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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

B2

FILE:

[REDACTED]

Office: TEXAS SERVICE CENTER

Date:

FEB 17 2011

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

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
Chief, Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. 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) and that he submitted comparable evidence of his extraordinary ability pursuant to the regulation at 8 C.F.R. § 204.5(h)(4). We acknowledge that the standard of proof is preponderance of the evidence, as noted by counsel on appeal. The "preponderance of the evidence" standard, however, does not relieve the petitioner from satisfying the basic evidentiary requirements required by the statute and regulations. Therefore, if the statute and regulations require specific evidence, the applicant is required to submit that evidence. *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)(2) and (3). In this case, the documentation submitted by the petitioner failed to demonstrate by a preponderance of the evidence that the beneficiary has achieved sustained national or international acclaim and that he is one of the small percentage who has risen to the very top of the field of endeavor. 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.

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 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

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).

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).

II. Analysis

A. Evidentiary Criteria

This petition, filed on April 14, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a ballroom dancer and instructor. The petitioner has submitted evidence pertaining to the following categories of evidence at 8 C.F.R. § 204.5(h)(3).²

(i) 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, *inter alia*, he won [REDACTED] at the [REDACTED]. Accordingly, the petitioner has established that he meets this criterion.

(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.

The petitioner submitted his membership card for the World Dance and Dance Sport Council (WDDSC) reflecting an "end" date of December 2006. The petitioner also submitted general information about the World Dance Council (WDC), but there is no evidence (such as membership bylaws or rules of admission) showing that the WDDSC or the WDC require outstanding achievements of their members.

The petitioner submitted a July 2008 letter from the [REDACTED] stating that the petitioner is a valued member of the company. The petitioner also submitted evidence indicating that he has competed in [REDACTED] competitions such as the 2008 Sundance Classic and the 2006 National Cross Country Dance Sport Championships. The petitioner's employment with [REDACTED] and his participation in company sponsored competitions do not equate to membership in an association in the field. Further, there is no evidence showing that securing employment with the company or entering its competitions requires outstanding achievements.

Counsel asserts that the petitioner is a member of the National Dance Council of America (NDCA), but there is no evidence to support the assertion. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17

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

I&N Dec. 503, 506 (BIA 1980). 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). In this instance, the petitioner has not complied with the regulation at 8 C.F.R. § 103.2(b)(2) regarding his failure to submit primary evidence of his NDCA membership.

The petitioner submitted a letter from the General Secretary of the Hungarian Dance Sport Association (HDSA) stating that the petitioner was a [REDACTED]

[REDACTED] 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. We will not presume that every national "team" is sufficiently exclusive. Without evidence showing, for instance, the selection requirements for the Hungarian national team, we cannot conclude that the petitioner meets the elements of this regulatory criterion.

The petitioner submitted letters from the [REDACTED] [REDACTED] stating that the petitioner competed for the ADSF. The petitioner also submitted two competition record books confirming his registration and participation in the ADSF and the Hungarian Dance Sport Federation (HDSF), but there is no evidence showing the preceding federations' membership requirements. Further, the English language translations accompanying the competition record books from the ADSF and the HDSF do not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3), which requires that any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation that the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English. The submitted English language translations signed by the translator simply state "I guarantee that the translation is correct." Therefore, the translator certifications submitted by the petitioner are not in compliance with the regulation at 8 C.F.R. § 103.2(b)(3).

In response to the director's request for evidence, counsel points to nine letters of recommendation from individuals affiliated with the WDC, the NDCA, and FAFDS as further evidence for this criterion. The letters from [REDACTED]

[REDACTED] do not discuss the specific membership requirements for the WDC, the NDCA, or FAFDS, or state that the petitioner is a member of the NDCA.

In this case, there is no evidence from the HDSF, the ADSF, the WDDSC, the WDC, FAFDS, or the NDCA showing that they require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

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

(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.

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.³

The petitioner submitted a letter published in the December 2008 issue of *The Beacon*, "A Consumer Interest Magazine Serving northern Palm Beach County," appearing under [REDACTED]. We note that [REDACTED] works as a dance instructor with [REDACTED]. The published letter, authored by [REDACTED] a student of the Fred Astaire Jupiter Dance Studio, describes in detail her problems with Osteo Arthritis and how ballroom dancing helped to alleviate her ailment. She concludes her letter by stating:

I would like to take this opportunity to thank a few people. To [REDACTED] for unknowingly inspiring me to try; [REDACTED] and [REDACTED] for their encouragement, support and extra coaching; and most of all to [the petitioner] for his patience, humor, kind heart, expertise, support, encouragement and for not giving up on me.

Your Very Grateful Student,

The preceding article is about [REDACTED] overcoming her medical ailment rather than the petitioner and his work as a dance professional.

The petitioner submitted an April 2008 article in *The Beacon*, "A Consumer Interest Magazine Serving Jupiter, Tequesta, Juno Beach, Palm Beach Gardens, Hobe Sound," again appearing under [REDACTED] column. In the April 2008 article, [REDACTED] discusses a visit by her and the petitioner to a client who requested that the petitioner give her a dance lesson on a horse. The petitioner also submitted a September 2006 article in the "Images" section of *The Beacon* entitled "A 'World Class' Challenge," but the author of the article was not identified as required by the plain

³ 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.

language of this criterion. The article describes a [REDACTED] event for students hosted by the [REDACTED] and briefly mentions the petitioner's participation in the event and two of his upcoming competitions. The petitioner's evidence also included July 2006 and July 2007 articles in *The Beacon* entitled [REDACTED] and [REDACTED]. These articles are about [REDACTED] and their business. The July 2006 and July 2007 articles briefly mention that the petitioner joined the [REDACTED] at their Jupiter studio, but the articles are not about him. Further, the author of the July 2006 and July 2007 articles was not identified as required by the plain language of this criterion.

In response to the director's request for evidence, the petitioner submitted information from *The Beacon's* home page stating that it showcases local businesses in the North Palm Beach County area. Counsel asserts that this local business interest magazine in Florida "sends out approximately 26,500 copies per month," but the record does not include circulation evidence to support the claim. As previously discussed, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. at 533, 534 n.2; *Matter of Laureano*, 19 I&N Dec. at 1, 3 n.2; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 503, 506. Nevertheless, there is no evidence showing that this local advertising source equates to a professional or major trade publication or some other form of major media.

The petitioner submitted three articles in *Dance Beat* [REDACTED] and [REDACTED]. The dates of the preceding articles were not identified as required by the plain language of this criterion. With regard to [REDACTED] in *Dance Beat*, the petitioner did not submit the first part of the article and its author was not identified. The second part of the article includes one sentence stating that the petitioner [REDACTED] and lists him among forty contestants in the results section. [REDACTED] article in *Dance Beat* does not mention the petitioner in the body of the article and only lists him in the results section among 56 contestants. The Fred Astaire chain of studios' National Dance Championships article in *Dance Beat* only briefly mentions the petitioner stating: "Not as widely contested, but also exciting to watch, was [REDACTED]." The preceding articles only briefly mention the petitioner and are instead articles about dance contests as a whole in which he competed. The plain language of this regulatory criterion requires "[p]ublished material about the alien." Articles that only briefly mention the petitioner in passing do not meet the plain language of this regulatory criterion.⁴ In response to the director's request for evidence, the petitioner submitted self-serving information from *Dance Beat's* web page stating that the publication was established in 1989 as a monthly dancesport newspaper. There is no evidence (such as circulation statistics) showing that this newspaper equates to a professional or major trade publication or some other form of major media.

The petitioner submitted additional articles published in the German language, but the English language translations accompanying these articles were not complete and they were not certified by

⁴ 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).

the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that these articles meet all the requirements of 8 C.F.R. § 204.5(h)(3)(iii). For instance, there is no evidence establishing that the German language newspapers and magazines in which the articles appeared qualify as major media.

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

(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 specification for which classification is sought.

Counsel states that several of the petitioner's "students have gone on to compete as Ballroom Dancers." The petitioner submitted event programs from FAFDS competitions showing that his students [REDACTED] competed in "amateur" ladies events such as the [REDACTED] and the [REDACTED]. The petitioner also submitted a January 19, 2009 letter from [REDACTED] explaining how the petitioner and his partner's dance lessons have improved [REDACTED] and his wife's dancing skills. Counsel does not explain how providing dance lessons and instruction to students who compete equates to participation as a judge of the work of others in the field. The phrase "a judge" implies a formal designation in a judging capacity, either on a panel or individually as specified at 8 C.F.R. § 204.5(h)(3)(iv). The regulation cannot be read to include every informal instance of dance instruction or coaching of pupils under one's immediate tutelage.

The petitioner submitted evidence showing that he and his dance partner [REDACTED] served as judges at the [REDACTED] at the [REDACTED]. Although the petitioner's evidence meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(iv), certain deficiencies pertaining to this evidence will be addressed below in our final merits determination regarding whether the submitted evidence is commensurate with sustained national or international acclaim, or being among that small percentage at the very top of the field of endeavor.

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

The petitioner submitted letters of support discussing his competitive success and talent as a dance instructor. We cite representative examples below. Competitive success and talent as a dance teacher, however, are not necessarily indicative of original contributions of major significance in the field. The record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

In the original submission, counsel states that the petitioner is eligible under this criterion by virtue of teaching ballroom dancing to students with intellectual and physical disabilities. The

petitioner submitted a letter from [REDACTED] “a special syllabus school” in Hungary, stating:

[REDACTED] was still at the high school when she undertook a very difficult mission; teaching these children dancing in her free time. In our study circle we showed all the video material about [REDACTED] which we had recorded from different Hungarian television channels. The pupils were enchanted!

The first year passed quickly and [REDACTED] students reached excellent positions [REDACTED] decided to go to Austria because of her dancing career. We are very thankful that after she moved to another country she still managed to find time to come regularly (several times a year) to our institution together with her partner [the petitioner]. They gave us important information and advice how to successfully continue this activity.

* * *

After years, all our children and adults still look forward every time to the possibility of working with [REDACTED] and [the petitioner]. . . . They showed us how to practice the joy of movement, the love of dancing. They gave the children self-confidence and have made their self picture stronger. Through [REDACTED] work we have now happier students who are very active and believe in their own possibilities.

* * *

They have undoubtedly proven in our school that they are able to cope magnificently with teaching injured children who are not easy to instruct and train.

While the petitioner’s work with students at this school is certainly admirable, there is no evidence showing that his work equates to an original artistic, athletic, or business-related contribution of major significance in the field. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) requires that the contributions be “of major significance in the field” rather than limited to a school where the petitioner helped with dance instruction. Moreover, the letter from [REDACTED] indicates that [REDACTED] rather than the petitioner, was the originator of the instructional activity at the school.

Counsel further states:

One of [the petitioner’s] students [REDACTED] suffers from Osteo Arthritis. She wrote a letter regarding her illness and how ballroom dancing has improved her life and thanking [the petitioner] “for his patience, humor, kind heart, expertise, support, encouragement and for not giving up on me.”

As previously discussed, the petitioner submitted a letter published by [REDACTED] in the December 2008 issue of *The Beacon* appearing under [REDACTED] column. In addition, the petitioner submitted a letter of recommendation written by [REDACTED] in

which she praises his abilities as an instructor and describes how her life has changed thanks to her newfound ability to dance.

Counsel continues:

Another of [the petitioner's] students, [REDACTED] He submits a letter of recommendation in which he explains how his life has changed since taking ballroom dance classes with [the petitioner]. [REDACTED] first describes how he and his wife have improved their dancing ability and even compete now in ballroom dance events which is a contribution to the profession of ballroom dancing.

While the petitioner's dance lessons have improved the abilities of his students at the [REDACTED] the preceding letters of recommendation do not specify exactly what the petitioner's "original" contributions in ballroom dancing have been, nor is there an explanation indicating how any such contributions were of major significance in his field. Counsel argues that "[a]s a ballroom dance instructor, [the beneficiary] is in a unique position to make real contributions to the lives of his students which in turn contribute to society in general as well as to the U.S. economy and of course the world of ballroom dancing." The record, however, does not include evidence showing that the petitioner's original instructional techniques have significantly impacted the field beyond the pupils under his immediate tutelage. As previously discussed, contributions limited to the dance school where the petitioner works do not equate to original contributions of major significance to the field of ballroom dancing as a whole.

[REDACTED] states that she is "an Internationally Recognized Latin American Dance Champion, Coach & Adjudicator" and that she has been associated with the petitioner for the past year. [REDACTED] further states:

[The petitioner] is at the top of his field. . . . [The petitioner] maintains the reputation as one of the most gifted, results focused dancers and teachers in the world[']s dance community.

* * *

I have served as an adjudicator of various dance competitions in which his students have participated. His students possess an obvious level of talent developed by [the petitioner's] instruction. Their success is far beyond those with whom they compete against as evidenced by their championship awards.

I highly commend [the petitioner] and feel that he can make a significant contribution to DanceSport in American [sic]. Today the U.S. and other nation's [sic] top dance talent seeks [sic] [the petitioner's] teachings, as he is one of the United States' brightest and most gifted dancer[s] in the World's dance scene.

does not specify the “championship awards” won by the beneficiary’s students or the level of competition against which his dancers competed (such as novice, intermediate, amateur, or professional). Moreover, her letter does not explain how the petitioner’s teaching techniques are original in ballroom dancing or how such techniques constitute “contributions of major significance in the field.”

states:

I have served as the [redacted]
[redacted] and I serve on the [redacted]
[redacted]
[redacted]

I have known [the petitioner] since he first came to the United States. In my professional opinion, I strongly feel that [the petitioner] is an exceptionally talented dancer, coach, and teacher. On several occasions I have worked directly with [the petitioner] and his students as well as coached him with his dance partner. I feel [the petitioner] is currently one of the most outstanding International Latin competitive dancers representing the United States today. Most importantly though, there are not very many young American dancers who exhibit his abilities and it is very hard to find someone of that caliber in International Style, expertise and training in this country. So, someone of [the petitioner’s] caliber is truly a gift to any employer in the dance instruction field

does not specify exactly what the petitioner’s “original” contributions as a competitive dancer have been, nor is there an explanation indicating how any such contributions were of major significance in his field. While the petitioner’s abilities have contributed to the success of [redacted], there is no evidence demonstrating that his original contributions in ballroom dancing have significantly influenced the field in general.

Through my work in the Fred Astaire Company . . . for many years, I had the possibility to meet many dedicated and talented young dancers. One of the most extraordinary people that I have had the pleasure to know is [the petitioner]. [The petitioner] drew my attention as being an outstanding Ballroom and Latin Dancer. He has won multiple National . . . Championships. Among them [redacted]
[redacted]
[redacted]

The petitioner’s competitive achievements (such as first place in the [redacted]
[redacted]) have already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion we find 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.

continues:

[The petitioner] is a superb teacher and coach who gives his pupils 100% of his knowledge and time. His knowledge of Dance sport is highly esteemed in the United States, making him a great asset to the [redacted] and North American dancing in general. It is extremely rare that a young ballroom dancer can capture the attention of the judges, and competitors alike in the social dance field in the way that [the petitioner] has. His proven track record of excellence in the most prestigious and difficult competitions . . . is a testament to [the petitioner's] abilities.

* * *

[The petitioner] would be an extraordinary gift to the United States dance community. . . . His achievements and experience can only elevate the quality of education for the youth of this country.

With regard to the petitioner's contributions as a dance teacher and coach, there is nothing in the recommendation letters indicating that he has developed original teaching methodologies, as opposed to methodologies passed down from his own tutelage in the sport. Moreover, even if the educational techniques utilized by the petitioner were found to be original, there is no evidence demonstrating that these techniques are of major significance in ballroom dancing.

[redacted] identifies himself as one of the petitioner's teachers. [redacted] states:

I have won three World Ballroom Dance Champion amongst many other titles. . . . I am [redacted] and . . . respectively coach many of the World's leading dance couples of today.

Due to my profession I happen to be one of the main teachers of [the petitioner]. . . . I have invited him and his partner to participate as guests of honour in the training camps of the German National team, a privilege which is usually for only German competitors.

* * *

[The petitioner] *could* contribute to the development of U.S. Ballroom Dancing with his expertise from the influences of competitive dancing in Bulgaria, Austria and Germany likewise. The molding of different countries' styles *would* culminate in the improvement of competitive Ballroom Dancing in the U.S.

[Emphasis added.]

does not specify the original teaching methodologies developed by the petitioner or explain how those methodologies have already impacted the field. Rather than providing specific examples of the petitioner's original contributions of major significance in the field, discusses his future expectations for the petitioner's work. 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). It is not enough to be a talented dancer or instructor and to have others attest to that talent. An alien must have demonstrably impacted his field in order to meet this regulatory criterion.

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. There is no evidence demonstrating that any of the petitioner's original contributions were of major significance in the field, such as through the widespread adoption of his specific methods of instruction. Mastering and subsequently teaching ballroom dancing styles is not demonstrative of an "original" contribution to the field. While the submitted documentation suggests that the petitioner is a talented dancer and an effective instructor, it does not establish that he has made original athletic or artistic contributions of major significance in the field.

The preceding letters from the petitioner's dancing contacts have been considered above. Although the petitioner has earned the admiration of his references, there is no evidence demonstrating that his impact on ballroom dancing is commensurate with an original contribution of major significance in the field. 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). 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 dancer or an instructor who has made original contributions of "major significance." Without supporting evidence showing that the petitioner's work equates to original contributions of major significance in his field, we cannot conclude that he meets this criterion.

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases.

Counsel states: "As a Professional Ballroom Dancer, [the petitioner's] art is constantly on display during his performances at competitions and events throughout the U.S. and abroad." The petitioner submitted documentation of numerous dancesport contests in which the petitioner has competed as a professional ballroom dancer such as the 2009 Freddy Ball in St. Augustine,

The petitioner also submitted internet photographs of the petitioner and his partner competing in various dancesport competitions. Regarding the petitioner's participation in dance competitions, dancesport is not a display of artwork but an athletic competition. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. This interpretation has been upheld by at least one district court. *See Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at 7 (D. Nev. Sept. 8, 2008) (finding that the AAO did not abuse its discretion in finding that a performing artist should not be considered under the display criterion). While we acknowledge that the district court's decision is not binding, the court's reasoning indicates that the AAO's interpretation of the regulation is reasonable. Moreover, the petitioner's participation and success in dance competitions have already been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion we find the petitioner has met.

The petitioner's evidence also included a DVD showing the petitioner, [REDACTED] and [REDACTED] event with various members of the country club (located in Palm Beach Gardens, Florida). The content of the DVD indicates that the Frenchman's Creek Country Club event is not affiliated with the "Dancing with the Stars" television series reality show airing on the ABC network. The submitted DVD footage shows a social function for country club patrons rather than display of the petitioner's work in the field at an artistic exhibition or showcase. The petitioner is shown dancing with partners of varying skill levels from among the country club's patrons.

In this case, the petitioner has not established that competing in dance contests, participating in the Frenchman's Creek Country Club local social event, or having one's competition photographs posted on the internet equates to "display of the alien's work in the field at artistic exhibitions or showcases." In light of the above, the petitioner has not submitted qualifying evidence that meets the plain language requirements of the regulation at 8 C.F.R. § 204.5(h)(3)(vii).

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

The petitioner submitted a letter from [REDACTED] stating that the petitioner was a "member of the [REDACTED]". The preceding letter does not include any information about the significance of the petitioner's role. The petitioner also submitted a competition record book confirming his registration and participation in the HDSF. As previously discussed, the English language translation accompanying the competition record book from the HDSF does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). The evidence submitted by the petitioner does not demonstrate that his role significantly differentiated him from his fellow teammates on the Hungarian National Team, or indicate how his role was leading or critical for the team as a whole, the HDSA, or the HDSF. Further, there is no supporting evidence showing that the preceding organizations have a distinguished reputation. 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)).

The petitioner submitted a letter from [REDACTED] stating:

As a Latin American Dancer, [the petitioner] has demonstrated extraordinary talent and achieved many victories whether it has been in Europe in champion dance competitions or overseas.

* * *

The Austrian Dancesport Federation is very proud having such a successful representative in competitive dancing.

The petitioner also submitted a letter from [REDACTED] stating:

[The petitioner] was as [REDACTED] an outstanding competitor for the Austrian Dance Sport Federation, an excellent demonstrator of quality dancing for the Austrian and international audiences and a very much appreciated comrade to his friends, colleagues and coaches.

[The petitioner] danced for Austria in numerous international competitions and has been nominated to be [REDACTED]. He has become a role model for so many young dancers and through that he has been of the highest value for Austrian and International Dance Sport. Through his successes he inspired a new generation of young dancers to thrive for the best.

The petitioner also submitted a competition record book confirming his registration and participation in the ADSF. As previously discussed, the English language translation accompanying the competition record book from the ADSF does not meet the requirements of the regulation at 8 C.F.R. § 103.2(b)(3).

There is no supporting evidence showing that the ADSF has a distinguished reputation. 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. Further, the submitted evidence does not establish that the petitioner's role as a dance competitor was leading or critical to the ADSF. While the petitioner has represented the ADSF in international competitions, the petitioner's documentation does not sufficiently explain how a competitor performs in a leading or critical role for ADSF organization as a whole. The aforementioned letters of support from the [REDACTED] do not provide specific information differentiating the petitioner's role from that of the other competitors in non-Latin dancing events, let alone the ADSF's coaches and executive officers such as the president.

The petitioner submitted a letter from [REDACTED] stating:

As a Professional Dancer, [the petitioner] he has won many competitions that I have sponsored in the last three years. He is also a superb teacher and coach who gives his pupils 100% his knowledge and time. His knowledge of Dance sport is rare in the United States and makes him a great asset to the [REDACTED] and North American dancing in general.

As employee of the [REDACTED], he has gained the respect of his coworkers, managers and clients due to their dedication and work ethic. On a National level they have received awards for his sales abilities and have been TOP Pro-Am teachers at many Regional and National Dance Competitions.

The petitioner also submitted a letter from [REDACTED] stating:

I am the current [REDACTED] [REDACTED] I am registered with the Scottish Dance Teacher's Alliance, the World Dance Council, the National Dance Council of America and The Fred Astaire Dance studio organization. I hold SDTA and WDC Competitors and Adjudicators Licenses.

* * *

[The petitioner's] expertise, dedication and hard work earned him [REDACTED] [REDACTED] That means he has become eligible for the Florida Freddy Award which is bestowed to a percentage of the top teachers and executives in the state of Florida.

* * *

[The petitioner] has been a major contributor to the success of the [REDACTED] [REDACTED] His outstanding knowledge of Ballroom and Latin American dancing enabled his students to achieve top results in national and international competitions. His student, [REDACTED] has won the Top Student award [REDACTED] and he contributed to the success of [REDACTED] who achieved to be [REDACTED] [REDACTED] in November 2007.

[REDACTED] states that the petitioner "contributed to the success of [REDACTED]" but she does not identify [REDACTED] as the petitioner's student or state that he is her primary coach.

The petitioner also submitted a letter from [REDACTED] [REDACTED], stating:

I am [REDACTED] I currently am a Member of the National Dance Council of America and the United States Imperial Society of Teachers of Dancing. I also hold a World Officiating License with the World Dance Council

* * *

[The petitioner] became my student and ever since I have been following [the petitioner's] dancing career and development for the last few years.

* * *

[The petitioner's] . . . highly professional way of teaching and caring for his students has made him one of the most outstanding and respected instructors in the [REDACTED] community as well as on the international dance circuit in very short period of time. [The petitioner] has been a major contribute [sic] to the success of the [REDACTED] and the whole [REDACTED] His outstanding knowledge of Ballroom and Latin American Dancing enabled his students to achieve top results in national and international competitions.

The record adequately demonstrates that the [REDACTED] company has a distinguished reputation. With regard to the petitioner's role for the company, the submitted documentation indicates that he competes and works as an instructor for the [REDACTED]. The preceding letters of support do not explain how the petitioner's role differentiated him from the other instructors employed at his studio (such as [REDACTED]), let alone franchise instructors from throughout the company, Regional Dance Directors, members of the [REDACTED] the company's National Dance Director, National Choreographer, National Training Director, Executive National Examiner, and senior corporate executives such as the president. Without an organizational chart or other evidence documenting how the petitioner fits within the general hierarchy of [REDACTED], the petitioner has not established that his role was leading or critical for the company. In this instance, there is no evidence showing that the petitioner has been responsible for the success or standing of the [REDACTED] company to a degree consistent with the meaning of "leading or critical role."

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

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

The petitioner submitted a sampling of regional weekly revenue reports for [REDACTED] dance studios in locations such as [REDACTED]. The submitted reports show that the petitioner worked the most number of "sessions" thereby generating more revenue than other [REDACTED] instructors in his region in Florida. There is no evidence indicating that he received a higher level of earnings per session than his [REDACTED] coworkers. Further, there is no evidence (such as pay statements or

income tax forms) showing the petitioner's actual "salary" or "remuneration" received from [REDACTED]. The submitted documentation only shows the revenue he generated for the company as indicated in the sampling of regional weekly reports. The plain language of this regulatory criterion, however, requires evidence of "a high *salary* or other significantly high *remuneration* . . . in relation to others in his field." [Emphasis added.] Further, the submitted weekly revenue reports do not present an appropriate basis for comparison because they are limited to employees of [REDACTED] in Florida and exclude instructors from outside his region and those employed by other dance chains (such as [REDACTED]) and by independent dance studios. Moreover, the difference in the revenue generated by the petitioner was based on him conducting more dance sessions rather than him commanding a significantly higher rate of pay per session. Accordingly, the petitioner has not established that he meets this criterion.

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

The petitioner submitted a letter from [REDACTED] stating that his company sponsors the petitioner, but his letter does not specify the amount of the sponsorship. The petitioner also submitted a letter from the [REDACTED] stating that the petitioner and his partner were interviewed for the television program "MAS-NAP" in 2003. The petitioner's evidence also includes video footage from a 2002 television performance. In addition, the petitioner submitted event programs and photographs from dance contests in which the petitioner has competed as a professional ballroom dancer. This regulatory criterion requires evidence of commercial successes in the form of "sales" or "receipts"; simply submitting evidence indicating that the petitioner received an apparel sponsorship, appeared on television, or performed in competition does not meet the plain language of this criterion. The record does not include evidence of documented "sales" or "receipts" showing that the petitioner has achieved commercial successes in the performing arts. For instance, there is no evidence showing that dance performances headlined by the petitioner consistently drew record crowds or were regular sell-out performances. Accordingly, 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. Comparable Evidence Under 8 C.F.R. § 204.5(h)(4)

On appeal, counsel argues that the director erred in failing to consider the documentation submitted for 8 C.F.R. §§ 204.5(h)(3)(ix) and (x) as comparable evidence of the petitioner's extraordinary ability. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten categories of evidence "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable

evidence in this case, as there is no evidence that eligibility for visa preference in the petitioner's occupation cannot be established by the categories of evidence specified by the regulation at 8 C.F.R. § 204.5(h)(3). For instance, there is no evidence indicating that earning a high salary or other significantly high remuneration does not apply to professional dancers or ballroom dance instructors. Where an alien is simply unable to meet three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3), the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, there is no evidence showing that the documentation the petitioner requests reevaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of the field of professional ballroom dancing. For instance, the sampling of weekly revenue reports submitted by the petitioner are limited to employees of [REDACTED] in Florida and exclude instructors from outside his region and those employed by other dance companies. Accordingly, they do not demonstrate his sustained "national or international acclaim" at the very top of the professional ballroom dancing field. With regard to the petitioner's apparel sponsorship, television appearances, and dance competition entries, the petitioner has not established that such evidence significantly distinguishes him from other dance professionals at the national or international level. For example, the event programs submitted by the petitioner list him along with numerous other ballroom dancers who compete under the professional designation. We note the supplementary information at 56 Fed. Reg. 60899 (November 29, 1991) states:

The Service disagrees that all athletes performing at the major league level should automatically meet the "extraordinary ability" standard. . . . A blanket rule for all major league athletes would contravene Congress' intent to reserve this category to "that small percentage of individuals who have risen to the very top of their field of endeavor."

Likewise, it does not follow that being listed in an event program or securing a place to compete along with numerous other professionals equates to comparable evidence of a ballroom dancer's extraordinary ability.

C. 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 regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(ii) – (v) and (vii) – (x).

With regard to awards won by the petitioner and his pupils in "amateur," "student" or "junior" dancing competitions, we cannot conclude that such awards demonstrate 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). For instance, while [REDACTED] is said to have won the [REDACTED] at the [REDACTED] and [REDACTED] is said to have been the [REDACTED]

[REDACTED] there is no evidence indicating that these dancers competed against experienced professionals rather than contestants limited to their approximate age group or skill level. 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 60899.⁵ Likewise, it does not follow that a dancer or instructor who has had past success competing and coaching at the amateur, student, or junior level 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.”

Regarding the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iv), the petitioner submitted an event program showing that he and his dance partner served as judges at the [REDACTED]

[REDACTED] In contrast to the other event programs contained in the record listing dozens of participating studios and professionals (such as those for the [REDACTED]

[REDACTED] event program lists only six participating dance studios and a total of seventeen participating professionals (eleven male and six female contestants). Without supporting evidence showing the level of national or international prestige associated with this competition, we cannot conclude that serving as a judge for this local [REDACTED] is commensurate with sustained “national or international acclaim” at the very top of the field. Further, we cannot ignore that many of the petitioner’s references’ judging credentials are more impressive. [REDACTED] states that he has judged “many National and NDCA recognized competitions across America and Canada.” [REDACTED] asserts that he is “certified to serve as an adjudicator at the world’s largest and most prestigious international dance competitions.” [REDACTED] indicates that he is a “World Class Adjudicator” and [REDACTED] states that he holds “a World Officiating License with the World Dance Council.” [REDACTED] states that she holds Scottish Dance Teachers Alliance and World Dance Council Adjudicators Licenses. Moreover, we note that the petitioner has submitted evidence of his participation as a judge for only one competition in January 2007. The statute and

⁵ 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.

regulations, however, require “extensive documentation” and the petitioner to demonstrate that his national or international acclaim as 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). The documentation submitted for 8 C.F.R. § 204.5(h)(3)(iv) is not extensive or commensurate with *sustained* national or international acclaim.

While the petitioner has earned the respect and admiration of his references, the evidence of record falls short of demonstrating his sustained national or international acclaim as a ballroom dancer or instructor. 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).

D. Prior O-1 Nonimmigrant Visa Status

On appeal, counsel points out that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary ability in the arts. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, “The term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(o)(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines 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 evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(o)(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the beneficiary’s receipt of O-1 nonimmigrant classification is not evidence of his eligibility for immigrant classification as an alien with extraordinary ability. Further, we do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each petition 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.