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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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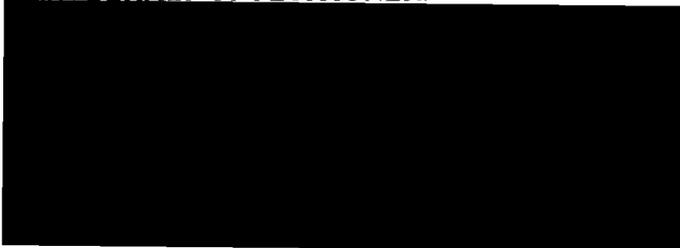
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FILE:  Office: NEBRASKA SERVICE CENTER Date: SEP 15 2010

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:

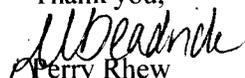


INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, on August 14, 2009, and is now before the Administrative Appeals Office 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 as a field hockey assistant coach.¹ The director determined that the petitioner had not established the beneficiary's requisite extraordinary ability and failed to submit extensive documentation of his sustained national or international acclaim.

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

On appeal, counsel claims that the beneficiary 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,

¹ We note that the petitioner does not claim the beneficiary to be, nor does the petitioner submit evidence, that the beneficiary is currently a field hockey competitor.

(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* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the beneficiary's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the following ten categories of evidence.

(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*, 596 F.3d 1115 (9th Cir. 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.² With respect to the criteria at 8 C.F.R. §§ 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (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 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then 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 *Spencer Enterprises, Inc. v.*

² 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).

United States, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

II. Analysis

A. Evidentiary Criteria

This petition, filed on May 21, 2008, seeks to classify the beneficiary as an alien with extraordinary ability as an assistant field hockey coach. The petitioner has submitted evidence pertaining to the following criteria under 8 C.F.R. § 204.5(h)(3).³

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

The director found that the evidence submitted by the petitioner failed to establish eligibility for the beneficiary for this criterion. At the time of the original filing of the petition, counsel stated:

Before coming to Kent State University [KSU], [the beneficiary] coached teams in England and the Netherlands, and has subsequently won several national titles. These include coaching the University of Birmingham's [UB] First XI team to victory in the National League Division III, as well as guiding the Women's Midlands U-21 team (athletes under the age of 21) to victory in the national championships twice. [REDACTED] to the national championship game in the BUSA British Universities Hockey Finals.

* * *

This past January, [the beneficiary] was selected by U.S. Field Hockey [USAFH] to participate in their inaugural certification program (much like the England system of certification for field hockey coaches), receiving a Level II "High Level Development" certification in 2008. This system of certification is now the standard for field hockey throughout the United States. The accreditation consists of 9 hours of theory and 3 hours of practical education over two days, and covers all aspects of the game from training to team playing concepts.

* * *

Furthermore, [the beneficiary] received the Level 2 Coaching Award Accreditation by England Hockey and nearly completed the Level 3 Coaching Award, which is currently the second highest Coaching Educator Level in England.

³ The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

Moreover, in response to the director's request for evidence pursuant to the regulation at 8 C.F.R. § 103.2(b)(8), counsel stated:

[The beneficiary's] accreditation through [USAFH] is not based simply upon "a minimum level of experience and completion of training courses" as suggested by the RFE. The Coaching Accreditation system was established in June 2007 by USAFH., the recognized governance body for the sport of field hockey in the United States from children to Olympic-level play. [The beneficiary's] current Level III Accreditation requires more than just "showing up" and completing a few drills – it is the "highest level of [USAFH] Coaching Accreditation" that is shared by only a small percentage of the members of USAFH (about 7 percent of the total membership based upon the 2010 projections).

Regarding the beneficiary's USAFH's Level II Coaching Accreditation, the petitioner submitted a certificate from USAFH recognizing the beneficiary's participation in USAFH's Level II Coaching Accreditation Program on January 7, 2008. In response to the director's request for evidence, the petitioner submitted documentation regarding the requirements for receiving level 0 - III accreditation. A review of the documentation reflects that level 0 pertains to introductory, level I pertains to development, level II pertains to high level development, and level III pertains to high performance. In order to achieve level II accreditation, an individual attends a 12 hour course, which includes 9 hours of theory and 3 hours of practical, and several topics are covered such as skill acquisition, team playing concepts, set pieces, introductory technology in coaching, training management, game management, and rules of the game.

We note that the petitioner also submitted evidence demonstrating that he received level III accreditation in November 2008. However, the petition was filed on May 21, 2008. Eligibility must be established at the time of filing. Therefore, we will not consider the petitioner's level III accreditation as evidence to establish the beneficiary'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.

Regarding the beneficiary's English Hockey Coach Level Two Award, the petitioner submitted a certificate from English Hockey certifying that the beneficiary qualified for a Hockey Coach Level Two Award on January 1, 1993. In response to the director's request for evidence, the petitioner submitted documentation from the website, www.englishhockey.co.uk, regarding coaching awards for levels 1 – 4. Regarding level 2, the website reflects:

This is the qualification for those who wish to coach the techniques of the game beyond an introductory level and apply them to tactical play and the coaching of teams. It is only suitable for those with experience of coaching hockey. A prerequisite for this course is the England Hockey Level 1 Coach Award.

The course will involve a minimum of 28 hours of tutored pitch-time and theory work. All theory work will be completed on the course and related directly to the practical situation by the tutors. A further six hours of practical coaching, some of which will be mentored will take place following the course prior to assessment. Candidates will have two practical assessments; one with adults and one with children and those who are successful will be awarded the Level 2 VRQ in Hockey Coaching. The course must be completed within 18 months by registration and it is anticipated that candidates will complete within 6 – 9 months.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires “[d]ocumentation of the alien’s receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.” In this case, the petitioner based the beneficiary’s eligibility on his receipt of coaching accreditations and not based on “nationally or internationally recognized prizes or awards for excellence.” Similar to academic study, completing courses to become an accredited coach is not a field of endeavor, but training for a future field of endeavor. Significantly, this office has held, in a precedent decision involving a lesser classification than the one sought in this matter, that academic performance, measured by such criteria as grade point average, is not a specific prior achievement that establishes the alien’s ability to benefit the national interest. *Matter of New York State Dep’t. of Transp.*, 22 I&N Dec. 215, 219, n.6 (Comm’r. 1998). Thus, academic performance is certainly not comparable to the awards criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), designed to demonstrate an alien’s eligibility for this more exclusive classification. Even if we would consider the petitioner’s most recent level III accreditation, which requires a more rigorous accreditation than level II, it still remains a certification as a field hockey coach rather than a nationally or internationally recognized award or prize for excellence.

As it pertains to the beneficiary’s coaching of UB First XI team to victory in the National League Division III and the Women’s Midlands U-21 team (athletes under the age of 21) to victory in the national championships twice, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires “[d]ocumentation of the *alien’s receipt* of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor [emphasis added].” Although the petitioner submitted sufficient documentation reflecting that UB First XI and Women’s Midlands U-21 teams won their respective championships, the documentary evidence fails to reflect that the beneficiary received any awards or prizes for his coaching of these teams. We cannot conclude that awards that were not specifically presented to the beneficiary are tantamount to his receipt of nationally recognized awards. It cannot suffice that the beneficiary was a coach of a team that earned collective recognition. Moreover, the documentary evidence submitted by the petitioner is insufficient to establish that the championships won by the teams are recognized national or international awards for excellence.

Similarly, while not specifically claimed by the petitioner, the director indicated in his decision that the beneficiary was an assistant coach when KSU “won the Mid-American Conference

(MAC) regular season and tournament championships [REDACTED] However, KSU won the MAC tournament over [REDACTED] after the filing of the petition.⁴ 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. at 49. Regardless, the petitioner failed to demonstrate that [REDACTED] equates to the “alien’s receipt” of a nationally or internationally recognized award for excellence.

As discussed, the plain language of this regulatory criterion specifically requires that the beneficiary receive nationally or internationally recognized awards or prizes for excellence, and it is the petitioner’s burden to establish every element of this criterion. In this case, there is insufficient evidence demonstrating that the beneficiary received any nationally or internationally recognized prizes or awards for excellence in his field of endeavor.

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

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

The petitioner failed to claim the beneficiary’s eligibility for this criterion at the time of the original filing of the petition. However, in response to the director’s request for evidence, counsel submitted the Articles of Incorporation of USAFH and the Bylaws of the National Field Hockey Coaches Association (NFHCA). Furthermore, counsel claimed that “[the beneficiary] is already a member of both [USAFH] and [NFHCA].”

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires “[d]ocumentation of the alien’s membership in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields [emphasis added].” While the petitioner failed to submit any documentary evidence demonstrating the beneficiary’s membership with NFHCA, the record does contain evidence regarding USAFH’s coaching accreditation, which indicates that the courses are offered “exclusively to [its] Coach Members.” As the petitioner has submitted evidence from USAFH demonstrating the beneficiary’s successful completion of USAFH’s coaching accreditation programs, we find it reasonable to conclude that the beneficiary is a member of USAFH.

The articles of incorporation from USAFH indicate that “[o]rganizations and individuals having amateur standing in field hockey shall be eligible for membership as set forth in the Bylaws of the Association.” We also note that according to the bylaws of NFHCA, active members are defined as “[c]oaches who are actively engaged in coaching field hockey at four-year colleges

⁴See [REDACTED]

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

In this case, we are not persuaded that USAFH’s requirement of individual amateur standing equates to outstanding achievements of its members. Likewise, although the petitioner failed to establish the petitioner’s membership with NFHCA, we do not find that being a coach at an educational institution reflects outstanding achievements of its members. Furthermore, the documentary evidence is insufficient to demonstrate that membership with USAFH or NFHCA is “judged by recognized national or international experts in their disciplines or fields.” Membership in associations that only require basic eligibility requirements, such as having amateur standing or coaching at a school, is insufficient to establish the eligibility under the regulation at 8 C.F.R. § 204.5(h)(2)(ii) which requires “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.”

Accordingly, the petitioner failed to establish 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.

Although the petitioner never claimed the beneficiary’s eligibility for this criterion, the director determined that articles submitted by the petitioner which appeared on the websites of the University of Virginia and KSU and the beneficiary’s biography in the media guide for KSU failed to establish the beneficiary’s eligibility for this criterion. Specifically, the petitioner submitted two documents:

1. An article entitled, *Virginia Field Hockey* [redacted] *to Coaching Staff*, [redacted] unidentified author, www.virginiports.cstv.com; and
2. A biography of the beneficiary, unidentified specific date, unidentified author, [redacted] and www.kentstatesports.com.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) 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." 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. 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.⁵

While both items reflect material about the beneficiary relating to his work as a field hockey coach, the petitioner failed to submit any documentary evidence demonstrating that www.virginiports.cstv.com, www.kentstatesports.cstv.com, and the [REDACTED] are professional or major trade publications or other major media. Further, regarding the websites, in today's world, many organizations post stories and articles on the Internet. 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 website is "major media."

We note that the regulation at 8 C.F.R. § 204.5(h)(3)(iii) also requires that "[s]uch evidence shall include the title, date, and author of the material, and any necessary translation." However, the petitioner failed to include the date and/or authors of the items. For the reasons set forth, the petitioner failed to submit sufficient documentary evidence to establish the beneficiary's eligibility for this criterion.

Accordingly, the petitioner failed to establish that the beneficiary 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.

The director found that the petitioner failed to establish the beneficiary's eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires "[e]vidence 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." Pursuant to *Kazarian*, the petitioner submitted sufficient documentary evidence demonstrating the beneficiary's eligibility for the plain language of the regulation. As such, we withdraw the findings of the director for this criterion.

Accordingly, the petitioner established that the beneficiary meets this criterion.

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

⁵ 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.

At the time of the original filing of the petition, counsel claimed the beneficiary's eligibility for this criterion by stating:

Having seen his considerable achievements as a professional hockey coach who made his mark on the national level, it should be no surprise that [the beneficiary] has made a number of substantial athletic contributions to his sport of field hockey. These contributions rest upon his talents and experiences, which have led to:

1. His experience in defense,
2. His ability in identifying potential players for the national teams, and
3. His skills in developing individual athletes.

* * *

As a testament to his standing as an expert on defensive strategies, he was invited to speak during the 2008 National Coaches Convention, attended by field hockey coaches from across the United States. His presentation focused on his original defensive drills that can be used to assist teams to adapt to a unique defensive style of play.

* * *

[The beneficiary's] contributions to field hockey have not been restricted to one organization or team at a time. He has taken the extra step of engaging in national initiatives to foster young athletic talent on both a national and international level. Most recently [the beneficiary] was selected to serve as one of only eight coaches for the Junior Olympic field hockey teams, as well as the head coach for the [redacted]. The Futures Program provides athletes with elite level coaching and training opportunities. At these "Future Sites," up and coming high school aged athletes are exposed to the skills and techniques necessary to become future Olympic level athletes. The top teams from all these Regional Future Programs eventually compete in the National Championship in the summer. [The beneficiary's] presence of one of a select few coaches to hold these positions further evidences the recognition by [USAFH] of his extraordinary abilities in talent identification and development, an invaluable skill as the U.S. National Team continues to develop their competitive edge in international games.

As you may recall, [the beneficiary] previously served in a similar role [redacted] coach in the U.K. Also, [the beneficiary's] previous experience in the Talent ID programs in the U.K. provided the foundation for his unique

assessment skills. As part of the Talent ID program, [the beneficiary] provided mentorship and training to some of the best up-and-coming field hockey athletes in the U.K. By providing a solid foundation in the game for these young men and women, he was having an impact on the very earliest stages of those entering the sport of field hockey. It is this attitude of mentorship and work ethic that he continues to instill in his players today.

The petitioner submitted the presentation by the beneficiary at the [REDACTED] on January 6, 2008. In addition, the petitioner submitted several recommendation letters. We cite representative examples here:

[REDACTED] stated:

[The beneficiary] has made outstanding contributions to [USAFH] during his three years of involvement. His unique work on defensive structures is outstanding because of his great experience as a player and coach both in England and the Netherlands. He has continuously distinguished himself for his work, his involvement with the USA National programs both at Senior and Junior levels, the continual improvements of his collegiate program, and his involvement with the NFHCA.

[REDACTED] stated:

In addition to his administrative duties [the beneficiary] is an exceptional coach. He aids me in all tactical and technical aspects of the hockey program, in particular the defensive and "out-letting" aspects. He has individual skill sessions with the athletes and I have seen great improvements in overall team skills since his arrival, with several of our athletes gaining conference and regional honors. He is also highly skilled in the use of video-technology presentations to the team, incorporating game footage with tactical aspects of play. His defensive expertise is an asset which derives from his playing career in the English National League.

[REDACTED] stated:

[The beneficiary's] coaching skills, specifically his defensive strategies and practice pedagogy has attracted attention and respect from the United States Senior National Team, a prestigious and premier field hockey program representing the United States in international competition. [The beneficiary] has conducted clinics for the United States junior and senior field hockey programs and was selected as one of the coaches to lead the United States junior program in international competition.

[REDACTED] stated:

[The beneficiary] has made outstanding contributions to the sport of field hockey. His unique work with the college programs he has been affiliated with, his work with our programs, both Men and Women, coupled with his willingness to share within our coaching community as a speaker during our 2008 National Coaches Convention, all put [the beneficiary] at the top of his field. [The beneficiary] has been and continues to be an integral part of the Division I field hockey program where he is employed. His vast experiences internationally, allow him to introduce well developed tactics and techniques of the game, not only to his players, but to the other coaches on staff, in the collegiate ranks and at the high school and junior levels as well.

[The beneficiary] has continuously distinguished himself for his work in the sport of field hockey. As mentioned above, [the beneficiary] was a speaker at our Annual Coaches Convention, where he presented a drill discussion which was well received. He received very positive feedback on his presentation, both content and delivery, from our Convention surveys. I am assured by the reception of the coaches he addressed, that he will be again be asked to speak at upcoming Conventions.

stated:

I have known [the beneficiary] for three years now, and I am familiar with his coaching styles and tactics he uses with his team. Having coached with him at a Futures Developmental Invitational Camp which is a filter camp for our USA National Squad, I was able to be a part of his energy and passion for the game which made the campers eager to learn more. I also had the pleasure to be a co-speaker with [the beneficiary] at our [NFHCA] convention in January 2008 where he conveyed ideas that all 200 people in the room could benefit from hearing. At this speaking engagement, there was a variety of listeners ranging from novice high school coaches to top level Division I college coaches. Based on their feedback it was very evident they left learning something which they could bring back to their respective teams. It was great to see [the beneficiary] appeal to such a diverse listening audience.

[The beneficiary] has made outstanding contributions to the field of collegiate coaching. His unique work in tactical planning, emphasis in technical development, and overall knowledge of the game puts him and his players in position to be successful. His attention to goal setting, diligence to improve individual's skill and thoroughness to details shows his dedication and commitment to the people he works with on a daily basis.

stated:

At [UC] I am responsible primarily for the building of the defense, I am proud that we are consistently one of the top three defenses in the nation. I think this has allowed me to respect [the beneficiary's] great knowledge of hockey even more as his original defensive ideas and schemes and strong emphasis of fundamentals really make him one of the premier defensive minds in the United States right now.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires “[e]vidence of the alien’s original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.” While the petitioner established that the beneficiary gave a presentation to the 2008 National Coaches Convention, the petitioner failed to establish, through documentary evidence, that the beneficiary’s defensive concepts were original and have impacted field hockey, such as evidence demonstrating that field hockey teams have changed their defensive schemes based on the beneficiary’s innovative concepts. Moreover, while the petitioner submitted documentary evidence demonstrating the beneficiary’s involvement in such programs like the Futures Program and High Performance/Olympic Coaching, they relate more to the leading or critical role criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(viii). The regulatory criteria under 8 C.F.R. § 204.5(h)(3) are separate and distinct from one another. Because separate criteria exist, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. Regardless, the petitioner failed to submit sufficient documentary evidence establishing that the beneficiary made original athletic contributions to such programs like Futures Program and High Performance/Olympic Coaching that have impacted the field. Merely serving in the role of coach without evidence of original contributions of major significance is insufficient to meet the plain language of this regulatory criterion.

In this case, the petitioner relies almost exclusively on recommendation letters as qualifying evidence under the regulation at 8 C.F.R. § 204.5(h)(3)(v). We note that the reference letters consistently refer to the petitioner’s “outstanding contributions,” however, this regulatory criterion requires original contributions of major significance. In this case, the reference letters fail to indicate any original athletic contributions and how those contributions have significantly impacted field hockey as a whole.

Regarding [REDACTED] letter, he provides only general statements of the beneficiary’s involvement with the USA National programs and while he mentions the beneficiary’s “unique work on defensive structures,” he fails to identify the defensive structures and how they have influenced the field as a whole. Regarding [REDACTED] letter, although she highly praises the beneficiary for his various coaching skills and attributes her success to his help, she failed to describe any original contributions and how they have impacted field hockey as a whole and not limited to KSU. Regarding [REDACTED] letter, while he also attests to the beneficiary’s coaching and practicing skills and mentions his involvement with the United States Senior National Team, [REDACTED] fails to point out any original contributions that have significantly impacted field hockey. Regarding [REDACTED] letter, although she mentions the beneficiary’s “unique work

with the college programs,” she fails explain exactly what unique works that the beneficiary developed and how his techniques differentiated from those of other coaches. Regarding [REDACTED] letter, while she claimed that “[b]ased on their feedback it was very evident they left learning something which they could bring back to their respective teams,” she failed to identify what the other coaches learned and if they ever utilized the beneficiary’s ideas in his presentation. Regarding [REDACTED] letter, he merely praises the beneficiary for his defensive mindset but fails to describe any original contributions of major significance to field hockey.

It is quite apparent from the recommendation letters that they respect the coaching abilities of the beneficiary, however, an individual’s skills or reputation is insufficient to meet the plain language of this regulation without evidence reflecting original contributions that have impacted the field at a level consistent with contributions of major significance. While the reference letters claim that the beneficiary has made “outstanding contributions,” they fail to reflect any original athletic contributions of major significance to the beneficiary’s field. The regulation does not merely require an alien to make contributions to the field but requires those contributions to be original and of major significance. Furthermore, merely repeating the language of the statute or regulations, such as describing the beneficiary’s contributions as “outstanding,” does not satisfy the petitioner’s burden of proof.⁶

USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the beneficiary’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 beneficiary’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

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. Without extensive documentation showing that the beneficiary’s work has been unusually influential or widely accepted throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that he meets this criterion.

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

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

⁶ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d* 905 F. 2d 41 (2d. Cir. 1990), *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y. 1997).

The director found that the petitioner established the beneficiary's eligibility for this criterion without addressing any of the evidence. Upon further review of the record of proceeding, we must withdraw the findings of the director.

At the time of the original filing of the petition, counsel claimed the beneficiary's eligibility for this criterion by stating:

Given [the beneficiary's] national titles and honors, it should be no surprise that he has been a key contributor in several highly reputable organizations. His most recent contributions are to the U.S. Senior Men's Field Hockey Program, which supports the official U.S. Men's National Team who represents the United States at the international level.

[The beneficiary] is also a member of the [NFHCA] and was invited as a co-speaker to speak on his strategies at the NFHCA Convention in January 2008 alongside [REDACTED]

* * *

According to the official [USAFH] website, the U.S. Men's National Team is the premier's men's squad representing the United States in international competitions such as the Olympics, the Pan-American Games and the World Cup. This is U.S. field hockey at the highest level, and so being invited as an expert coach to consult for the team is truly a tremendous honor.

* * *

[The beneficiary's] contributions at this highest level in the United States are only building upon his past record of success in the United Kingdom. There he was a crucial presence coach for several distinguished field hockey organizations. The [UB] team can be singled out as a particularly fitting example of [the beneficiary's] ability to play several important roles for various organizations.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. Although counsel refers to the beneficiary's awards, membership with NFHCA,⁷ and contributions, they have already been

⁷ We note that we found that the petitioner failed to submit sufficient documentary evidence demonstrating that the beneficiary was a member of NFHCA in our discussion of the beneficiary's eligibility pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii).

discussed as they related to their respective criteria pursuant to the regulation at 8 C.F.R. § 204.5(h)(3).

The petitioner submitted documentary evidence reflecting that the beneficiary has held the following positions for USAFH:

1. [REDACTED] which consists of the northern Ohio area;
2. Coach of the Pink squad for the [REDACTED]
3. Coach for the [REDACTED] and
4. Coach for the [REDACTED] Championship.

While the beneficiary has served as a coach, the documentary evidence submitted by the petitioner is insufficient to demonstrate the beneficiary's leading or critical role consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). For example, according to USAFH's website,⁸ there are 11 regions within the Futures Program. The beneficiary served as a head coach in a division under the 9th region. Similarly, while the beneficiary served as coach for the [REDACTED] Junior Olympics, the documentary evidence submitted by the petitioner reflects that there were at least seven other squads. Moreover, the documentary evidence submitted by the petitioner reflects that the beneficiary was a member of the [REDACTED] Men's National Team, however, the evidence also reflects that there were 16 other coaches on the team. Finally, although the beneficiary served as coach of the [REDACTED] the record reflects that there were at least 7 other teams within the Men's National Championship. We are not persuaded that the beneficiary's role as a coach for teams within USAFH demonstrates evidence of his leading or critical role for an organization. We would be more persuaded, for example, by evidence that the beneficiary served in a leading or critical role for USAFH as whole and not as a head coach for a division within a region of the Futures Program. Similarly, the petitioner failed to submit any documentary evidence that distinguished the beneficiary from the other 16 coaches who served on the 2006 Men's National Team so as to demonstrate that the beneficiary was leading or critical to the program.

Regarding counsel's claim that the beneficiary meets this criterion based on his presentation at the 2008 NFHCA Annual Convention, we are not persuaded that providing a single presentation at a convention demonstrates evidence of his leading or critical role for NFHCA. We further note that there were three other individuals who contributed to the presentation, and the record fails to reflect how the beneficiary's role differentiated him from the roles of the other individuals.

Regarding the beneficiary's roles with teams in England, the petitioner submitted a recommendation letter from [REDACTED] Coaching Solutions, who stated:

⁸ See www.usfieldhockey.com/futures/. Accessed on July 22, 2010, and incorporated into the record of proceeding.

[The beneficiary] was also involved in the selection process for the England junior international side at the Under 16 level, attending camps and selection weekends. This “Talent ID” program involves athletes who had not previously been assessed or viewed at any representative level. The athletes are invited to a large scale training days at the nearest regional centres, so that the “Talent” can be identified and selected for future monitoring, screening and be invited to join the IAD scheme. The best players are ultimately selected for the England Junior teams. The general chain of ability goes from School or Club – County – Region – England Juniors. If a player has missed out on one of the earlier levels, this system still gives them a chance to demonstrate their abilities later on.

[The beneficiary] was part of the team that coached and monitored the emerging elite players in England on a regular basis, and was also part of the coach development scheme to nurture aspiring young coaches.

In addition, a letter from [REDACTED] World Class Hockey, stated:

[The beneficiary] joined the [UB] as an Assistant Coach [REDACTED]. At that time the team was playing in the Midlands Premier League, which is a regional league. After his addition the team was Midlands Champions (regional) and won promotion in the English National League via the Promotion Play-Offs. This is a great success for a young coach because the English National Leagues are high standard, semi-professional hockey leagues which include top international players from all over the world who have competed in both World Cups and Olympics. [The beneficiary’s expertise in defensive play and tactical awareness were key to their success from his first year onwards.

The following year the team finished tied with another for the top, but was ranked second based on goal differences in [REDACTED]. As testament to [the beneficiary’s] defensive knowledge and expert instruction, the team recorded one of the best defensive records in the league. In [REDACTED] the team was the champion of [REDACTED] and was yet again promoted, this time to National League Division 2. In his final year with the program, [REDACTED] the team finished 3rd in the league, a position which ranks them as the 15th overall best team in the country. In the English Hockey Association there are 1,700 ladies clubs currently active in leagues across the country and the majority of clubs have several teams. The [UB] is therefore amongst the elite teams in the nation.

As evidenced above, the letters fail to provide sufficient details of the beneficiary’s roles with any of these teams so as to demonstrate that the beneficiary performed in a leading or critical role. Instead, [REDACTED] generally describes the beneficiary as “being involved in the selection process” and “part” of the team. While [REDACTED] described the accomplishments of the UB team, [REDACTED] failed to indicate that the beneficiary performed in a leading or critical role.

Rather, ██████ stated that the beneficiary served as an assistant coach, which is not persuasive evidence consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) of a leading or critical role.

Similarly, the beneficiary's current position is an assistant coach with the petitioner. ██████ stated:

[The beneficiary] has served as my right hand man in all aspects of the program. He is responsible for organizing all the recruitment of our prospective student-athletes including both off campus evaluations and on campus visits. In February 2008, he took the initiative to plan and run our first "Junior Day." This recruiting event, covering both academic and athletic presentations by university staff members, was a success that I attribute to his background of talent identification. His experience working with up and coming young athletes has been a major asset to the program with regards to recruiting top players, both from the U.S. and internationally.

While ██████ described some of the duties of the beneficiary as an assistant coach, ██████ however, does not establish that his position was leading or critical to the petitioner as a whole. Rather, she described routine job duties that one would expect from an individual in an assistant coach position. We are not persuaded that being a "right hand man" or one of several assistant coaches also equates to a leading or critical role. Again, while the beneficiary is responsible for organizing the recruitment of prospective athletes, this example of the beneficiary's role falls far short in meeting the plain language of this regulatory criterion. In addition, the plain language of the regulation requires the petitioner's critical or leading role to be "for organizations or establishments that have a distinguished reputation." In this case, we are not persuaded that KSU's field hockey team is an organization or establishment. We will not narrow the beneficiary's role to KSU's field hockey team, rather than to KSU as whole. However, the petitioner failed to submit any documentary evidence demonstrating that the beneficiary's role as an assistant coach for the field hockey team is leading or critical compared to the many other coaches and assistant coaches of athletic teams at KSU. Moreover, as previously indicated USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony, it is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *See Matter of Caron International*, 19 I&N Dec. at 795.

As this criterion specifically requires the petitioner to submit evidence demonstrating that the beneficiary performed in a leading or critical role, the petitioner's submission of evidence merely reflecting that the beneficiary performed in routine roles as one of several assistant coaches is insufficient to demonstrate eligibility for this criterion. In this case, the documentation submitted by the petitioner does not establish that the beneficiary was responsible for the success or standing to a degree consistent with the meaning of "leading or critical role" pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). For the reasons set forth, we must withdraw the decision of the director for this criterion.

Accordingly, the petitioner failed to establish 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.

Although the petitioner never claimed the beneficiary's eligibility for this criterion, the director found that the beneficiary's salary of \$31,500, as claimed in a letter from the petitioner, failed to establish that it was "considered significantly high in relation to others in the field." A review of the record of proceeding reflects that the petitioner submitted a letter as evidence of employment verification and its ability to pay the beneficiary's salary.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires "[e]vidence that the alien has commanded a high salary or other significantly high remuneration for services, *in relation to others in the field* [emphasis added]." However, the record fails to reflect that the petitioner submitted any documentary evidence demonstrating that the beneficiary's salary 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 is high compared to other coaches in the petitioner's field.

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

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we must next conduct a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2); and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). See also *Kazarian*, 596 F.3d at 1115. The petitioner established eligibility for one of the criteria, in which at least three are required under the regulation at 8 C.F.R. § 204.5(h)(3). In this case, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in our preceding discussion of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

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." 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). The petitioner failed to establish that the beneficiary has received any nationally or internationally

recognized prizes or awards for excellence as a field hockey coach. In fact, the petitioner based the beneficiary's eligibility on awards won by teams in which he was part of the coaching staff. Moreover, even if we found the beneficiary eligible, which we clearly did not, the awards won by the teams in which the beneficiary was a coach were age-restricted, amateur, and student level competitions and do not reflect that "small percentage who have risen to the very top of the field of endeavor." See 8 C.F.R. § 204.5(h)(2). USCIS has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.⁹

Likewise, it does not follow that a coach who has had some success in regional competitions restricted by age or amateur 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." Similarly, although the petitioner established the beneficiary's eligibility under the judging criterion, the petitioner based the beneficiary's eligibility on his coaching and evaluation of those with amateur and student-level status rather than his coaching of professionally acclaimed accomplished field hockey players. Clearly, coaching at such a level is not indicative of someone who has achieved recognition and sustained acclaim and is at the top of his or her field.

We note here that the petitioner's claim of the beneficiary's award was based upon the beneficiary's Level II accreditation. Even if we relied on accreditation as an award, which we did not, the beneficiary was not at the highest levels of accreditation at the time the petition was filed.

Moreover, while the petitioner failed to establish the beneficiary's eligibility under the original contributions and leading or critical role criteria, we note that the petitioner based the beneficiary's eligibility heavily on the submission of recommendation letters. However, such letter cannot form the cornerstone of a successful extraordinary ability claim, and USCIS may, in

⁹ 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.

its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795.

We also cannot ignore that the statute requires the petitioner to submit “extensive documentation” of the beneficiary’s sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). Even though the petitioner failed to establish the beneficiary’s eligibility under the published material criterion, we are not persuaded that two articles appearing on websites and the petitioner’s media guide demonstrates the sustained national or international acclaim for this highly restrictive classification.

The petitioner failed to submit evidence demonstrating that the beneficiary “is one of that small percentage who have risen to the very top of the field.” In addition, the petitioner has not demonstrated the beneficiary’s “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Even when compared to the accomplishments of individuals who submitted recommendation letters on the beneficiary’s behalf, it appears that the highest level of the beneficiary’s field is far above the level he has attained. For example, while the beneficiary has not received any awards or prizes, [REDACTED] was awarded the [REDACTED]. Moreover, [REDACTED] currently serves as head coach of the United States Men’s Field Hockey Hockey Program compared to the beneficiary who currently serves as an assistant coach at the collegiate level. When comparing the achievements of the beneficiary to the above-mentioned individuals, the petitioner falls far short in establishing that he is that “small percentage who have risen to the very top of the field of endeavor.” *See* 8 C.F.R. § 204.5(h)(2).

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

III. O-1 Nonimmigrant Admission

We note that at the time of the filing of the petition, the beneficiary was last admitted to the United States as an O-1 nonimmigrant on December 31, 2007. However, while USCIS has approved at least one O-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. 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).

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043, *aff'd*, 345 F.3d at 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

IV. Conclusion

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 and to be within the small percentage at the very top of his field. The evidence is not persuasive that the beneficiary's achievements set him significantly above almost all others in his field at a national or international level. Therefore, the petitioner has not established the beneficiary's 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.