petitioner about golfer [redacted] in the December 2004/January 2005 issue of *Golf Punk*. The Audit Report describes the petitioner's style of writing as "high quality" and "very illustrative." The petitioner's evidence includes a copy of his feature article about [redacted] The Audit Report, however, is not about the petitioner and does not mention him by name. The plain language of this regulatory criterion, however, requires that the published material be "about the alien."

The petitioner submitted a short commentary (three sentences) in the "Editor's Letter" section of *Arena* highlighting a story written by him in the magazine's February 2003 issue. In addressing this

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[2] 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.

material, the director's decision stated: "The short, self-promotional commentary in *Arena* appears mainly to direct readers of the magazine to an interesting article." We cannot conclude that this brief piece promoting an article written by the petitioner on page 106 equates to published material about him. Further, there is no evidence showing that *Arena*, a now-defunct "men's style" magazine, qualifies as a major publication.[3] The petitioner has not submitted evidence (such as objective circulation information from an independent source) showing the distribution of the preceding publication relative to other national media to demonstrate that the submitted article was published in a professional or major trade publication or some other form of major media.

The petitioner submitted an online interview of him which was posted on the Tux:Tops internet site in November 2006. The director's decision noted that the material on this "obscure website does not concern [the petitioner's] work as a journalist, but as the creator of a music video which he filmed on a cell phone." There is no evidence demonstrating that the Tux:Tops website qualifies as a professional or major trade publication or some other form of major media. Moreover, there is no evidence indicating that the online interview of the petitioner was accessed by a significant number of website visitors, had substantial national or international readership, or otherwise attracted a level of interest commensurate with publication in major media.

In light of the above, the petitioner has not established that he meets this criterion.

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

The petitioner initially submitted copies of articles he wrote for publications such as *Esquire*, *Live Night & Day*, *The Independent on Sunday*, *Ace*, *Arena*, *Golf Punk*, *The Guardian*, *Los Angeles City Beat*, *Los Angeles Times*, *The Times*, *Inside Edge*, *Docklands*, *Jack*, *Restaurant*, *Total Film*, *Soma*, *Big*, *The Sunday Telegraph*, *Men's Health*, and *Later*. In addressing these articles, the director's decision stated: "The record indicates that the petitioner has written numerous articles as a free-lance writer for several publications . . . . However, as just some of the thousands of articles which appear in these publications on a yearly basis, the significance of these articles is not apparent." The director's decision noted that three of the petitioner's articles were highlighted on the cover of *Arena* magazine in 2003, but that his work has not attracted "special attention" or "set a standard in the field of journalism." We concur with the director's observations. While the articles authored by the petitioner are original, there is no evidence demonstrating that any of his articles equate to contributions of major significance in his field.

On appeal, counsel argues that the petitioner's "extensive body of work is of major significance within the field of journalism," but the record does not support his conclusion. The petitioner

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[3] *See* March 3, 2009 article entitled "Men's monthly magazine *Arena* to cease printing after 22 years," http://www.guardian.co.uk/media/2009/mar/03/mens-magazine-arena-to-close, accessed on August 26, 2009, copy incorporated into the record of proceeding. "[M]en's monthly magazine *Arena* is set to close after 22 years . . . . Publisher Bauer Media said today it was suspending publication of the title . . . . The men's style title suffered years of decline and was only selling 17,071 actively purchased copies over the last six months of 2008." *Id.*

submits a November 10, 2006 press release issued by Nokia America's Media Relations and Press Office entitled "New Rob Dickinson Music Video Shot Entirely on the Nokia N93." The press release states:

> Last night, Nokia premiered musician Rob Dickinson's new video, "Oceans;" which is the first music video created solely on a Nokia Nseries multimedia computer – the first music video ever done solely on a device of its class.
>
> Directed by [the petitioner], "Oceans" is the second single off Rob Dickinson's debut solo album . . . . The "Oceans" music video was shot by [the petitioner] on the Nokia N93, a 3.2 megapixel camera phone with DVD quality video and Carl Zeiss optics.

We note that a press release is a written communication directed at the news media for the purpose of announcing information claimed as having news value. We cannot conclude that Nokia's press release, which is not the result of independent media reportage and which is sent to journalists in order to encourage them to develop articles on a subject, is sufficient to demonstrate that the petitioner's work constitutes an original contribution of major significance in his field. The petitioner also submitted evidence reflecting that the PRNewswire marketing service transmitted Nokia's press release to various media outlets, but there is no indication that his work was recognized as a contribution of major significance throughout the video music industry or in the fields of journalism or digital media. We cannot ignore that the press release material focused primarily on the quality and versatility of the advanced camera phone technology that was developed and introduced by Nokia.

We acknowledge the petitioner's submission of several recommendation letters praising his talent as a writer and discussing his activities in the field. We cite representative examples here. Talent and employment in one's field, however, are not necessarily indicative of original artistic or business-related contributions of major significance. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

The Hollywood Hill, states:

> [The petitioner] is known internationally as an outstanding and talented print journalist — his work for *Esquire* magazine, the *Guardian* and the *Independent* has taken him to global prominence.
>
> * * *
>
> In addition, [the petitioner] has proven himself a pioneer in the rapidly advancing field of digital journalism, which demands visual as well as literary creative talent. [The petitioner's] groundbreaking work in mobile video, in association with Nokia, remains an inspiration to The Hollywood Hill and establishes him as a true innovator in visual communication. His breakthroughs are helping to shape the creative digital landscape and define the limits of multimedia, cross-platform journalism as it takes shape in the 21st Century.

> An article written by [the petitioner] for the Guardian ("Block by Blog" May 7, 2005) — in which he laid down a framework for multimedia travel writing by exploring Manhattan via weblog — stands as a landmark in digital journalism. And in 2006 and 2007, [the petitioner] pushed the boundaries of mobile video innovation with cutting-edge work on Nokia devices that has opened up the full potential of multi-platform journalism and film-making.

asserts that the petitioner's exploration of Manhattan via weblog is a "landmark in digital journalism," but there is no evidence to support this conclusion aside from the comments of the petitioner's professional contacts.

, Director of Digital Strategy & Development, Guardian Media Group, states:

> [The petitioner] was a key member of the editorial team on www.euro96.com, one of the first sports websites in the world. In the years since then he has enhanced his reputation as a first-class journalist, and an [sic] true innovator in the field of digital media. As well as writing insightful, globally syndicated articles for the world's premier publications, both online and in print, he has helped develop the mobile tools for reportage that are now an essential part of the 21st-century journalist's skill-set.
>
> In 2005, [the petitioner] authored an influential article for the Guardian ("Block by blog") in which he mapped out Manhattan using weblogs accessed via cell phone, a technique now commonplace among travel writers. In 2006 and 2007, he worked in association with Nokia at the forefront of creative innovation on mobile video projects that shaped the way stories are now researched, compiled and reported. In summary, his pioneering work places him among contemporary journalism's groundbreaking elite.

While the petitioner may have utilized mobile phone technologies developed and invented by others, there is no evidence demonstrating that his original work was of major significance to the field.

a science documentary producer and director for British Broadcasting Corporation (BBC) Vision Productions, states:

> I've known [the petitioner] for many years — and we have collaborated on a number of projects. [The petitioner] works at the forefront of the new multi-platform media universe and is one of a few select journalists who is globally recognized in the convergent worlds of video, online content and print publishing. His global perspective on — and analysis of — American cultural life has appeared in a host of internationally renowned magazines and newspapers (including *Esquire*, the *Independent on Sunday*, the *Guardian*, the *Times of London*, & the *Los Angeles Times*), while his related creative output at the cutting edge of digital journalism — incorporating mobile video techniques into the traditional arena of the written word — has set [the petitioner] apart as an innovator. The advances in reportage he has pioneered in association with Nokia have received worldwide coverage and acclaim.

Aside from the press release that was circulated to various media outlets by Nokia and the PRNewswire marketing service to promote the Nokia N93 camera phone's capabilities, there is no evidence demonstrating that the petitioner is responsible for original "advances in reportage" that "have received worldwide coverage and acclaim."

, Ann Flower Communications, "a hospitality focused public relations agency," states:

> [The petitioner] is an exceptional and innovative journalist, and one of the world's top travel writers. His work appears in the most prestigious of media outlets — the *Guardian* (in print and online); the *Independent on Sunday*; *The Times of London*; *Esquire* magazine — and as a result, his editorial coverage is highly sought after by myself as well as everyone else in the public relations sector of the travel and leisure industry. I have a working relationship with many journalists, and I can confirm that [the petitioner's] talent and outstanding track record truly set him apart from the majority of his fellow writers.

of iTunes Essentials for Apple, states:

> [The petitioner] is one of the few recognized music experts entrusted by Apple iTunes to represent the phenomenal world-wide, music download service in the digital editorial arena. His work as a writer for iTunes, via contracted editorial service Hackmart, has a truly global dimension. He provides the highest quality of copy for iTunes consumers in Canada, Australia, the United States and the United Kingdom, and was hired on the basis of his uniquely impressive and wide-ranging musical knowledge.
>
> Although he has been working with iTunes since 2005, [the petitioner's] reputation precedes him — he is a journalist of exceptional ability and global standing, as his track record with the *Times of London*, the *Guardian* newspaper, the *Los Angeles Times* and the *Sydney Morning Herald* confirms. He is one of the few writers in the world talented and knowledgeable enough to fulfill the duties requested of him by iTunes.

, a reality television producer for Warning Shot Entertainment, states:

> In my experience, I've found that few writers have the scope and sensibility to succeed across media disciplines, but [the petitioner] has deftly navigated the various creative platforms of 21st Century communication, entertainment and reportage with consistent excellence. From my perspective, his abilities can fairly be considered as extraordinary.

In the fields of freelance journalism, digital media, advertising, public relations, and entertainment, it is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion. 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 has earned the admiration of his employers and colleagues, there is no

evidence establishing that specific accomplishments of the petitioner are tantamount to original contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other writers nationally or internationally, nor does it show that the fields of journalism or digital media have somehow changed as a direct result of his original work.

In this case, the recommendation letters submitted by the petitioner are not sufficient to meet this regulatory criterion. 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 professional contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance that one would expect of a writer or journalist who has sustained national or international acclaim at the very top of the field. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

> *Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.*

Although the petitioner did not initially claim to meet this criterion, the director's decision addressed it stating:

> The evidence clearly shows that the petitioner has authored many lifestyle and sports articles that have been published in major media, but this criterion is set aside specifically for scholarly articles concerning the field of endeavor, in this case journalism. There is no evidence in the record that the petitioner has authored scholarly articles about the field of journalism.

We concur with the director's observations. Not every published article is a scholarly article in the field; and therefore we cannot conclude that the sports and lifestyle articles written by the petitioner fall under this regulatory criterion. More appropriate for consideration under this criterion would be articles in trade publications, for instance, concerning the technical aspects of journalism or digital media. A journalist cannot satisfy this requirement simply because his work has appeared in print, as publication of articles is inherent to the occupation.

On appeal, counsel cites *Gulen v. Chertoff*, 2008 WL 2779001 (E.D. Pa.), in which the court held that "a work becomes scholarly by virtue of its author and its subject matter, not its intended audience." As discussed previously, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United

States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. at 715. The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value. Regardless, the facts of *Gulen v. Chertoff*, 2008 WL 2779001, are easily distinguishable from the present matter. In the court decision cited by counsel, the subject matter of the alien's work was scholarly in nature, his work was "prominent on the syllabi of graduate and undergraduate courses at major American colleges and universities," his work was "the subject of international conferences of scholars," and there were "academic studies of the [alien's] 'thought.'" *Id.* In the present case, however, the petitioner has not demonstrated that the subject matter of his work was scholarly or that it has been widely recognized as significant throughout the journalism community.

In light of the above, the petitioner has not established that he meets this criterion.

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

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position is indicative of or consistent with national or international acclaim.

The petitioner initially submitted 29 letters from various editors, journalists, producers, directors, and executives who have worked with the petitioner in the past or who are familiar with his work. In addressing these letters, the director's decision stated:

> [T]he evidence shows that you have been a contributing writer for several publications, as well as an editor of *Later* magazine. The evidence does not suggest that as a free-lance writer for several publications, you played a leading, decision-making role for those publications, or that in producing content for these publications your role exceeded that of other free-lance journalists or staff journalists. Several letters indicate that you played an important role in the launching of *Later* magazine, which won an award for Best New Magazine in 1999, but the only documentary evidence of your role consists of a handful of articles written by you, only one of which was shown to be mentioned on the cover of that particular edition. Similarly, a letter from *Lemonade* magazine notes that you were recruited to be the editor of that magazine, but no further evidence regarding *Lemonade* was submitted. USCIS notes that both of these magazines appear to have been short-lived, significantly calling into question their respective distinguished reputations.

We concur with the director's observations. On appeal, the petitioner submits additional letters praising his talent as a writer and discussing his activities in the field. The content of several of these letters has already been cited and discussed under the criterion at 8 C.F.R. § 204.5(h)(3)(v). For example, the letter from [redacted] indicated that the petitioner has written copy as a sub-contractor for Apple

iTunes (via contracted editorial service Hackmart, Inc.). In addition, the letter from Simon Waldman notes that the petitioner served as an editor for one of the Guardian Media Group's multiple websites. The petitioner also submitted a letter from of *The Independent on Sunday*'s supplement magazine, *The New Review*, stating that he "commissioned" the petitioner to write various articles, including a July 2007 article about professional soccer player David Beckham's arrival in the United States. While many of the media organizations for which the petitioner has worked have distinguished reputations, the record lacks evidence differentiating the petitioner's role from that of the other writers and editors employed by those organizations, let alone their top executives. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing of the organizations for which he worked to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim.

In light of the above, the petitioner has not established that he meets this criterion.

> *Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.*

The petitioner initially submitted a June 28, 2006 letter from Hackmart, Inc., offering the petitioner the position of "Senior Writer & Editor" with an annual salary of $135,000. The petitioner also submitted Foreign Labor Certification (FLC) Wage Results from the U.S. Department of Labor's FLC Data Center for "Editors" in the "Los Angeles-Long Beach-Glendale," California Metropolitan region for 2006-07. The FLC Data Center online wage results for editors in California reflect a Level 1 wage (entry) of $32,989 per year, a Level 2 wage (qualified) of $44,970 per year, a Level 3 wage (experienced) of $56,950 per year, and a Level 4 wage (fully competent) of $68,931 per year.

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

> The sole piece of evidence submitted in support of this criterion consists of a job offer letter from Hackmart, Inc. which includes the promise of an annual salary of $135,000. No evidence of your actual past or present earnings, such as W-2 forms or similar foreign tax documentation, was submitted. The wage data submitted from the U.S. Department of Labor does not reflect the salaries of top journalists.

We concur with the director's findings. First, the record does not include supporting evidence (such as payroll records, a Form W-2, or income tax returns) showing the petitioner's actual earnings for any specific period of time. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 158, 165. A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Second, the petitioner must submit evidence showing that his earnings place him in that small percentage at the very top of his field, rather than simply in the top half of fully competent editors at the local or regional level. *See* 8 C.F.R. § 204.5(h)(2). Median regional wage statistics for editors in California do not meet this requirement.

Accordingly, the documentation initially submitted by the petitioner is not sufficient to demonstrate that he has commanded a high salary or significantly high remuneration in relation to other editors, senior writers, or journalists in a manner consistent with national or international acclaim.

On appeal, despite the director's observation that the petitioner had failed to submit evidence of his actual earnings, the petitioner submits only an updated October 28, 2008 letter from offering the petitioner a salary of $150,000.[4] This latest salary offer from Hackmart post-dates the filing of the 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 October 28, 2008 salary offer in this proceeding.

The petitioner's appellate submission includes FLC Data Center online wage results (2008-09) for "Writers and Authors" in California reflecting a Level 1 wage (entry) of $43,430 per year, a Level 2 wage (qualified) of $77,168 per year, a Level 3 wage (experienced) of $110,885 per year, and a Level 4 wage (fully competent) of $144,622 per year. Even if we were to accept the petitioner's most recent salary offer from October 2008 (which we do not as it post-dates the filing of the petition and is unsupported by evidence of the petitioner's actual earnings), it demonstrates only that he was offered a salary that exceeded the median wage for "fully competent" writers by $5,378 per year. It does not demonstrate a high salary in relation to others in the field. The petitioner also submits information showing median salaries (2008) by select states for journalists from www.payscale.com. The petitioner's appellate submission also includes information printed from www.foliomag.com showing average salary information (2008) for editorial directors, managing editors/senior editors, and editors/executive editors in the New York City area and four other geographic regions in the United States. As discussed, aside from the petitioner's failure to submit objective evidence of his actual salary or remuneration, the petitioner must submit evidence showing that his earnings place him in that small percentage at the very top of his field, rather than simply in the top half or above average at the local or regional level. Median and mean regional wage statistics for the aforementioned occupations do not meet this requirement. Without a proper basis for comparison and objective evidence showing his actual earnings during a sustained period predating the filing of the petition, we cannot conclude that the petitioner has commanded a high salary or other significantly high remuneration for services in relation to others in his field. Accordingly, the petitioner has not established that he meets this criterion.

> *Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.*

The petitioner initially submitted the following:

1. *Live* magazine's readership figures as indicated on *The Mail on Sunday*'s internet site;

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[4] According to the letter from the petitioner worked for Apple iTunes "via contracted editorial service Hackmart" since 2005. As such, it is reasonable to conclude that objective evidence documenting the petitioner's prior years' earnings with Hackmart would be available for submission. The record, however, does not include such evidence.

2. *Later* magazine's readership figures as indicated by ABC's February 18, 2000 issue of *Media Week*;
3. A February 11, 2000 press release from *Later* magazine's Press Office stating that the magazine won the BSME Launch of the Year award in 1999;
4. A letter from [redacted] *FHM Bionic*, stating that he worked with the petitioner on the launch of *Later* and that the BSME award for 1999 "would not have been won without [the petitioner's] insight and talent;"
5. Promotional material from *GuardianUnlimited* listing more than a dozen online awards received by the publication from 1999 to 2001;
6. Promotional material reflecting *GuardianUnlimited*'s readership statistics;
7. A May 19, 1999 "COMAG Consumer Magazine of the Year" award given to "*Men's Health* (Rodale Press)" by the Periodical Publisher's Association of the United Kingdom;
8. Promotional material about *Men's Health*;
9. A letter from [redacted], *Men's Health*, stating that the petitioner "played a crucial and leading role . . . in securing the Magazine of the Year Award in 1999;" and
10. Material from the Periodical Publisher's Association of the United Kingdom's internet site reflecting that Emap East's *Arena* magazine was one of eight publications nominated for COMAG's Consumer Magazine of the Year in 2006.

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

> It is not apparent that this criterion, which applies specifically to the performing arts, applies to the instant petition. Further, the evidence submitted refers to the commercial success of two of the magazines for which the petitioner wrote and edited, *Men's Health* and *Later,* and not to the petitioner himself.

We concur with the director's observations. The plain language of this regulatory criterion requires "[e]vidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales." The petitioner's field is not in the "performing arts." Further, the commercial successes of the preceding publications have not been demonstrated to have been primarily attributable to the petitioner's articles or editorial functions.

On appeal, counsel asserts that the petitioner "has contributed to the major success" of the following publications:

1. 1999, Magazine of the Year Award for *Men's Health,* as described by the Production Editor, [redacted] [the petitioner] "played a crucial and leading role, not least in securing the award;"
2. 1999, winning the Launch of the Year, *Later* magazine;
3. 2000-2001, *GuardianUnlimited,* winner of Best Online News Story, Best Travel Site, Best Use of New Media by a Media Owner, Best Entertainment Award; and
4. 2006, *Arena,* for Best Consumer Magazine of the Year, 2006.

The preceding evidence has already been addressed (pages 3 – 8) in our discussion of the one-time achievement at 8 C.F.R. § 204.5(h)(3) and the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). It should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and commercial successes in the performing arts, USCIS clearly does not view the two as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Nevertheless, none of the preceding honors were presented to the petitioner. Further, the evidence of record is not sufficient to demonstrate that the above honors focused on the petitioner's individual work. Moreover, aside from the fact that the petitioner's field is not in the "performing arts," this regulatory criterion calls for commercial successes in the form of "sales" or "receipts"; simply submitting evidence of awards or readership statistics cannot meet the plain language of this regulatory criterion. In this case, there is no evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes as a writer in a manner consistent with sustained national or international acclaim at the very top of his field. For example, there is no evidence showing that magazine sales for the above publications significantly increased when the petitioner's articles were published.

In light of the above, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's determination that the petitioner has failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition. Although the words "extraordinary ability" are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states: "The term 'extraordinary ability' means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction." The O-1 regulation reiterates that "[e]xtraordinary ability in the field of arts means distinction." 8 C.F.R. § 214.2(3)(ii). "Distinction" is a lower standard than that required for the immigrant classification, which defines extraordinary ability as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility pursuant to 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner's receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, we do not find that an approval of a nonimmigrant visa mandates

the approval of a similar immigrant visa. Each case must 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.