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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED]  
LIN 07 121 51148

OFFICE: NEBRASKA SERVICE CENTER Date: DEC 10 2006

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

*John F. Grissom*

John F. Grissom, Acting Chief  
Administrative Appeals Office

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

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in the arts. The director determined that the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

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* 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the regulation at 8 C.F.R. § 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that she has sustained national or international acclaim at the very top level.

This petition, filed on March 19, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a pianist. The petitioner earned a Bachelor of Music degree from the University of Texas at Austin in 2004 and a Master of Music degree from Yale University in 2006.

The regulation at 8 C.F.R. § 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, internationally recognized award). Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. A petitioner, however, cannot establish eligibility for this classification merely by submitting evidence that simply relates to at least three criteria at 8 C.F.R. § 204.5(h)(3). In determining whether the petitioner meets a specific criterion, the evidence itself must be evaluated in terms of whether it is indicative of or consistent with sustained national or international acclaim. 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). The petitioner has submitted evidence pertaining to the following criteria.<sup>1</sup>

*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 award certificates stating that she won second place in the "Zhejiang Junior Instrumental Competition" (1986) and a silver medal in the third division of the "Zhejiang Junior Piano Competition" (1989). The petitioner also submitted local media coverage of the competitions in *Jiaxingbao*. Pursuant to 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. The English language translations accompanying the petitioner's award certificates and *Jiaxingbao* articles were not certified by the translator as required by the regulation. Nevertheless, the preceding awards reflect provincial recognition rather than national or international recognition.

The petitioner submitted evidence showing that she placed sixth out of six finalists in the 56<sup>th</sup> Wideman Piano Competition (2006) held at the Hurley School of Music at Centenary College in Shreveport, Louisiana.<sup>2</sup> By placing behind the top three finalists in this competition, the petitioner received a Glenda Lee Harrison Award. The petitioner's evidence included a June 5, 2007 letter from [REDACTED] Executive Director, Wideman Piano Competition, stating:

[The petitioner] received a Glenda Lee Harris[on] Award in the Shreveport Symphony Wideman Piano Competition in December 2006 which is given to the finalist in the competition who is not a winner of the Gold, Silver or Bronze Medal who nevertheless shows great promise and talent as an aspiring young artist.

The Wideman Competition is frequently the first piano competition that many contestants participate in.

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<sup>1</sup> The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

<sup>2</sup> According to the "Wideman Competition Rules," all contestants "must be at least 18 years of age and not older than 28 years of age" to be eligible for participation. See <http://www.widemanpiano.com/widemanrules.htm>, accessed on November 24, 2008, copy incorporated into the record of proceeding.

The petitioner also submitted a December 4, 2006 article, entitled “Wideman Piano Competition announces winners,” in the “Local & State” section of *The Times* (Shreveport) stating:

More than 80 applicants representing 17 countries applied for a piano competition that comes down to only six people on its last day. Although most of the applicants are now college-age, many said they started playing piano as young as age 3.

The contest, in its 56th year, drew 46 competitors from 17 countries. The gold medalist winner, [REDACTED] from this year’s competition will play with the Shreveport Symphony at the beginning of new year’s season Sept. 15.

We note that the petitioner placed sixth out of 46 competitors. The petitioner has not established that finishing last among the finalists in a competition restricted to “aspiring” musicians age 28 and younger is an indication that she “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). 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.

The petitioner submitted evidence showing that she was the second place winner in the Jefferson Symphony’s 40<sup>th</sup> Young Artists Competition (2003) and the first prize winner in the Fort Collins Symphony’s 47<sup>th</sup> National Young Artist Competition (2002).<sup>3</sup> The petitioner also submitted a certificate stating that she “tied for Third Place” in the Isabel Scionti Senior Piano Solo Competition at Texas A&M University-Kingsville (2001). The petitioner’s supporting evidence for this competition included general information printed from <http://kingsvillemusic.com>. This material indicates that the Isabel Scionti Senior Piano Solo Competition is limited to “contestants under the age of 26” and that the “Senior” division in which the petitioner competed is the “College” division.<sup>4</sup>

With regard to awards won by the petitioner in junior, collegiate, and young artist competitions, we do not find that such awards indicate that she “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2). There is no indication that the petitioner faced competition from throughout her field, rather than limited to her approximate age group within the field. USCIS has long held that even athletes performing at the major league level do not automatically meet the “extraordinary ability” standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Commr. 1994); 56 Fed. Reg. at 60899.<sup>5</sup> Likewise, it

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<sup>3</sup> According to the symphonies’ internet sites, contestants in their competitions must be age 25 or younger. See <http://www.fcsymphony.org/youngartist.shtml> and <http://www.jeffersonsymphonyorchestra.org/YAC/competition/rules.htm>, accessed on November 24, 2008, copy incorporated into the record of proceeding.

<sup>4</sup> The “Junior” division is the “Pre-college” division.

<sup>5</sup> While we acknowledge that a district court’s decision is not binding precedent, we note that in *Matter of Racine*, 1995 WL 153319 at \*4 (N.D. Ill. Feb. 16, 1995), the court stated:

[T]he plain reading of the statute suggests that the appropriate field of comparison is not a comparison of Racine’s ability with that of all the hockey players at all levels of play; but rather, Racine’s ability as a

does not follow that a musician who has had success in competitions restricted to amateur pianists in their teens and twenties should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for “that small percentage of individuals that have risen to the very top of their field of endeavor.” Further, the plain language of this regulatory criterion requires “nationally or internationally recognized prizes or awards for excellence in the field of endeavor” and it is the petitioner’s burden to establish every element of this criterion. In this case, the petitioner has not established the competitive awards she won were nationally or internationally recognized and open to pianists of all ages in her field of endeavor (including professional musicians) rather than limited to “young artists” at the early stages of their careers.

The petitioner submitted evidence showing that she participated in the 2006 Steinway Society of Massachusetts Piano Competition and “was selected as one of the six finalists in the second division.” In response to the director’s request for evidence, the petitioner submitted a document entitled “Steinway Society of Massachusetts Piano Competition” reflecting that the second division is for pianists age 19 to 35.<sup>6</sup> While it is certainly an honor to be selected as a finalist, the plain language of this regulatory criterion requires evidence of the petitioner’s receipt of a prize or award. Further, the petitioner’s success in a competition restricted to amateur musicians age 19 to 35 is not an indication that she “is one of that small percentage who have risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2).

The petitioner submitted evidence showing that she was the runner-up in the South Orange Symphony Orchestra 2006 Artist Competition.<sup>7</sup> While it is certainly an honor to be selected as the runner-up, the plain language of this regulatory criterion requires evidence of the petitioner’s receipt of a prize or award. Further, this honor reflects regional recognition in New Jersey rather than national or international recognition.

The petitioner submitted a certificate from the Texas Christian University/Cliburn Piano Institute recognizing her “for attending The Young Artists Program as Performer” (2001). There is no evidence showing that this certificate is a nationally or internationally recognized award for excellence, rather than simply an acknowledgment of the petitioner’s attendance.

The petitioner also submitted evidence of her receipt of various university honors and scholarships. The petitioner’s receipt of educational funding and academic recognition from her university does not constitute

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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.

<sup>6</sup> The Steinway Society of Massachusetts internet site states: “The Steinway Society’s Piano Competition is open to amateur pianists in two age divisions, 14-18 and 19-35.” See <http://www.steinwaysocietymass.org/piano-competition.html>, accessed on November 25, 2008, copy incorporated into the record of proceeding.

<sup>7</sup> According to the South Orange Symphony internet site, applicants for its artist competition must “be either a legal resident of New Jersey, or matriculated at a New Jersey College or University.” See <http://www.southorangesymphony.org/artistCompetition.html>, accessed on November 26, 2008, copy incorporated into the record of proceeding.

her receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor. University study is not a field of endeavor, but rather training for future employment in a field of endeavor. Receipt of academic recognition and scholarships, limited by their terms to students, is not 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). Such evidence offers no meaningful comparison between the petitioner and experienced musicians in the field who have long since completed their educational training. Further, recognition by one’s university reflects institutional recognition rather than national or international recognition.

In light of the above, the petitioner has not established 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.*

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. An alien would not earn acclaim at the national level from a local publication. 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.<sup>8</sup>

The petitioner submitted a November 7, 2005 article in the *Washington Post* entitled “From Yale, a Break for Impoverished Musicians: Free Grad School Tuition.” This article discusses an anonymous \$100 million donation to the Yale School of Music to provide free tuition for financially strapped students. The petitioner’s name is mentioned in a captioned photograph above the article, but there is no discussion of her in the text of the article.<sup>9</sup> The plain language of this regulatory criterion requires that the published material be “about the alien” relating to her work in the field. The preceding article does not meet this requirement.

The petitioner submitted two articles printed in the “Local & State” section of *The Times* (Shreveport) in December 2006. The December 3, 2006 article, entitled “Six make final cut in piano competition,” includes a photograph of the petitioner and two sentences indicating the universities where she earned her music degrees. The December 4, 2006 article, entitled “Wideman Piano Competition announces winners,” mentions the petitioner’s name only in passing as taking sixth place among the six finalists. The petitioner’s name is also mentioned in one of two captioned photographs accompanying the December 4, 2006 article, stating that she played Chopin at the competition. The preceding articles are about the competition finals rather than being

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<sup>8</sup> 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.

<sup>9</sup> The captioned photograph states: “Yale School of Music master’s student [the petitioner], center, performs during class, watched by professor Claude Frank. Students like [the petitioner] will be able to attend free of charge starting next year, thanks to a \$100 million donation.”

primarily about the petitioner. Further, there is no evidence (such as circulation statistics) showing that *The Times* qualifies as a form of major media.

The petitioner submitted three articles printed in *Jiaxingbao* in the 1980s, but the English language translations accompanying them were not certified by the translator as required by the regulation at 8 C.F.R. § 103.2(b)(3). Further, there is no evidence showing that *Jiaxingbao* qualifies as a form of major media.

In response to the director's request for evidence, the petitioner submitted an April 20, 2002 article in the *Coloradoan* discussing the Fort Collins Symphony's 47<sup>th</sup> annual Young Artist Competition. This article only mentions the petitioner's name in passing as one of three finalists. Further, there is no evidence showing that the *Coloradoan* of Fort Collins, Colorado qualifies as a form of major media.

In light of the above, the petitioner has not established 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.*

The petitioner submitted several letters of recommendation praising her talent as a pianist. Talent in one's field, however, is not necessarily indicative of artistic contributions of major significance. The record lacks evidence showing that the petitioner has made original artistic contributions that have significantly influenced or impacted her field.

[REDACTED], a concert pianist and coach at the Yale School of Music, states:

I had the opportunity of coaching [the petitioner] and hearing her perform when she was a graduate student at Yale University. [The petitioner] has a unique set of skills and talents that make her a major asset to our musical community. She is an extraordinary pianist and performer, consistently thrilling audiences with her brilliance, musicianship and charisma. She has a remarkable capacity to learn music rapidly, an invaluable gift in the music world which has placed her in consistently high demand.

[REDACTED], a concert pianist and recording artist, states:

I first met [the petitioner] in the summer of 2004 at the Colorado College Music Festival in Colorado Springs. I was on the faculty and [the petitioner] was invited as a scholarship student. . . . I was astonished by the level of [the petitioner's] performance of what I consider one of the most technically and musically demanding concerti in the repertoire. She had enviable physical control and dexterity, a firm sense of line, a grasp of Chopin's challenging style, and, crucially, she produced a beautiful tone. In addition, her stage command was easy and confident.

Visiting Professor, Yale School of Music, states: "[The petitioner] studied with me at Yale University School of Music for one year and she is an excellent, very talented, intelligent young pianist. . . . She is a real performer with very engaging stage presence."

Priscilla Pond Flawn Regents Professor of Piano and Chamber Music, and Head of the Division of Keyboard Studies, University of Texas at Austin, states:

[The petitioner] first came to my attention in 2000 when she enrolled as a student at the University of Texas at Austin. She immediately distinguished herself as one of the brightest and most brilliant pianists this school has ever had. Since then she has completed [sic] her undergraduate and graduate training under several famous musicians. . . . In addition to her studies at Austin and Yale, she was also selected to attend very prestigious summer chamber music festivals. Her extraordinarily sensitive, intelligent and technically brilliant interpretations place her among the elite of this generation of performers.

Professor of Piano, University of Texas at Austin, states:

[The petitioner] is a remarkably gifted young pianist with a comprehensive technique, solid performing skills and an unusually distinctive musical personality for one so young. I have heard her on numerous occasions, and have been consistently impressed with her understanding and projection of many musical styles. I have also coached her on an ad hoc basis a couple of times and found her a most receptive student.

Assistant Professor of Music, Princeton University, states:

I met [the petitioner] at the University of Texas, where she was a student in one of my graduate seminars. She was a dedicated, hardworking, and reliable student – fluent in English – as well as an exceptionally gifted pianist. She not only possesses excellent technique but also a sensitive musical mind, showing great independence and maturity in her musical judgment. Clearly she applies her natural intelligence equally effectively in the classroom and at the keyboard.

Director of Orchestras, University of Northern Colorado, states:

I first encountered [the petitioner] at the 2002 Fort Collins National Young Artist Competition where she was one of three finalists and I was conductor for the orchestra accompanying these finalists. Working with [the petitioner] I immediately recognized her as a significant emerging talent.

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[The petitioner] has brilliant technique and is a mature, young artist with passionately confident musicianship and a gracious stage presence.

, Music Director of the Metamorphosen Chamber Orchestra, Music Director of the San Luis Obispo Mozart Festival, and Conductor of the Colorado College Summer Music Festival, states that the petitioner “has great potential as a performing artist and will have a great future.” Similarly, “a former Assistant Professor of Accompanying at the University of Texas at Austin,” states that the petitioner “possesses great potential as a performing artist.” Such statements indicate that the very top of the petitioner’s field is a level above her present level of achievement.

The letters of recommendation submitted by the petitioner discuss her talent as a pianist, musical performances, awards, and educational training, but they fail to demonstrate that she has made original contributions of major significance in her field. These letters do not include a substantive discussion as to which of the petitioner's specific achievements constitute original artistic contributions of major significance in the field of music. According to the regulation at 8 C.F.R. § 204.5(h)(3)(v), an alien's contributions must be not only original but of major significance. We must presume that the phrase "major significance" is not superfluous and, thus, that it has some meaning. While the petitioner has excelled as a student and been successful in amateur competitions, there is nothing to demonstrate that her work has had major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other pianists nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the letters of recommendation submitted by the petitioner are not sufficient to meet this criterion. The opinions of experts in the field, while not without weight, cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the experts' 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 of original contributions of major significance that one would expect of a musician who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout her field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude that she meets this criterion.

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

The petitioner submitted evidence of her concert performances in a university setting and in conjunction with amateur competitions she won. There is no evidence showing that these performances were consistent with sustained national or international acclaim at the very top of her field. Nevertheless, the plain language of this regulatory criterion indicates that it is intended for visual artists (such as sculptors and painters) rather than for pianists such as the petitioner. In the performing arts, acclaim is generally not established by the mere act of appearing in public, but rather by attracting a substantial audience. For this reason, the regulations establish separate criteria, especially for those whose work is in the performing arts. The petitioner's musical performances are far more relevant to the "commercial successes in the performing arts" criterion at 8 C.F.R. § 204.5(h)(3)(x).

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

This regulatory criterion calls for evidence of commercial successes in the form of "sales" or "receipts;" simply submitting evidence indicating that the petitioner participated in various concerts or recitals cannot meet the plain

language of this criterion. The record does not include evidence of documented “sales” or “receipts” showing that the petitioner achieved commercial successes in the performing arts in a manner consistent with sustained national or international acclaim at the very top of her field. For example, there is no indication that the petitioner’s performances consistently drew record crowds, were regular sell-out performances, or resulted in greater audiences than other similar performances that did not feature the petitioner. Nor is there evidence showing, for example, that the petitioner’s musical recordings generated substantial national or international sales.

In this case, the petitioner has failed to demonstrate her receipt of a major, internationally recognized award, or that she meets at least three of the criteria at 8 C.F.R. § 204.5(h)(3).

Beyond the decision of the director, the regulation at 8 C.F.R. § 204.5(h)(5) requires “clear evidence that the alien is coming to the United States to continue work in the area of expertise. Such evidence may include letter(s) from prospective employer(s), evidence of prearranged commitments such as contracts, or a statement from the beneficiary detailing plans on how he or she intends to continue his or her work in the United States.” The record does not include such evidence.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition. Although the words “extraordinary ability” are used in the Act for classification of artists under both the nonimmigrant O-1 and the first preference employment-based immigrant categories, the statute and regulations define the term differently for each classification. Section 101(a)(46) of the Act states, “The term ‘extraordinary ability’ means, for purposes of section 101(a)(15)(O)(i), in the case of the arts, distinction.” The O-1 regulation reiterates that “[e]xtraordinary ability in the field of arts means distinction.” 8 C.F.R. § 214.2(3)(ii). “Distinction” is a lower standard than that required for the immigrant classification, which defines extraordinary ability as “a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The evidentiary criteria for these two classifications also differ in several respects, for example, nominations for awards or prizes are acceptable evidence of O-1 eligibility, 8 C.F.R. § 214.2(3)(iv)(A), but the immigrant classification requires actual receipt of nationally or internationally recognized awards or prizes. 8 C.F.R. § 204.5(h)(3)(i). Given the clear statutory and regulatory distinction between these two classifications, the petitioner’s receipt of O-1 nonimmigrant classification is not evidence of her eligibility for immigrant classification as an alien with extraordinary ability.

While CIS has approved an O-1 nonimmigrant visa petition filed on behalf of the petitioner, that prior approval does not preclude CIS 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 CIS 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 CIS 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 CIS from denying an extension of the original visa based on a reassessment of the 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. 1988). It would be absurd to suggest that CIS 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 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).

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 or 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. Nor is there clear evidence showing that the petitioner will continue to work in her area of expertise in the United States. 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 AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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.