U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

PUBLIC COPY

B2

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: APR 16 2009

LIN 07 031 52328

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.

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, an ice rink and skating school, 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 in athletics. 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. More specifically, the director found that the petitioner had failed to demonstrate the beneficiary's receipt of a major, internationally recognized award, or that she meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3).

On appeal, counsel argues that the beneficiary meets at least three of the regulatory criteria at 8 C.F.R. § 204.5(h)(3) and that the petitioner submitted comparable evidence of her extraordinary ability pursuant to 8 C.F.R. § 204.5(h)(4).

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

This petition, filed on November 13, 2006, seeks to classify the beneficiary as an alien with extraordinary ability as an ice skating trainer and a coach. The record reflects that the beneficiary has coached for Stamford Twin Rinks since 2004. Aside from her activities as a coach and a trainer, the record includes evidence showing that the beneficiary competed successfully in national and international ice dancing competitions from the 1990s through 2002. Subsequent to 2002, there is no evidence indicating that the beneficiary remained active in national or international ice dancing competition. Further, according to Part 6 of the Form I-140 petition, "Basic information about the proposed employment," and an August 10, 2006 letter from the Director of Stamford Twin Rinks, the beneficiary (age 25 at the time of filing) is seeking work in the United States as an ice skating trainer rather than as a competitive ice skater or an ice dancer. The statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While a competitive skater and a coach may 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. In the present matter, there is no evidence showing that the beneficiary has sustained national or international acclaim through achievements as a competitive ice skater subsequent to 2002. Further, the evidence is clear that the beneficiary intends to work as an ice skating trainer and a coach for Stamford Twin Rinks. While the beneficiary's competitive accomplishments as an ice dancer are not completely irrelevant and will be given some consideration, ultimately she must satisfy the regulation at 8 C.F.R. § 204.5(h)(3) through her achievements as a trainer and 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, 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 the beneficiary's 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 beneficiary 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.[1]

> *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 showing, *inter alia*, that the beneficiary and her ice dancing partner won 1st place in the "Final Cup of Russia" in 2001 and 2002. However, there is no evidence indicating that the beneficiary has received any nationally or internationally recognized awards in her sport since 2002 or that she intends to continue competing as ice dancer in the United States. As discussed previously, the statute and regulations require the beneficiary's national or international acclaim to be *sustained* and that she seeks to continue work in her area of expertise in the United States. *See* sections 203(b)(1)(A)(i) and (ii) of the Act, 8 U.S.C. §§ 1153(b)(1)(A)(i) and (ii), and 8 C.F.R. §§ 204.5(h)(3) and (5). While the beneficiary's awards as a competitive athlete are not completely irrelevant and will be given some consideration, ultimately she must satisfy the regulatory criterion at 8 C.F.R. § 204.5(h)(3)(i) through her achievements as a coach and trainer. As such, the beneficiary's awards and competitive results demonstrating her past record of success as a national and international ice dancing competitor from the 1990s to 2002 cannot serve to meet this regulatory criterion.

Nationally or internationally recognized prizes or awards won by ice skating competitors coached primarily by the beneficiary, however, can be considered for this criterion. In that regard, the petitioner submitted evidence showing the competitive achievements of the beneficiary's junior skaters [redacted] and [redacted]

The petitioner submitted documentation showing that [redacted] placed 2nd out seventeen couples in the Intermediate Free Dance Finals at the Lake Placid Ice Dance Championships in 2006, 1st out of four couples in the Intermediate Free Dance Finals at the 2006 Boston Open, 2nd out of six couples in the Intermediate Dance category at the 2007 New England Championships on October 21, 2006, 2nd out of thirteen couples in the "Intermediate Dance Group A (QR)" Finals at the 2007 U.S. Junior National Championships on November 30, 2006, and 5th out of fourteen couples in the Intermediate Dance Finals at the 2007 U.S. Junior National Championships on December 2, 2006. [redacted] achievements at the 2007 U.S. Junior National Championships post-date the filing of the petition. A petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). Accordingly, the AAO will not consider competitive achievements from the 2007 U.S. Junior National Championships in this proceeding.

With regard to [redacted]s achievements, the petitioner submitted an October 27, 2005 article in the *Greenwich Post* stating:

---

[1] The petitioner does not claim to meet or submit evidence relating to the criteria not discussed in this decision.

> [redacted] was recently chosen as one of only 100 junior figure and hockey skaters from the Northeast region to skate on-ice with national and international world champions at the Sarah Hughes and Friends IceTravaganza Show . . . at Nassau Coliseum in Uniondale, N.Y.
>
> The seven-year-old Laurel Springs School third grader participated in the recent Stars, Stripes and Skates Talent Search at Danbury Ice Arena.
>
> * * *
>
> She is coached by Frances Gold Lind, with additional coaching by [redacted] and [the beneficiary].

The article further states that candidates were judged "solely on their performance acumen, not technical skill." This article indicates that "Frances Gold Lind" was the principal coach of Claire Uygur when she was chosen for the show. Further, we cannot ignore counsel's statement on page three of her appellate brief indicating that the beneficiary followed her "world-renowned coach, [redacted], who had coached many other ice dance teams to top three finishes in such prestigious contests as the Olympics and the World Championships, to Stamford, Connecticut, where [redacted] had a permanent position with STR [Stamford Twin Rinks]."[2] In this case, it is the petitioner's burden to demonstrate that the beneficiary's role in her athlete's success was primary rather than attenuated by others such as [redacted], or [redacted]. Nevertheless, the petitioner has not established that selection for the show as one of 100 junior figure and hockey skaters from the Northeast region is tantamount to a nationally or internationally recognized prize or award for excellence in figure skating.

On appeal, the petitioner submits documentation showing that [redacted] placed 1st in the "Unrestricted Pre-Preliminary Group C" Female Championship Solo Free Skate at the 2007 State Games of America in Colorado Springs, 1st in the "Pre-preliminary Girls Group H Final Standings" at the 82nd Mid-Atlantic Figure Skating Championships in September 2007, and 2nd in the "Preliminary Girls – Group D" category at the 2008 Darien Open **Figure Skating Competition. The** petitioner also submits similar competitive results from 2007 and 2008 for [redacted] and [redacted]. The petitioner's appellate submission includes letters from [redacted] mother of [redacted] and [redacted], mother of [redacted] indicating that the beneficiary served as their daughters' coach and discussing their daughters' competitive achievements in 2007 and 2008.[3] [redacted], and [redacted] competitive results post-date the filing of the petition. A petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO is not required to consider this evidence in this proceeding.

---

[2] The achievements of [redacted] indicate that the very top of the beneficiary's field is a level above her present level of coaching achievement.

[3] [redacted] letter identifies the beneficiary as "primary figure skating coach," but the letter from [redacted] states that Bess has only worked with the beneficiary "for two hours every week."

With regard to the beneficiary's athletes' awards in competitions such as the Mid-Atlantic Figure Skating Championships and the New England Championships, such awards reflect regional recognition rather than national or international recognition. Regarding awards won in "Junior," "Intermediate," or age-group competition, we do not find that successfully coaching their recipients demonstrates that the beneficiary "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). 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.[4] Likewise, it does not follow that a skating coach who has had success coaching athletes at the "Junior" or "Intermediate" 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." In this case, there is no evidence showing that top athletes (such as senior national competitors) coached primarily by the beneficiary have won nationally or internationally recognized prizes or awards. Accordingly, 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, 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 letter from the Figure Skating Federation of Russia stating that, as a competitor in the 1990s and early 2000s, the beneficiary represented Russia as a member of its

---

[4] 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.

national team. In this case, "the field for which classification is sought" is coaching and instruction. Further, the beneficiary was selected for the team based on her ability as a competitive athlete, not as a coach. As such, the beneficiary's athletic participation as a member of the Russian national team, before she was active as a coach, cannot serve to meet this regulatory criterion.

The petitioner submitted a certificate stating that the beneficiary attained the "rank of the International Class Master of Sport of Russia in figure skating." As evidence of the requirements for this certificate, the petitioner submitted information about the "United Sports Classification System of the U.S.S.R." from *Wikipedia*. With regard to information from *Wikipedia*, there are no assurances about the reliability of the content from this open, user-edited internet site.[5] *See Lamilem Badasa v. Michael Mukasey,* No. 07-2276 (8th Cir. August 29, 2008). Accordingly, we will not assign weight to information for which *Wikipedia* is the only cited source. Nevertheless, the beneficiary earned this rank based on her ability as an athlete, not as a coach.

The petitioner submitted the beneficiary's membership card for the U.S. Figure Skating Association and a form letter from its president welcoming her as a member. The letter states that "the organization now has nearly 200,000 members." The petitioner also submitted information from the U.S. Figure Skating Association's internet site stating: "You can become and individual member online! It's quick and easy – go to the membership form!" According to the documentation submitted by the petitioner, anyone can become a member simply by registering online and paying an $85 membership fee. There is no evidence showing that this association requires outstanding achievements of its members.

The petitioner submitted the beneficiary's membership card for the Professional Skaters Association (PSA). The petitioner also submitted general information and application material from the PSA's internet site, but there is no evidence showing that the association requires outstanding achievements of its members.[6] We cannot conclude that being 18 years of age, teaching more than 5 hours per week,

---

[5] Online content from *Wikipedia* is subject to the following general disclaimer:

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

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on April 9, 2009, copy incorporated into the record of proceeding.

[6] "The PSA Membership Categories and Fees" section of the PSA's internet site states:

> Full Membership: New $115, Renewal $120. Refers to all ice skaters 18 years & older, who teach more than 5 hours per week and are interested in the general advancement of the profession and to Program Directors who are employed by a rink or club to direct skating programs. This membership also applies to Skate Technicians

and declaring an interest in the general advancement of the profession are tantamount to outstanding achievements.

In this case, there is no evidence showing that the beneficiary holds membership in an association requiring outstanding achievements of its members, as judged by recognized national or international experts in her field or an allied one. Accordingly, the petitioner has not established that the beneficiary 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 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 level from a local or regional 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.[7]

The petitioner submitted a three-sentence captioned photo of the beneficiary and her skating partner in the December 29, 2003 issue of the *Adirondack Daily Enterprise*, but there is no evidence (such as circulation statistics) showing that this local newspaper qualifies as a form of major media. Further, the plain language of this regulatory requires published material "relating to the field for which classification is sought." We cannot conclude that a captioned photograph indicating that the beneficiary performed in an ice show relates to her work as a trainer or coach, or that the photograph meets the other requirements of this regulatory criterion.

As discussed, the petitioner submitted an October 27, 2005 article in the *Greenwich Post* entitled "Uygur to skate with champions," but the article only mentions the beneficiary's name in passing. The plain language of this regulatory criterion requires that the published material be "about the alien." Further, the author of the material was not identified as required by 8 C.F.R.

> who are at least 18 years of age and who are presently employed for remuneration as a skate repairer, sharpener or person fitting skates either as a proprietor or with a business selling, repairing, sharpening or fitting skates (defined as boots as well as boots and blades) and is so engaged in such work at least 20 hours per week.

See http://www.skatepsa.com/Categories-and-Fees.htm, accessed on April 9, 2009, copy incorporated into the record of proceeding.

[7] 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.

§ 204.5(h)(3)(iii) and there is no evidence showing that the *Greenwich Post* qualifies as a form of major media.

The petitioner submitted an undated article entitled "Timur Aslakhanov – first Chechen figure skater" and a May 12, 2002 article entitled "[The beneficiary] and Timur – future of Russia's figure skating" posted online at ChechnyaFree.ru, an internet site for "Free Chechnya radio station" which broadcasts in Russian and Chechen. The date of the first article was not provided and it was primarily about [redacted] rather than the beneficiary. Further, the authors of the two preceding articles were not identified as required by the plain language of this regulatory criterion and the material did not relate to the beneficiary's work as a trainer or coach. On appeal, the petitioner submits page 335 of the *2007 World Radio TV Handbook: The Directory of Global Broadcasting* identifying the radio station and its internet site in the Russian "National Radio" section of the handbook. The petitioner also submits the results of a "Dow Jones Factiva Source Search" stating that ChechnyaFree.ru is a "[n]ews agency providing daily social, political, and business news from Republic of Chechnya." While the preceding documentation indicates that the radio station and its internet site are national media outlets, there is no evidence (such as readership statistics) indicating that the radio station's online publication qualifies as a form of "major media" as required by the plain language of this regulatory criterion.

The petitioner submitted printouts from various internet sites reflecting that video tapes of competitions in which the beneficiary competed were available for sale online. The petitioner also submitted evidence of a video posted on YouTube showing the beneficiary and her partner skating at the "Russian nationals" in 1998. The plain language of this regulatory criterion requires "published material about the alien" including "the title, date and author of the material." The preceding evidence does not meet these requirements. Nevertheless, there is no evidence showing that the video footage of the beneficiary was broadcast by major media outlets.

On appeal, the petitioner submits a June 14, 2007 article in the *Bulletin* (Wilton, Connecticut) entitled "More gold medals for [redacted]" This article states that [redacted], a sixth grader, is in her "fourth year of competitive figure skating" and that "[h]er primary coach is [redacted]" The petitioner also submits a June 2007 article and a May 9, 2008 article in the *Wilton Villager* entitled "[redacted] makes it 10 straight golds" and [redacted] has a golden weekend." The preceding articles from 2007 and 2008 were published subsequent to the petition's filing date. A petitioner must establish the beneficiary's eligibility at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. at 49. Accordingly, the AAO is not required to consider these articles in this proceeding. Nevertheless, the preceding articles were not primarily about the beneficiary and there is no evidence that they were published in major media rather than local media.

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.

We acknowledge the petitioner's submission of several reference letters praising the beneficiary's talents as a skater and a coach. Talent and employment in one's field, however, are not necessarily indicative of original artistic contributions of major significance. The record lacks evidence showing that the beneficiary has made original contributions that have significantly influenced or impacted her field.

1994 Olympic Champion, Ladies Figure Skating, states:

> I want to write this letter of support for [the beneficiary] because I know she is a skater, and coach with a specialty in choreography, of extraordinary ability. [The beneficiary] and I both trained in Russia in the early years of the 1990s, when I was practicing to become a World and Olympic Champion and she was a star ice dancer in our country. I was 16 years of age when I won my Olympic medal, but [the beneficiary] was even younger that year when she competed with [redacted] in ice dancing at the Russian national championships and also in international competitions. Even before that, [the beneficiary] competed in ice dancing at the National Championships and in international competitions at the Junior level, even though she was only 10 years old!
>
> [The beneficiary] is especially known for her gracefulness and artistry and her extraordinary talent in a discipline, ice dancing, which requires great precision, musical interpretation, and creativity. Even [redacted] one of the top coaches in the world today, still talks about [the beneficiary's] abilities at such a young age and her talents as a world-class choreographer in figure skating. Having such competitive experience at a very young age helps [the beneficiary] to coach especially young skaters who have the talent to be champions.

Coach and Choreographer, Ice House Skating Rink,[8] states:

> I have known [the beneficiary] for many, many years, since we were young skaters in Russia. [The beneficiary] and I competed as an ice dancing team for Russia in 1994-95. . . . [The beneficiary] was one of the top ice dancers in Russia for many years. I personally was very surprised that [the beneficiary] missed earning a spot on Russia's Olympic team in 2002 by only one place; my own sense is that she and her partner should have placed in the top three that year.

---

[8] With regard to his own accomplishments as a coach, states:

> **Students I have coached to Olympic and World medals include** [redacted] of Japan, who won the Olympic Ladies Gold Medal in 2006; [redacted] of Japan, who won the 2007 World Ladies Gold Medal; [redacted] of Japan, who won the 2007 World Men's Silver Medal; [redacted] and [redacted] **of Canada,** who won the 2003 World Ice Dancing Gold Medal; and [redacted] and [redacted] of Russia, who won the 2006 Olympics Ice Dancing Bronze Medal.

The achievements of [redacted] indicate that the very top of the beneficiary's field is a level above her present level of coaching achievement.

> [The beneficiary] has always demonstrated an extraordinary level of talent, grace, and creativity in the sport of figure skating. It is these skills that make her an irreplaceable member of the professional coaching staff at Stamford Twin Rinks, where I have skated with my own students. [The beneficiary] would not have qualified to compete at the senior level at such a young age without having remarkable interpretive ability, agility, and discipline that most skaters do not possess. Her dance and ballet training also made her an unbelievably beautiful and imaginative skater — talents that now allow her to be an extraordinary choreographer and technical coach for many young skaters with very promising competitive futures.
>
> As a coach and choreographer for several of the top skaters in the world today, I can say without qualification that I consider [the beneficiary] to be one of the most talented skaters, coaches, and choreographers I have ever met.

[redacted], 2006 Olympic Pairs Gold Medalist, 2004 & 2005 World Pairs Champion, 2002-06 European Pairs Champion, and 2003-05 Russian Pairs Champion, states:

> [The beneficiary's] extraordinary achievements at such a young age give her an ability that very few skating coaches have, to instill in young competitive skaters the discipline, focus, artistry and technical skills they must have to become champions. [The beneficiary's] ability to combine technical skills with artistry and grace, which have allowed her young students to excel in competition under the new, complicated judging system, is very rare to find in our sport.

[redacted] Georgian National Men's Champion, 2000-06, states:

> I have known [the beneficiary] for many years, when we practiced and competed together for our countries.
>
> * * *
>
> I think that [the beneficiary] offers skating students in the United States something that no other coach can, and that is an understanding of how much hard work and discipline it takes to become a national and international competitor starting at a very young age. There are many young skaters who want to become champions, and [the beneficiary] has the personal experience of competing at the Junior level in Nationals at age 10 and at the Senior level in Nationals and ISU events at age 13 . . . . [The beneficiary] also has extraordinary artistic talent, combined with uncommon grace and flexibility. These assets make her an unbelievably gifted choreographer and technical coach, which is rare to find in our sport.

On appeal, counsel states:

> As a choreography coach, [the beneficiary] is responsible for using the music selected for her student's program to create an entertaining and visually pleasing and technically challenging routine that includes all the elements required by the International Skating Union (ISU), as dictated in the International Judging System ("IJS") guidelines, which are the rules and regulations that apply to all major figure skating competitions in the United States . . . . Thus, every new skating routine [the beneficiary] produces serves to be an original creation, a creation that, upon its exhibition in a figure skating competition, will seen by [sic], and thus affect, other choreographers' approaches to skating routine construction.

Counsel does not specifically identify any skating routines produced by the beneficiary that have affected other choreographers' approaches to the extent that they constitute original contributions of major significance in the field. There is no evidence showing that any of the skating routines produced by the beneficiary have significantly influenced or impacted her field in a manner consistent with sustained national or international acclaim.

With regard to the beneficiary's achievements as a skater and a coach, the letters of recommendation do not specify exactly what the beneficiary's original athletic contributions have been, nor is there an explanation indicating how any such contributions were of major significance in her 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 beneficiary may have helped various young athletes with their skills, choreography, and training, there is nothing in the reference letters indicating that she has developed original training techniques, routines, or skating methodologies that have been recognized, widely adopted, or otherwise significantly impacted her field in manner consistent with sustained national or international acclaim. Even if the techniques utilized by the beneficiary were found to be original, there is nothing to demonstrate that they have had major significance in the field. For example, the record does not indicate the extent of the beneficiary's influence on others in her sport nationally or internationally, nor does it show that the field has somehow changed as a result of her work.

In this case, the petitioner has submitted letters from impressive experts whose opinions are important in figure skating and ice dancing. The letters of recommendation submitted by the petitioner, however, 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 beneficiary'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 trainer or coach who has sustained national or international acclaim. Without

extensive documentation showing that the beneficiary'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 photographs of the beneficiary and her students taken during competition. On appeal, counsel argues that the beneficiary's work as an ice dancer and as a choreographer meets this regulatory criterion. The plain language of this regulatory criterion indicates that it applies to visual artists (such as sculptors and painters) rather than to ice skating coaches such as the beneficiary. The ten criteria in the regulations are designed to cover different areas; not every criterion will apply to every occupation. The beneficiary and her students' participation in national and international ice skating competitions has previously been addressed under the awards criterion at 8 C.F.R. § 204.5(h)(3)(i). Virtually every athlete "displays" his or her work in the sense of competing in front of an audience. Accordingly, 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.*

On appeal, the petitioner submits a statement prepared by [redacted] and [redacted] Skating Directors of Stamford Twin Rinks, stating:

> Having [the beneficiary] as a choreographer on staff is allowing us both to retain skaters who are reaching higher competitive levels and to attract new ones who are drawn to [the beneficiary's] distinctive and renowned skills as an experienced international competitor and ice dancing champion, and specialist in artistry and choreography.
>
> We are also utilizing [the beneficiary's] coaching abilities more broadly in our Skating School, which is one of the largest in the country, with more than 1,400 students who are either full members of U.S. Figure Skating or are members of the U.S. Figure Skating Basic Skills Program. Over the past three years, [the beneficiary] has taught private lessons in ice dancing, freestyle, and Moves in the Field to both adults and younger skaters. She has assisted us in choreographing and teaching routines for STR's Annual Ice Show. She has choreographed numerous competition programs for singles skaters and ice dancing teams.
>
> [The beneficiary] also contributes off-ice training instruction to our program, teaching classes in stretching, fitness, ballet, jump training, and partnering.

While the record adequately demonstrates that Stamford Twin Rinks has a distinguished reputation, there is no evidence establishing that the beneficiary performed in a leading or critical role for the facility. For example, there is no evidence differentiating the importance of the beneficiary's role from that of the other coaches employed by Stamford Twin Rinks, let alone its more senior staff (such as its

skating directors). The documentation submitted by the petitioner shows that the beneficiary has performed admirably for her employer as a coach and a choreographer, but it does not establish that she was responsible for Stamford Twin Rinks' 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 the beneficiary meets this criterion.

In this case, the petitioner has failed to demonstrate the beneficiary's 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). 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 beneficiary 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).

On appeal, counsel argues that the reference letters from the beneficiary's peers are comparable evidence of her extraordinary ability in the field of figure skating. The regulation at 8 C.F.R. § 204.5(h)(4) allows for the submission of "comparable evidence" only if the ten criteria "do not readily apply to the beneficiary's occupation." The regulatory language precludes the consideration of comparable evidence in this case, as there is no evidence that eligibility for visa preference in the beneficiary's occupation cannot be established by the ten criteria specified by the regulation at 8 C.F.R. § 204.5(h)(3). Where an alien is simply unable to meet three of the regulatory criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence.

Nevertheless, the reference letters submitted in support of this petition have already been addressed under the regulatory criteria at 8 C.F.R. §§ 204.5(h)(3)(i), (v), and (viii). Further, there is no evidence showing that the documentation the petitioner requests re-evaluation of as comparable evidence constitutes achievements and recognition consistent with sustained national or international acclaim at the very top of the beneficiary's field. While reference letters can provide useful information about an alien's qualifications or help in assigning weight to certain evidence, such letters are not a substitute for objective evidence of the alien's achievements and recognition as required by the statute and regulations. The nonexistence of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Further, the classification sought requires "extensive documentation" of sustained national or international acclaim. *See* section 203(b)(1)(A)(i) of the Act, 8 U.S.C. § 1153(b)(1)(A)(i), and 8 C.F.R. § 204.5(h)(3). The commentary for the proposed regulations implementing the 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). Primary evidence of achievements and recognition is of far greater probative value than opinion statements from individuals selected by the petitioner.

Documentation in the record indicates that the alien was the beneficiary of an approved O-1 nonimmigrant visa petition filed in her behalf by Stamford Twin Rinks. While USCIS has approved an O-1 nonimmigrant visa petition filed on behalf of the beneficiary, that prior approval does not preclude USCIS from denying an immigrant visa petition based on a different, if similarly phrased

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