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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

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: FEB 23 2010
SRC 09 065 52680

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 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, on April 16, 2009, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. The director determined that the petitioner had not established that the beneficiary had 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 the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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.

On appeal, the petitioner argues that the director erred in denying the petition without first issuing a request for evidence (RFE). The regulation at 8 C.F.R. § 103.2(b)(8) provides in pertinent part:

> (ii) Initial evidence. If all required initial evidence is not submitted with the application or petition or does not demonstrate eligibility, USCIS in its discretion may deny the application or petition for lack of initial evidence or for ineligibility or request that the missing initial evidence be submitted within a specified period of time as determined by USCIS.
>
> (iii) Other evidence. If all required initial evidence has been submitted but the evidence submitted does not establish eligibility, USCIS may: deny the application or petition for ineligibility; request more information or evidence from the applicant or petitioner, to be submitted within a specified period of time as determined by USCIS; or notify the

> applicant or petitioner of its intent to deny the application or petition and the basis for the proposed denial, and require that the applicant or petitioner submit a response within a specified period of time as determined by USCIS.

A review of the record reflects that the director adjudicated the petition based on the evidence submitted at the time the petition was filed. The director did not deny the petition because initial evidence was missing; rather the submitted evidence failed to establish eligibility for the benefit. We find that in denying the petition, the director complied with 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii). Furthermore, 8 C.F.R. §§ 103.2(b)(8)(ii) and (iii) provides for discretionary authority to request additional evidence, provide notice of the director's intent to deny the application or petition, or deny the petition or application. In this case, the director exercised his discretionary authority and denied the petition based on the evidence submitted by the petitioner not establishing eligibility for the benefit. For these reasons, we are not persuaded by counsel's argument that the director erred in his decision regarding this matter.

In addition, counsel argues that the director erred in denying the petition because the petitioner failed to submit evidence for six of the regulatory criteria under 8 C.F.R. § 204.5(h)(3). However, a review of the director's decision reflects that the petition was denied based on the petitioner's failure to meet at least three of the regulatory criteria. Further, counsel argues:

> Receipt of international awards, association membership that require outstanding achievements, acting as a judge, authorship of scholarly articles, display of work at artistic exhibitions, critical roles for reputable organizations clearly do not apply in the case of any professional jockey, who furthermore are not teachers.

We are not persuaded by counsel's assertion that all of the regulatory criteria mentioned by counsel are inapplicable to the beneficiary. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the beneficiary's occupation. It is clear from the record that a jockey could win lesser nationally or internationally recognized prizes and awards, that a jockey could be the subject of published materials about him, and that a jockey could command a high salary or other significantly high remuneration for services. Further, although the petitioner failed to claim these additional criteria, we find that a jockey could participate as a judge, that a jockey could make an original contribution of major significance, and that a jockey could play a leading or critical role for an organization with a distinguished reputation. Counsel provided no documentation as to why these provisions of the regulation would not be appropriate to the profession of a jockey.

In addition, counsel states:

> The foregoing mentioned evidence is comparable evidence in the field of thoroughbred horse racing, since most of the criteria for this classification does not readily apply to this field. The regulations do not preclude some fields from this classification and do allow comparable evidence to be submitted. In this case, they are: continuously being ranked among leading jockeys, performance at major U.S. horse racing venues and publication of the Beneficiary's wins at major U.S. newspapers and major publications in the filed.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of three of the following ten criteria. We note that it is unlikely that all ten criteria are applicable to any one occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. We further acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the beneficiary's occupation, the petitioner may submit comparable evidence to establish the beneficiary's eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to the beneficiary's occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the beneficiary's occupation as a jockey cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as cited above, counsel mentions evidence that specifically addresses two (awards and published material) of the ten criteria at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Finally, counsel specifically raises the issue of "comparable evidence" for the first time on appeal. Thus, the director cannot be considered to have erred by following the regulatory criteria set forth at 8 C.F.R. § 204.5(h)(3).

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

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish the beneficiary's 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 beneficiary meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. A lower evidentiary standard would not be consistent

with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). As counsel has failed to specify which of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) the beneficiary purportedly meets, we have considered the evidence submitted under the criterion we find to be most applicable.

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

At the time of the original filing of the petition, the petitioner submitted the following documentation:

1. Website page for *Leading Trainers at Calder Race Course* from www.equibase.com reflecting that from October 20, 2008 to December 21, 2008, the *petitioner* was the 8th leading trainer;
2. Various website pages for *Leading Jockeys at Calder Race Course* from www.equibase.com reflecting that the beneficiary has been ranked from 7th to 14th from January 1, 2006 to December 21, 2008;
3. Two *Facts and Figures at Calder Race Course* from April 21, 2008 to October 19, 2008, reflecting that the beneficiary won between 11% to 15% of his races;
4. A copy of *Jockey Standings* from the Daily Racing Form for April 25, 2007 to July 17, 2007, reflecting that the beneficiary was the 26th leading jockey at the Calder Race Course;
5. Several website pages for *Leading Jockeys at Calder Race Course* from www.thebestdamnsportsforum.com reflecting that the beneficiary has been ranked from 15th to 17th from April 26, 2004 to August 31, 2004;
6. Website page for *Leading Jockeys at Gulfstream Park* from Equibase Company LLC reflecting that from January 3, 2008 to April 5, 2008, the beneficiary was the 19th leading jockey;
7. Two website pages for *Leading Jockeys at Laurel Park* from www.equibase.com reflecting that from January 1, 2006 to April 15, 2006, the beneficiary was the 13th and 14th leading jockey;
8. Advertisement from www.gulfstreampark.com;
9. Advertisement from www.laurelpark.com;
10. Advertisement from www.marylandstatefair.com;
11. A certificate, along with a picture and advertisement, for congratulating the beneficiary for Jockey of the Month at Calder Race Course in September;
12. Information for Calder Race Course, Gulfstream Park, and Laurel Park from the website, Wikipedia; and
13. A multitude of photographs with captions reflecting that the beneficiary won at least 177 races.

On appeal, the petitioner submitted a website page for *Leading Jockeys at Calder Race Course* from www.equibase.com reflecting that the beneficiary was the 11th leading jockey from April 24, 2009 to June 15, 2009. In addition, the petitioner submitted a website page for Leading Trainers at Calder

Race Course from www.equibase.com reflecting that the *petitioner* was the 4th leading trainer from April 24, 2009 to June 15, 2009. However, the petition was filed on December 24, 2008. Since these documents reflect events occurring after the filing of the petition, we will not consider these items as evidence 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. In addition, the petitioner submitted on appeal partial extracts from the 2009 International Cataloguing Standards and International Standards (ICSIS). On page 1-83, ICSIS indicates that "[f]or those tracks whose schedules were not available, race information is based on 2008 data." Therefore, ICSIS is comprised of racing statistics from 2009 with the exception of those tracks whose schedules were not available in which racing statistics from 2008 are utilized. Moreover, as the petitioner only submitted a partial extract of ICSIS and a review of this extract does not distinguish between 2008 or 2009 statistical data, we are unable to determine which races contained in ICSIS used the respective yearly data. As such, we cannot accept ICSIS as evidence since it is not clear which data occurred after the filing of the petition.

Generally, the beneficiary's jockey rankings at local race tracks are not evidence of nationally or internationally recognized awards or prizes. The beneficiary is not awarded a ranking based on placement at a specific competition or race. Instead, the beneficiary's ranking is based on the collective placement of finishes at a race track over a period time. We find that the beneficiary's finishes (i.e., first, second, third) at race tracks to be a more determinative finding than the beneficiary's ranking as it relates to this criterion. In this case, the beneficiary has demonstrated that he has garnered success at the Calder Race Course, Gulfstream Park, and Laurel Park.

However, the plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the beneficiary's awards be nationally or internationally *recognized* in the field of endeavor, and it is the petitioner's burden to establish every element of this criterion. In this case, there is no evidence showing that the beneficiary's awards at these local tracks commanded a significant level of recognition beyond the context of the events where they were presented. For example, there is no evidence showing that the beneficiary's awards were announced in major media or in some other manner consistent with a national or international award.

The petitioner failed to submit any documentary evidence regarding any of the actual races that the beneficiary competed in and won. We note that the petitioner submitted documentary evidence regarding the race tracks from the website Wikipedia. However, there are no assurances about the reliability of the content from this open, user-edited internet site.[1] *See Lamilem Badasa v. Michael*

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[1] Online content from Wikipedia is subject to the following general disclaimer:

> WIKIPEDIA MAKES NO GURANTEE OF VALIDITY. Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content.

Mukasey, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information from Wikipedia.

In addition, the information from the websites from Gulfstream Park and Laurel Park were advertisements for the parks rather than information regarding the stature of the races, the level of jockeys who participated, or evidence of the jockey selection criteria. While the beneficiary has won numerous races, and placed second and third at a significant number of other races, there is no evidence demonstrating that his finishes were tantamount to nationally or internationally recognized prizes or awards for excellence in the beneficiary's field of endeavor. We acknowledge that the beneficiary has accumulated an impressive history of wins and high finishes. However, the record appears to reflect that those wins and high finishes were at race courses that featured local competition. As such, we cannot conclude based on the submitted documentary evidence that the races were national or international competitions, and therefore those awards were recognized beyond the awarding entities as national or international awards.

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

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

The petitioner submitted the following documentation:

1. *The Right Track*, www.washingtonpost.com, dated May 7, 2006;
2. *The Day at the Races*, Daily News, December 4, 2004;
3. *An Ugly Spill Mars Opener*, New York Post, December 4, 2004;
4. *Laurel Lands a Winning Ride*, www.baltimoresun.com, September 6, 2006;
5. *UPI Thoroughbred Racing Roundup*, www.upi.com, August 4, 2008;
6. *Amazing, Finallymadeit Score at Calder*, www.bloodhorse.com, November 8, 2008;
7. *Hypocrite Prompt Favorite in Valid Video*, www.drf.com, August 2, 2008;
8. *Black Russian is First Winner for Black Mambo*, www.thoroughbredtimes.com, July 21, 2008;
9. *Weekend Stakes Action*, www.calderracecourse.com, 2008;
10. *Mysterious Jule Likely Choice in Georgia Oaks Sunday at Calder*, www.calderracecourse.com, 2008;

> Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . Wikipedia cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on January 19, 2010, and copy incorporated into the record of proceeding.

11. *Crowd at 153,563 Witness Mine That Bird Win Derby 135*, www.winkentuckyderby.com, May 2, 2009;
12. *Borel, Mine That Bird Soar in Derby Shocker*, www.bloodhorse.com, May 2, 2009;
13. *Racing Is His Main Event*, unspecified publication and date;
14. *Charles Town Races and Slots*, www.ctownraces.com, unspecified date.

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.[2]

Regarding item 1, the article is not about the beneficiary but about [redacted] In fact, the beneficiary is not mentioned in the article but is noted in a picture and caption. Regarding items 2 and 3, the articles are a recap at an unspecified racetrack of several races. While the articles briefly describe a racing accident involving the beneficiary, the articles also discuss other races at the track. Regarding item 4, the article is about [redacted] and mentions the beneficiary one time as a competitor. Regarding items 5 and 6, the articles recap thoroughbred racing at various venues, and the beneficiary is mentioned one time in each article as the jockey of a race. Regarding items 7, 9, and 10, the articles are about several races at Calder Race Course, and mention the beneficiary one time as the jockey of the races. Regarding item 8, the article is about Black Russian winning the race with the beneficiary mentioned one time in the article. Regarding items 11 and 12, the articles are about the 2009 Kentucky Derby and mention the jockey, [redacted]. The beneficiary is not mentioned anywhere in the articles. In addition, these two articles were published after the filing of the petition and cannot be considered as evidence in this proceeding. Regarding item 13, while the article contains a picture of the beneficiary, the article is about [redacted], a jockey agent. In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." As the article fails to contain the date of article and the name of the publication, it fails to conform to the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(iii). Regarding item 14, the article is about Charles Town Races and Slots, and the beneficiary is not mentioned at all in the article. In addition, the article fails to contain the date of the article as required by the regulation.

Further, regarding www.upi.com, www.bloodhorse.com, www.drf.com, www.thoroughbredtimes.com, www.calderracecourse.com, and www.ctownraces.com, although the petitioner submitted background information from these sources themselves, the petitioner failed to submit any independent, supporting information establishing that these sources are professional or major trade

[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.

publications or other major media. In addition, these sources appear to be exclusively Internet sources. In today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet and make their stories available to large electronic databases. To ignore this reality would be to render the "major media" requirement meaningless. We are not persuaded that international accessibility by itself is a realistic indicator of whether a given publication is "major media." We will not presume that the mere inclusion of articles exclusively online or from local publications that post articles online will notably increase the readership of that paper if it is otherwise unknown or distributed nationally.

As discussed above, while the petitioner submitted articles that mentioned the beneficiary, as well as some articles that did not mention the beneficiary at all, none of the submitted articles featured or were about the beneficiary as required under the regulation at 8 C.F.R. 204.5(h)(3)(iii). In addition, the petitioner failed to establish that the websites were professional or major trade publications or other major media.

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

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

As mentioned previously, the petitioner submitted the following documentation:

1. Various website pages for *Leading Jockeys at Calder Race Course* from www.equibase.com from January 1, 2006 to December 21, 2008;
2. Several website pages for *Leading Jockeys at Calder Race Course* from www.thebestdamnsportsforum.com from 15th to 17th from April 26, 2004 to August 31, 2004; and
3. Website page for *Leading Jockeys at Gulfstream Park* from Equibase Company LLC from January 3, 2008 to April 5, 2008.

A review of the above documents reflects that the beneficiary's earnings are also included with the beneficiary's racing finishes. For example, in 228 starts at Calder Race Course, the beneficiary is listed to have earned $443,207 from April 21, 2008 to August 12, 2008. However, these documents appear not to reflect how much the beneficiary actually received in earnings, but the total amount of money awarded to the owners of the horses in races, which the beneficiary was a jockey.

The plain language of this regulatory criterion requires the petitioner to submit evidence showing that the beneficiary has commanded a high salary "in relation to others in the field." The petitioner failed to submit any documentary evidence demonstrating the beneficiary's salary or other compensation. Furthermore, the petitioner offers no basis for comparison showing that the beneficiary's salary or other compensation was significantly high in relation to others in his field. There is no evidence establishing that the beneficiary has earned a level of compensation that places him among the highest paid jockeys in his field. While the documentation demonstrates evidence of financial winnings for the owners of the horses in races, which the beneficiary was a jockey, the

petitioner failed to submit documentation demonstrating the beneficiary's salary or other compensation was high compared to other jockeys.

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

In addition, the AAO notes that at the time of the filing of the original petition, counsel claimed:

> [The petitioner] has already found an alien with extraordinary ability when granted P-1 status by the Department. This petition alone establishes that he was internationally recognized as a thoroughbred jockey.

While USCIS approved at least one P-1 nonimmigrant visa petition filed on behalf of the beneficiary, 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).

We concur with the director's finding that the petitioner has failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the 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 beneficiary 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). While the beneficiary demonstrated success as a jockey among local competition, the record fails to reflect that the beneficiary has amassed a record of accomplishment at the national or international level which places him among that small percentage at the very top of his field.

Regarding counsel's claim of "comparable evidence," we again reiterate that 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 beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). 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.

Review of the record does not establish that the beneficiary has distinguished himself to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the 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)(i) of the Act, and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.