



U.S. Citizenship
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FILE: [Redacted] SRC 07 052 53092

Office: TEXAS SERVICE CENTER

Date: MAR 05 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:



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 on June 15, 2007, 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 the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3). In addition, counsel argues that the director failed to comply with a September 12, 2006, memorandum titled, *AFM Update: Chapter 22: Employment-based Petitions (AD03-01)*, issued by Michael Aytes, Acting Associate Director for Domestic Operations. Counsel claims:

In the Texas Service Center's Request for Evidence [RFE] dated March 7, 2007, the officer reiterated the evidentiary requirements for aliens seeking classification of extraordinary ability and failed to provide Petitioner with any "clear guidance" as to what was deficient in the filing and how to overcome the observed deficiencies. Without further information from the officer, it was difficult for Petitioner to address any specific issues the officer may have found with the original filing. Again, the same can be said about the Notice of Decision. The officer reiterates the evidentiary requirements but fails to state with specificity which pieces of evidence may have been deficient.

The purpose of the RFE is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The RFE stated that the petitioner needed to submit evidence in support of his claim for eligibility under each criterion. 8 C.F.R. § 103.2(b)(8) requires that the RFE specify the "type of evidence required" and does not require that any sort of exact documents be identified. Regardless, a review of the director's RFE reflects that it provided the types of evidence required and listed examples of evidence such as "copies of certificates, awards, copies of articles or other published materials by or about yourself or any other documentary evidence as long as it fulfills the regulatory criteria cited." We find that the director's RFE was in accordance with the regulation at 8 C.F.R. § 103.2(b)(8) and further find that there was no error on part of the director's RFE.

However, regarding the director's decision, we agree with counsel that the director failed to discuss the documentary evidence as it related to any of the regulatory criteria under 8 C.F.R. § 204.5(h)(3).¹ On appeal, we will evaluate and discuss the evidence submitted by the petitioner as

¹ It is noted that the petitioner submitted a previous Form I-140 requesting classification as an alien of extraordinary ability based upon essentially the same arguments and evidence as presented in this proceeding. The director's and the

it pertains to the claimed regulatory criteria under 8 C.F.R. § 204.5(h)(3). 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).

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

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation.

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

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

This petition, filed on December 13, 2006, seeks to classify the petitioner as an alien with extraordinary ability as a folk guitarist/singer.

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

AAO's determinations in the prior proceeding were extensive. As such, any argument that the petitioner lacked notice of the deficiencies in the record is not very persuasive.

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

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

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

1. Certificate by the 2nd International Children's Competition Festival for Folklore Ensemble, Kozaki From Podille on an unspecified date;
2. Certificate of Honour by the Vinnista Children's Musical School for First Place for the 4th School Technique Competition of a Piano Kind, Young Virtuoso on an unspecified date;
3. Diploma by the Ministry of Culture of Russian Federation for 3rd Degree for the 4th All-Russia Competition of Young Jazz Musicians on May 4-7, 1991; and
4. Diploma by an unnamed source for an unknown award for Fireworks at the 3rd International Jazz Review Concert of the Students of Musical Schools and Lycee on an unspecified date.

Regarding item 1, the document fails to provide the petitioner's placement at the competition, such as a first, second, or third place finish. Regarding item 4, the document also fails to provide the petitioner's placement at the concert and the actual awarding entity.

Besides the evidence listed above, the petitioner failed to provide any information regarding the petitioner's awards. For example, the petitioner failed to establish that the competitions were at the national or international level. While an award has the words "International," or "National" in the title, it does not automatically elevate the award to "extraordinary ability" standards. Without documentary evidence regarding the actual competitions themselves, such as the level of those who participated, evidence of the selection criteria, or documentation regarding the prestige of the competition, we cannot conclude based on the name of the competition alone, that the competition is national or international, and therefore that its awards are recognized beyond the awarding entities as a national or international award.

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

In addition, the awards appear to be restricted to children, students, and “young jazz musicians.” Such awards do not indicate that the petitioner “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). There is no indication that the petitioner faced significant competition from throughout his field, rather than being mostly limited to a few individuals in age-based or other similarly limited competition. 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 60899.³ Likewise, it does not follow that a competitor like the petitioner who has had success in a competition restricted by age or non-professional status, 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.” Finally, the petitioner failed to submit documentary evidence establishing that his awards were nationally or internationally recognized prizes or awards for singing.

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). Item 3 listed above is the only award that specifies a year, 1991, in which it was awarded to the petitioner over a period of over 15 years prior to the filing of the petition. The petitioner has failed to establish the requisite sustained national or international acclaim.

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

³ 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.

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 following submitted documentation:

1. Extract from the article, *Construction of a Studio in Vinnitsa* in AudioStop;
2. Advertisement of the petitioner's compact disc, *Never Ending Story*, on the website CD Baby; and
3. Advertisement of the petitioner's compact disc, *Never Ending Story*, on the website India Star Search.

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

Regarding item 1, the English translation accompanying the article failed to comply with 8 C.F.R. § 103.2(b)(3), which requires that “[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator’s certification that he or she is competent to translate from the foreign language into English.” The petitioner only submitted an extract translation of the article instead of a full English language translation. In addition, 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.” However, the petitioner failed to provide the author and date of the article. Because the petitioner failed to comply with 8 C.F.R. §§ 103.2(b)(3) and 204.5(h)(3)(iii), the AAO cannot determine whether the evidence supports the petitioner's claims. Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding.

Regarding items 2 and 3, they fail to reflect the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) which requires “[p]ublished 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.” Instead, these reflect advertisements for downloading the petitioner’s songs. Moreover, they fail to contain titles, dates, and authors. See 8 C.F.R. § 204.5(h)(3)(iii).

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.

Notwithstanding the above, counsel failed to establish that AudioStop and the websites for CD Baby and Indie Star Search are professional or major trade publications or other major media. Regarding CD Baby and Indie Star Search, we are not persuaded that international accessibility by itself is a realistic indicator of whether a website is “major media.” We will not presume that articles or advertisements posted on the Internet will notably increase the readership if it is otherwise unknown or distributed nationally or internationally. In addition, we do not find evidence that the petitioner had two advertisements about him is sufficient to establish the level of acclaim required for this highly restrictive classification.

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

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

On appeal, counsel claims the petitioner’s eligibility for this criterion based on the petitioner headlining at the Sugar Rush Café, the petitioner’s songs played on Radio Swanson, and the petitioner’s albums and concerts.

The plain language of this regulatory criterion at 8 C.F.R. § 204.5(h)(3)(vii) indicates that it is intended for visual artists (such as sculptors and painters) rather than for singers such as the petitioner. It is inherent to the field of singing to perform on stage. Not every stage performance is an artistic exhibition or showcase. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. In this instance, the petitioner has failed to demonstrate that his performances were something other than what is intrinsic to a performer. The record contains no evidence that the petitioner’s performances or the venue at which they occurred are recognized as prestigious or which otherwise establishes that his performances are indicative of national or international acclaim. However, while we find that the petitioner has not established his eligibility for this criterion, we find that the petitioner’s performances and albums are far more relevant to the “commercial successes in the performing arts” criterion at 8 C.F.R. § 204.5(h)(3)(x) and therefore will be discussed later under this criterion.

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 his performances at the Sugar Rush Café. The petitioner submitted letters of recommendation regarding the Sugar Rush Café. We cite some representative examples here:

stated:

I have been in the audience at Sugar Rush during [the petitioner’s] performances as a Ukrainian musician, and I can confirm that [the petitioner] has played a leading and

critical role for organizations or establishments with a distinguished reputation. [The petitioner] is the main performer at Sugar Rush, where he impresses customers with his culturally unique skills as a Ukrainian folk guitarist/singer. The Sugar Rush nightclub is well-established with a distinguished reputation and [the petitioner] has performed for thousands of people there. His performances bring in much revenue to Sugar Rush and cultural value to the entire south Florida area.

stated:

[The petitioner] continues to impress both our customers and us with his culturally unique skills as a Ukrainian musician/singer. [The petitioner] is an excellent performer, very punctual and reliable and a superb guitarist and singer. Our restaurant [Sugar Rush Café] has benefited tremendously since his employment, and he has been a tremendous asset to us.

stated:

[The petitioner] plays the keyboard and sings, while I sing the female parts. Sugar Rush is a Russian restaurant and nightclub specializing in an Eastern European clientele. [The petitioner] plays and sings Russian, and Ukrainian songs, both contemporary, and historical folk. [The petitioner's] talents allow him to uniquely serve the cultural needs of the community.

stated:

This letter is to verify that I am personally familiar with the Sugar Rush Café and nightclub. It is an organization with a distinguished reputation. Sugar Rush Café is a Russian nightclub and restaurant that provides entertainment to its patrons by employing professional singers and entertainers who have expertise in the native cultures of Russia, Ukraine and the status of the former Soviet Union. It is, by far, the best nightclub specializing in Russian and Ukrainian music in the southern United States and it has a distinguished reputation.

We also note that the petitioner submitted a letter from [redacted] whose letter contained the exact language as [redacted] letter. In addition, the petitioner submitted a letter from [redacted] which indicated that the petitioner worked at the Sugar Rush Café.

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim. In this case, the reference letters submitted by the petitioner are not sufficient to meet this regulatory criterion. We note that the above letters are 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.

While the letters praise the petitioner for his performances, the documentation, however, does not establish that his position is leading or critical to the Sugar Rush Café. Even the letter from [REDACTED] indicates that the Sugar Rush Café employs other singers and entertainers who have expertise in the native cultures of Russia, Ukraine and the former Soviet Union. The petitioner failed to establish how his position as an entertainer and singer at the Sugar Rush Café differentiates him from other entertainers and singers who also perform there or from the café’s management. In this case, the documentation submitted by the petitioner does not establish that he was responsible for the success or standing to a degree consistent with the meaning of “leading or critical role” and indicative of sustained national or international acclaim.

In addition, we are not persuaded by the letters themselves that the Sugar Rush Café is an establishment that has a distinguished reputation. Simply submitting letters of recommendation which state the Sugar Rush Café has a distinguished reputation is insufficient for the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The petitioner failed to submit any supporting documentation establishing that Sugar Rush Café’s reputation is different or distinct from other nightclubs or otherwise establishes its distinguished reputation.

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

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

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

1. A partial English translation of a radio show, Rhythm, in Vinnitsa, Ukraine (no foreign language document or evidence was submitted);
2. Copy of a contract in a foreign language without any English language translations;

3. Information from Amazon.com in a foreign language without any English language translations;
4. A partial English language translation regarding a contract between the petitioner and Magnet Production;
5. A partial English language translation regarding a contract with ArtStarsStudioSouz;
6. A partial English language translation of document regarding two of the petitioner's songs;
7. Copies of foreign language compact disks and covers without any English translations;
8. A copy of a compact disk titled, *Anatoliy Antonishen & "Barhatniy Sezon" Group, 90-97 Years*;
9. An advertisement from the CD Baby's website for the petitioner's album, *Never Ending Story*, along with background information regarding CD Baby;
10. An email from James McCullough of IndieRhythm.com. regarding the advertising the petitioner's albums on the website;
11. An advertisement from CDQuest.com regarding the petitioner's album, *Never Ending Story*;
12. An advertisement from AudioLunchbox.com regarding the petitioner's album, *Never Ending Story*;
13. An advertisement from Indie Star Search's website for the petitioner's album, *Never Ending Story*;
14. An advertisement from Rhapsody.com regarding the petitioner's album, *Never Ending Story*;
15. A copy of a diploma from the Vinnitsa Region State Administration of the Management of Culture stating that the petitioner was an artistic administrator at Vinnitsa Philharmonic Society and a member of two bands;
16. A copy of statement from the Department of Culture of the Municipal Palace of Arts stating that the petitioner was employed in the musical group, *The Podol Cossacs*;
17. Copies of two advertisements for the Sugar Rush Café with a picture of the petitioner performing; and
18. Letters regarding his performances at Sugar Rush Café.

This regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts." Regarding items 1-7, the petitioner failed to provide full English language translations in compliance with the regulation at 8 C.F.R. § 103.2(b)(3). As such, this evidence will not be accorded any weight in this proceeding. Regarding items 8-17, while the petitioner has established that he created at least two compact disks, advertised his compact disks on various websites, and performed in musical groups, the petitioner failed to submit any documentation reflecting the sales of his compact disks or box office receipts for his performances. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of his field. For example, there is no evidence showing that petitioner's

performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature him. Further, there is no evidence showing, for instance, that the petitioner's musical recordings have generated substantial national or international sales.

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

We note here that the petitioner was initially approved with a P-1 nonimmigrant visa and was subsequently approved with several P-3 nonimmigrant visas. While USCIS has approved at least one P-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).

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). While the petitioner has earned the respect and admiration of the individuals offering recommendation letters, the petitioner failed to establish that he has amassed a record of accomplishment which places him among that small percentage at the very top of his field. Review of the record does not establish that the petitioner has distinguished himself to such an extent that

he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence is not persuasive that the petitioner's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act, and the petition may not be approved.

The 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.