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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: TEXAS SERVICE CENTER Date:
SRC 08 800 03229

APR 28 2010

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:

[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 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).

U. Deardorff
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, on April 9, 2009, and is now before the Administrative Appeals Office 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 an architect. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien's "sustained national or international acclaim" and present "extensive documentation" of the alien's achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel submits a brief and additional evidence. At the outset, counsel claims:

[The petitioner] is currently in the US working in O-1 status as a Nonimmigrant Alien of Extraordinary Ability, Senior Architect 1 with [REDACTED] [The petitioner] has therefore satisfied the requirements of 8 CFR §214.2(o)(3)(iii)(B) for a nonimmigrant of "extraordinary ability," which are virtually reiterative of the requirements at 8 CFR §204.5(h)(3) listed above for an immigrant of "extraordinary ability." As such, [the petitioner] contends that he meets the requirements for classification as an alien of "extraordinary ability" as defined in 8 CFR §204.5(h)(3) and the instant I-140, Immigrant Petition for Immigrant Alien Worker, should be approved at this time.

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

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. at 597. 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 at 1090.

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

For the reasons discussed below, our assessment of the evidentiary criteria as well as the merits evaluation of the evidence submitted, which addresses the significance of the evidence submitted under the necessary three criteria, leads us to conclude that the petitioner has not demonstrated the necessary national or international acclaim.

I. Law

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).

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award, the regulation outlines the following 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.

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) 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;
- (iii) 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;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;
- (ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field; or
- (x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 2010 WL 725317 (9th Cir. March 4, 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at *6 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at *3.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then, if qualifying under three criteria, considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

¹ Specifically, the court stated that the AAO had unilaterally imposed novel, substantive, or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).²

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

On appeal, counsel argues:

The Petitioner contends that he has won at least 4 qualifying awards, including the Panasonic Store Design Competition, the Chernikhov Award, the Capacity 21 Competition and the IAA Triennial of Architectural Award. Therefore, Petitioner should have been found to have met at least 4 of the 10 forms of documentation to establish his eligibility for EB-1 classification in the category of "lesser nationally or internationally recognized" awards set forth in 8 CFR § 204.5(h)(3)(i) alone. The Decision's failure to identify on what basis Petitioner's evidence met this regulatory criteria and disregard for the evidence of 4 such awards is arbitrary and capricious and a denial of the Petitioner's due process.

First, a review of the director's decision reflects that while he failed to specifically discuss the petitioner's documentation, he found that the petitioner met this regulatory criterion. Since the director found that the evidence established eligibility for this criterion, the director determined that a discussion of the petitioner's submitted documentation was not necessary.

Second, we are not persuaded by counsel's argument that "4 of the 10 forms of documentation" establishes his eligibility under 8 C.F.R. § 204.5(h)(3)(i). The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Contrary to counsel's claim of "4 of the 10," this regulatory criterion does not specify the number of nationally or internationally recognized prizes or awards that must be submitted to establish eligibility for this criterion. Further, if it is counsel's contention that the petitioner's four awards not only establish his eligibility under 8 C.F.R. § 204.5(h)(3)(i) but also satisfy four out of the ten regulatory criteria under 8 C.F.R. § 204.5(h)(3)(i)-(x), his argument is not persuasive. The regulatory criteria under 8 C.F.R. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless.

Finally, the petitioner also claims eligibility for this criterion based on Second Prize from the United Nations Development Programme (UNDP) and a \$4000 University of Southern California (USC) School of Architecture Award.

² The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Regarding the Panasonic Storefront Design Competition, the petitioner submitted a letter, dated February 6, 2009, from [REDACTED], who stated that “[t]he [Panasonic] Storefront Design Competition was committed to transforming the Panasonic Bulgaria main show room on Vitosha Promenade in Sofia into exclusive and memorable location.” 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 demonstrating that the petitioner’s award is tantamount to a nationally or internationally recognized prize or award for excellence in the petitioner’s field of endeavor. While the petitioner submitted photographs of the storefront design, the petitioner failed to submit any other documentation regarding this competition to demonstrate its recognition beyond the awarding entity.

Regarding the UNDP, the petitioner submitted a letter, dated November 10, 1998, from [REDACTED] who stated:

The United Nations Development Programme, Capacity 21 appreciates your participation in the Shopping Center competition for the town of Assenovgrad.

We are pleased to inform you, that the Jury confers the Second Prize and financial award on the entry of your Company.

In addition, the petitioner submitted documentation regarding the background and role of UNDP in Bulgaria along with information about the UNDP’s Capacity 21 Programme. According to the documentation submitted by the petitioner:

Through the Capacity 21 Programme, the Government of Bulgaria confirmed its commitment to the principles of sustainable human development as expressed in various UN Conferences. The Programme lays the groundwork for a national sustainable development strategy by promoting and testing models for sustainable development at the community level in the cities of Asenovgrad and Velingrad. The Programme also promotes human resource capacity and greater awareness among school children and the Bulgarian press of Bulgaria’s sustainable development challenges and options. All its elements are essential steps in preparing a Bulgarian national strategy for sustainable development, a Bulgarian Agenda 21.

We cannot ignore the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) which requires that the nationally or internationally recognized prizes or awards be *for excellence* in the field of endeavor. As evidenced below from a second letter, dated August 8, 2007, from [REDACTED], the Capacity 21 Century Competition was for a design or construction bid and not a competition based on excellence:

[The petitioner's company] participated in the organized bidding procedures for architectural plans of the future agricultural market in the municipality of Asenovgrad. They submitted an offer with an original design of the market construction and were rewarded the second prize by the Evaluation Committee established under the order A-865/06.11.1998. Some of the ideas were used later in the implementation of the agricultural market demonstration project.

In addition, the petitioner submitted the meeting minutes from the Municipality of Asenovgrad that stated:

The Jury has an assignment to review and grade the submitted projects. The jury reviews the participants report presented by the Technical Committee, verifies the implementation by the participants of the Program, and reviews the technical/economic data of the submitted projects.

While the meeting minutes provide very little information regarding the specific prize selection criteria, they do reflect that the jury is responsible for reviewing the "technical/economic data of the submitted projects." The documentation submitted by the petitioner fails to establish that his second prize for the Capacity 21 Century Competition was for excellence in the field of architecture. Further, the petitioner failed to establish that the prizes derived from the competition were based principally on excellence and not meeting governmental code or cost regulations.

Regarding the USC award, the petitioner submitted a letter from [REDACTED] who stated that the petitioner was awarded "financial aid." However, academic study is not a field of endeavor, but training for a future field of endeavor. As such, academic scholarships, student awards, and financial aid awards cannot be considered nationally or internationally recognized prizes or awards in the petitioner's field of endeavor. Moreover, financial aid awards are reserved for students in need of financial assistance to pay for tuition and not based on excellence in the field.

Regarding the Chernikhov and WTA awards, the petitioner submitted sufficient documentation demonstrating that his receipt of the Prize of the ICIF and Interarch Laureate at the Ninth WTA are nationally or internationally recognized prizes or awards for excellence.

We note here that on appeal counsel stated:

Attached please find First Place Awarded to [REDACTED] (PBS&J) for a Design Competition – Dubai Seventh Crossing hosted by [REDACTED] at his first annual international bridge design competition held in November 2008.

The petition was originally filed on November 20, 2007. However, as the above-mentioned award occurred in November 2008, after the filing of the petition, we cannot consider this

evidence in this proceeding to establish the petitioner's eligibility. Eligibility must be established 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). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi*, 22 I&N Dec. 169, 175 (Comm'r. 1998). That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. 114 (BIA 1981), that we cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Moreover, first place was awarded to [REDACTED] and not to the petitioner. We cannot conclude that the 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.

For the reasons stated above, we agree with the finding of the director for this criterion. Accordingly, the petitioner has 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.

The petitioner claims eligibility for this criterion based on the following:

1. Associate Membership with The American Institute of Architects (AIA);
2. Member of the Union of Architects in Bulgaria (UAB); and
3. Leadership in Energy and Environmental Design Accredited Professional (LEED AP) with the U.S. Green Building Council (USGBC).

Regarding item 1, the petitioner submitted information from www.aialosangeles.org that reflects that associate membership within AIA is open to individuals who meet one of the following criteria:

- a. Recent graduate with a degree in architecture; or
- b. Currently enrolled in the Intern Development Program (IDP) and working towards licensure; or
- c. Currently work under the supervision of an architect or hold a degree in architecture; or
- d. Faculty member (non-licensed) in a university program in architecture.

Regarding item 2, the petitioner submitted the regulations from UAB that reflect that a "[m]ember of UAB shall become every active person who is Bulgarian citizen, has a graduate degree in architecture and accepts [these] regulations." In addition, the regulations reflect that membership applications are reviewed and approved by "Board resolution."

Regarding item 3, while the petitioner submitted information from www.usgbc.org regarding the advantages of national and individual chapter membership, the petitioner failed to submit any

documentation regarding membership requirements. However, according to USGBC's website located on the document submitted by the petitioner:³

Candidates must have experience in the form of documented professional experience on a LEED project, within the last 3 years, with verification through LEED Online or employer attestation. Candidates are also required to agree to the Disciplinary and Exam Appeals Policy and Credential Maintenance Program and submit to an application audit.

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.

As evidenced above, AIA and UAB require an individual to possess a degree in architecture. In addition, membership with USGBC as a LEEP AP requires an individual to have three years of professional experience on a LEED project. However, the record fails to reflect that membership in any of these organizations requires demonstration of outstanding achievement as an essential condition for membership. The record also fails to reflect that membership in any of these organizations is judged by recognized national or international experts in the field of architecture. For example, according to the documentation submitted by the petitioner, as long as an applicant for membership with AIA meets the minimum membership requirements, completes an application, submits the appropriate membership dues, and submits a copy of the applicant's degree, the applicant is then eligible for membership with AIA. In addition, regarding UAB, while membership applications are reviewed by "Board resolution," the petitioner failed to submit any documentation establishing that UAB's Board is comprised of recognized national or international experts. Finally, regarding USGBC, an applicant must pay the appropriate application fee and pass an exam in order to become a LEEP AP.

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

³ See [REDACTED], accessed on February 17, 2010, and incorporated into the record of proceeding.

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

The petitioner claims eligibility for this criterion based on the petitioner's design, *Stirling House*, appearing in *Global Architecture (GA) Houses* magazine in the Project 2002 edition.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. An alien would not earn acclaim at the national level from a local publication or from a publication printed in a language that the vast majority of the country's population cannot comprehend. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁴

A review of the article reflects that the petitioner is mentioned only one time as being credited as part of the project team. Even though *GA House* is a major media magazine, we find the article is not about the petitioner but a design for a house along with a brief summary that credits the petitioner with working on the project. As such, the petitioner's submission of a single article (the regulation indicates more than one is required), which briefly mentions the petitioner, failed to establish that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) which requires that the published material be "about" the petitioner relating to his work.

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

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

On appeal, counsel argues:

The Center Director's statements demonstrate that Officer #144 is unlawfully adding requirements not found in the plain language of the regulation and dismissing evidence based on speculation and conjecture rather than a proper weighing of the evidence. Nowhere in the regulation is there any language requiring that the competition over which the Petitioner presided as a juror and critic "was on a national or international level." Officer #144's implicit requirement that only "judging a major national competition broadcast on a top

⁴ 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.

national television network” would qualify under this criterion is both irrelevant and misleading.

Although the director may have overreached in finding that this criterion requires the petitioner’s judging to be on the national or international level, we note that the alien must participate “as a judge must of the work of others in the same or an allied field of specialization for which classification is sought” pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv). In addition, we are not persuaded by counsel’s assertion that the director’s decision implied that judging for this criterion required it to be broadcasted on a top television network. Instead, a review of the director’s decision reflects that he referred to broadcasting on a top television network as a comparison to judging competitions at a school level as an example that “[n]ot all instances of judging carry equal weight.”

Nevertheless, the petitioner claims eligibility for this criterion by submitting the following documentation:

1. A letter, dated November 8, 2007, from [REDACTED] University of Architecture, Civil Engineering and Geodesy (UACEG), who stated that “[i]n 1999, 2000, 2003 [the petitioner] participated as a guest critic on architectural juries at [UACEG] and judged the work of the students”; and
2. A letter, dated November 13, 2007, from [REDACTED] Former Director, Southern California Institute of Architecture (SCI-Arc), who stated that “[the petitioner] participated in numerous events and symposia and was a frequent juror at SCI-Arc during 2005-2006.”

The petitioner also submitted a copy of SCI-Arc’s Thesis Reviews reflecting that the petitioner was listed as a juror. On appeal, counsel argues that since other jurors for the student thesis reviews were “nationally and internationally acclaimed architects and architect critics, such as [REDACTED] is,” the petitioner should qualify for this criterion.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires the petitioner to be “a judge of the work of others in the same or an allied field of specialization for which classification is sought.” In this case, the documentation submitted by the petitioner reflects that he participated as a judge for students at UACEG and SCI-Arc. As such, the petitioner submitted sufficient documentation to meet the plain language of this regulatory criterion.

Accordingly, the petitioner has 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 claims eligibility for this criterion based on his previously mentioned design, *Stirling House*, appearing in GA Houses magazine for the Project 2002 edition. The petitioner failed to submit any documentation establishing that *Stirling House* was a contribution of “major significance” in the field of architecture.

While not specifically claimed by the petitioner, we note here that the petitioner submitted recommendation letters. We cite representative examples here:

., stated:

[The petitioner] joined in the design process and the organization of our office unusually fast. [The petitioner’s] human qualities easily integrated him into our team. He worked closely with the firm’s principal and other team members.

stated:

We found [the petitioner’s] work, attitude and skills to be very good. He was pleasant to work with and got along well with his co-workers.

stated:

[The petitioner’s] award winning projects and publications have made original contributions of major significance in the field of architecture. He was the leader of a team whose work was published in a major professional magazine Global Architecture – GA Houses, the best projects edition of the year 2002. In 2000, [the petitioner] as a notable self-employed architect was proclaimed a Laureate of International Academy of Architecture from World Triennial of Architecture Interarch. IAA activities have global recognition and play an important role in the improvement of the built environment as well as sustainable development. The Academy’s laureates are some of the leading masters in the world. Appearance in this select group is internationally recognized as a mark of high distinction in the profession of architecture.

stated:

Hence, according to my vision based on professional contacts and survey of his architectural projects [the petitioner] has shown exceptionally rare abilities in his research and design work, and I very much believe that he has the capacity of very few architects in the world.

We note that the letters were all from individuals who have worked or interacted with the petitioner. While such letters can provide important details about the petitioner’s role in various projects, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have “sustained national or international acclaim” necessitates

evidence of recognition beyond the alien's immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters of support from the 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 any immigration petition are of less weight than preexisting, independent evidence that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In this case, while the recommendation letters praise the petitioner for his professional skills, they do not demonstrate any *original contributions* to the field of architecture. This regulatory criterion not only requires the petitioner to make contributions, the regulatory criterion also requires those contributions to be original. Even though [REDACTED] stated that the petitioner's "award winning projects and publications have made original contributions of major significance in the field of architecture," he failed to describe how those "award winning projects and publications" were original contributions of major significance. We are not persuaded by letters that simply repeat the regulatory language as evidence to establish the petitioner's original contributions. Moreover, the petitioner's claimed awards and his publications have been addressed under separate criteria. As previously indicated, we do not consider the regulatory criteria to be interchangeable.

In addition, this regulatory criterion requires those original contributions to be *of a major significance in the field*. The petitioner failed to submit any documentation establishing that his original architectural contributions have impacted or influenced the field of architecture as a whole and not just to private firms in which he was employed. Without extensive documentation showing how the petitioner's architecture has already impacted his field, that it has been unusually influential, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

The petitioner claims eligibility for this criterion based on the following submitted documentation:

1. A letter, dated February 1, 2009, from [REDACTED] who stated that the petitioner was selected to “represent [SCI-Arc] at the very prestigious forum of Beyond Media International Festival (BMIF)”;
2. A letter, dated February 16, 2009, from [REDACTED] Architecture, who stated:

The UIA Triennial Congress’ International (TCI) competition is the organization’s utmost accolade for students in architecture throughout the World. Only students of architecture worldwide attending a UIA-recognized school are invited to participate. The UIA’s selection of a student for the exhibition is one of the most sought-after awards among gifted student architects in all countries.

The regulation at 8 C.F.R. § 204.5(h)(3)(vii) requires “[e]vidence of the display of the alien’s work in the field at artistic exhibitions or showcases.” However, while the letter from [REDACTED] mentions the petitioner’s participation at TCI, the petitioner failed to submit any documentation demonstrating exactly what was displayed by the petitioner at TCI or even how [REDACTED] was aware of the petitioner’s participation at TCI. Regarding the letter from [REDACTED] he failed to indicate exactly what was displayed at BMIF. The submission of letters that merely reflect participation fails to meet the plain language of this criterion requiring “evidence of the display of the alien’s work.”

We note that the petitioner also submitted evidence from [REDACTED] website reflecting that the petitioner participated as a student in the class, [REDACTED]. While the website address appears to reflect an affiliation with a festival, the record is unclear if a project from this class was displayed at BMIF or any other exhibition.

Accordingly, 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.

The petitioner claims eligibility for this criterion based on the submission of several recommendation letters. We cite representative examples here:

[REDACTED] stated:

Following the reward of the second prize in bidding procedure for architectural plans of agricultural market in the municipality of Asenovgrad [the petitioner] was invited to give series of architecture lectures to promote sustainable development.

[The petitioner] was effectively involved in other demonstration and conceptual projects, seminars, and important initiatives in the region.

stated:

[The petitioner] participated in design development and preparation of detailed working drawings from rough sketches for residential and commercial projects using computer-assisted drafting (CAD) software. He was also responsible for presentation materials using different techniques. [The petitioner] presented necessary skills and profound precision in his work.

stated:

During this period [the petitioner] has performed a number of planning coordination and production tasks to satisfactory levels for his designated position.

stated:

[The petitioner] was a valuable architectural member of our team contributing to the development of major projects as University of Cincinnati Campus Recreation Center and third phase of Hype Alpe-Adria-Center in Klagenfurt, Austria.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him.

While the letters briefly describe the petitioner's work, the documentation, however, does not establish that his position was leading or critical to these companies as a whole. In fact, the letters fail to indicate that any of the petitioner's positions were leading or critical; rather they describe routine job duties that one would expect from an individual in a subordinate position and generally assert that his role was leading or critical. While the letters mention projects that the petitioner participated, the petitioner failed to establish, for instance, that his roles directly led to the success and accomplishments at any of the companies so as to establish the petitioner's leading or critical role. Moreover, the letters of recommendations are general and broad in nature when describing the petitioner's specific roles, responsibilities, and accomplishments. Further, the petitioner has not submitted an organizational chart or other similar evidence to differentiate the petitioner from other members of his team projects and that of his position in relation to that of the other employees in similar positions at any of these companies.

Notwithstanding the above, the petitioner failed to submit any documentation establishing that the organizations or establishments have a distinguished reputation. We note in reference to letter, while we acknowledge the reputation of UNDP, the petitioner never worked for UNDP, but was representing his own company, when he bid on the

previously mentioned UNDP Programme Capacity 21. Regardless, the petitioner failed to submit any documentation demonstrating that [REDACTED] had a distinguished reputation.

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor,” 8 C.F.R. § 204.5(h)(2); and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 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). See also *Kazarian*, 2010 WL 725317 at *3. The petitioner established eligibility for two of the criteria, in which three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

While the petitioner submitted documentation reflecting receipt of nationally or internationally recognized awards or prizes under the regulation at 8 C.F.R. § 204.5(h)(3)(i), the petitioner has not demonstrated a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Based on an evaluation of the submitted evidence, the petitioner failed to establish that he “is one of that small percentage who have risen to the very top of the field.”

Regarding the petitioner’s Prize of the ICIF, the petitioner submitted a certificate from ICIF reflecting that the petitioner was awarded the prize of ICIF at the Annual Exhibition of Diploma Works held at the University of Architecture, Sofia, Bulgaria. According to the documentation submitted by the petitioner regarding ICIF:

The Iakov Chernikhov Prize is established to honor young architects – individuals or teams – for a significant contribution to the development of architectural culture, realized in the form of a conceptual architecture project and selected through a biannual Chernikhov International Competition.

* * *

Persons having degrees in architecture and under forty years of age may enter the Chernikhov International Competition.

As evidenced above, the Iakov Chernikhov Prize is reserved “to honor young architects,” and the competition is restricted to individuals who have degrees in architecture and are under forty years of age. As such, we cannot conclude that prizes from youth level competitions, such as

Iakov Chernikhov International Competition which is limited by age and experience, indicate that he “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). 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 Likewise, it does not follow that an architect who has had success at youth level competitions 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.”

Notwithstanding the above, the regulation at 8 C.F.R. § 204.5(h)(3) provides that “[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” Evidence of the petitioner’s nationally or internationally recognized prizes or awards must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(i), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien’s field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of “extraordinary ability” as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). As the petitioner was awarded the Prize of the ICIF in 1998 and the Interarch Laureate at the Ninth WTA in 2000, a period of six and eight years respectively from the original filing of the petition, we are not persuaded that the petitioner’s awards occurring between six and eight years from the filing of the petition is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Similarly, even if we would have found that the petitioner met the published material criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iii), we do not find evidence that the publication of a single article in GA Houses magazine is sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

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 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.

While the petitioner submitted evidence demonstrating his participation as a judge pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner's eligibility was based on his participation as a judge for students at [REDACTED]. Judging local, amateur, or student competitions is not indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." See, e.g., *Matter of Price*, 20 I&N at 954. Evaluating the work of accomplished architects as a member on a national panel of experts is of far greater probative value than evaluating the work of student architects.

Moreover, the petitioner's documentation regarding the artistic exhibition criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(vii) appear to reflect that BMIF and TCI were student level competitions. However, displaying work at student level exhibitions is not indicative of "that small percentage of individuals that have risen to the very top of their field of endeavor." See, e.g., *Matter of Price*, 20 I&N Dec. at 954. Nonetheless, the record contains no evidence to show, for instance, that the petitioner's exhibitions garnered any attention in a manner consistent with sustained national or international acclaim. For example, the petitioner failed to submit any documentary evidence reflecting that the exhibitions brought any critical acclaim or favorable press reviews. Finally, the record reflects that TCI occurred in 1996, and BMIF occurred in 2003. We are not persuaded by the petitioner's two exhibitions, occurring eleven and four years from the filing of the petition, are sufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

Regarding the petitioner's eligibility claim for the original contribution criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(v) and the critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. Specifically, we note that the petitioner based his eligibility for the critical role criterion entirely on recommendation letters from his peers. However, they cannot form the cornerstone of a successful extraordinary ability claim. The statutory requirement that an alien have "sustained national or international acclaim" necessitates evidence of recognition beyond the alien's immediate acquaintances. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). Further, USCIS may, in its discretion, use as advisory opinion statements as expert testimony. See *Matter of Caron International*, 19 I&N at 795. 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.

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. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

III. Conclusion

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 and 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.