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



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

B2

DATE: **JUL 12 2012** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

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

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

ON BEHALF OF PETITIONER:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 March 24, 2011, 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 as a vice president in sports educational development. The director determined that the petitioner had not established the requisite extraordinary ability and failed to submit extensive documentation of 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.

In the director’s decision, she determined that the petitioner failed to establish eligibility for a one-time achievement pursuant to the regulation at 8 C.F.R. § 204.5(h)(3), the awards criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(i), the published material criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii), the judging criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iv), the original contributions criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the scholarly articles criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vi), and the leading or critical role criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(viii). Moreover, the director indicated that the petitioner failed to submit any evidence relating the membership criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(v), the artistic display criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(vii), the high salary criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(ix), and the commercial success criterion pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(x). On appeal, counsel specifically requests the AAO to review the director’s decision regarding the awards criterion, the published material criterion, and the judging criterion. Accordingly, the AAO considers the remaining issues to be abandoned and will not further discuss them on appeal. *See Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the AAO).

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.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's 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 ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

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.

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).

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)).

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 this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

II. ANALYSIS

A. Evidentiary Criteria²

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

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i) requires "[d]ocumentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor." Moreover, it is the petitioner's burden to establish eligibility for every element of this criterion. Not only must the petitioner demonstrate his receipt of prizes and awards, *he must also demonstrate that those prizes and awards are nationally or internationally recognized for excellence in the field of endeavor.* In other words, the petitioner must establish that his prizes and awards are recognized nationally or internationally for excellence in the field beyond the awarding entities.

In the director's decision, she stated that the petitioner submitted the following documentary evidence:

1. A document entitled, "Awards of Appreciation: The Salvation Army-Hispanic Corps Gala 2007"; and
2. The petitioner's resume indicating that he received the "English Football Association Business of Football," "English Football Association Advanced Marketing & Administration," and "FIFA [International Federation of Association Football] Volunteer of the Year 2001."

² On appeal, the petitioner does not claim to meet any of the regulatory categories of evidence not discussed in this decision.

Furthermore, the director determined:

This criterion has not been met because the Salvation Army award appears to be local or regional in nature. The evidence of record appears to indicate the award was given to individuals in the Atlanta area only. Although the evidence indicated others participated in the partnership activities, there was no evidence to indicate others outside of Atlanta were considered for the award or participated in the selection of the recipients of the award. As such, [the petitioner has] not demonstrated the receipt of a lesser nationally or internationally recognized award. Further, it has not been established that the award was given for excellence in [the petitioner's] field of endeavor, or that the primary purpose of the award was to recognize excellence in [the petitioner's] field. The evidence of record appears to indicate the award was given as a token of appreciation in partnership with the Salvation Army. Additionally, [the petitioner] provided no evidence to demonstrate receipt of the English Football awards.

In response to the NOID, [the petitioner] provided a personal letter, amongst others, in which [the petitioner] stated that [he] had previously submitted certificates of awards that [he has] received. [The petitioner] indicated that [he] supplied copies of certificates for internationally recognized awards from the English Football Association Business of Football certificate of distinction, English Football Association Advanced Marketing certificate of excellence, [and] English Football Association Advanced Administration certificate of excellence. However, the evidence of record does not contain such evidence, nor did [the petitioner] provide this evidence with the response to the NOID. This evidence is only referred to by [the petitioner's] resume. As such, USCIS is unable to verify that [the petitioner] received these awards or the criteria used for the selection. Thus, the evidence submitted does not meet this criterion.

On appeal, counsel only contests the 2001 FIFA Volunteer of the Year Award and claims that "[t]his award was a combined award given by both the International Olympic Committee, the world governing body of Olympic sports, and [FIFA], the world governing body of soccer." The AAO therefore considers the Salvation Army Award and the English Football Association awards to be abandoned and will not and will not further discuss them on appeal. *See Sepulveda v. U.S. Att'y Gen.*, 401 F.3d at 1228 n. 2; *Hristov v. Roark*, No. 09-CV-27312011, 2011 WL 4711885 at *1, *9 (the court found the plaintiff's claims to be abandoned as he failed to raise them on appeal to the AAO). The AAO notes that a review of the record of proceeding fails to reflect that the petitioner submitted any documentary evidence regarding his purported English Football Association awards. 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)).

Regarding the 2001 FIFA Volunteer of the Year Award, on appeal, counsel submits a certificate that reflects:

To commemorate the International Year of Volunteers, the International Olympic Committee and [FIFA] pay tribute to [the petitioner] for having contributed time, effort and enthusiasm to the success of football competitions and to the promotion of friendship and solidarity among peoples.

The certificate does not indicate that the petitioner received [REDACTED]. Instead, the certificate simply acknowledges the petitioner for his contributions, effort, and time to football. The certificate does not support the petitioner's claim on his resume that he received [REDACTED]. 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 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190). Moreover, the petitioner failed to submit any documentary evidence demonstrating that the award is nationally or internationally recognized for excellence in his field of endeavor.

Furthermore, even if the petitioner were to submit supporting documentary evidence showing that he received [REDACTED] and it meets all of the elements of this criterion, which he 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)(i) requires more than one nationally or internationally recognized prize or award for excellence in the field of endeavor. 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. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at 12 (D.C. Cir. March 26, 2008); *Snapnames.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). On appeal, counsel only claimed the petitioner's eligibility for this criterion based on one award.

As discussed above, the plain language of this regulatory criterion specifically requires that the petitioner demonstrate his receipt of nationally or internationally recognized prizes or awards for excellence in his field. In this case, the petitioner failed to demonstrate that he meets the elements of this criterion consistent with the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i).

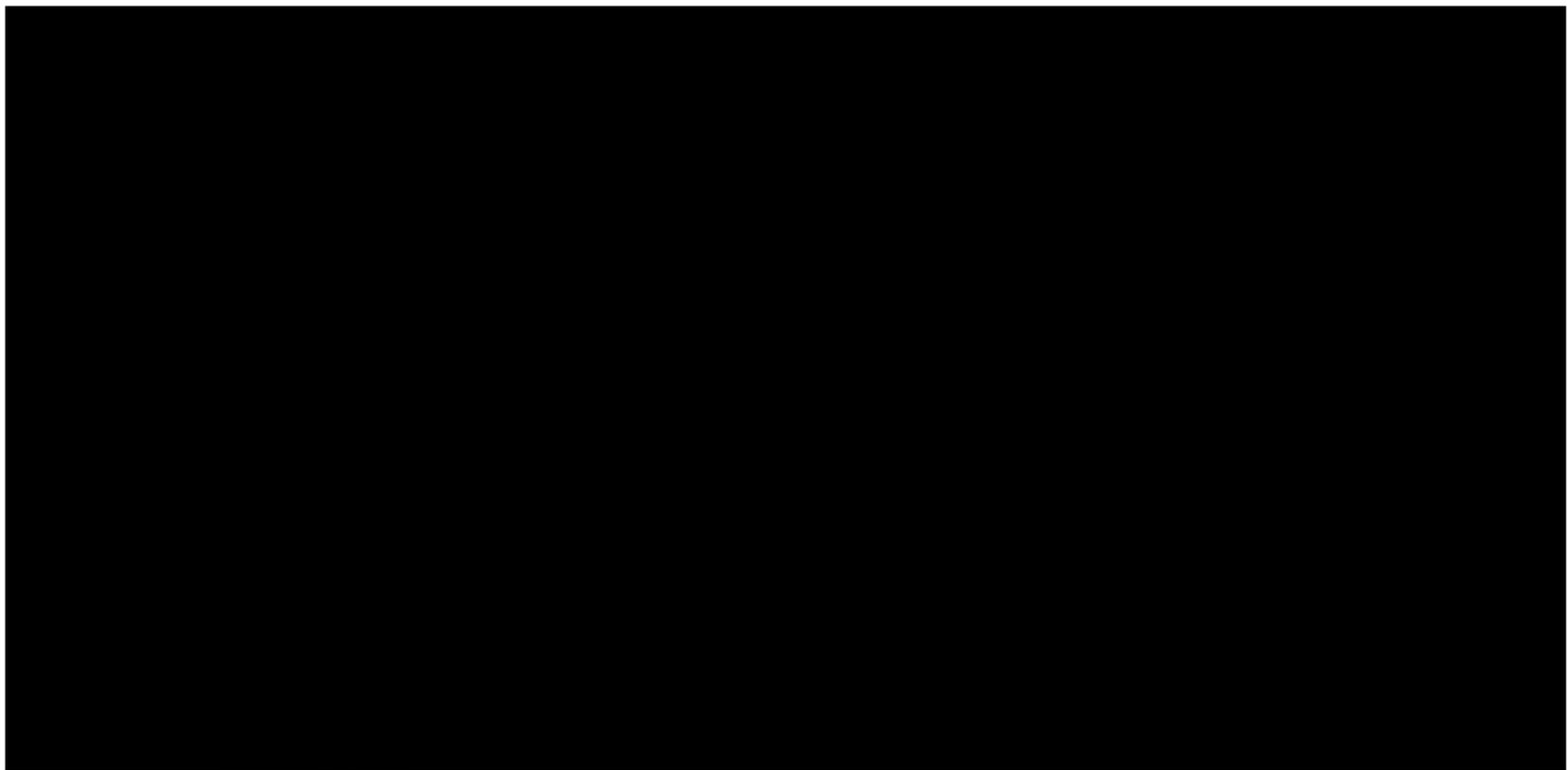
Accordingly, the petitioner failed to establish that he meets this criterion.

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.

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.³ 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.”

On appeal, counsel claims that the director disregarded the evidence and submitted additional documentation on appeal. A review of the record of proceeding reflects that the petitioner submitted the following documentation:



Simon Kiles.

Regarding items 1 – 3, a review of the screenshots fail to reflect published material about the petitioner relating to his work in the field. Regarding item 1, the screenshot is about

underprivileged Hispanic children in the Atlanta area. In fact, the screenshot quotes the petitioner one time and is not about the petitioner. The AAO notes that the petitioner failed to include the

³ Even with nationally-circulated newspapers, consideration must be given to the placement of the article. For example, an article that appears in the *Washington Post*, but in a section that is distributed only in Fairfax County, Virginia, for instance, cannot serve to spread an individual’s reputation outside of that county.

author of the material as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Regarding item 2, the screenshot is about CL Financial San Juan Jabloteh partnership with [REDACTED]. The petitioner is mentioned one time by [REDACTED] who “applauded the efforts by [the petitioner] of [REDACTED].” There is no discussion about the petitioner that would qualify for this criterion. Regarding item 3, the screenshot is about the creation of the largest ever football shirt. The screenshot quotes the petitioner regarding the shirt, but it is not published material about the petitioner relating to his work. Furthermore, the petitioner failed to submit any documentary evidence demonstrating that any of the websites are major media. The AAO is not persuaded that articles posted on the Internet from a printed publication or from an organization are automatically considered major media. The petitioner failed to submit independent, objective evidence establishing that the websites are 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 include the date of the article as required pursuant to the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Regardless, a review of the article reflects that it is published material about the petitioner relating to his work. However, the petitioner failed to submit any documentary evidence establishing that *Southern Spirit* is a professional or major trade publication or other major media.

Regarding item 5, while the chapter contains some brief references and quotations from the petitioner, the chapter is about football sponsorship rather than published material about the petitioner relating to his work. In addition, the petitioner failed to submit any documentary evidence reflecting that *Football Sponsorship & Commerce* is a professional or major trade publication or other major media.

It is noted that counsel also claimed the petitioner’s eligibility for this criterion based on a book review by the petitioner for the *International Journal of Sports Marketing and Sponsorship (IJSMS)*. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires that the published material be “about” the petitioner relating to his work in the field for which classification is sought. However, articles authored by the petitioner are not articles about him relating to his work. Thus, while the petitioner’s review is not relevant to this criterion, it will be considered below as it relates to the judging criterion under the regulation at 8 C.F.R. § 204.5(h)(3)(iv).

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.” The burden is on the petitioner to establish that he meets every element of this criterion. In this case, the petitioner submitted one article that was published material about him relating to his work but failed to demonstrate that *Southern Spirit* is a professional or major trade publication or other major media. Even if the petitioner established that the article from *Southern Spirit* meets every element of this criterion,

which he has not, the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iii) requires published material in more than one publication.

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

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv) requires “[e]vidence of the alien’s participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.” In the director’s decision, she determined that the letter from [REDACTED] who claimed that the petitioner was a member of the editorial advisory board for *IJSMS* was insufficient without documentary evidence to support [REDACTED]. As indicated above, the petitioner submitted on appeal documentary evidence reflecting that he served as a reviewer for *IJSMS*. As such, the petitioner submitted sufficient documentation establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(iv). Therefore, the AAO withdraws the findings of the director for this criterion.

Accordingly, the petitioner established that he minimally meets this criterion.

B. Summary

The petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence.

III. O-1 NONIMMIGRANT

The AAO notes that at the time of the filing of the petition, the petitioner indicated that he was last admitted to the United States as an O-1 nonimmigrant on October 3, 2008. However, while USCIS has approved at least one O-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, if similarly phrased, 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. 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*, 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 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

IV. CONCLUSION

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.

Even if the petitioner had submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be 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" 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." 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

⁴ The AAO maintains *de novo* review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d at 145. In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.