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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

PUBLIC COPY



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DATE: OFFICE: TEXAS SERVICE CENTER
MAY 23 2011

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$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, on September 17, 2009, 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 and failed to submit extensive documentation of her 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 “sustained national or international acclaim” and present “extensive documentation” of his or her achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement, specifically a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific evidence. 8 C.F.R. §§ 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

On appeal, counsel claims that the petitioner meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

I. Law

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

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

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

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

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

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

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.* and 8 C.F.R. § 204.5(h)(2).

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

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields;
- (iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation;
- (iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specialization for which classification is sought;
- (v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;
- (vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;
- (vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;
- (viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

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

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

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.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.*

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)). The court also explained the "final merits determination" as the corollary to this procedure:

If a petitioner has submitted the requisite evidence, USCIS determines whether the evidence demonstrates both a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor," 8 C.F.R. § 204.5(h)(2), and "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(3). Only aliens whose achievements have garnered "sustained national or international acclaim" are eligible for an "extraordinary ability" visa. 8 U.S.C. § 1153(b)(1)(A)(i).

Id. at 1119.

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In reviewing Service Center decisions, the AAO will apply the test set forth in *Kazarian*. As the AAO maintains *de novo* review, the AAO will conduct a new analysis if the director reached his or her conclusion by using a one-step analysis rather than the two-step analysis dictated by the *Kazarian* court. See *Spencer Enterprises, Inc. v. 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

This petition, filed on July 24, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a dancer/choreographer. The petitioner has submitted evidence pertaining to the following criteria under the regulation at 8 C.F.R. § 204.5(h)(3).²

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.

A review of the record of proceeding fails to reflect that the petitioner claimed eligibility for this criterion at the time of the original filing of the petition. However, on appeal, counsel is now claiming the petitioner's eligibility for this criterion. As such, the director could not have erred in his decision as the petitioner is only claiming eligibility for this criterion for the first time on appeal.

On appeal, counsel claims:

I respectfully submit that the selection of the beneficiary to choreograph the ice skating programs for the world renowned ice skaters, [REDACTED] as well as with famed US Olympic Champions, [REDACTED] is equivalent 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 as these World's best performers in ice skating only select the best choreographers for their programs.

Counsel submitted a letter, dated October 5, 2009, from [REDACTED] and [REDACTED] of the International Figure Skating Center, who stated that the petitioner's character dance choreography was instrumental in securing wins at the [REDACTED] Chinese Championship for a gold medal for the Chinese team and a silver medal for the Korean team. In addition, they indicated that the petitioner is currently choreographing programs for Ukraine, Canada, Switzerland, and the United States for the [REDACTED] Olympics. Counsel also submitted a letter, dated October 6, 2009, from [REDACTED] and [REDACTED] Five-Time U.S. Ice Dance Champions and [REDACTED] Olympic Silver Medalists, who stated that the petitioner is choreographing their ice dancing programs for the [REDACTED] Olympics.³ Finally, counsel submitted a letter, dated October 6, 2009, from [REDACTED] and [REDACTED], [REDACTED] World Champions in Ice

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

³ The AAO notes that according to the screenshots submitted by counsel on appeal from *Wikipedia* and *Icehouse* regarding [REDACTED] their choreographer is [REDACTED] and not the petitioner, as claimed in their letter.

Skating, who stated that the petitioner is currently choreographing their program for the Olympics.⁴

The petitioner filed her petition on July 24, 2007. Clearly, the letters reflect events occurring after the filing of the petition. Eligibility must be established at the time of filing. Therefore, the AAO will not consider these items as evidence to establish the petitioner's eligibility. 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 the AAO cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176.

Regardless, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires "[d]ocumentation of the alien's *membership* in associations in the field for which is classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields [emphasis added]." In order to demonstrate that *membership* in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. *Membership* requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is *membership* requirements rather than the association's overall reputation.

In this case, the letters fail to indicate that the petitioner is a member of any association. The petitioner's involvement in choreographing programs for the [REDACTED] for several countries does not constitute membership in an association in the field. Merely submitting documentary evidence reflecting the petitioner's employment or involvement with a particular organization 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 or involvement with organizations or businesses. In this instance, based on the submitted letters, the petitioner was hired at the International Figure Skating Center at the University of Delaware in Newark, Delaware to choreograph ice skating programs and not nominated or elected to membership based on her outstanding achievements, as judged by recognized national or international experts in the field.

Moreover, counsel's argument on appeal regarding the petitioner's choreography of ice dancing programs for world and Olympic champions is not persuasive evidence of the petitioner's

⁴ The AAO notes that according to the screenshots submitted by counsel on appeal from *Wikipedia* regarding [REDACTED] their choreographer is [REDACTED] and not the petitioner, as claimed in their letter.

eligibility for this criterion. Again, the plain language of the regulation requires the petitioner to demonstrate her membership with associations and not her employment or involvement with individuals competing at world and Olympic events.

Finally, even if the petitioner established that her involvement with the International Figure Skating Center meets the elements of this criterion, which she has not, section 203(b)(1)(A)(i) of the Act requires the submission of extensive evidence. Consistent with that statutory requirement, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(ii) requires membership in more than one association. Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of “letter(s).” Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS’ ability to interpret significance from whether the singular or plural is used in a regulation.⁵

Accordingly, the petitioner failed to establish that she 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.

On appeal, counsel claims that the director “indicated that the [petitioner] has satisfied this criter[ion].” However, a review of the director’s decision does not reflect that the director concluded that the petitioner meets this criterion. Rather, the director stated only that “[t]he petitioner submitted evidence that she has been mentioned in newspapers as a producer and folk dancer.” As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought,” the AAO is not persuaded that the director’s statement simply indicating that the petitioner has been “mentioned in newspapers” is sufficient to demonstrate eligibility for this criterion without the submission of documentary evidence reflecting published material about the petitioner regarding her work in professional or major trade publications or other major media. Therefore, the AAO will review the record of proceeding to determine if the petitioner meets every element of the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii).

The petitioner submitted the following documentary evidence:

⁵ See *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snappnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for “a” bachelor’s degree or “a” foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials).

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]
8. Photos from *Russia Grand Revue*.

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires “[p]ublished material about the alien in professional or major trade publications or other major media, relating to the alien’s work in the field for which classification is sought.” In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.⁶ Furthermore, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that “[s]uch evidence shall include the title, date, and author of the material, and any necessary translation.”

Regarding item 1, the petitioner failed to include the author of the article as required by the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the article is not primarily about the petitioner and her work. While the article mentions the petitioner, the article is about the [REDACTED] who is the president.

⁶ 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.

Finally, the petitioner failed to submit any documentary evidence demonstrating that *Northeast Times* is a professional or major trade publication or other major media.

Regarding item 2, the petitioner again failed to include the author of the article. Further, the article is simply an interview conducted with the petitioner. The article does not discuss the petitioner and the petitioner's work; instead the article repeats the responses by the petitioner to the interviewer's questions. In addition, the petitioner failed to submit any documentary evidence establishing that *Weekend* is a professional or major trade publication or other major media.

Regarding item 3, the screenshot is about a fashion show called [REDACTED] at the [REDACTED]. Clearly, the article is not about the petitioner relating to her work; rather the article is about the fashion show. In fact, the petitioner is only mentioned twice in the article as participating in the show. Moreover, the petitioner failed to submit any documentary evidence reflecting that the website of *Moscow News* is a professional or major trade publication or other major media. The AAO notes that articles which are posted on the Internet from a printed publication are not automatically considered major media. In today's world, many newspapers, regardless of size and distribution, post at least some of their stories on the Internet. To ignore this reality would be to render the "major media" requirement meaningless. However, the AAO is not persuaded that international accessibility by itself is a realistic indicator of whether a given website is "major media."

Regarding item 4, the petitioner failed to submit a complete translation of the article. The regulation at 8 C.F.R. § 103.2(b)(3) requires that "[a]ny document containing foreign language submitted to USCIS shall be accompanied by a full English language translation [emphasis added]." In addition, the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that such evidence include "any necessary translation." As the petitioner failed to submit a full English language translation, the AAO cannot accord any weight to this evidence to establish the petitioner's eligibility for this criterion. Nonetheless, the partial translation reflects an interview conducted with the petitioner where the petitioner simply responds to the interviewer's questions. The article is not about the petitioner regarding her work. Finally, the petitioner failed to submit any documentary evidence demonstrating that *The Kostroma Courier* is a professional or major trade publication or other major media.

Regarding item 5, the petitioner failed to include the author of the article. Furthermore, the article is about a series of programs at World's Windows in Shen Zhen, China. In fact, the petitioner is not even mentioned in the article. In addition, articles that are not about the petitioner do not meet this regulatory criterion. See, e.g., *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). Finally, the petitioner failed to submit any documentary evidence establishing that *Oct Weekly* is a professional or major trade publication or other major media.

Regarding item 6, similar to item 5, the article is about the [REDACTED] of [REDACTED] performing *A Russian Christmas*. The petitioner is never mentioned in the article. Furthermore, the petitioner failed to include the name of the publication in which the article

appeared and failed to submit any documentary evidence reflecting that it is a professional or major trade publication or other major media.

Regarding items 7 and 8, the evidence merely reflects photographs with arrows claiming they reflected the petitioner performing. As the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material, as well as the title, date, and author, purported photographs of the petitioner's performances clearly do not meet the plain language of the regulation. Moreover, the petitioner failed to submit any documentary evidence establishing that *21st Century Happy Kingdom* and *Russia Grand Revue* are professional or major trade publications or other major media.

The burden is on the petitioner to establish every element of this criterion. For the reasons stated above, the petitioner failed to establish eligibility under the criterion. In some instances, the petitioner failed to include the authors of the published material, failed to submit a full translation, and failed to include the name of the publication in which the article appeared. Moreover, none of the evidence reflected published material about the petitioner relating to her work consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Finally, the petitioner failed to submit any documentary evidence demonstrating that any of the material was published in professional or major trade publications or other major media.

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

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

In the director's decision, he concluded that the petitioner's recommendation and testimonial letters failed to "indicate that the petitioner is one of the few who has risen to the very top of her field." The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v), however, requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." In compliance with *Kazarian*, the AAO must focus on the plain language of the regulatory criteria. 596 F.3d at 1121. Here, the evidence must be reviewed to see whether it rises to the level of original artistic-related contributions "of major significance in the field."

On appeal, counsel refers to the recommendation and testimonial letters as evidence of the petitioner's eligibility for this criterion. A review of the record of proceeding reflects that the petitioner submitted three recommendation letters at the time of the original filing of the petition. While the recommendation letters praise the petitioner for her work in folk character dance and indicate her performances as unique, they fail to indicate that her contributions are of *major significance* to the field. The letters provide only general statements without offering any specific information to establish how the petitioner's work has been of major significance. For example, the petitioner submitted a letter from [REDACTED] at the University of the Arts. We note that [REDACTED] indicated that she reviewed the petitioner's affidavit and supporting documents. [REDACTED] stated:

Of the 15 existing types of obertas in the contemporary choreography now, [the petitioner] is the only dancer I know who managed to master and perform perform [sic] 10 varieties and to create 5 new ones. The uniqueness of [the petitioner's] style lies in several major elements of this distinctive dance, which she has created and developed for the first time in the world. She is the inventor and the creator of the obertas technique where the movement starts with "epaulement croise" (oblique turn to the audience). This technique enables the dancer to perform spinning movements much faster and more elegantly.

* * *

Another important movement in the character dances is a double "Saut de basque," a dance term meaning a jump in which the dancer turns in the air with one foot drawn up to the knee of the other leg. This bright element is a traditional finishing movement for the trick part of the dance. It is one of the most complicated elements in the performance technique of character and folk dances. Normally, it is performed only by male dancers, and when do perform it, they perform it only once. As far as I know, [the petitioner] is the only dancer who can and does perform this element 24 times while moving on the stage, which is significantly more difficult than the usual performance while being at the fixed point.

Although [redacted] discussed the petitioner's unique skills, she failed to indicate the significance of the petitioner's talents to the field, so as to establish that they are original contributions of major significance. In other words, [redacted] failed to indicate that the impact or influence of the petitioner's work on the field that would reflect it has been of major significance. Moreover, assuming the petitioner's skills are unique, the classification sought was not designed merely to alleviate skill shortages in a given field. In fact, that issue properly falls under the jurisdiction of the Department of Labor through the alien employment labor certification process. *See Matter of New York State Dep't. of Transp.*, 22 I & N Dec. 215, 221 (Commr. 1998). Finally, while [redacted] discussed the petitioner's original "obertas technique," the record of proceeding fails to contain any other documentation regarding this technique that supports [redacted] claim that it was originally developed by the petitioner. Further, [redacted] did not indicate that the "obertas technique" has been, for example, widely used in the field that would demonstrate it has been an original contribution of major significance.

The petitioner also submitted a letter from [redacted], who indicated that he previously met her one time and "was requested to provide this expert opinion based on the [petitioner's] affidavit and other documentation that she has submitted." [redacted] does not indicate that he was aware of the contributions of the petitioner prior to reviewing documentation that was supplied to him by the petitioner. Regardless, [redacted] stated:

[The petitioner] is well known and internationally recognized as a rare master of character dance, one of the few who have mastered even the most difficult and taxing elements of character dance at the level that is truly superb and probably at the edge of human ability. [The petitioner's] physical abilities as well as her superb and probably at the edge of human ability. [The petitioner's] physical abilities as well as her technical and artistic mastery of character dance is beyond comparison. In addition to technical brilliance as a soloist dancer, she has an established reputation as a true connoisseur of the Russian folk character dance. [The petitioner] masterfully combines the classic ballet techniques with thorough knowledge and understanding of the authentic folk dance, which [the petitioner] has carefully researched, investigated, and studied. [The petitioner's] unique mastery of the dance as well as her deep knowledge and understanding of the choreographic arrangements involved make her truly unique and superb to nearly all others in her field.

While [redacted] indicated that the petitioner is internationally recognized, the petitioner based his opinion on the petitioner's affidavit and documentation that was supplied to him by the petitioner. Nevertheless, similar to [redacted] letter, [redacted] discussed the petitioner's unique talents and abilities; however he failed to indicate how those skills have transgressed into her field, so as to establish that they are original contributions of major significance in the field. It is insufficient to meet the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(v) based on recommendation letters that only discuss the petitioner's skills, talents, and abilities without explaining how such characteristics have impacted or influenced the field as a whole.

[redacted] stated:

[The petitioner] has accomplished an impressive entry into this field [Russian dance] in the United States, performing at colleges, where her performances was appreciated by academics studying the Russian culture, at major culture festivals and Russia-related events. She is successfully capturing the best venues of the Russian folk dance and character dance has to offer today in the United States, while applying her extraordinary skills and talents to take the Russian folk and character dance to the new heights in the United States.

[redacted] failed to explain how the petitioner's performances at the Kremlin, as well as festivals and colleges in the United States, can be considered original contributions of major significance in the field. While the petitioner's performances may be considered original, [redacted] failed to demonstrate that the significance of her performances in the field and not limited to the venues in which she has performed. Moreover, although [redacted] stated the petitioner is applying her skills "to take the Russian folk and character dance to the dance to the new heights in the United States [emphasis added]," he failed to establish that the petitioner has already taken Russian folk and character dance to new heights in the United States that would be reflective of an original contribution of major significance. Eligibility must be established at the

time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. 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. at 175. That decision further provides, citing *Matter of Bardouille*, 18 I&N Dec. at 114, that the AAO cannot “consider facts that come into being only subsequent to the filing of a petition.” *Id.* at 176. A petitioner cannot file a petition under this classification based on the expectation of future eligibility. The assertion that the petitioner’s performances is likely to be influential is not adequate to establish that her work is already recognized as major contributions in the field. While [REDACTED] praises the petitioner, the fact remains that any measurable impact that results from the petitioner’s work will likely occur in the future.

The AAO notes here on appeal that counsel also refers to the recommendation letters that were previously discussed under the membership criterion. Again, the letters discuss events occurring after the filing of the petition and discuss future possibilities. As such, we will not consider these letters as evidence to establish the petitioner’s eligibility for this criterion. For example, [REDACTED] stated that “the petitioner is currently playing a vital role in our training, and her work *will* have a direct impact on our performances at major national and international events [emphasis added].” Moreover, although [REDACTED] and [REDACTED] stated that the petitioner has made “substantial contribution[s] in the field of character dance choreography,” they failed to identify the substantial contributions, let alone establishing that her contributions have been of major significance in the field.

While the recommendation letters praise the petitioner for her skills and talents, the letters contain general statements that lack specific details to demonstrate that the petitioner’s work is of major significance. This regulatory criterion not only requires the petitioner to make original contributions, but also requires those contributions to be significant. The AAO is not persuaded by vague, solicited letters that simply repeat the regulatory language but do not explain how the petitioner’s contributions have already influenced the field. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof.⁷ The lack of supporting documentary evidence gives the AAO no basis to gauge the significance of the petitioner’s present contributions.

Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. See *id.* at 795. Thus, the content of the writers’ statements and how they became aware of the petitioner’s reputation are important considerations. Even when written by independent experts, letters solicited by an alien in

⁷ *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.).

support of an immigration petition are of less weight than preexisting, independent evidence of original contributions of major significance.

The AAO must presume that the phrase “major significance” is not superfluous and, thus, that it has some meaning. Without additional, specific evidence showing that the petitioner's work has unusually influential or has otherwise risen to the level of contributions of major significance, the AAO cannot conclude that she meets this criterion.

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

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

The petitioner never claimed eligibility for this criterion at the time of the original filing of the petition. However, the director discussed this criterion and found that the petitioner failed to establish her eligibility. On appeal, counsel did not contest the decision of the director or offer additional arguments. The AAO, therefore, considers this issue to be abandoned and will not further discuss it on appeal. *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005).

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

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

The director found that the petitioner did not submit any evidence for this criterion. However, a review of the record of proceeding reflects that counsel and the petitioner did, in fact, claim eligibility for this criterion at the time of the initial filing of the petition based on a letter from [REDACTED] and [REDACTED], as well as event programs and media information, regarding the Russian National Ballet, *Kostroma*. The AAO will, therefore, review the record of proceeding to determine if the petitioner has performed in a leading or critical role pursuant to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii).

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the alien has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” In general, a leading role is evidenced from the role itself, and a critical role is one in which the alien was responsible for the success or standing of the organization or establishment. Based on a review of the documentary evidence submitted by the petitioner, the record reflects that the petitioner submitted sufficient documentary evidence demonstrating that she performed in a leading or critical role for the Russian National Ballet, *Kostroma*, that has a distinguished reputation.

The petitioner also submitted the following documentary evidence:

1. [REDACTED]
2. [REDACTED]
3. [REDACTED]
4. [REDACTED]
5. [REDACTED]
6. [REDACTED]
7. [REDACTED]

Again, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires “[e]vidence that the petitioner has performed in a *leading or critical role* for organizations or establishments that have a distinguished reputation [emphasis added].” While the petitioner submitted documentation reflecting that she performed at the above-mentioned venues, the petitioner failed to establish that she performed in a leading or critical role for any of these shows. Regardless, even if the AAO was to conclude that a dance or ballet performance equates to an organization or an establishment, which the AAO does not, there is no evidence showing that these shows have a distinguished reputation.

Regarding item 1, the program reflects that there were nine acts, and the petitioner performed in only two of them. Moreover, there is no evidence distinguishing the petitioner from the other 13 performers, so as to establish that the petitioner performed in a leading or critical role. Further, the petitioner failed to submit any documentary evidence demonstrating that the performance has a distinguished reputation.

Regarding item 2, although the program cover indicates that the petitioner is performing at the concert, the petitioner failed to submit any other documentary evidence reflecting that the petitioner’s performance at the concert was leading or critical. Moreover, the petitioner failed to submit any documentary evidence establishing that the [REDACTED] School has a distinguished reputation.

Regarding item 3, the program reflects that the petitioner appeared in the first act as a member of the [REDACTED] along with four other performers. In addition, in the first act, there were at least 39 other performers. We note that [REDACTED] is listed as the leading character playing [REDACTED]. The AAO is not persuaded that the petitioner’s performance in [REDACTED] reflects a leading or

critical role. Moreover, the petitioner failed to submit any documentary evidence establishing that International [REDACTED] has a distinguished reputation.

Regarding item 4, the certificate merely reflects that the petitioner participated at the Fourth Annual [REDACTED]. There is no evidence demonstrating that the petitioner performed in a leading or critical role for the festival, nor did the petitioner submit any documentary evidence reflecting that the [REDACTED] has a distinguished reputation.

Regarding item 5, a review of the concert program reflects that there were at least 16 performances in act 1, in which the petitioner performed and choreographed one of the performances. Regarding item 6, the program reflects that there were at least 19 performances, in which the petitioner performed and in which the petitioner choreographed two performances and danced in one performance. The programs fail to reflect that the petitioner distinguished herself from the other performers or choreographers, so as to establish that the petitioner performed in a leading or critical role. While the petitioner submitted a brochure from the [REDACTED] the brochure simply provides brief background information regarding the faculty, and the petitioner failed to submit independent, objective evidence demonstrating that the [REDACTED] has a distinguished reputation.

Finally, regarding item 7, a list of the events at the festival reflects that the petitioner performed on behalf of [REDACTED] Company along with two other performers. Moreover, there were at least 14 other events scheduled for the festival. The petitioner failed to establish that her performance on behalf of [REDACTED] Company was leading or critical compared to the other 14 performances. Further, the petitioner failed to submit any documentary evidence reflecting that the [REDACTED] [REDACTED] has a distinguished reputation. In addition, the petitioner submitted the previously mentioned article from the *Northeast Times* about the [REDACTED] Company. Although the article indicates that the petitioner is a founder of the company, the article is insufficient to establish that [REDACTED] Company has a distinguished reputation, such as evidence differentiating [REDACTED] Company from other dance companies.

Similarly, the petitioner also submitted an advertisement entitled, [REDACTED] in [REDACTED] announcing the auditions for admissions into the [REDACTED] Choreography "Master-Class." Although the advertisement lists the petitioner, along with [REDACTED] as leading the studio, the petitioner failed to demonstrate that the studio has a distinguished reputation. The AAO notes that the petitioner submitted a letter from [REDACTED] and [REDACTED] thanking the petitioner for her teaching of the master-class. However, the AAO is not persuaded that two appreciation letters by former students establishes that the Studio of [REDACTED] has a distinguished reputation. The petitioner failed to submit independent, objective evidence separating the studio from other dance studios.

As discussed above, the documentary evidence fails to reflect, for instance, that the petitioner was featured or received top billing in shows consistent with the meaning of *leading* or *critical* pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). As this criterion specifically requires the petitioner to submit evidence demonstrating that she *performed in a leading or critical role*, the petitioner's

submission of evidence merely reflecting that she performed in roles as a routine dancer for these shows is insufficient to demonstrate eligibility for this criterion.

Finally, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the petitioner to demonstrate that she has performed in a leading or critical role in more than one organization or establishment with a distinguished reputation. In this case, the petitioner only established that she performed in a leading or critical role for one organization - the [REDACTED]

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

B. Comparable Evidence

On appeal, counsel argues:

Please be advised that 8 C.F.R. 240.5 [sic] provides that if the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility. The evidence in this case, i.e. the expert testimonials submitted in support of the petition as well as the evidence attached hereto, proves that the [petitioner] has made an original contribution of major significance in the field of choreography/character dance.

The regulation at 8 C.F.R. § 204.5(h)(3) provides that evidence of sustained national or international acclaim "shall" include evidence of a one-time achievement or evidence of at least three of the following regulation categories. The ten categories in the regulations are designed to cover different areas; not every criterion will apply to every occupation. For example, the criterion at 8 C.F.R. § 204.5(h)(3)(vii) implicitly applies to the visual arts, and the criterion at 8 C.F.R. § 204.5(h)(3)(x) expressly applies to the performing arts. We further acknowledge that the regulation at 8 C.F.R. § 204.5(h)(4) provides "[i]f the above standards do not readily apply to the [petitioner's] occupation, the petitioner may submit comparable evidence to establish the [petitioner's] eligibility." It is clear from the use of the word "shall" in 8 C.F.R. § 204.5(h)(3) that the rule, not the exception, is that the petitioner must submit evidence to meet at least three of the regulatory criteria. Thus, it is the petitioner's burden to explain why the regulatory criteria are not readily applicable to her occupation and how the evidence submitted is "comparable" to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The regulatory language precludes the consideration of comparable evidence in this case, as there is no indication that eligibility for visa preference in the petitioner's occupation as a choreographer and dancer cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). In fact, as indicated in this decision, counsel mentions evidence in her brief that specifically addresses four of the ten criteria at 8 C.F.R. § 204.5(h)(3). An inability to meet a criterion, however, is not necessarily evidence that the criterion does not apply to the petitioner's occupation. Moreover, although the petitioner failed to claim these additional criteria, we find that a choreographer or dancer could win lesser nationally or internationally recognized

prizes and awards pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), that a choreographer or dancer could judge the work of others pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), and that a choreographer or dancer could command a high salary pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix). Counsel provided no documentation as to why these provisions of the regulation would not be appropriate to the profession of a choreographer or dancer.

Moreover, the AAO addressed the petitioner's recommendation letters as they pertained to the membership criterion and the original contributions criterion. Where an alien is simply unable to meet or submit documentary evidence of three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

C. Final Merits Determination

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

In evaluating the AAO's final merits determination, the AAO must look at the totality of the evidence to conclude the petitioner's eligibility pursuant to section 203(b)(1)(A) of the Act. In this case, the petitioner enjoyed some success in performing in a leading role for the [REDACTED]. However, besides this single accomplishment from May 2000 to April 2004, the petitioner falls far short of establishing that she "is one of that small percentage who have risen to the very top of the field of endeavor" and that she "has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." See 8 C.F.R. § 204.5(h)(2), 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "[a] petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." The petitioner's evidence must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a

level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Although the AAO found that the petitioner did not meet the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ii), the petitioner claimed eligibility based on working with athletes from various countries. The petitioner did not, however, submit any documentary evidence that she was a member of any association that requires outstanding achievements of its members, as judged by recognized national or international experts.

Moreover, while the AAO found that the petitioner failed to meet the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the petitioner claimed eligibility based on material that was not about her relating to her work. In addition, the petitioner failed to submit any documentary evidence demonstrating that the material appeared in professional or major trade publications or other major media. It would be expected that an alien of extraordinary ability, who was the lead dancer of the [REDACTED] would have substantial media coverage about her and her work that would be indicative that she “is one of that small percentage who have risen to the very top of the field of endeavor.” Clearly, the petitioner’s lack of media coverage does not demonstrate that she has sustained national or international acclaim.

As for the AAO’s conclusion that the petitioner failed to meet the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the AAO notes that the petitioner based her eligibility on three recommendation letters. However, recommendation letters cannot form the cornerstone of a successful extraordinary ability claim. Further, USCIS may, in its discretion, use as advisory opinion statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. at 795. USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters of support from the petitioner’s personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien’s eligibility. *See id.* at 795-796; *see also Matter of V-K-*, 24 I&N Dec. at 500 n.2 (BIA 2008). 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. Regardless, although the authors of the recommendation letters indicated original contributions made by the petitioner through her performances, the authors failed to establish that her contributions have been of major significance in the field.

Regarding the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner only established that she performed in a leading or critical role for the [REDACTED]. The petitioner failed to demonstrate that she performed in a leading or critical role for any other organizations or establishments that have a distinguished reputation. Although the petitioner submitted event programs for local concerts and festivals in the United States, the petitioner failed to submit any documentary evidence reflecting that the petitioner was featured or received top billing in shows consistent with “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). Moreover, the petitioner’s submission of her work with the [REDACTED] occurring three years prior to the filing of the petition, is insufficient to establish the sustained national or international acclaim required for this highly restrictive classification.

The AAO also cannot ignore that the statute requires the petitioner to submit “extensive documentation” of the petitioner’s sustained national or international acclaim. See section 203(b)(1)(A) of the Act. The commentary for the proposed regulations implementing section 203(b)(1)(A)(i) of the Act provide that the “intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required” for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991). While the petitioner did not meet the membership criterion, she only submitted evidence pertaining to one entity – the International Figure Skating Center, in which membership in at least two associations are required by the regulation. Furthermore, while the petitioner demonstrated that she performed in a leading or critical role for the [REDACTED] she only established a leading or critical role for one organization, in which at least two organizations or establishments are required by the regulation. In addition, the petitioner failed to comply with the basic regulatory requirements such as providing title, date, author, and/or necessary translation of the published material criterion. The AAO is not persuaded that such evidence with the numerous deficiencies noted equates to “extensive documentation” and is demonstrative of an individual with sustained national or international acclaim. The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r. 1989).

The petitioner failed to submit evidence demonstrating that she “is one of that small percentage who have risen to the very top of the field.” In addition, the petitioner has not demonstrated her “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

The conclusion the AAO reaches by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of the field of endeavor.

III. P-1 Nonimmigrant Admission

Finally, the AAO notes that at the time of the filing of the petition, the petitioner was last admitted on October 25, 2004, to the United States as a P-1 nonimmigrant, a visa classification that requires the alien to perform with or is an integral and essential part of the performance of an entertainment group that has been recognized internationally as being outstanding in the

discipline for a sustained and substantial period of time and the alien seeks to enter the United States “temporarily and solely for the purpose of performing as such a performer or entertainer or as an integral and essential part of a performance.” See section 214(c)(4)(B) of the Act, 8 U.S.C. § 1184(c)(4)(B). The current record is devoid of any evidence to indicate that the petitioner is performing at an internationally recognized level or that she is in the United States “temporarily and solely” for the purpose of performing as an integral and essential part of a performance. While USCIS has approved at least one P-1 nonimmigrant visa petition filed on behalf of the petitioner, the prior approval does not preclude USCIS from denying an immigrant visa petition based on a different standard. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. See, e.g., *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; see also *Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of petitioner's qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. See, e.g., *Matter of Church Scientology International*, 19 I&N Dec. at 597. It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d at 1090.

Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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

IV. Conclusion

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

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.