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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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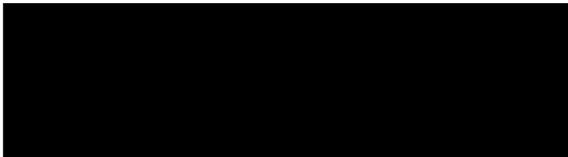
Petitioner:

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 \$630. 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
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in athletics. 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 appeal, counsel argues that the petitioner meets at least three of the ten regulatory categories of evidence at 8 C.F.R. § 204.5(h)(3). For the reasons discussed below, we uphold the director's 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.

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 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. *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.¹ 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.* at 1121-22.

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 (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).

¹ 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).

II. Analysis

A. Evidentiary Criteria

According to counsel's July 27, 2008 cover letter, this petition, filed on July 29, 2008, seeks to classify the petitioner as an alien with extraordinary ability as a "Crew Chief and Lead Mechanic" in the sport of auto racing. The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).²

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

The petitioner submitted an August 16, 2007 online article posted at www.champcaratlantic.com entitled "Champions and [REDACTED]" (exhibit 9). Paragraph 12 of the article states: "[REDACTED] crew chief [the petitioner] claimed the [REDACTED] of the Year Award. [The petitioner] also received a [REDACTED] welding package." The petitioner also submitted a September 26, 2007 online article posted at [REDACTED] entitled "Portuguese Mechanic Honored in the U.S." (exhibit 10). Paragraph 1 of the article indicates that the petitioner received the [REDACTED]. Paragraph 6 states: "In 2005 [the petitioner] went to the [REDACTED] as the driver, winning the team championship and the driver championship with [REDACTED] with his driver winning the first race at [REDACTED] and the second at [REDACTED]." Counsel argues that the September 26, 2007 online article (exhibit 10) is evidence that the petitioner won a team championship and driver championship at the 2005 Renault World Series.

The director issued a request for evidence to the petitioner stating:

As evidence of having won awards in the field, you indicate that you have received the [REDACTED] and that you were part of the 2005 [REDACTED]. Submit documentary evidence of having won the Renault award as well as documentary evidence which demonstrates your role in receiving the award. For both awards, submit documentary evidence to establish the criteria for winning the award or prize, including evidence regarding who is eligible to compete for the award or prize. Submit documentary evidence to establish the reputation of the organization granting the award in the field of endeavor and any other documentary evidence to establish the significance of the award or prize.

In response, the petitioner submitted a December 2005 letter from [REDACTED], stating:

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

We are pleased to provide this letter confirming [the petitioner's] full-time employment as a [REDACTED] from January 11 until October 12, 2005.

In this role, [the petitioner] supervised 2 mechanics in the preparation and maintenance of an open wheel formula race car for testing and competition in the 2005 season of the World Series by Renault. [The petitioner] was responsible for meeting with our crew chief and race engineers to determine optimum set-up specifications for the car and for making and directing appropriate adjustments to all race car components

Nothing in [REDACTED] letter mentions the petitioner winning a team championship and driver championship at the 2005 [REDACTED]. Further, [REDACTED] letter does not indicate that [REDACTED] victories were mostly attributable to the petitioner's work rather than the team's two drivers or its crew chief. The petitioner also submitted information about the [REDACTED] racing team and the World Series by Renault racing series from *Wikipedia*, an online encyclopedia. Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.³ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the source.

With regard to the petitioner's 2007 [REDACTED] of the Year Award, the petitioner's response to the director's request for evidence included a photograph of his trophy and general information about the [REDACTED] from its website, but his response did not include any evidence regarding the award, its significance, or eligibility criteria. The brief mention of the petitioner's award in articles whose national or international circulation is undocumented does not establish the national or international *recognition* of the award. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this instance, the submitted documentation does not establish that the petitioner's [REDACTED] of the Year Award constitutes a "nationally or internationally recognized" prize or award for excellence in the field.

³ Online content from *Wikipedia* is subject to the following general disclaimer:

WIKIPEDIA MAKES NO GUARANTEE OF VALIDITY. *Wikipedia* is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information. . . . *Wikipedia* cannot guarantee the validity of the information found here. The content of any given article may recently have been changed, vandalized or altered by someone whose opinion does not correspond with the state of knowledge in the relevant fields.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 1, 2011, copy incorporated into the record of proceeding.

The petitioner's response also included an October 9, 2008 article posted at [REDACTED] entitled "Series 2008 Awards Banquet report" which discusses the [REDACTED] drivers and team members' season-ending awards banquet in Fall 2008. Paragraph 3 of the article states that the petitioner "earned the Top Wrench Award." The petitioner received the preceding award subsequent to the petition's July 29, 2008 filing date. A petitioner, however, must establish eligibility 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. Accordingly, the AAO will not consider the petitioner's Top Wrench Award from October 2008 in this proceeding. Nevertheless, there is no evidence showing that the award equates to a nationally or internationally recognized prize or award for excellence in the field.

On appeal, counsel asserts that the petitioner also won a [REDACTED] in the U.S. in 2007, [REDACTED] of the Year in 2007, vice champion at the [REDACTED] Series with [REDACTED] in 2002, third place at 24 Hours at [REDACTED] Motorsport in 2003, second place in the [REDACTED] with Driver [REDACTED] in 2004, fourth place in the Atlantic Formula with driver [REDACTED] in 2004, and four races with Intersport Racing in the [REDACTED] Series becoming the class vice champion and the team champion in 2004. Counsel, however, does not point to specific evidence or exhibits in the record to support these claims. 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)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii).

In light of above, the petitioner has not 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 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.

The petitioner submitted the aforementioned December 2005 letter from [REDACTED] confirming the petitioner's "full-time employment as a Number 1 Mechanic with [REDACTED] from January 11 until October 12, 2005." The petitioner also submitted information about [REDACTED] posted at [REDACTED] stating:

[REDACTED] is a High Performance [REDACTED] aiming to be a reference point for European motor racing:

Obtaining international sporting titles.

Generating human and technological resources.

Generating jobs and opportunities for young people: engineers, mechanics and drivers.

Increasing development of the great competition motor racing industry.

Generating the greatest repercussion by means of all its activities, with competitions as its most attractive international showcase, escaparatte internacional.

In short, giving back to society the financial and personal support which it receives, by developing the following activities:

- a) In the [REDACTED] [REDACTED] is participating with 2 single-seater racing cars (F3000) and 2 drivers with international prestige. *This category is considered to be the forerunner to Formula 1.*
- b) In the Formula Renault 2000 there are 3 drivers and their respective single-seaters (2000cc). A prior step which promotes younger drivers up towards the World Series by Renault.
- c) Development of a Junior Cup for Karting. This category is a good starting point for drivers who really wish to become professionals, preparing them to rise up the aforementioned categories. 20 drivers and 20 karts can participate in this Junior Cup.
- d) [REDACTED] This category, in which [REDACTED] participates with 2 drivers and 2 prototypes, is an alternative to the single-seaters. This gives drivers the opportunity to participate in different international car competitions, just as demanding as Formula 1, even though it is not necessarily their ultimate professional objective.

* * *

Due to the great demand for qualified engineers in top competition, [REDACTED] is running a [REDACTED] in collaboration with the [REDACTED]. This is a unique post graduate course

due to its characteristics and reference within Europe giving students the opportunity to carry out practical work on international circuits.

An exceptional opportunity for 24 newly graduated engineers or professionals who wish to orient their professional career towards top class competition in world of motor racing. The important qualification which they obtain also equips them to join the conventional automotive industry.

Training mechanics to be specialists in competition vehicles is also an area in which Epsilon participates in a special way, collaborating actively with different Professional Schools by giving training and practical experience to these future technicians.

* * *

“We are probably one of the last race car manufacturers to *offer students and young designers the stepping stones which are needed to be a successful race car designer or racing car engineer.*”

[Emphasis added.]

The petitioner also submitted an October 4, 2005 article in *Motor* entitled “[REDACTED] Honors [REDACTED]” stating:

The World Series by Renault held at the [REDACTED] was a rare opportunity for [REDACTED] to call attention to a “son of the country,” [the petitioner] who despite his youth has already made a name for himself as an accredited mechanic on international race tracks.

After a few seasons in North-American racing, namely in the Atlantic Formula, he decided to take a chance on Europe when he received an invitation to join the ranks of Epsilon Euskadi, one of the foremost names in the World Series.

The petitioner’s “full-time employment” as a mechanic with Epsilon Euskadi does not constitute membership in an association in the field. Merely submitting documentary evidence reflecting the petitioner’s employment with a particular organization or providing background information about the employer without evidence reflecting that the petitioner is a member of an association that requires outstanding achievements of its members, as judged by recognized national or international experts, is insufficient to meet the plain language of the regulation. Clearly, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires the petitioner to show “membership in associations” and not the petitioner’s employment with organizations or businesses. In this instance, the petitioner was hired to perform the duties of a mechanic and not nominated or elected to membership based on his outstanding achievements. The submitted evidence does not establish that Epsilon Euskadi requires outstanding achievements of its members, as judged by recognized national or international experts in the petitioner’s field. Moreover, consistent with the statutory requirement for “extensive documentation” at section

203(b)(1)(A)(i), the regulation at 8 C.F.R. § 204.5(h)(3)(ii) expressly requires qualifying membership in “associations” in the plural. A single association membership does not meet the plain language requirements of this regulatory criterion. Accordingly, the petitioner has not established that he 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.

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.⁴

The petitioner submitted articles about him in *Motor* entitled “An Experienced Engineer” (April 1, 2003), [REDACTED] (October 4, 2005), “The Fidalgo Siblings Other Champions” (December 5, 2006), “Portuguese Named Mechanic of the Year in Atlantic Formula” (September 18, 2007), and “A Winning Team” (November 27, 2007). The petitioner also submitted an online duplicate of the September 18, 2007 article posted on the website of *Journal Motor On-Line*. The petitioner’s evidence also included an October 4, 2005 article in *Motor* entitled “Kubica Anticipates Title,” but the article does not mention the petitioner. The regulation at 8 C.F.R. § 204.5(h)(3)(iii), however, requires that the published material be “about the alien.”⁵ Further, the authors of the preceding articles in *Motor* and *Journal Motor On-Line* were not identified as required by the plain language of this regulatory criterion. The petitioner also submitted an October 31, 2005 article in *Motor* entitled “To be a champion, consistency is essential.” The primary article includes a subsection entitled “The Portuguese Contribution” which mentions the petitioner. The primary section of the article, which is not about the petitioner, states:

After the World Series title, the dream of the Formula 1. At the [REDACTED] then in his first season in this discipline, secured the World Series by Renault title. Considering the way in which he dominated the season and his talent which he had already demonstrated in go-cart racing, this came naturally, and even then he had dreams of one day racing in the Formula 1.

* * *

⁴ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

⁵ See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a show are not about the actor).

Regarding the fact that the World Series is a learning curve for the Formula 1, the next step in the career of a driver, the Pole stated: "It will be difficult to enter the F1, but I think that this category, after the Formula 1, is one of the best."

* * *

Having won the World Series, the next step in [REDACTED] career may be the Formula 1.

The content of the preceding article indicates that Formula 1 racing is above the racing level where the petitioner is working as a mechanic. Moreover, there is no evidence (such as readership statistics from an independent source) showing that *Motor* and *Journal Motor On-Line* qualify as professional or major trade publications or other major media.

The petitioner submitted a 2005 article in *Gondomar Economico* entitled "Gondomar Governing Board Honors [the petitioner's] Team." The petitioner also submitted articles in *Reporter of Gondomar* entitled "[REDACTED] [the petitioner's] Team" (October 25, 2005) and "Man from [REDACTED] of the Year [the petitioner] Honored in Atlantic Formula in the U.S.A." (September 26, 2007). The authors of the preceding articles in *Gondomar Economico* and *Reporter of Gondomar* were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the director noted that these publications "appear to be regional periodicals of the petitioner's birthplace, Gondomar, Portugal." There is no evidence showing that these publications from the petitioner's native region equate to professional or major trade publications or other major media.

The petitioner submitted an August 16, 2007 online article posted at [REDACTED] entitled "Champions and Award Winners Honored at Champ Car Atlantic Awards Banquet" (exhibit 9). The article briefly mentions the petitioner's name (paragraph 12) among more than a dozen individuals honored at the banquet. The article does not include any further information about the petitioner and is primarily about the awards banquet in general. The petitioner also submitted a September 26, 2007 online article posted at [REDACTED] entitled "Portuguese Mechanic Honored in the U.S." The authors of the preceding articles were not identified as required by the plain language of this regulatory criterion. Further, there is no evidence showing that the preceding websites qualify as professional or major trade publications or other major media.

In light of above, the petitioner has not established that he meets this criterion.

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

[REDACTED] Team Manager for Intersport Racing, a professional race team that has been competing in the [REDACTED] for the past ten years, states:

During his Career in motorsports, [the petitioner] has had many great accomplishments including winning the 2005 European World Series by Renault, winning a Toyota Atlantic race in the United States in 2007, and also being named 2007 Toyota Atlantic Crew Chief of the Year. [The petitioner] also graduated from the [redacted] racing school in California where he was the mechanic of the month in May of 2002.

I have been involved in professional racing for the past ten years and I can honestly say that I have yet to come across someone with as much determination, drive and professionalism as [the petitioner]. Along with his qualified credentials the experience and expertise that [the petitioner] brings with him will benefit any team that wishes to hire him.

* * *

He is by far the best [redacted] have ever had the pleasure of working with.

[redacted] for both A [redacted] and its parent company, [redacted] states:

[redacted] Series is recognized worldwide as a premier professional sports car racing series with events held throughout North America. The series attracts large crowds to each event and all events are broadcast on network and cable television in 70+ countries around the world.

I have personally been involved at the executive level in motorsports for two decades and for this reason have been requested to comment on [the petitioner's] significance to our sport. [The petitioner's] proposed involvement would be as Crew Chief / Lead Mechanic for one of the sport's top teams in the world, with a multitude of wins and championships (more detailed information is available on their website at [redacted]). Therefore the role of Crew Chief for this team is critically important to their continued success. [The petitioner] has a wealth of experience in this type role beginning with his graduation from the well know [redacted] in California where he was honored as Mechanic of the Month in May of 2002.

[The petitioner] has had many successes as a professional Crew [redacted] Mechanic including a much coveted and very competitive [redacted] by Renault championship in 2005. In this role he has also been on winning teams in the [redacted] in which he took top honors as the Crew Chief of the Year in 2007.

[redacted] Executive Vice President, [redacted] states:

[The petitioner] participated in the [redacted] as a Chief Mechanic for one of the Atlantic teams and was recognized as the "Top Wrench of the Year" in 2008.

This honor was based upon his extraordinary ability as an auto racing mechanic and crew chief. The team he worked for, [REDACTED] won the 2008 Atlantic Series Championship the same year.

I have organized and administered the Atlantic Racing Series for over 25 years and can honestly say that [the petitioner] stands atop the list of very successful auto racing expert mechanics

As previously discussed, the petitioner received the "Top Wrench of the Year" award subsequent to the petition's July 29, 2008 filing date. A petitioner, however, must establish eligibility 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). Accordingly, the AAO will not consider the petitioner's Top Wrench Award from October 2008 in this proceeding.

[REDACTED], states:

[The petitioner] and I have worked together in the Atlantic championship and ALMS now for 4 years. In that he has earned my respect both personally and professionally. But don't take my word for it. Success on the race track seems to follow him where ever he goes. As cars that he was responsible for have won many races including the 2008 Formula Atlantic Championship. In 2008 he was voted for as the top mechanic on his championship winning car.

I am responsible for the [REDACTED] department at Cosworth in America. [The petitioner] has displayed all the talents professionally that are required to be successful in racing.

The documentation submitted by the petitioner indicates that the petitioner performed in a critical role as a crew chief for [REDACTED] and as a lead mechanic with [REDACTED]. The record, however, does not establish that these organizations have a distinguished reputation when compared to other racing teams. As previously discussed, the petitioner submitted information about the [REDACTED] racing team from *Wikipedia*, but there are no assurances about the reliability of the content from this open, user-edited internet site. See [REDACTED] at 910. Accordingly, we will not assign weight to information for which *Wikipedia* is the source. Further, there is no documentary evidence showing that [REDACTED] Racing has a distinguished reputation in auto racing. 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. at 165.

In light of the above, the petitioner has not established that he 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.

In response to the director's request for evidence, the petitioner submitted his 2007 U.S. Individual Income Tax Return reflecting "total income" of \$29,611. The petitioner also submitted a letter to USCIS stating that he "received a Lincoln Welders precision TIG 225 welding package in 2007 for winning the Lincoln Welders Mechanic of the Year Award. The estimated cash value for this item is \$1900." The petitioner's response also included an August 3, 2004 article entitled "Last Lap: Answering fan mail" written by Marty Smith of NASCAR.COM. The article states:

It's very difficult to get a true midline crewman salary, because there are so many different types of positions, some that require travel, others that don't. Some shop guys might make 30 grand, while a guy who stays back and sets up the car for the following weekend might make six figures. For guys that have a duty at the shop, travel and have an over-the-wall position on Sundays, \$75,000 is a legitimate average salary. Then there are bonuses.

The article from [REDACTED] indicates that "\$75,000 is a legitimate average salary" for a midline crewman, but the petitioner seeks classification as a "Crew Chief and Lead Mechanic," not as a midline crewman. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ix) requires the petitioner to submit evidence of a "high salary or other significantly high remuneration for services, in relation to others in the field." Average salary information for those performing work in a related but distinct occupation with different responsibilities is not a proper basis for comparison. Rather, the petitioner must submit documentary evidence of the earnings of those in his occupation performing similar work at the top level of the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994) (considering professional golfer's earnings versus other PGA Tour golfers); *see also Grimson v. INS*, 934 F. Supp. 965, 968 (N.D. Ill. 1996) (considering NHL enforcer's salary versus other NHL enforcers); *Muni v. INS*, 891 F. Supp. 440, 444-45 (N. D. Ill. 1995) (comparing salary of NHL defensive player to salary of other NHL defensemen). Nevertheless, the petitioner's total income in 2007 of \$29,611 falls below all of the salary amounts discussed in Mr. Smith's 2004 article.

The petitioner also submitted a September 30, 2009 earnings statement from CRF Racing LLC reflecting year to date gross earnings of \$38,250.03. The petitioner's earnings from 2009 post-date the petition's filing date. As previously discussed, a petitioner must establish eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO will not consider earnings received after July 29, 2008 in this proceeding.

The evidence submitted by the petitioner does not establish that he has received a high salary or other significantly high remuneration for services in relation to others in the field as of the petition's filing date.

In light of the above, the petitioner has not established that he meets this criterion.

Summary

In this case, we concur with the director's determination that 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).

B. Final Merits Determination

In accordance with the *Kazarian* opinion, we will 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 categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii), (viii), and (ix).

With regard to the documentation submitted for 8 C.F.R. §§ 204.5(h)(3)(i) - (iii), the petitioner submitted published and online material indicating that Formula 1 racing is a level above the competitive series in which the petitioner has participated (such as the World Series by Renault). For example, the information submitted by the petitioner from www.ultimatecarrpage.com states that the Renault World Series "category is considered to be the forerunner to Formula 1." Further, the October 31, 2005 article in *Motor* entitled "To be a champion, consistency is essential" states: "Regarding the fact that the World Series is a learning curve for the Formula 1, the next step in the career of a driver, the Pole stated: 'It will be difficult to enter the F1, but I think that this category, after the Formula 1, is one of the best.'" The petitioner has not established that his level of success as a crew chief or mechanic in the Atlantic Championship Powered by Mazda and the World Series by Renault is an indication that he "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 60899.⁶ Likewise, it does not follow that a crew chief or mechanic whose racing teams do not compete at the very top level of the sport should necessarily qualify for an

⁶ 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.

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."

Regarding the documentation submitted for 8 C.F.R. § 204.5(h)(3)(ix), the August 3, 2004 article entitled "Last Lap: Answering fan mail" written by [REDACTED] provides average salary information rather than high salary information. The petitioner, however, must submit evidence demonstrating that his salary places him at the very top of his field rather than simply above average in his field. *See* 8 C.F.R. § 204.5(h)(2).

In this case, the evidence of record falls short of demonstrating petitioner's sustained national or international acclaim as an auto racing crew chief or mechanic. 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. The conclusion we reach by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate 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). The submitted evidence does not establish that the petitioner's achievements at the time of filing were commensurate with sustained national or international acclaim in auto racing, or being among that small percentage at the very top of his field.

C. Prior P-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 appeal is dismissed.