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Washington, DC 20529

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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JAN 05 2007

LIN 04 124 51042

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

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.

Marie Johnson

Robert P. Wiemann, 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 on appeal. The appeal will be dismissed.

The petitioner is a gymnastics training facility. It seeks to classify the beneficiary 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.[1] The director determined the petitioner had not established that the beneficiary has earned the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

On appeal, counsel argues that the beneficiary has satisfied the statutory requirements of section 203(b)(1)(A) of the Immigration and Nationality Act.

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 to the United States will substantially benefit prospectively the United States.

Citizenship and Immigration Services (CIS) 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, 60898-9 (November 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 the beneficiary has earned sustained national or international acclaim at the very top level.

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[1] The petitioner was initially represented by attorney Amy Peck. In this decision, the term "prior counsel" shall refer to Amy Peck.

This petition, filed on March 22, 2004, seeks to classify the beneficiary as an alien with extraordinary ability as a gymnastics coach. The beneficiary has been working for [redacted] in that capacity since July 2003. Prior to coming to the United States, the beneficiary worked as a coach at the [redacted] City Athletics Academy in China. The majority of the documentation submitted by the petitioner, however, pertains to the beneficiary's career as a competitive acrobatic gymnast in China from 1988 to 1993. This documentation indicates that he last competed in 1993. Counsel states: "Since 1993, [the beneficiary] changed his career to acrobatics and gymnastics coaching." As required by section 203(b)(1)(A)(i) of the Act and the regulation at 8 C.F.R. § 204.5(h)(3), the petitioner must demonstrate that the beneficiary's national or international acclaim has been sustained. The beneficiary in this case has been coaching for several years since he stopped competing as a gymnast. There is no evidence showing that the beneficiary, age 41 at the time of filing, remains active at the national or international level as a competitive acrobatic gymnast. In such a situation, where the beneficiary has had ample time to establish a reputation as a coach, the petitioner must show that the beneficiary has earned sustained national or international acclaim based on his achievements as a coach rather than his prior reputation as a competitive athlete.

The regulation at 8 C.F.R. § 204.5(h)(5) requires the beneficiary to "continue work in the area of expertise." As noted by counsel and as indicated under Part 6 of the I-140 petition, athletic competition is not the field in which the beneficiary seeks to continue working in the United States. In this country, the beneficiary clearly intends to work as a coach. While a gymnast and a coach certainly share knowledge of the sport, the two rely on very different sets of basic skills. Thus, competitive athletics and coaching are not the same area of expertise. This interpretation has been upheld in Federal Court. In *Lee v. I.N.S.*, 237 F. Supp. 2d 914 (N.D. Ill. 2002), the court stated:

> It is reasonable to interpret continuing to work in one's "area of extraordinary ability" as working in the same profession in which one has extraordinary ability, not necessarily in any profession in that field. For example, Lee's extraordinary ability as a baseball player does not imply that he also has extraordinary ability in all positions or professions in the baseball industry such as a manager, umpire or coach.

Id. at 918. The court noted a consistent history in this area. Thus, while the beneficiary's accomplishments as a competitive acrobatic gymnast are not irrelevant and will be considered below, ultimately he must demonstrate sustained national or international acclaim as a coach.

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, international recognized award). On appeal, counsel states:

> The [director's] decision was in error in that it failed to categorize [the beneficiary] as an alien who has won international acclaimed/recognized awards. The statutory language is clear that one the alien has proven that he had won "a one-time achievement (that is, a major, international recognized award)," he/she does not need to prove any of the 10 items listed under 8 C.F.R. § 204.5(h)(3).
>
> Here, [the beneficiary] is a 14-time world champion.

The petitioner submitted evidence showing that the beneficiary received the following awards:

1. Champion in the Men's Pair 1st Combination Event, 8th World Sports Acrobatics Championship held by the International Federation of Sports Acrobatics (IFSA), Antwerp, Belgium, December 31, 1988
2. Champion in the Men's Pair 2nd Combination Event, 8th World Sports Acrobatics Championship held by the IFSA, Antwerp, Belgium, December 31, 1988
3. 2nd Place in the Men's Pair All-Around Event, 8th World Sports Acrobatics Championship held by the IFSA, Antwerp, Belgium, December 31, 1988
4. Champion in the Men's Pair 1st Combination Event, 7th World Cup Acrobatic Gymnastics Games, Riga, Russia, 1989
5. Champion in the Men's Pair 2nd Combination Event, 7th World Cup Acrobatic Gymnastics Games, Riga, Russia, 1989
6. Champion in the Men's Pair All-Around Event, 7th World Cup Acrobatic Gymnastics Games, Riga, Russia, 1989
7. Champion in the Men's Pair – Overall Title, 9th World Sports Acrobatics Championship held by the IFSA, Augsburg, Germany, October 29, 1990
8. Champion in the Men's Pair – Balance Title, 9th World Sports Acrobatics Championship held by the IFSA, Augsburg, Germany, October 29, 1990
9. 2nd Place in the Men's Pair – Tempo Title, 9th World Sports Acrobatics Championship held by the IFSA, Augsburg, Germany, October 29, 1990
10. Champion in the Men's Pair, the Eravis Cup '90 Sports Acrobatics, 1990
11. Champion in the Men's Pair, the Hattingen Cup '90 Sportakrobatik International, November 10, 1990
12. Champion in the Men's Pair, '91 World Cup Sports Acrobatics Championship held by the IFSA in Tokyo, Japan, May 3-4, 1991
13. Champion in the Men's Pair Tempo Event, Hague World Games, Hague, Holland, 1993
14. 2nd Place in the Men's Pair Balance Event, Hague World Games, Hague, Holland, 1993

Counsel asserts that the preceding acrobatic gymnastics awards constitute major, internationally recognized awards. The petitioner, however, seeks to classify the beneficiary not as an extraordinary gymnast, but rather as an extraordinary coach. As such, the beneficiary's awards demonstrating extraordinary ability as a gymnast cannot, by themselves, demonstrate the beneficiary's eligibility for the classification sought. Further, the burden is on the petitioner to submit supporting evidence showing that the preceding sporting events garnered major, international recognition. For example, the record lacks evidence showing the attendance figures for the preceding events or that the events attracted a substantial international television audience. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Given Congress' intent to restrict this category to "that small percentage of individuals who have risen to the very top of their field of endeavor," the regulation permitting eligibility based on a single award must be interpreted very narrowly, with only a small handful of awards qualifying as major, internationally recognized awards. *See* H.R. Rep. 101-723 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6710, 1990 WL 200418 at *6739.

Given that the House Report specifically cited to the Nobel Prize as an example of a one-time achievement, examples of one-time awards which enjoy truly international recognition may include the Pulitzer Prize, the Academy Award, and (most relevant for athletics) the Olympic Gold Medal. These prizes are "household names," recognized immediately even among the general public as being the highest possible honors in their respective fields.

In this case, there is no evidence showing that the events listed in items 1 through 14 were broadcast on television to a substantial international audience or that they attracted significant major media coverage at the international level (in the same manner as events such as the Olympics or the World Cup of Soccer). The record does not establish that the beneficiary's awards, which will be further addressed below as a lesser nationally or internationally recognized prizes or awards under the criterion at 8 C.F.R. § 204.5(h)(3)(i), command immediate international recognition comparable to the examples cited above. Thus, the petitioner's evidence fails to demonstrate that the beneficiary is the recipient of 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. The petitioner has submitted evidence pertaining to the following criteria.

> *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 evidence (items 1 through 14) showing that the beneficiary received lesser internationally recognized awards as an acrobatic gymnast. The petitioner also submitted a certificate issued by the "Physical Culture and Sports Commission of the People's Republic of China" in 1998 reflecting the beneficiary's designation as an "International Master of Sports." As stated previously, however, these awards relate to the beneficiary's accomplishments as a competitive athlete, not as a coach. Further, there is no evidence showing that that the beneficiary has earned prizes or awards at the national or international level since 1993 (more than a decade prior to the filing date of this petition). As such, the preceding awards cannot be considered evidence of his sustained national or international acclaim.

It is not clear that significant awards exist for gymnastics coaches; however, nationally or internationally recognized prizes or awards won by players coached primarily by the beneficiary may be considered as comparable evidence for this criterion pursuant to 8 C.F.R. § 204.5(h)(4). Here, it is important to evaluate the level at which the beneficiary acts as a coach. A coach who has established a successful history of coaching top athletes who win titles at the national level or above has a credible claim under this visa classification; a coach of intermediates or junior-level athletes does not.

In a May 27, 2005 letter responding to the director's request for evidence, Owner of [redacted] Inc., states:

> Our elite program, which is coached by [the beneficiary], has several boys who have reached the Junior Olympics national level. Recently, [redacted] and [redacted] were ranked No. 1 and No. 2 in the all-around in the regional championship. They both represented the regional team in the

> 2005 J.O. [Junior Olympics] National Gymnastics Championship in Houston. won the national championship on the pommel horse with a score of 9.900.

The petitioner's response to the director's request for evidence included evidence of the official results for the 2005 Junior Olympic Nationals – Event Finals for the pommel horse (Level 10: Ages 14-15) showing as the first place winner. We note, however, that victory occurred subsequent to the petition's filing date. A petitioner, however, must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. 45 (Comm. 1971). Accordingly, the AAO will not consider award in this proceeding. Further, we do not find that a Level 10 Junior Olympic event represents the highest level of competition in the sport of gymnastics. The petitioner must show that gymnasts under the beneficiary's direct tutelage have won in competitions at the highest level (such as the "elite" level), rather than competitions limited to a particular age group or skill level.

The petitioner's response to the director's request for evidence also included an April 25, 2005 letter from Coach g of the City Athletics Academy stating: "[The beneficiary], the men's pair world champion of acrobatic gymnastics, had finished the systematic training in gymnastics of our Academy. In addition, he was also employed as a coach of our Academy, and taught and coached who received the men's pair world champion, and other gymnastics athletes." Although correspondence is dated April 25, 2005, for some inexplicable reason, the lower left-hand corner of his letter bears a facsimile date of "Apr. 03 2002."

The petitioner also submitted a "Letter of Recommendation" from who identifies himself as "chief coach" of the Chinese Trampoline Team, stating:

> I know [the beneficiary] because we worked together as coaches of the Athletic Team. He was a student of Famous Athletic Coach He worked hard and laid a good foundation for later winning the world championship. He passed his successful experience on to athletes such as and
>
> [The beneficiary] was an athletic coach of the City Athletic Academy. He taught and coached athletes such as who later won the world championship in men's pairs. When he retired, he became a national referee of sports acrobatics.

The petitioner's response also included an April 29, 2005 "Letter of Recommendation" from stating:

> I, , am the world champion of acrobatic gymnastics. I was crowned many world champions in various international big matches such as the 10th World Acrobatic Gymnastics Tournament held in France, 1992.
>
> * * *
>
> In the process of being crowned world champion, I received helpful guide both on teaching and training from the coach – [the beneficiary]. . . . The difficult moves of "Roll Back and Forth With

> Single Hand" [and] "Headstand" I used in the international tournaments just generate from the wisdom of the coach – [the beneficiary]. He always taught us by personal example as well as verbal instruction. In addition, he shared all the experience of using difficult moves in international tournaments with us selflessly. Consequently, I benefit a lot from it. With his help, I become the world champion and get the gold medal too.

The preceding letters from [redacted] and [redacted] include no address, telephone number, or any other information through which these individuals may be contacted. Nor do their letters identify the specific time periods during which the beneficiary served as the primary coach of [redacted] or [redacted] In addressing the vague statements of [redacted], and [redacted] the director's decision stated:

> [T]he record is ambiguous about the extent to which the beneficiary is responsible for [redacted] and [redacted] awards. Many witnesses say only that the beneficiary was involved in training those athletes, with no clear indication that the beneficiary was the principal coach for any of the athletes during the time immediately leading up to their awards.

As evidence of [redacted]s awards, the petitioner submitted a 1st place certificate from the 1992 Hattingen Cup, two photographs (bearing Chinese captions underneath) of medals from the Sports Acrobatics World Cup held in Sophia, Bulgaria in September 1993, a 1st place certificate from the 11th World Championships in Sports Acrobatics held in Beijing, China in 1994, and a photograph (bearing a Chinese caption underneath) of a medal from the 11th World Championships in Sports Acrobatics. Pursuant to 8 C.F.R. § 103.2(b)(3), any document containing foreign language submitted to CIS 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 preceding documents were not accompanied by certified English language translations as required by the regulation. Further, there is no evidence showing that the beneficiary accompanied [redacted] to the preceding competitions as his primary coach. We note that the beneficiary competed as an acrobatic gymnast up until 1993; therefore, the extent to which his coaching resulted in [redacted]'s competitive success remains unclear. For example, there is no indication that the beneficiary, rather than [redacted] who [redacted] describes as a "famous athletic coach), was [redacted]'s primary coach at the [redacted] City Athletic Academy.

As evidence of [redacted]'s awards, the petitioner submitted three blurred photographs (bearing Chinese captions underneath) dated 1995, 1996, and 2000 of individuals standing atop award podiums, a 1st place certificate from the World Championships in Sports Acrobatics held in Riesa, Germany in 1996, and a "World Ranking List" dated July 27, 2005 from the International Gymnastics Federation showing that Song Min and his men's pair partner ranked 4th after the 7th World Games in 2005. The preceding world ranking list was issued subsequent to the petition's filing date. As stated previously, a petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. § 103.2(b)(12); *see Matter of Katigbak*, 14 I&N Dec. at 45. Accordingly, the AAO will not consider the latter document in this proceeding. Nevertheless, there is no evidence showing that the beneficiary, who left China for the United States in June 2003, coached [redacted] immediately prior to the 7th World Games in 2005. Nor does the record include a statement from [redacted] confirming that the beneficiary was his primary coach or the specific dates of his tutelage. Further, there is no evidence showing that the beneficiary accompanied [redacted] to the preceding competitions as his primary

coach. Finally, aside from the 2005 world ranking list (which was printed in English), the preceding documents relating to [redacted] awards were not accompanied by certified English language translations as required by the regulation at 8 C.F.R. § 103.2(b)(3).

A May 9, 2005 letter of support from [redacted] of Littleton, Colorado, who identifies himself as a former executive of the Federation of International Gymnastics, discusses awards won by the [redacted] Acrobatics Team since 1988. Counsel cites this letter on appeal stating: "Under [the beneficiary's] coaching, the provincial team has won 40 gold medals, 7 silver medals and 3 bronze medals in international competitions." While [redacted]'s letter mentions the beneficiary's athletic accomplishments for this team as an acrobatic gymnast, it fails to identify the beneficiary as a coach of the [redacted] Acrobatics Team or to discuss his specific coaching accomplishments. As stated previously, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N at 533, 534; *Matter of Laureano*, 19 I&N at 1; *Matter of Ramirez-Sanchez*, 17 I&N at 503, 506.

In this case, the evidence is not adequate to show that the beneficiary has earned sustained national or international acclaim in the years immediately preceding the petition's filing date through coaching top athletes or teams to championship titles at the national or international level. Thus, the petitioner has not established that the beneficiary 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, the 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, recommendations by colleagues or current members, or payment of dues, do not satisfy this criterion as such requirements do not constitute outstanding achievements. In addition, it is clear from the regulatory language that members must be selected at the national or international level, rather than the local or regional level. Therefore, membership in an association that evaluates its membership applications at the local or regional chapter level would not qualify. Finally, 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 issued by the "Physical Culture and Sports Commission of the People's Republic of China" in 1988 reflecting the beneficiary's designation as an "International Master of Sports." As stated previously, however, this certificate relates to the beneficiary's accomplishments as a competitive athlete, not as a coach. Further, we find that the beneficiary's "International Master of Sports" designation, which has already been addressed under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(i), constitutes recognition rather than membership in an association in his field.

In a June 8, 2005 letter responding to the director's request for evidence, prior counsel argued that the beneficiary's designation as a referee of Chinese sports acrobatics meets this criterion. We do not find that refereeing gymnastics competitions constitutes membership in an association in the field for purposes of this

criterion. The beneficiary's service as a referee is better considered under the criterion set forth at 8 C.F.R. § 204.5(h)(3)(iv).

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

> *Published materials 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 order for published material to meet this criterion, it must be primarily about the beneficiary 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 or international level from a local publication or from a publication in a language that most of the population cannot comprehend. 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.[2]

The petitioner submitted newspaper articles and other published material dated 1988 to 1991 that discuss the beneficiary's achievements as an athlete. For example, the petitioner submitted articles appearing in [redacted] *Daily* stating that the beneficiary and his partner earned gold medals at acrobatics competitions in 1988, 1989, and 1990. Such material, however, is not adequate to demonstrate the beneficiary's extraordinary ability as a coach. Further, there is no evidence showing that the publications mentioning the beneficiary's athletic accomplishments had substantial national readership. We do not find that published material limited to a period between 1988 and 1991 is adequate to demonstrate the beneficiary's sustained national acclaim as a coach. Without evidence demonstrating that the beneficiary has been the primary subject of major media attention in recent years, we cannot conclude 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 regulation at 8 C.F.R. § 204.5(h)(3) provides that "a petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." Evidence of the beneficiary's participation as a judge must be evaluated in terms of these requirements. The weight given to evidence submitted to fulfill the criterion at 8 C.F.R. § 204.5(h)(3)(iv), therefore, depends on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). For example, judging an Olympic competition is of far greater probative value than judging a local age-group competition.

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[2] 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, cannot serve to spread an individual's reputation outside of that county.

In response to the director's request for evidence, the petitioner submitted a May 9, 2005 letter issued by the China Sports Acrobatics Association stating: "From 1993 to 1997, [the beneficiary] was a referee of Chinese Sports Acrobatics." The May 9, 2005 letter then lists five competitive events during that period in which the beneficiary participated as a referee. This letter, however, includes no name, address, telephone number, or any other information through which an official of the China Sports Acrobatics Association may be contacted. Nor has the petitioner submitted evidence from this association (such as its official rules and regulations) outlining the specific duties of a sports acrobatics referee.

We do not find that the May 9, 2005 letter is adequate to demonstrate that the beneficiary meets this criterion. The plain language of this criterion requires "[e]vidence of the alien's participation . . . as a judge of the work of others." Primary evidence of the beneficiary's participation is of greater probative value than a May 9, 2005 letter of support issued several years after the competitive events occurred. In this instance, there is no evidence showing the names of the athletes evaluated by the beneficiary, their level of expertise, and the paperwork documenting his assessments. The absence of contemporaneous evidence of the beneficiary's participation (such as judging slips, event programs identifying the beneficiary as a judge, or a judge's credential from the events) is a significant omission from the record. The benefit sought in the present matter is not the type for which documentation is typically unavailable and the statute specifically requires "extensive documentation" to establish eligibility. *See* section 203(b)(1)(A)(i) of the Act. The regulations governing the present immigrant visa determination have no requirement mandating that CIS specifically accept the credibility of personal testimony, even if not corroborated. The commentary for the proposed regulations implementing this statute provide that the "intent of Congress that a very high standard be set for aliens of extraordinary ability is reflected in this regulation by requiring the petitioner to present more extensive documentation than that required" for lesser classifications. 56 Fed. Reg. 30703, 30704 (July 5, 1991).

In addition to the preceding deficiencies, we note that the statute and regulations require the beneficiary's acclaim to be sustained. Subsequent to 1997, there is no indication that the beneficiary has served as a gymnastics judge in the United States or China.

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

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

In response to the director's request for evidence, prior counsel asserts that the beneficiary coached athletes such as [redacted] and [redacted] to national and international victories. Nationally or internationally recognized prizes or awards won by teams or individuals coached by the beneficiary are far more relevant to the criterion at 8 C.F.R. § 204.5(h)(3)(i), a criterion which has already been addressed. Here it should be emphasized that the regulatory criteria are separate and distinct from one another. Because separate criteria exist for awards and original contributions of major significance, CIS clearly does not view the two 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 order to satisfy this criterion, the petitioner must show that the beneficiary's coaching contribution has demonstrably influenced the greater field at the national or international level. The record in this case, however, includes no evidence showing that the beneficiary is among the most influential coaches currently active in the sport of gymnastics. Nor is there evidence showing that a number of top gymnasts or coaches from throughout the United States or China have adopted the beneficiary's particular techniques. We find that the petitioner has failed to demonstrate a specific coaching accomplishment of the beneficiary that rises to the level of contribution of major national or international significance in his sport. Thus, the petitioner has not established that the beneficiary meets this criterion.

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

In order to establish that he performed a leading or critical role for an organization or establishment with a distinguished reputation, the petitioner must establish the nature of the beneficiary's role within the entire organization or establishment and the reputation of the organization or establishment.

In response to the director's request for evidence, prior counsel states: "[The beneficiary] was a lead gymnastics coach for the Fujian Province, which is one of the best in China with an impressive record of accomplishments." The record reflects, however, that [redacted] rather than the beneficiary, was the head coach of the Fujian provincial team. Aside from the May 9, 2005 letter of support from Jibai Feng of Littleton, Colorado, the record includes no evidence showing that the Fujian provincial team had a distinguished national or international reputation during the beneficiary's tenure as a coach. For example, the record includes no official comprehensive competitive statistics directly comparing the Fujian team's performance to that of the other provincial teams in China. Further, [redacted]'s letter and the other reference letters submitted by the petitioner include no specific information about his duties and responsibilities as a coach, nor do they identify his dates of service. In addressing the reference letters submitted by the petitioner, the director noted that the letters offered "little more than confirmation that the beneficiary has held various coaching positions. The letters do not indicate that the beneficiary held leading or critical roles . . . ." While the beneficiary may have coached the Fujian provincial team along with [redacted] and [redacted], the petitioner has not submitted evidence showing that the beneficiary's role was more important than that of the preceding individuals or any other coaches employed by this team. In this case, the evidence submitted by the petitioner is not adequate to demonstrate that the beneficiary performed in a leading or critical role for a distinguished organization, or that his involvement earned him sustained national or international acclaim as a coach. Thus, the petitioner has not established that the beneficiary meets this criterion.

In conclusion, we concur with the director's finding that the beneficiary 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 sustained acclaim necessary to qualify as an alien of extraordinary ability.

While CIS has approved one O-1 nonimmigrant visa petition filed on behalf of the beneficiary, LIN0313853327, that prior approval does not preclude CIS from denying an immigrant visa petition based on a different, if similarly phrased, standard. In publishing the proposed rule, legacy INS specifically distinguished the O-1 nonimmigrant category from the high standard set for immigrant visa extraordinary ability category. *See* 56 Fed. Reg. 30703, 30704 (July 5, 1991). 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 beneficiary'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 had approved the nonimmigrant petitions on behalf of the beneficiary, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Review of the record does not establish that the beneficiary 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 beneficiary's achievements set him significantly above almost all others in his field at the national or international level. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

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.