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



U.S. Citizenship  
and Immigration  
Services

B-2

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:

SEP 27 2010

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The AAO dismissed the petitioner's appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner seeks classification as an "alien of extraordinary ability" in athletics, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A). The director determined that the petitioner had not established the requisite extraordinary ability through extensive documentation and sustained national or international acclaim.

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

On motion, counsel argues that the petitioner meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i), (ii), (iii), and (v), and that the AAO erred in concluding the petitioner had not established sustained national or international acclaim at the very top of his field. For the reasons discussed below, we affirm our prior decision.

## **I. Law**

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101<sup>st</sup> 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 an alien demonstrate his or her sustained acclaim and the recognition of his or her achievements in the field. Such acclaim and achievements must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through meeting 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, *See Kazarian v. USCIS*, 596 F.3d 1115 (9<sup>th</sup> 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.<sup>1</sup> With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.*

The court stated that the AAO's 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 1119-1120.

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. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> 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

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

*A. Evidentiary Criteria*

This petition, filed on June 18, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a professional cyclist. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).<sup>2</sup>

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

The petitioner submitted evidence showing that he won the [REDACTED] and that his four-man cycling team placed third in the [REDACTED]. The petitioner also submitted race results indicating that he placed first in the [REDACTED] and second in [REDACTED]. In the appellate decision, the AAO found that the record lacked evidence establishing “the national or international recognition of the petitioner’s claimed awards.” On motion, the petitioner submits a letter from [REDACTED]. The new information in [REDACTED] letter and published material in the record are sufficient to demonstrate that the preceding awards are nationally or internationally recognized in the sport of cycling. Accordingly, the petitioner has established that he meets this criterion.

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

In finding that the petitioner’s evidence did not satisfy this criterion, the AAO’s appellate decision stated:

The petitioner initially submitted evidence to show that he is a member of the [REDACTED]. More specifically, the petitioner provided internet printouts from [REDACTED] that indicated he was a [REDACTED] member of the [REDACTED] and that provided some general team information. The petitioner also submitted internet pages from [REDACTED] demonstrating he was a [REDACTED]. The petitioner also provided photographs of himself in his [REDACTED] team uniform. In addition, the petitioner’s evidence included a web printout from [www.world-of-cycling.com](http://www.world-of-cycling.com), which cited his membership in the [REDACTED]. After a review of the evidence submitted by the petitioner, the director found that “the record lacks documentation that the [petitioner] belongs to an association that requires outstanding achievements of its members.”

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

On appeal, the petitioner attempted to bolster this evidence, providing new, additional evidence. The petitioner provided a credential for his membership in the International Cycling Union [UCI] in 2008, as well as background information regarding this organization from internet sites including [www.powerseat.com](http://www.powerseat.com) and [www.uci.ch](http://www.uci.ch). A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. 8 C.F.R. § 103.2(b)(1); 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). As the petitioner's membership in this organization occurred after his petition was filed, this new evidence cannot be considered. Nonetheless, even if the AAO considered this evidence, we would not find it sufficient to meet this criterion.

\* \* \*

In this case, the petitioner failed to provide any evidence, such as membership bylaws or official admission requirements, showing that any of the groups require outstanding achievements of [their] members, as judged by recognized national or international experts in the petitioner's field or an allied one. The printouts provided of the organizations' websites failed to state the requirements of membership, the types of outstanding achievements necessary for membership, or whether membership is judged by recognized national or international experts in the field.

On motion, counsel states: "In order to get selected as a team member and join a professional cycling team which is a corporate sponsorship, one must be at the top of his field in cycling." The letters of support from [redacted] note that the petitioner has competed for "professional" cycling teams, but neither letter specifies the achievements required for becoming a team member. While an athletic team is not strictly speaking an "association," it is nonetheless equally true that an athlete can earn a place on a national or an Olympic team through rigorous competition which separates the very best from the great majority of participants in a given sport. Therefore, an athlete's membership on an Olympic team or a major national team such as a World Cup soccer team may serve to meet this criterion as such teams are limited in the number of members and have a rigorous selection process. We reiterate, however, that it is the petitioner's burden to demonstrate that he meets every element of a given criterion, including that he is a member of a team that requires outstanding achievements of its members, as judged by recognized national or international experts. Without evidence showing, for instance, the selection requirements for the petitioner's professional cycling teams, we cannot conclude that the petitioner meets the elements of this regulatory criterion.

In light of the above, we reaffirm our appellate finding that the petitioner does not meet 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.*

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.<sup>3</sup>

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner initially submitted the following evidence:

1. A newspaper article, [REDACTED] entitled, [REDACTED]
2. A newspaper article, dated [REDACTED] entitled, [REDACTED]
3. A newspaper article, dated [REDACTED] entitled, [REDACTED]
4. A newspaper article from [REDACTED] entitled, [REDACTED] dated only with the month and day, Monday, June;
5. A newspaper article from the [REDACTED] without a date, entitled, [REDACTED]
6. A newspaper article, dated [REDACTED]
7. A newspaper article, dated [REDACTED] with no mention of a publication name or city of publication, entitled, [REDACTED]
8. An article from [REDACTED] dated [REDACTED] entitled, [REDACTED]
9. An article in [REDACTED] dated [REDACTED], entitled [REDACTED]
10. An article entitled, [REDACTED] without a translated date or publication name;
11. An article dated [REDACTED] was submitted (out of order) with the name of the publication cut off (and written in by hand as the [REDACTED] entitled, [REDACTED]
12. An article dated [REDACTED] from the [REDACTED] entitled, [REDACTED]
13. An article dated [REDACTED] from the [REDACTED] entitled, [REDACTED]

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<sup>3</sup> 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.

14. An article without any translation from a Chinese newspaper;
15. A newspaper article, dated [REDACTED] from the [REDACTED] entitled, "[REDACTED]";
16. A newspaper article, dated [REDACTED] entitled, [REDACTED] without a publication name;
17. An article from [REDACTED] providing background information on its [REDACTED] team; and
18. Articles from websites including [REDACTED] [REDACTED] and [REDACTED]

In response to the RFE [request for evidence], the petitioner provided one additional article from a website entitled [www.internationalcycling.com](http://www.internationalcycling.com), which failed to cure any missing information mentioned in the RFE including a translation and various article dates. Further, no new evidence was provided on appeal. Despite the deficiencies cited in the RFE, the director's decision found that there was sufficient evidence provided to satisfy this criterion. We disagree with the director, and reverse his decision with respect to this criterion.

\* \* \*

Although the director generally stated that "several" of the petitioner's articles were published in major publications, we find there is no evidence (such as circulation statistics) showing that any of the preceding articles submitted by the petitioner were printed in professional or major trade publications or some other form of major media. In fact, many of the articles appear in regional papers, including Items 1 through 7, 11, 12, 13, 15, and 16, rather than nationally or internationally circulated publications. Regional coverage is not indicative of national or international acclaim. Moreover, Item 18 includes articles on various internet sites. No evidence about these sources or the reliability of their contents was provided. We note that in today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the internet. To ignore this reality would be to render the "major media" requirement meaningless. However, we are not persuaded that international accessibility via the internet by itself is a realistic indicator of whether a given publication is a form of "major media." The petitioner must still provide evidence, such as, a widespread readership or overall interest in the publication in order to demonstrate that the publication is a professional or major trade publication or a form of major media in order for us to credit these articles.

Moreover, Item 14 was not submitted with a translation. Without a complete translation, the actual content of the article cannot be ascertained and is of minimal evidentiary value. *See* 8 C.F.R. § 103.2(b)(3). Item 17 also fails to serve as probative evidence, as it comes from his sponsor's website and is therefore self-serving. Further, Items 2, 5, 9 and 13 were not written primarily about the petitioner. If mentioned at all, the articles only briefly mentioned the petitioner or captioned his name under a photograph. Finally, while the article in Item 9 may have been featured in a prominent magazine, we cannot conclude that the article is primarily about the petitioner or his work. Instead, the article, entitled [REDACTED]

reflects that it is about fashion and the petitioner's looks rather than his competition or notoriety. The petitioner also submitted only what appears to be the first page of the article rather than the entire article which contains the photographs of two bikers with captions near their pictures on the page. The petitioner is one of the bikers photographed and his caption states that he has the "type of looks that make modeling agents stop him in the streets." The caption also mentions the petitioner is a "former junior world champion [who] has the chops to become a great cyclist." As such, it appears this article, as well as the petitioner's placement within it, featured the petitioner more for his physical appearance and style than for his "work in the field."

Finally, the AAO concluded that even if the article in [REDACTED] was found to be about the petitioner and his work, which it is not, a single article is not sufficient to meet the plain language of this regulatory criterion. The statute requires the submission of "extensive documentation." See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A). Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires the submission of published material about the alien in more than one qualifying source by specifying "professional or major trade publications or other major media."

The petitioner's motion does not specifically challenge any of the AAO's appellate findings for this regulatory criterion. Rather, counsel simply asserts that "numerous publications in important media markets and professional publications . . . wrote articles about him." The record, however, does not include circulation information for the publications listed at items 1 – 18 demonstrating that they equate to professional or major trade publications or other major media. The unsupported statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Upon review, we find the AAO properly considered the evidence submitted, thoroughly addressed the petitioner's arguments, and appropriately addressed the evidence and arguments in its decision. Accordingly, we reaffirm our appellate finding that the petitioner does not meet this criterion.

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

In finding that the petitioner's evidence did not satisfy this criterion, the AAO's appellate decision stated:

The petitioner initially submitted various photographs of himself in cycling races and accepting awards, with only some of the pictures containing captions. The petitioner also argued that he contributed athletically to the sport of cycling by his many wins, honors and recognitions, and submitted many printouts from websites documenting his statistics and placements in various cycling races. Following the RFE, the petitioner subsequently provided a reference letter from [REDACTED] In the letter, he states:

I have coached and directed elite cycling teams in the United States for seventeen years and my athletes have won ninety national championships and two world championships and I can say that [the petitioner] was one of the best, most talented, loyal racers I have ever had the privilege to direct.

In his decision, the director states that this recommendation letter attests to the petitioner's talents and accomplishments, but does not provide enough evidence to demonstrate he has made contributions of major significance in his field of cycling. The director also notes that "competing would not be considered a contribution of major significance."

On appeal, the petitioner argues that competition is a contribution in athletics. To this end, the petitioner argues that Babe Ruth contributed to baseball by hitting 60 home runs during competition. Further, in his brief he states,

There is nothing more important to cycling than the winning of the competition. The fact that he can win is no different than the fact that Babe Ruth could hit 60 home runs.

In addition to this argument, the petitioner provided three additional recommendation letters from the former [REDACTED]

According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. The AAO concedes that the petitioner appears to have a successful cycling career and now competes at a professional level. However, the record, including the documentation of his racing accomplishments and letters of recommendation, fail to rise to the level of his making a "contribution of major significance" in cycling. The letters of recommendation provided discuss the petitioner's talents, training, and examples of the races that he has won. However, they do not demonstrate that he has made original contributions of major significance in his field. The letters include no substantive discussion as to which of the petitioner's specific achievements rise to the level of original contributions of major significance in the field. Moreover, the record does not indicate the extent of the petitioner's influence on other cyclists nationally or internationally, nor does it show that the field has somehow changed as a result of his participation in competitions. Therefore, there is insufficient evidence to demonstrate that the petitioner has made a contribution of major significance in the field.

The petitioner argued that his competition and his awards in races should be enough to fulfill this criterion. He equated himself with Babe Ruth. This comparison is not persuasive. Babe Ruth was an extremely well-rounded baseball player, who was both a talented pitcher and hitter. This remains quite unusual and original to the sport today. Moreover, Babe Ruth held world records for home runs for decades, and continues to hold world records in many

aspects of his game at the major league level. The petitioner, however, has no comparable impact on the field of cycling as a whole, much less at a level commensurate with the major leagues. The record contains no evidence to show, for instance, that his techniques in cycling have been original or that his records have been making contributions of major significance.

On motion, counsel repeats his appellate argument that the petitioner's competitive victories are contributions of major significance in athletics. The petitioner's competitive awards (such as his [REDACTED] have already been addressed under 8 C.F.R. § 204.5(h)(3)(i), a criterion we find that the petitioner has met. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance in the field, USCIS clearly does not view these criteria as being interchangeable. To hold otherwise would render meaningless the statutory requirement for extensive evidence or the regulatory requirement that a petitioner meet at least three separate criteria. Moreover, the plain language of this regulatory criterion requires "original" athletic contributions of major significance in the field. Counsel does not explain how winning or competing in cycling events equates to "original" contributions of major significance in the field.

The letter from [REDACTED] states:

[REDACTED] informs that [the petitioner] was one of the most talented riders in the [REDACTED] during the period of [REDACTED]

His name had been heard among the first ones not only in [REDACTED], but also in Europe since he was 17 years old.

At the age of 18 [the petitioner] became [REDACTED] . . . Due to [the petitioner's] participation [REDACTED] became winner and the prize winner of World Cups and bronze-winner in the [REDACTED]

\* \* \*

Starting from 2003 [the petitioner's] career is basically connected with road races. During this period he more than once has already become a winner of big competitions, that took place in America, Europe and Asia where he took part as a member of professional American clubs [REDACTED] and [REDACTED]

Although the record adequately documents the other awards mentioned, the record does not contain World Cup competitive results or prizes to support [REDACTED] claim that the petitioner was a "World Cup" prize winner in cycling. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nevertheless, as previously discussed, the petitioner's competitive awards

pertain to the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) and have already been addressed there. The letter from [REDACTED] does not specify exactly what the petitioner's "original" contributions in the sport of cycling have been, nor is there an explanation indicating how any such contributions were of major significance in his field. It is not enough to be talented and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this regulatory criterion. USCIS may, in its discretion, use as advisory opinions 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 from experts supporting the petition 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 795-796. 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 an immigration petition are of less weight than preexisting, independent evidence that one would expect of a professional cyclist who has made original contributions of major significance. Without supporting evidence showing that the petitioner's achievements equate to original contributions of major significance in his field, we reaffirm our appellate finding that the petitioner does not meet this criterion.

#### *Summary*

In this case, the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the ten categories of evidence that must be satisfied to establish the minimum eligibility requirements necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). A final merits determination that considers all of the evidence follows.

#### ***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." Section 203(b)(1)(A) of the Act; 8 C.F.R. § 204.5(h)(3). *See also Kazarian*, 596 F.3d at 1119-1120. In the present matter, 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)(ii), (iii), and (v).

With regard to the documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), the petitioner's evidence showed that he won the [REDACTED] and that his four-man cycling team placed third in the [REDACTED]

[REDACTED]. We cannot conclude that such awards limited to “Junior” competitors or cyclists under 23 years of age establish 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). 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.<sup>4</sup> Likewise, it does not follow that a cyclist who received awards in age-restricted or amateur competitions should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Moreover, the statute and regulations require the petitioner to demonstrate that his national or international acclaim in the sport of cycling has been *sustained*. 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). In this case, there is no evidence showing that the petitioner has received any nationally or internationally recognized prizes or awards as a professional cyclist subsequent to 2005.

Regarding the evidence submitted for the regulatory criterion at 8 C.F.R. §§ 204.5(h)(3)(iii), the petitioner submitted a June 2003 article in [REDACTED] stating that he “has the chops to become a great cyclist” and that he has “still got five more years to go till he hits his cycling prime.” Moreover, the petitioner’s [REDACTED] states: “His all-around capabilities and nose for the finish line will serve him well under the tutelage of his more experienced Navigators teammates.”

While the petitioner need not demonstrate that there is no one more accomplished than himself to qualify for the classification sought, it appears that the very top of his field of endeavor is above the level he has attained at this stage of his professional cycling career. In this case, the petitioner has not established that his achievements at the time of filing the petition were commensurate with sustained national or international acclaim at the very top of the field. The conclusion we reach by considering the evidence to meet each criterion at 8 C.F.R. § 204.5(h)(3) 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).

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<sup>4</sup> 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.

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

The AAO notes that the petitioner has been in the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform as an athlete, either individually or as part of a team, at an internationally recognized level of performance, and that the alien seek to enter the United States "temporarily and solely for the purpose of performing as such an athlete." See section 214(c)(4)(A) of the Act, 8 U.S.C. § 1184(c)(4)(A). While USCIS has approved a prior P-1 nonimmigrant visa petition filed on behalf of the petitioner, this prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis upon review of the evidence of record. 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 the alien's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), cert. denied, 485 U.S. 1008 (1988).

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, 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).

### **III. Conclusion**

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

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).

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 AAO's June 22, 2009 decision dismissing the appeal is affirmed. The petition will remain denied.