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



U.S. Citizenship
and Immigration
Services

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DATE: NOV 25 2011 Office: NEBRASKA SERVICE CENTER 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:

SELF-REPRESENTED

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability. 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, the petitioner argues that he has received a major, internationally recognized award and that he meets the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii) and (viii). For the reasons discussed below, the AAO will 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 1119-20.

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 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).

II. Analysis

This petition, filed on April 23, 2009, seeks to classify the petitioner as an alien with extraordinary ability as a chess club player, director, and coach.

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).

A. Major, internationally recognized award

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. Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a one-time achievement must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. See H.R. Rep. 101-723, 59 (Sept. 19, 1990), reprinted in 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739. Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy major, international recognition may include the Pulitzer Prize, the Academy Award, and an Olympic Medal. The regulation is consistent with this legislative history, stating that a one-time achievement must be a *major, internationally recognized* award. 8 C.F.R. § 204.5(h)(3). The selection of Nobel Laureates, the example provided by Congress, is reported in the top media internationally regardless of the nationality of the awardees, is a familiar name to the public at large, and includes a large cash prize. While an internationally recognized award could conceivably constitute a one-time achievement without meeting all of those elements, it is clear from the example provided by Congress that the award must be internationally recognized in the alien's field as one of the top awards in that field.

The petitioner submitted a diploma from the World Chess Federation (FIDE) stating that he "obtained the title of International Master in the year 2000." On appeal, the petitioner argues that his title of International Master is a major, internationally recognized award. This title, however, is attained through "specific results in specific Championship events" or through "achieving a rating" as specified in the regulations of the FIDE Handbook.² For example, FIDE may confer the International Master designation on a player based on his "achieving norms in internationally rated tournaments" or "having achieved norms" in "events covering at least 27 games" rather than his actually winning those tournaments.³ As the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) clearly defines a one-time achievement as a major, internationally recognized award, the AAO cannot conclude that attaining an International Master rating meets the requirements of the regulation. Further, the AAO cannot ignore documentation submitted by the petitioner demonstrating the existence of the higher title of "Grandmaster." A Grandmaster is the highest rating conferred by FIDE upon chess players.⁴ Accordingly, the Grandmaster title, rather than the

² See <http://www.fide.com/fide/handbook?id=57&view=article>, accessed on October 21, 2011, copy incorporated into the record of proceeding. "GM [Grandmaster] performance is \geq 2600 performance against opponents with average rating \geq 2380. IM [International Master] performance is \geq 2450 performance against opponents with average rating \geq 2230." *Id.*

³ See <http://www.fide.com/fide/handbook?id=58&view=article>, accessed on October 21, 2011, copy incorporated into the record of proceeding.

⁴ The United States Chess Federation (USCF) defines a Grandmaster as "The most distinguished title in chess, awarded by FIDE. A grandmaster is usually rated between 2500 up to 2851." The USCF defines an International

International Master designation, represents a rating at the very top of the petitioner's field of endeavor. 8 C.F.R. § 204.5(h)(2). Moreover, more than thirteen hundred male players hold FIDE's Grandmaster designation and more than three thousand male players hold its International Master designation at any given time.⁵

In response to the director's request for evidence, the petitioner submitted a January 21, 2010 letter from the General Secretary of the Mongolian Chess Federation stating: "The World Chess Federation awarded [the petitioner] the title of International Master. To be eligible, a player must be in the top .25% of all chess players in the world." The petitioner also submitted a January 21, 2010 letter from the Chairman of the Physical Culture and Sports Authority stating: "The honor and title of International Chess Master and the Grandmaster *are only awarded* to chess players who have been recognized as one of the small percentage who plays so well that reach the top 0.25% of all tournament players of the chess field, after the player's winning several international championships against other international chess masters." [Emphasis added.] The petitioner's response also included a January 20, 2010 letter from the President of the Mongolian Olympic Committee stating: "Indeed, the honor and title of International Chess Master and the Grandmaster *are only awarded* to members who have been recognized as one of the small percentage who plays so well that reach the top 0.25% of all tournament players of the chess field, after the player's winning several international championships which also involve other international chess masters." [Emphasis added.]

Nothing in the regulations of the FIDE Handbook indicates that eligibility for the title of International Master is contingent upon being in the top .25% of all chess players in the world. Further, unlike the letter from the General Secretary of the Mongolian Chess Federation, the letters from the Chairman of the Physical Culture and Sports Authority and the President of the Mongolian Olympic Committee include the Grandmaster title in the top .25% level. Moreover, according to the FIDE Handbook and contrary to the statement in the latter two letters, "winning several international championships" involving other international chess masters is not the "only" means through which a player can qualify as an International Master. The AAO may, in its discretion, use as advisory opinion statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). See also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact").

The record also includes documentation from *Wikipedia*, an online encyclopedia, stating:

- *Grandmaster* (shortened as GM, sometimes International Grandmaster or IGM is used) is awarded to world-class chess masters. Apart from World Champion,

Master as "the ranking just below Grandmaster, usually rated between 2400 and 2500, and also awarded by FIDE." See <http://main.uschess.org/content/view/7327>, accessed on October 21, 2011, copy incorporated into the record of proceeding.

⁵ See <http://ratings.fide.com/topfed.phtml>, October 21, 2011, copy incorporated into the record of proceeding.

Grandmaster is the highest title a chess player can attain. Before FIDE will confer the title on a player, the player must have an Elo chess rating . . . of at least 2500 at one time and three favorable results (called norms) in tournaments involving other Grandmasters, including some from countries other than the applicant's. There are also other milestones a player can achieve to attain the title, such as winning the World Junior Championship.

- International Master (shortened as IM). The conditions are similar to GM, but less demanding. The minimum rating for the IM title is 2400.

Additional material submitted by the petitioner from *Wikipedia* states: "An International Master is usually in the top 0.25% of all tournament players at the time he or she receives the title. The July 2005 FIDE rating list records over 2500 players holding the IM title." Regarding information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.⁶ See *Lamilem Badasa v. Michael Mukasey*, 540 F.3d 909 (8th Cir. 2008). Accordingly, the AAO will not assign weight to information for which *Wikipedia* is the source.

Aside from the aforementioned deficiencies, the AAO notes that the preceding information from *Wikipedia* and the letters from the Chairman of the Physical Culture and Sports Authority and the President of the Mongolian Olympic Committee use the phrase "the top 0.25% of *all tournament players*" [emphasis added] to describe those who have received the International Master title. It has not been established that the phrase "all tournament players" excludes youth, novice, and casual chess tournament players. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994); 56 Fed. Reg. at 60899. Likewise, it does not follow that a statistical universe including youth, novice, and casual chess tournament players constitutes an appropriate basis for comparison. The AAO notes 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;

⁶ Online content from *Wikipedia* is subject to the following general disclaimer:

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

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on October 21, 2011, copy incorporated into the record of proceedings.

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. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor."

Moreover, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3) requires the petitioner's receipt of a major, internationally recognized award. There is no documentary evidence (such as extensive media coverage) showing the level of recognition accorded to the petitioner's receipt of his International Master diploma. The documentation submitted by the petitioner fails to demonstrate that his attainment of an International Master diploma was recognized at a level commensurate with a major, internationally recognized award. Accordingly, the petitioner has failed to demonstrate evidence of a qualifying one-time achievement.

B. Evidentiary Criteria

The petitioner has submitted documentation pertaining to the following categories of evidence under 8 C.F.R. § 204.5(h)(3).⁷

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 a May 1, 2004 letter from [REDACTED] Federation, stating:

[The petitioner's] biggest ever achievements as chess sportsman are as following:

- [REDACTED] International open tournament, Berdichev, Russia-best foreign player
- [REDACTED] International open tournament, Beijing, China-FIDE rating of 2325
- [REDACTED] International open tournament "B" section, Irkutsk, Russia - 2nd rank
- [REDACTED] International open tournament, Tula, Russia - 4th rank
- [REDACTED] National blitz (5') chess championship, Ulaanbaatar, Mongolia -Winner
- [REDACTED] National rapid (30') chess championship, Ulaanbaatar, Mongolia -Winner
- [REDACTED] Berlin blitz championship, Berlin, Germany -Winner
- [REDACTED] Berlin rapid championship, Berlin, Germany - Runner-up
- [REDACTED] Berlin rapid championship, Berlin, Germany - Winner

⁷ The petitioner does not claim to meet or submit evidence relating to the categories of evidence not discussed in this decision.

- [REDACTED] Berlin championship, Berlin, Germany - 4th rank
- [REDACTED] International tournament, Potsdam, Germany - Winner
- [REDACTED] International tournament Lichtenrade, Berlin, Germany - 3rd rank
- [REDACTED] Intl. open tournament "Berlin summer," Berlin, Germany - Prize [sic]
- [REDACTED] International tournament, Yangon, Myanmar - 4 - 6th rank, IM norm
- [REDACTED] World cities championship, Shenyang, China - Ulaanbaatar team member
- [REDACTED] Asian team championship, Shenyang, China - National team member
- [REDACTED] Asian universities team championship, Kuala-Lumpur, Malaysia - Winner
- [REDACTED] National championship, Ulaanbaatar, Mongolia - Runner-up
- [REDACTED] [6th] World universities championship, Varna, Bulgaria - Bronze medal (MGL)
- [REDACTED] World Chess Olympiad, Istanbul, Turkey – Nat. team, 2nd IM norm
- [REDACTED] All England team championship, UK - Winner (Essex)
- [REDACTED] 110th National open of Scotland, Scotland, UK - Winner
- [REDACTED] Essex blitz championship, Essex, UK - Winner

In support of [REDACTED] claims, the petitioner submitted tournament results and a photograph from the [REDACTED] in Varna reflecting that his team placed 3rd in the team competition (the petitioner placed 9th in the men's individual competition), but there is no evidence showing that petitioner received a prize or an award that is nationally or internationally recognized. The petitioner also submitted results from the [REDACTED] the Edinburgh Congress" listing the petitioner among multiple [REDACTED]. The submitted documentation does not include supporting evidence demonstrating the significance and magnitude of the competitive category won by the petitioner at [REDACTED] or evidence demonstrating that his prize was nationally or internationally recognized. A competition may be open to participants from throughout a particular country or region, but this factor alone is not adequate to establish that an award or prize is "nationally or internationally recognized."⁸ The burden is on the petitioner to demonstrate the level of recognition and achievement associated with his [REDACTED] prize. A victory in an event category with a limited pool of entrants or talent is not evidence of national or international recognition.

The petitioner also submitted the Mongolian team's individual player results at Olympiad "Herren" in Istanbul, Turkey in 2000 [REDACTED]. The "Team Composition with round-results" reflect that the petitioner finished third among the Mongolian entrants (advancing to the 10th round) – placing below his Grandmaster teammates Hatanbaatar Bazar and Sharavdorj Dashzeveg (who both advanced to the 13th round). There is no evidence showing the petitioner's overall placing in the Istanbul Olympiad tournament or evidence of his receipt of a prize or an award.

The petitioner submitted photographs from the [REDACTED] the "1999 Asian universities team championship," and the [REDACTED]

⁸ The record indicates that the petitioner was residing in Newcastle, United Kingdom at that time.

but the petitioner failed to submit documentary evidence of his prizes or awards from the competitions' organizers, or documentation of the tournaments' official competitive results. Aside from the results from the 2000 World University Championships and the 2003 Edinburgh Chess Congress, the record does not include evidence showing that the petitioner received prizes or awards at the remaining tournaments and championships specified in [REDACTED] Gendengyn's May 1, 2004 letter. Rather than submitting primary evidence of his prizes and awards from the tournaments' organizers, the petitioner instead submitted a third-party letter from [REDACTED] attesting to their existence. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). A petition must be filed with any initial evidence required by the regulation. 8 C.F.R. § 103.2(b)(1). The nonexistence or other unavailability of primary evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). According to the same regulation, only where the petitioner demonstrates that primary evidence does not exist or cannot be obtained may the petitioner rely on secondary evidence and only where secondary evidence is demonstrated to be unavailable may the petitioner rely on affidavits. Where a record does not exist, the petitioner must submit an original written statement on letterhead from the relevant authority indicating the reason the record does not exist and whether similar records for the time and place are available. 8 C.F.R. § 103.2(b)(2)(ii). The May 1, 2004 letter from [REDACTED] does not comply with the preceding regulatory requirements.

The petitioner also submitted a diploma from FIDE stating that he "obtained the title of International Master in the year 2000." As previously discussed, there is no documentary evidence (such as media coverage) showing the level of recognition accorded to the petitioner's receipt of an International Master diploma.

The petitioner did not submit evidence of the national or international *recognition* of his particular awards, such as national or widespread local coverage of his awards in professional or general media. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that the petitioner's awards be nationally or internationally *recognized* in the field of endeavor and it is his burden to establish every element of this criterion. In this case, there is no documentary evidence demonstrating that the petitioner's awards are recognized beyond the presenting organizations and therefore commensurate with nationally or internationally recognized prizes or awards for excellence in the field.

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

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

The petitioner submitted letters from the General Secretary of the Mongolian Chess Federation, the Chairman of the Physical Culture and Sports Authority, and the President of the Mongolian Olympic Committee stating the petitioner was selected as a member of "Mongolia's National Chess Team, the All-Star Team and Olympic Chess Team."⁹ The May 1, 2004 letter from [REDACTED] confirms that the petitioner belonged to the Mongolian men's national chess team "from 1997 to 2000." The petitioner also submitted tournament results from the Olympiad "Herren" in Istanbul (2000) and [REDACTED] World University Championships in Varna (2000) reflecting that he competed for Mongolia in those competitions. The petitioner's evidence also included "General ratings statistics for Mongolia" from FIDE reflecting that the country has 52 active players, including 3 Grandmasters and 4 International Masters. The record, however, does not include documentary evidence showing that membership on the Mongolian team required outstanding achievements, as judged by recognized national or international experts. While a team is not strictly speaking an "association," it is nonetheless equally true that a player 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, a player'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. The AAO reiterates, 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. The AAO will not presume that every national "team" is sufficiently exclusive. Without evidence showing, for instance, the selection requirements for the Mongolian national chess team, the AAO cannot conclude that the petitioner meets the elements of this regulatory criterion.

The January 20, 2010 letter from the Chairman of the Physical Culture and Sports Authority states that the petitioner [REDACTED] and served as a player and coach for the Monchess chess club in Mongolia. The petitioner, a USCF member, also submitted documentation showing that he organized the Monshatar chess club in California as an affiliate of the USCF. There is no evidence demonstrating that the petitioner's work for the preceding chess clubs equates to "membership in associations in the field." Further, there is no evidence demonstrating that the USCF, the Monchess chess club, and the Monshatar chess club require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field.

The petitioner submitted his diploma from FIDE stating that he "obtained the title of International Master in the year 2000." The petitioner has not established that attainment of this title or rating equates to membership in an association in the field. Further, while the petitioner met the requirements necessary to attain this ranking in 2000, there is no evidence demonstrating that FIDE requires such a rating for admission to membership. For instance, there is no evidence

⁹ The International Olympic Committee does not include chess among the official competitive events in the Olympic Games. See <http://www.fide.com/component/content/article/15-chess-news/3677-chess-will-soon-be-an-olympic-spor.html>, accessed on October 24, 2011, copy incorporated into the record of proceeding.

showing that novices and casual chess players are excluded from FIDE's membership body. Moreover, as previously discussed, the Grandmaster designation is the highest ranking conferred by FIDE upon chess players and thus it is more indicative of outstanding achievement. Finally, the AAO notes that the record includes the petitioner's most recent chess player rating from FIDE as of 2009, which had declined to 2346, a level below the usual rating for International Masters.¹⁰

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

Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

In general, in order for published material to meet this criterion, it must be primarily about the petitioner and, as stated in the regulations, be printed in professional or major trade publications or other major media. To qualify as major media, the publication should have significant national or international distribution. Some newspapers, such as the *New York Times*, nominally serve a particular locality but would qualify as major media because of significant national distribution, unlike small local community papers.¹¹

The petitioner initially submitted a book review of [REDACTED] posted at www.jeremysilman.com. The book review, written by [REDACTED] in 2005, includes only two sentences about the petitioner discussing one of his matches at the 34th Chess Olympiad in Istanbul 2000 (which was among twenty games analyzed in [REDACTED]).¹² This book review and [REDACTED] book were not about the petitioner. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires, however, that the published material be "about the alien." Further, there is no documentary evidence (such as sales information or readership data) showing that Daniel King's book and www.jeremysilman.com qualify as major trade publications or other major media. The petitioner also submitted a "reader commentary" posted in the "Kibitzer's Corner" section of www.chessgames.com internet site, but the commentary is a duplicate of the two sentences in the John Donaldson book review and does not meet the requirements of this regulatory criterion. The petitioner's initial evidence also included a December 2, 2003 article about the 110th Scottish Chess Championships which incorporated the Edinburgh Chess Congress. The article entitled, "First Woman to be Scottish Champion," was posted by the Director of Chess Scotland on the internet site of the British Chess Federation and includes only a single sentence mentioning the petitioner. Aside from not being about the petitioner, there is no evidence showing that the preceding internet site qualifies as a major trade publication or some other form of major media. In

¹⁰ An International Master is "usually rated between 2400 and 2500." See <http://main.uschess.org/content/view/7327>, accessed on October 21, 2011, copy incorporated into the record of proceeding.

¹¹ 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.

¹² The record does not include a copy of the section of *Test Your Chess with Daniel King* that mentions the petitioner.

addition, the petitioner submitted event results for the [REDACTED] Chess Olympiad in Istanbul (2000), and [REDACTED] World University Championships (2000), but these results do not meet the plain language requirements of this regulatory criterion.

In response to the director's request for evidence, the petitioner submitted an incomplete English language translation of a November 29, 2000 article in *Zuunii Medee* entitled "O. Ganbold wins V. Kramnick." Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), 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. In addition to being incomplete, the English language translation accompanying the article did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

The petitioner submitted an English language translation of a September 16, 2000 article in *Zuunii Medee* entitled "Mongolian Chess players bring Bronze medal from World International Student Federation (FISU)," but he did not submit a copy of the original article in the Mongolian language. Further, the author of the article was not identified and the article was not about the petitioner as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the English language translation of the article does not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) because it did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

The petitioner submitted an incomplete English language translation of a February 13, 1999 article in *National Right* entitled "Fulfilled International Master Title Normative." In addition to being incomplete, the English language translation accompanying the article did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English as required by the regulation at 8 C.F.R. § 103.2(b)(3).

The petitioner submitted an English language translation of an article in *Unuudur*, but he did not submit a copy of the original article in the Mongolian language. Further, the title and date of the article were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Moreover, the English language translation of the article does not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) because it did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

The petitioner submitted an incomplete English language translation of an article published in *Mongolian Daily* in 2000 entitled "Mongolian Chess Players will in [sic] Olympiad, Istanbul, Turkey." This article is about the tournament in general and only mentions the petitioner in passing. As previously discussed, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be "about the alien." See, e.g., *Accord Negro-Plumpe v. Okin*, 2:07-CV-820-ECR-RJJ at *1,*7 (D. Nev. Sept. 8, 2008) (upholding a finding that articles about a

show are not about the actor). In addition to being incomplete, the English language translation accompanying the article does not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) because it did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

The petitioner submitted an incomplete English language translation of an article entitled "Awards." The date of the article and the name of the publication were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition to being incomplete, the English language translation of the article did not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) because it did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

The petitioner submitted an incomplete English language translation of an article entitled "Grant of 3600-28000 tugrugs." The date and author of the article and the name of the publication were not identified as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). In addition to being incomplete, the English language translation of the article did not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) because it did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

The petitioner submitted incomplete English language translations of two articles in *Sport*. The dates of the articles were not provided as required by the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Further, the article in *Sport* entitled "Teenage Chess Tournament" is about the tournament in general and only mentions the petitioner's name in passing. In addition to being incomplete, the English language translations of the articles did not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3) because they did not identify the translator and did not include the translator's certification that he or she is competent to translate from Mongolian into English.

Aside from the preceding deficiencies, the petitioner has not established that *Sport*, *Zuunii Medee Mongolian Daily*, *National Right*, and *Unuudur* qualify as professional or major trade publications or other major media. The petitioner submitted information from NewsWealth.com listing *Zuunii Medee* and *Unuudur* as "Major Mongolian newspapers," but the submitted material does not specify the basis for the website's determination or the source of its data. There is no reliable documentation (such as quantifiable circulation evidence) showing the distribution of the preceding publications to demonstrate that the submitted articles were published in professional or major trade publications or other major media.

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

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

As previously discussed, the petitioner submitted a May 1, 2004 letter from [REDACTED] stating that the petitioner belonged to the Mongolian men's national chess team "from 1997 to 2000." There is no documentary evidence showing that the Mongolian team had a distinguished reputation. Further, there is no evidence showing that the petitioner's role for the team was leading or critical. For instance, there is no evidence distinguishing the petitioner's results at chess tournaments from those of the other national team members (such as a comprehensive tally of tournament victories or matches won) during the three years he competed. 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. Without documentary evidence showing that the petitioner's achievements differentiated him from those of his fellow teammates, the AAO cannot conclude that he was responsible for the Mongolian national team's success or standing to a degree consistent with the meaning of "leading or critical role." The evidence submitted by the petitioner does not demonstrate that his role significantly differentiated him from the other members of the team (including his Grandmaster teammates [REDACTED] or indicate how his role was leading or critical for the team as a whole.

The petitioner submitted a January 20, 2010 letter from the Chairman of the Physical Culture and Sports Authority stating that the petitioner co-founded and served as a player and coach for the Monchess chess club in Mongolia. The preceding reference asserts that Monchess is "Mongolia's most famous chess club," but there is no documentary evidence to support the assertion. As previously discussed, 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, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990). The petitioner also submitted an April 30, 2004 letter from the Editor-in-Chief of the *Century News*, a Mongolian publication, stating: "[The petitioner] . . . has been performing for our chess club called 'MONCHESS' at the *Century News* between 1998 and 2000." The petitioner's evidence also included documentation showing that he organized the Monshatar chess club in California. There is no documentary evidence showing that the Monchess and Monshatar chess clubs have earned a distinguished reputation. Further, the letters of support submitted by the petitioner do not provide sufficient information detailing the specific nature of the petitioner's duties and responsibilities to demonstrate that his role for the chess clubs was leading or critical.

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

Summary

In this case, the AAO concurs 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). A final merits determination that considers all of the evidence follows.

C. Final Merits Determination

The AAO 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 1119-20. In the present matter, many of the deficiencies in the documentation submitted by the petitioner have already been addressed in the AAO’s discussion of the categories of evidence at 8 C.F.R. §§ 204.5(h)(3)(i) – (iii) and (viii).

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(i), this decision has already addressed why the submitted awards do not rise to the level of nationally or internationally recognized awards for excellence in the field. As previously discussed, the petitioner submitted documentation indicating that he received a team bronze medal at 6th World University Championships (2000), but it has not been established that receiving an award in a competition limited to university students is an indication that the petitioner “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). As previously discussed, USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for immigrant classification as an alien of “extraordinary ability.” *Matter of Price*, 20 I&N Dec. at 954; 56 Fed. Reg. at 60899. Likewise, it does not follow that placing third in a competition limited to university students should necessarily qualify a chess player for approval of an extraordinary ability employment-based immigrant visa petition. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Moreover, there is no evidence demonstrating that the petitioner has received any qualifying prizes or awards in chess subsequent to 2003. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) is not commensurate with *sustained* national or international acclaim as of the petition’s filing date.

Regarding the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(ii), as previously discussed, there is no evidence showing that the petitioner’s associations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner’s field. The petitioner has not established that his memberships are indicative of or consistent with sustained national acclaim or a level of expertise indicating that he is one of that small percentage who have risen to the very top of his field. The AAO notes that the record includes the petitioner’s most recent chess player rating from FIDE as of 2009, which had declined to 2346, a level below the usual rating for International Masters. Moreover, there is no evidence showing that the petitioner has competed for the Mongolian team or any other national team subsequent to 2000. The statute and regulations, however, require the petitioner to

demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(ii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

In regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(iii), all of the petitioner's submissions were deficient in at least one of the regulatory requirements such as not including a date or an author, not being about the petitioner, or not being accompanied by evidence that they were published in major media. Further, the English language translations of the articles submitted by the petitioner do not comply with the requirements of the regulation at 8 C.F.R. § 103.2(b)(3). Moreover, there is no evidence indicating that the petitioner has been the subject of published or online material since the early 2000s. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(iii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

With regard to the documentation submitted for the category of evidence at 8 C.F.R. § 204.5(h)(3)(viii), the petitioner has not established that he has performed in a leading or critical role for organizations that have a distinguished reputation. Moreover, there is no evidence showing that the petitioner has competed for the Mongolian national team subsequent to 2000. The statute and regulations, however, require the petitioner to demonstrate that his national or international acclaim has been *sustained*. See section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The documentation submitted for the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(viii) is not commensurate with *sustained* national or international acclaim as of the petition's filing date.

In this case, the petitioner has not established that his achievements at the time of filing were commensurate with sustained national or international acclaim as a chess club player, director, and coach, or being among that small percentage at the very top of the field of endeavor. The AAO cannot ignore the April 30, 2004 letter from the Editor-in-Chief of the *Century News* in Mongolia stating that the petitioner is "one of the most *promising* chess players of the country." [Emphasis added.] The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top at some unspecified future time. Merely demonstrating that the petitioner has competed nationally and internationally or contributed to developing local chess clubs is not useful in setting him apart from other chess players and coaches through a "career of acclaimed work." H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). That page (59) also says that "an alien must (1) demonstrate sustained national or international acclaim in the sciences, arts, education, business or athletics (as shown through extensive documentation)..." The conclusion we reach by considering the evidence to meet each category of evidence at 8 C.F.R. § 204.5(h)(3) separately is consistent with a review of the evidence in the aggregate. Ultimately, the evidence in the aggregate does not

distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

D. Prior O-1 Nonimmigrant Visa Status

The AAO notes that the alien is the beneficiary of an approved O-1 nonimmigrant visa petition for an alien of extraordinary. This prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased standard. Each case must be decided on a case-by-case basis upon review of the evidence of record. It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (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'r 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*, No. 98-2855, 2000 WL 282785, *1, *3 (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.