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U.S. Citizenship  
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUL 28 2009  
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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  
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 with extraordinary ability as a dance instructor. 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. More specifically, the director found that the petitioner had failed to demonstrate receipt of a major, internationally recognized award, or that he meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the petitioner “has been recognized as an alien of extraordinary ability who has achieved sustained national acclaim and whose achievements have been recognized in his field of expertise.”

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 he has sustained national or international acclaim at the very top level.

This petition, filed on June 21, 2007, seeks to classify the petitioner as an alien with extraordinary ability as a competitive dancer and a dance instructor. 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 the following:

1. 1<sup>st</sup> Place certificate from the Arthur Murray Franchised Dance Studios "Superama Open Professional Championships" in Miami Beach (2005);
2. 1<sup>st</sup> Place certificate from the Arthur Murray Franchised Dance Studios "World Dance-O-Rama Open Professional Championships" in Las Vegas (2006);
3. An English language translation of a diploma from the Czech Dance Sport Federation "for participation in main competition" of the "Championship of Czech Republic 2001;"
4. An English language translation of a diploma from the Czech Dance Sport Federation "for participation in main competition" of the "Championship of Czech Republic in dance sport" (1998);
5. Diploma stating that the petitioner and his partner won 1<sup>st</sup> place "in category amateur class 'S' Latin American dance" at the 8<sup>th</sup> International Competition of Dance Sport Siemianowice 2001;"
6. Diploma stating that the petitioner and his partner placed 4<sup>th</sup> in "Category adult, class A-S Latin American" in the "Slovak Cup Roztancovana Crievicka 2002" dance competition;
7. Diploma from the Dance Studio of Jaromir Riedel Trend Ostrava and the Podbeskydska Division of the Czech Dance Sport Federation stating that the petitioner and his partner placed 2<sup>nd</sup> at the Dance Competition "O JARNI CENU TS JAROMIRA RIEDLA TREND OSTRAVA" in "Category B Latin American Dance" (1997);

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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.

8. Diploma stating that the petitioner and his partner placed 6<sup>th</sup> at the “16<sup>th</sup> International Competition of Dance Sport Zawiercie 2001” in the “Class S, Latin American Dance” category;
9. Diploma stating that the petitioner and his partner placed 5<sup>th</sup> at the “23<sup>rd</sup> International Competition of Dance Sport Wiosna 2002” in the “Class S, Latin American” category;
10. Diploma stating that the petitioner and his partner placed 2<sup>nd</sup> in the Latin American dance adult category for the “Award of Health Insurance Company Ministry of the Interior CR- Dance League” (2002);
11. Diploma from “Community Center Koprivnice” stating that the petitioner and his partner placed 6<sup>th</sup> at the “Tatra 2000” competition in “Class M” of Latin American Dances;
12. Diploma from the Town of Sternberk Dance League stating that the petitioner and his partner placed 5<sup>th</sup> in Adult Latin American dance (2004);
13. Diploma stating that the petitioner and his partner received a 2<sup>nd</sup> place “Award of Dance Club Orel Telnice 2001” in Latin American Dance;
14. Diploma stating that the petitioner and his partner placed 2<sup>nd</sup> in the “A – Latin American dance” category of the “Tanecni Skola Krok” Dance Studio’s “Jarni Cena” competition (1998); and
15. Diploma stating that the petitioner and his partner placed 1<sup>st</sup> in Latin American dance “classes B, A, M” in a “private dance competition” organized by the “Top Dance Studio in Pocepice” (2002).

With regard to items 1 and 2, we note that these first place certificates do not bear the petitioner’s name. Regarding items 3 through 15, 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 diplomas were not certified by the translator as required by the regulation. Further, in regard to items 3 and 4, we note that the uncertified English language translations were not accompanied by copies of the original foreign language diplomas. In addition, there is no evidence demonstrating that items 3 and 4 are nationally or internationally recognized prizes or awards for excellence, rather than simply an acknowledgment of the petitioner’s participation in the competitions. The record does not include evidence demonstrating that the petitioner actually received a prize or award at the “Championships of the Czech Republic” in 1998 or 2001.

With regard to items 6, 8, 9, 11, and 12, the plain language of this regulatory criterion requires evidence of the petitioner’s receipt of “nationally or internationally recognized prizes or awards.” In these instances, there is no evidence from the competitions’ organizers showing that the petitioner received a prize or an award for placing fourth, fifth, or sixth. Further, regarding item 7 and items 10 through 15, there is no evidence showing that these diplomas are nationally or internationally recognized prizes or awards for excellence rather than forms of regional or institutional recognition.

The petitioner's initial submission included results posted at [www.dancesportinfo.net](http://www.dancesportinfo.net) for competitions in which he and his partner participated. These results indicate, *inter alia*, that the petitioner and his partner placed 3<sup>rd</sup> in the Professional "Rising Star" Latin category at the California Open (2007), 3<sup>rd</sup> in the Professional "Rising Star" Latin category at the Holiday Dance Classic in Las Vegas (2006), 3<sup>rd</sup> in the Professional Latin category at the California Star Ball (2006), 2<sup>nd</sup> in the Professional "Rising Star" Latin category at the California Star Ball (2006), and 2<sup>nd</sup> in the "Amateur S Latin" category at the IV International Czestochowa Championships in Poland. With regard to the petitioner's 3<sup>rd</sup> place in the Professional Latin category at the California Star Ball, there is no evidence showing that that this 3<sup>rd</sup> place finish equates to a nationally or internationally recognized prize or award for excellence rather than regional recognition in California.

With regard to awards won by the petitioner in amateur or Professional "Rising Star" dance competition, we do not find that such awards indicate that he "is one of that small percentage who have risen to the very top of the field of endeavor." 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>2</sup> Likewise, it does not follow that a dancer who has had success in national or international competition at the amateur or "Rising Star" level should necessarily qualify for an extraordinary ability employment-based immigrant visa. To find otherwise would contravene the regulatory requirement at 8 C.F.R. § 204.5(h)(2) that this visa category be reserved for "that small percentage of individuals that have risen to the very top of their field of endeavor." The petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for amateurs or "Rising Star" professionals progressing toward the top at some unspecified future time.

Further, the record does not include supporting evidence demonstrating the significance and magnitude of the preceding events in which the petitioner competed. The plain language of the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) specifically requires that 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 evidence establishing that the petitioner's awards were received in top-level competition and that they had significant national or international recognition beyond the context of the events where they were presented.

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<sup>2</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 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.

Nationally or internationally recognized prizes or awards won by dancers coached primarily by the petitioner can also be considered for this criterion. The record, however, does not include evidence demonstrating that competitors coached primarily by the petitioner have won nationally or internationally recognized prizes or awards in dancing.

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.*

In order to demonstrate that membership in an association meets this criterion, a petitioner must show that the association requires outstanding achievement as an essential condition for admission to membership. Membership requirements based on employment or activity in a given field, minimum education or experience, standardized test scores, grade point average, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. Further, the overall prestige of a given association is not determinative; the issue here is membership requirements rather than the association's overall reputation.

The petitioner submitted a certificate indicating that he is registered with the National Dance Council of America, Inc. (NDCA) as a "Competing Professional" and a "Pro/Am Teacher." There is no evidence indicating that this registration equates to membership in the organization. The petitioner also submitted a November 29, 2004 letter stating that he is a member of the dance club TK AKCENT OSTRAVA and holds the position of coach-in-residence. The record, however, does not include evidence (such as membership bylaws) showing the admission requirements for the NDCA or TK AKCENT OSTRAVA. There is no evidence demonstrating that these organizations require outstanding achievements of their members, as judged by recognized national or international experts in the petitioner's field or an allied one. Accordingly, the petitioner has not established that he 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 reference letters in support of the petition.

Dance Professional, Regency Ballroom, Lomita, California, states:

I encountered [the petitioner and his partner] first as accomplished dancers and later as highly skilled and well-educated dancers and teachers. They are very engaging, highly energetic but friendly professionals. They can skillfully extract the best of each student, moving them towards a student's highest level of dancing but still keep them at ease and allowing for an enjoyable, fun experience.

[The petitioner and his partner] are still active professional competitors and Pro-Am teachers. Having many advanced students who routinely demand and expect the highest level of dance instruction available to them, [the petitioner and his partner's] resume and qualifications are second to none. Their real life experience competing alongside the top ranked couples around the world has become invaluable to both the success of my students and the accomplishments of my studio.

My studio has greatly appreciated having [the petitioner and his partner] as visiting coaches. They have brought a renewed level of energy and enthusiasm to both students and staff.

Owner of Kaiser Dancesport, New York, states:

During the past few years I have witnessed [the petitioner and his partner] reach new heights in their professional dancing career. They have placed into both the semifinals and finals in numerous Dancesport competitions throughout both the continental U.S. and Europe. Having improved upon their technical understanding of dance, they have advanced beyond the abilities of an average couple to a technically advanced, highly entertaining couple with dynamic presentation and energetic precision. Their grace and pinpoint accuracy on the dance floor is hard to dismiss [sic] as a judge, having witnessed their presence in live competition.

[The petitioner and his partner] are highly sought after in the coaching and teaching aspects of dance as well. They are both well-adept and knowledgeable when imparting their technical expertise to their students. Through their professional career as competitive dancers, they bring a well-educated background and repertoire that is extremely rare to find in commercial dance studios throughout the nation. They are a commodity in extreme demand and a true asset to any local dance community by what they bring to the table. By way of their effective coaching, they know how to extract their students' potential in an engaging and entertaining atmosphere. They are both friendly and professional, and continue to pursue competitive dancing along with their students in Pro-Am Dancesport competition. [The petitioner and his partner] have placed as finalists and champions throughout the Pro-Am competitive landscape.

I believe their career as competing professionals and coaches has a bright and prolific future. With [the petitioner and his partner's] increased knowledge, confidence, and poise on the dance floor, their immediate future holds promise and continued success in professional Dancesport and Pro-Am competition. The two of them are invaluable contributors to the National Dance Council of America (NDCA). They are magnificent people and a pleasure to work with throughout the dancing profession.

Dance Professional and NDCA judge, states:

During past few years of judging international Dance Sport competitions I encountered and observed [the petitioner] first as a brilliant dancer and later also as a highly skilled and well-

educated coach. He is very engaging, highly energetic but friendly professional, who makes his students feel at ease, but who can very skillfully extract their potentials. His students are moving towards higher level of dancing in well-planned but fun fashion.

He is one of the few coaches who use the proper musicality and count to explain the moves and routines and the character of each dance, especially in the Latin-American and American Rhythm sections. He is also an excellent choreographer.

His experience as a competitive dancer is invaluable for not only explaining but also showing the dance patterns to his students. He is also still active as a professional competitor and partners his students in Pro-Am competitions. His personal competitive achievements are very impressive; as he is placing mostly in the semifinals of International Championships, which are open to the World. The World's top dance couples take part in these events. [The petitioner] represented the Czech Republic in Austria, United Kingdom, Italy, Netherlands and Switzerland among others over the past 7 years. [The petitioner] will be a great asset to any organization; studio and/or country in which he decides to put his skills to use.

[REDACTED], LR Cosemtic Dance Team, Ostrava, Czechoslovakia, states:

I have witnessed [the petitioner and his partner's] progress over the years in their competitive dance career from the judge's point of view. This couple has become one of the strongest dance teams in the Czech Republic over the period of the last three years. I have seen them grow in their technical understanding and performance qualities from once having been an average competitive couple into an outstanding powerful as well as extremely entertaining dance couple.

[The petitioner and his partner] are clear finalists on a national level, and ready to challenge the international arena.

I believe that their career as competing professionals and as dance teachers has a wonderful foundation. [The petitioner and his partner] will be a great addition to any dance school.

We acknowledge the petitioner's submission of reference letters from various individuals praising his talents as a dancer and a coach and discussing his activities. Talent and activity in one's field, however, are not necessarily indicative of original contributions of major significance. Several of the reference letters mention the petitioner's success in dance competition, but this evidence has already been addressed under the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i). Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for competitive awards and original contributions of major significance, USCIS clearly does not view these criteria as being interchangeable. If evidence sufficient to meet one criterion mandated a finding that an alien met another criterion, the requirement that an alien meet at least three criteria would be meaningless. In this case, the record lacks evidence showing that the petitioner has made original contributions that have significantly influenced or impacted his field.

With regard to the petitioner's dancing and coaching achievements, the reference letters do not specify exactly what his original contributions in dancing have been, nor is there an explanation indicating how any such contributions were of major significance in his field. 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 may have helped various youth and amateur dancers improve their dancing skills, the documentation submitted by him does not establish that he has made original artistic contributions of major significance in the field. For example, the record does not indicate the extent of the petitioner's influence on other dancers or coaches nationally or internationally, nor does it show that the field has somehow changed as a result of his work so as to demonstrate the petitioner's significant contribution to his field.

In this case, the reference letters submitted by the petitioner are not sufficient to meet this criterion. These letters, 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 of support from the petitioner's personal contacts is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. Thus, the content of the writers' statements and how they became aware of the petitioner's reputation are important considerations. Even when written by independent experts, letters solicited by an alien in 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 dancer or a coach who has sustained national or international acclaim. Without extensive documentation showing that the petitioner's work has been unusually influential, highly acclaimed throughout his field, or has otherwise risen to the level of original contributions of major significance, we cannot conclude 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.*

At issue for this criterion are the position the petitioner was selected to fill and the reputation of the entity that selected him. In other words, the position must be of such significance that the alien's selection to fill the position, in and of itself, is indicative of or consistent with national or international acclaim.

[REDACTED], Partner, Dance Asylum Ballroom Dance Studio, Costa Mesa, California, states:

[The petitioner] is our studio pro and partner in business. He is vital to the business because of his stature as a dance professional. He is a well known International Ballroom and Latin dancer and is well respected in the DanceSport world. He and his professional partner . . . have competed successfully for several years in the United States and most recently in California. Because of his reputation as a dancer and instructor he brings new students into our studio seeking his services.

Not only is he our main male instructor for both group and private lessons, he also competes with our top female students (clients) in the Pro-Am division at all the DanceSport competitions that we attend as a school. When competing with our clients they can and do win cash prizes as well as trophies. The more they win, the more clients we get. [The petitioner] brings in business because of his talent and professionalism and it would be extremely detrimental to our business if he was no longer able to be a part of our studio.

Director of Latin American Division, Dance Club TK AKCENT OSTRAVA, states:

[The petitioner and his partner] have been members of our dance club for the past ten years and went through a wonderful development in their career to become one of our top representatives and most successful couples in the International Latin style of dance.

Because of their broad experience nationally and internationally, the club decided to ask [the petitioner and his partner] to take on the positions of coaches in residence, starting in 1997. Their vast knowledge and enthusiasm was the very reason for the great competitive success many of our younger dancers enjoyed during the period of 1997 and 2000.

President of the Dancesport Division, TJ SOKOL VITKOVICE, states:

[The petitioner and his partner] have been one of our best couples in the International Latin style of dance for the past ten years and they represented our dance Sport organization successfully not only in national but in international competitions as well.

Because of their wonderful results and enthusiasm we asked them to work as coaches-in-residence in 1997. Thanks to their hard work and vast knowledge they gained the position of our chief coaches.

[The petitioner and his partner] have become wonderful and experienced dancers and also skillful coaches, which proves perfect results of many of our younger dancers.

The record, however, does not include evidence showing that the preceding organizations have distinguished reputations. Further, the record lacks evidence demonstrating the leading or critical nature of the petitioner's role for the organizations. For example, there is no evidence demonstrating how the petitioner's role differentiated him from the other coaches on their staffs, let alone the organizations' top management (such as the Division Director or President for the latter two organizations). There is no evidence demonstrating that the petitioner was responsible for the preceding organizations' success or standing to a degree consistent with the meaning of "leading or critical role" and indicative of sustained national or international acclaim. Accordingly, the petitioner has not established that he meets this criterion.

In this case, we concur with the director's finding that the petitioner has failed to demonstrate his receipt of a major, internationally recognized award, or that he meets at least three of the criteria that

must be satisfied to establish the national or international acclaim necessary to qualify as an alien of extraordinary ability. 8 C.F.R. § 204.5(h)(3). The conclusion we reach by considering the evidence to meet each criterion separately is consistent with a review of the evidence in the aggregate. Even in the aggregate, the evidence does not distinguish the petitioner as one of the small percentage who has risen to the very top of the field of endeavor. 8 C.F.R. § 204.5(h)(2).

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 his eligibility for immigrant classification as an alien with extraordinary ability. Further, we do not find that an approval of a nonimmigrant visa mandates the approval of a similar immigrant visa. Each case must be decided on a case-by-case basis, based on the evidence of record.

It must be noted that many I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Brothers Co. Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989). Because USCIS spends less time reviewing I-129 nonimmigrant petitions than I-140 immigrant petitions, some nonimmigrant petitions are simply approved in error. *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d at 29-30; *see also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556, 2004 WL 1240482 (5th Cir. 2004) (finding that prior approvals do not preclude USCIS from denying an extension of the original visa based on a reassessment of the alien’s qualifications).

The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that USCIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987), *cert. denied*, 485 U.S. 1008 (1988).

Furthermore, the AAO’s authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of the alien, the AAO would not be bound to follow the contradictory decision of a

service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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 or 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.

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.