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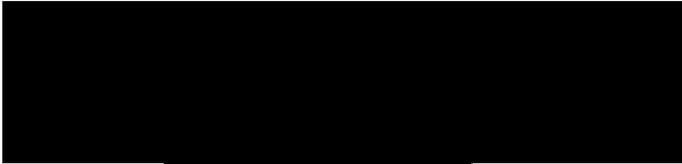
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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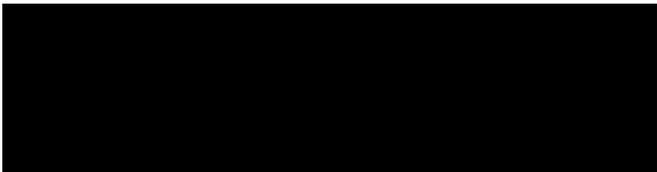
Date: APR 29 2010

IN RE: Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (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 business and/or education. The director determined that the petitioner had not established his requisite extraordinary ability through extensive documentation and 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 [USC cite removed because we already used it] 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, the petitioner, through counsel, argues that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

## **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). 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 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.<sup>1</sup> 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 approach 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

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<sup>1</sup> 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).

This petition, filed on February 4, 2009, seeks to classify the petitioner as an alien with extraordinary ability as an Instructor, Examiner, Inspector and Consultant in the maritime training industry and a manager in maritime training programs. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

*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 submitted a reference letter from [REDACTED] (RYA), dated January 15, 2009, confirming the petitioner's membership in RYA, as well as a letter from [REDACTED] of US Sailing, who confirmed the petitioner is an "RYA consultant to the United States." The petitioner also submitted many pages from the RYA website, including an overview of the organization and the training and courses offered. The website also provides details regarding the requirements for membership into the RYA Council, but the petitioner's name is not listed as a current or former council member nor has he claimed to be a council member. In additions, articles regarding the RYA and their training programs from [www.giirayachts.com](http://www.giirayachts.com), [www.everettpotter.com](http://www.everettpotter.com) and [www.offshore-sailing.com](http://www.offshore-sailing.com) were submitted. However, [www.giirayachts.com](http://www.giirayachts.com) only provided some membership information; including indicating that RYA has over 103,000 personal members and 500,000 boat owners who are members of RYA affiliated clubs and associations. No other information regarding membership was provided. No new evidence regarding membership was provided in response to the director's Request for Evidence (RFE) or on appeal.

In order to demonstrate that membership in an association meets this criteria, the petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum 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 submits that he is a member of RYA. The record does not include evidence (such as membership bylaws or official admission requirements) showing that the preceding organization requires outstanding achievements of its members. Moreover, the petitioner failed to provide any evidence to demonstrate that membership in RYA is judged by recognized national or international experts in the maritime field.

Counsel further cites to an unpublished decision where he states the AAO has recognized the receipt of a high-level coaching credential as consistent with membership. However, counsel has furnished no evidence to establish that the facts of the instant petition are analogous to those in the

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

unpublished decision. Moreover, while 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. Nonetheless, while the petitioner may be employed at a high level within the RYA, we do not find this position commensurate with someone who was not only nominated and approved for coaching at an international level but who represented and administrated at national and international events. As such, we do not find his paid employment with the RYA amounts to membership in an association in the field for which classification is sought, which require outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

Even if the petitioner were able to establish his membership in RYA was qualifying, such a finding would still not sufficiently establish that the petitioner meets this criterion. The plain language of the regulation requires the petitioner's membership in *associations*. As such, membership in a single association would not be qualifying.

Accordingly, the petitioner has not established 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 specification for which classification is sought.*

Counsel for the petitioner explained in his initial brief that the petitioner is "one of only two Examiners in the United States" and that he has judged "the most experienced and talented boat captains" seeking to be qualified as instructors and examiners. In addition, counsel claims that the petitioner has "spent his entire Navy career judging the work of others, as he climbed the ranks as a training officer, eventually taking charge of the country's entire submarine training program." Counsel for the petitioner did not pinpoint any specific evidence that he provided which supports his claims.

Nonetheless, we have examined the record for evidence applicable to this criterion. The petitioner submitted a letter from [REDACTED] dated January 15, 2009. In his letter, [REDACTED] confirmed that the petitioner is one of two Examiners in the United States. [REDACTED] also stated that the petitioner "judges the ability of some of the world's most experienced and talented sailors, who operate some of the world's most expensive and sophisticated vessels on every ocean in the world." The letter also includes a section indicating that the petitioner has risen to the top of his field, which is a copy of the petitioner's biography verbatim. The petitioner also provided various evaluations given to him during his career in the navy. These evaluations were clearly complimentary of the supervisory function in which the petitioner served, yet they did not provide specific examples of how he judged the work of others.

While we find that the petitioner has established that he meets the plain language of this criterion, this issue will be further addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim and being among that small percentage at the very top of the field of endeavor.

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

The petitioner initially submitted several letters of support praising the petitioner's experience and abilities in the maritime industry. In response to the RFE, the petitioner provided additional reference letters, and specifically claimed that his contribution of major significance is that his "efforts will have a significant beneficial impact on recreational boating in the United States" through his RYA accreditation program in the United States. On appeal, no new evidence was provided. However, the petitioner similarly argued in his addendum that "the implementation of the RYA system will change the U.S. system for training and licensure related to the operation of ocean going vessels of up to 200 tons."

[REDACTED] of RYA states:

The RYA's worldwide success has made it a benchmark for many maritime qualifications, whether professional or recreational, in the UK, Europe, Australia, New Zealand, South Africa, most Caribbean Island states and now, due to Leo Speat, increasingly amongst the more prestigious U.S. Sailing organizations.

\* \* \*

[REDACTED] is spearheading the process of implementing the RYA system in the United States. His contribution to the field of maritime instruction and examination, as well as to the facility accreditation and implementation of the entire RYA system in the United States has been remarkable.

In this instance, there is no evidence showing that the petitioner has had a significant national or international impact in the maritime industry such that it equates to an original contribution of major significance in his field. In fact, while [REDACTED] generally states that the petitioner's contribution has been "remarkable," he fails to offer any specific example to support this statement.

[REDACTED] of Suny Maritime College, states:

It is unquestionably the case that [REDACTED] is an outstanding expert in maritime training, having been selected by the RYA to play the lead role in a program of such significance for the boating industry in the United States, and indeed, worldwide.

While [REDACTED] claims that the petitioner is "an outstanding expert" and plays the lead role in a "program . . . of significance," he also fails to describe any specific original contribution of major significance on the part of the petitioner.

Similarly, [REDACTED], states:

As a result of the project spearheaded by [REDACTED], U.S. boat operators will for the first time be able to carry internationally-recognized operating licenses. Through this work, [REDACTED] is making a contribution of major significance to the boating industry.

However, [REDACTED] statements fail to explain why it is important that U.S. boat operators have an international license. As such, it is difficult to understand how the petitioner's work on this project will be a contribution of major significance.

[REDACTED] at US Sailing, specifically notes that the implementation of RYA's training and certification standards across the United States benefits the United States in the following manner.

The benefit to the U.S. boating community is multifaceted. U.S. Coast Guard licensing of ships not covered by RYA licenses will become more streamlined and accessible while saving tax dollars as US Sailing absorbs more of the administration for captain licenses for boats and yachts. U.S. citizens with dual US Sailing/RYA certifications will find greater acceptance and ease of travel around the world, due to the almost universal acceptance of the RYA license by ports, customs and immigration officials worldwide.

While it appears from [REDACTED] letter that the petitioner's implementation of RYA's standards will clearly benefit the United States, it is unclear whether such implementation can be considered an original contribution of major significance. The current standards were developed and implemented by [REDACTED] not the petitioner. As such, the petitioner's implementation of the same standards in another location cannot be an *original* contribution of major significance.

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. The petitioner argues that his introduction of the RYA program to the U.S. is consistent with a contribution of major significance. However, the petitioner has not revolutionized the standards nor has he made improvements to them. The petitioner is simply implementing already existing standards in the U.S. In fact, [REDACTED] is "the Chief Examiner and Head of Training at the Royal Yachting Association" and indicated that he "developed and implemented the current RYA Instructing and examining programme" and is "responsible for maintaining and improving the worldwide standards of RYA training and certification." As such, the petitioner has failed to show that his implementation of the RYA standards in the U.S. is a contribution of major significance.

In this case, the petitioner failed to submit preexisting, independent evidence of original contributions of major significance. While the letters highly praise the petitioner and provide examples of his work, they fail to establish that he has made contributions of major significance in his field. In evaluating the reference letters, they do not specifically identify how his contributions have influenced the field; rather, the letters discuss the possible implications that his work may lead to in the future. We will not consider evidence reflecting claims of future speculation. 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.

In this case, the recommendation letters are not sufficient to meet this regulatory criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful claim of sustained national or international acclaim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. 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 or original contributions of major significance that one would expect of an individual who has sustained national or international acclaim at the very top of the field.

As such, the petitioner has failed to establish that he has satisfied this criterion.

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

The petitioner submitted the following articles that he wrote for *The Tritons* in 2008, “How to pass the exam: Prepare well,” “Follow-up on Yacht master qualification,” and “USCG v MCA: no contest.” The director determined the petitioner failed to establish eligibility for this criterion. As the petitioner failed to contest this finding on appeal, we will not further review this determination in this proceeding.

As such, 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’s initial brief argued that the petitioner is playing a leading role:

[I]n transforming the U.S. boating industry into one in which US Sailing is authorized to issue Certificates of Competence on behalf of RYA. As a result of the project spearheaded by [REDACTED], U.S. boat operators will for the first time be able to carry internationally-recognized operating licenses.

The petitioner also referenced the letter from [REDACTED] which confirms the petitioner's involvement in developing and implementing a training program in the United States. A second letter from [REDACTED] stated that he had worked "very closely" with the petitioner on "several projects of major importance." However, [REDACTED] failed to provide any specific projects or responsibilities that he and the petitioner worked on. The petitioner also provided evidence to show his qualifications, including a listing of RYA courses indicating that the petitioner is the Registered Principal, a qualifying certificate for the petitioner's completion of Nuclear General Course Number 57 and a RYA Yacht Master Certificate of Competence. Lastly, the petitioner provided the Memorandum of Understanding (MOU) between RYA and US Sailing, which explained the agreement between the two organizations regarding the development of training courses and qualifications in the United States. The MOU does not mention the petitioner specifically.

In response to the RFE, the petitioner provided a reference letter from [REDACTED] of the Offshore Sailing School, dated June 5, 2009. [REDACTED] letter also confirms the petitioner's role in implementing RYA standards and inspecting training schools in the United States to determine whether they merit accreditation for the RYA. On appeal, no new evidence was provided, however counsel states that the petitioner meets this criterion by his implementation of RYA training and licensure standards in the U.S.

In order to establish that the petitioner performed in a leading or critical role for an organization or establishment with a distinguished reputation, he must establish the nature of his role within the organization or establishment and its reputation. The position should also be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. In all the above-referenced evidence, although the petitioner provides evidence of his appointment as a RYA representative to the U.S. through reference letters, he fails to show that his position is commensurate with a leading or critical role. For example, the petitioner has not submitted an organizational chart or other similar evidence showing where the petitioner's position fell within the hierarchy of RYA. As previously stated under 8 C.F.R. § 204.5(h)(3)(iv), [REDACTED] letter explains that the petitioner is only one of two examiners in the U.S. However, [REDACTED] also indicates that there are "1,304 Instructors, 377 are also Examiners. Examiners are authorized to assess candidates for the issuance of Certificates of Competence." Further, [REDACTED] identifies himself as a Chief Examiner. It is unclear how his role as a Chief Examiner, or those of the other Examiners, differs from that of the petitioner.

Further, the only evidence of the petitioner's leading role in the development in a training program in the United States for the RYA came directly from RYA. There was no independent evidence provided, or evidence other than reference letters that discuss the petitioner's leadership. Further, most of the letters actually discussed the petitioner's leadership qualities rather than his roles. For example, [REDACTED]

found the petitioner's "trustworthiness was beyond question," and noted the petitioner's credentials and certifications, rather than discussing examples of his actual leadership.

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

### ***B. Comparable Evidence***

Counsel states in his appeal brief that "comparable evidence may be submitted where the listed categories are inapplicable." Similarly, he argues that the petitioner is "one of the few people in the world to have received the appointments, qualifications, and promotions," and therefore has satisfied the awards criterion pursuant to 8 C.F.R. § 204.5(h)(3)(i). However, the petitioner's advancement in his career and the qualifications that he has obtained do not equate to awards. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3) of which the petitioner has claimed that he meets four. Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

### ***C. Prior O-1 Nonimmigrant Visa Status***

We note that although the record contains evidence of the petitioner's prior approval as an O-1 non-immigrant, 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. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the

contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

#### ***D. 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.” 8 C.F.R. § 204.5(h)(3). *See Kazarian*, 2010 WL 725317 at \*3.

In this case, the specific 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). The submitted documentation relating to the petitioner’s achievements in the maritime industry demonstrates that he is currently working on implementing standards and certification in the United States for RYA. The submitted evidence, however, is not indicative of the petitioner’s sustained national or international acclaim and there is no indication that his individual achievements have been recognized in the field.

With regard to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), although the petitioner met the plain language of the regulation, the petitioner’s instruction and evaluation is not commensurate with someone at the top of his field. In the petitioner’s career as a navy officer, simply judging the work of his subordinates was inherent to someone of a higher rank. Further, the petitioner’s career in the British Navy culminated in 1997, according to his biography, which was over a decade prior to the filing of his petition. As such, the submitted evidence does not establish that the petitioner’s national or international acclaim has been sustained with respect to this position. *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).

Likewise, the fact that it is part of the petitioner’s job with the RYA, to judge those with whom he has conducted examinations and issue certificates of competence, is not consistent with this highly restrictive classification either. The petitioner was not, for instance, judging a competition of skilled boatmen, rather he was simply reviewing captains and crews for competence. 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 participation as a judge must be evaluated in terms of these requirements. The weight given to evidence 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). For example, judging a national competition for boating professionals is of far greater probative value than judging a local competition for youth or novices or issuing certificates of competence.

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).

### **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 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 his 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.