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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 3 2015 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. We will dismiss the appeal.

The petitioner, a fashion and event photographer, seeks classification as an "alien of extraordinary ability" in the arts, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), which makes visas available to individuals who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation. The director determined that the petitioner had not satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3), which requires documentation of a one-time achievement or evidence that meets at least three of the ten regulatory criteria.

On appeal, the petitioner submits a brief and additional evidence. The petitioner asserts that he meets the categories of evidence at 8 C.F.R. § 204.5(h)(3)(iii), (v), (vii), and (viii).

For the reasons discussed below, we agree that the petitioner has not established his eligibility for the exclusive classification sought. Specifically, the petitioner has not submitted qualifying evidence of a one-time achievement pursuant to 8 C.F.R. § 204.5(h)(3), or evidence that satisfies at least three of the ten regulatory criteria set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(i)-(x). As such, the petitioner has not demonstrated that he is one of the small percentage who is at the very top in the field of endeavor, and that he has sustained national or international acclaim. *See* 8 C.F.R. § 204.5(h)(2), (3). Accordingly, we will dismiss the petitioner's appeal.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals

seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of his achievements in the field through evidence of a one-time achievement (that is, a major, internationally recognized award). If the petitioner does not submit this evidence, then he must submit sufficient qualifying evidence that meets at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The submission of evidence relating to at least three criteria, however, does not, in and of itself, establish eligibility for this classification. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the evidence is first counted and then, if satisfying the required number of criteria, considered in the context of a final merits determination). *See also Rijal v. USCIS,* 772 F.Supp.2d 1339 (W.D. Wash. 2011) (affirming USCIS' proper application of *Kazarian*), *aff'd*, 683 F.3d. 1030 (9th Cir. 2012); *Visinscaia v. Beers*, 4 F.Supp.3d 126, 131-32 (D.D.C. 2013) (finding that USCIS appropriately applied the two-step review); *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (holding that the "truth is to be determined not by the quantity of evidence alone but by its quality" and that USCIS examines "each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true").

II. ANALYSIS

A. Evidentiary Criteria[1]

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.*

The director determined that the petitioner had not established eligibility for this criterion.

Through counsel, the petitioner asserts that he submitted "multiple articles in major publications exclusively about [him] and [his] work . . . and objective documentation of each publication's qualifications as major media and professional publications." The petitioner submitted a February 21, 2014, online article about him entitled "[redacted]" that was posted on the website of [redacted] In addition, the petitioner submitted information from [redacted] website that states: "Born in [redacted], the [redacted] is the definitive bible of masculine universe in Brazil. . . . We now have 900,000 readers per month and 110,000 followers on social

[1] We have reviewed all of the evidence the petitioner has submitted and will address those criteria the petitioner asserts that he meets or for which the petitioner has submitted relevant and probative evidence.

networks."[2] On appeal, counsel asserts that "is the leading men's magazine in Brazil and is a major publication with nearly 1 million readers per month." With regard to the readership information provided from website, USCIS need not rely on self-promotional material. *See Braga v. Poulos,* No. CV 06 5105 SJO, *aff'd* 317 Fed. Appx. 680 (C.A.9) (concluding that the AAO did not have to rely on self-serving assertions on the cover of a magazine as to the magazine's status as major media). Despite the petitioner's assertion to the contrary, there is no objective evidence showing that website is a form of major media.

The petitioner submitted an 2011, online article about him entitled " " that was posted on the website of . In addition, the petitioner submitted an email message sent to him from , whose job title for is not identified, but whom the petitioner identifies as the author of the article. The e-mail from Ms. states: "Since has been Sweden's premier free entertainment magazine. . . . We reach 20K every week online and 140K readers every month with our three editions in ." On appeal, the petitioner submits a letter from Head of Sales, stating: "We distribute the free magazine to approximately 100 places in and which are the three largest cities in Sweden. . . . In print we have about 138,000 readers each month and we have about 150,000 new visitors on our website each week." While Ms. states that reaches "20K every week online," Mr. asserts that the online publication has "about 150,000 new visitors on our website each week." The petitioner submitted no documentation to resolve this inconsistency regarding online readership. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Accordingly, the petitioner has not established that website is a form of major media. Furthermore, although the petitioner provided documentation showing that the article was posted online on the website of he did not submit evidence showing that the article appeared in the print editions that were distributed in

The petitioner submitted a 2011 article about him in entitled ' " In addition, the petitioner submitted an e-mail message sent to him from , Editorial Director at stating: " . . . was founded and has about 105,000 readers every week. Each magazine is printed in 94,000 copies, of which about 80,000 are handed out directly to the households of The rest is distributed among about 80 magazine stands throughout " The assertions of editorial director regarding its circulation are not sufficient to demonstrate that the regional publication constitutes a form of major media. Again, USCIS need not rely on self-promotional material. There is no objective evidence showing the circulation of relative to other Swedish publications to demonstrate that the magazine is a form of major media.

The petitioner submitted an article about him dated 2011, that was printed from the website of , a Swedish company that provides "equipment and support for professional imaging." In addition, the petitioner submitted information from website that states:

[2] The submitted article included information reflecting that it had received a total of five "Likes" on the social networking website Facebook.

About Us

is more than just a photo shop. For over 20 years we have serviced the photographers and image buyers. Here you will find the best, new, used and rental service on behalf of the ordinary.

We make pictures in the highest quality for exhibition, portfolio also school picture and everything in between. Assembles, laminates and frames, and much, much more.

* * *

is a leading Swedish photo dealer for professionals and keen amateurs alike. We are well established, have great links within the industry and have existed for over 20 years.

While the submitted website material offers information about as a photographic and imaging service company, it does not provide specific readership statistics for any publication, newsletter, or internet webpage where the article about the petitioner was published. In response to the director's request for evidence, the petitioner submitted an August 1, 2014, letter from Chief Executive Officer (CEO), stating:

> I am writing to confirm that our website is a leading trade publication for the professional photography community in Sweden. . . . The articles and interviews that we publish are widely read and enormously popular with our audience of professional photographers. Our publication has over 9000 readers per month and is distributed to about 5000 subscribers in the photography industry per month. These figures are high compared to other similar publications in the field in Sweden . . . .

Mr. refers to his company's website as "a leading trade publication" with over 9,000 readers and about 5,000 subscribers per month, but it has not been shown that a product and service vendor's website constitutes a trade publication. According to the submitted webpages from internet site, the principal purpose of the website is to promote the company's products and services rather than serve as an independent source of photography news or trade information. Mr. comments do not sufficiently define what is meant by the website's readers and subscribers, or explain the differences between the two. For example, the submitted information does not indicate whether readers are individuals who only accessed the website for the purpose of purchasing a product or service. In addition, the information provided does not differentiate online customer or prospective customer visits to the website from those of its readers or subscribers who access the website for the purpose of viewing its online articles. Furthermore, the assertions of the company's CEO are not sufficient to demonstrate that website is a major trade publication or form of major media. Again, USCIS need not rely on self-promotional material. Moreover, USCIS need not rely on unsubstantiated statements. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990) (holding that an agency need not credit conclusory assertions in immigration benefits adjudications). There is no documentary evidence demonstrating that the 2011 article was in a major trade publication or form of major media.

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

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

The director determined that the petitioner had not established eligibility for this criterion. The plain language of this criterion requires "[e]vidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field." Here, the evidence must rise to the level of original artistic contributions "of major significance in the field." The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003).

The petitioner submitted five letters of support discussing his work as a photographer. The director found that the submitted evidence was not sufficient to demonstrate that the petitioner has made original contributions of major significance in the field. On appeal, the petitioner asserts that the director erred in disregarding the five letters of support that "explain in detail how the contributions were original (not merely replicating the work of others) and how they were of major significance."

Art Editor, , states that the petitioner contributed to a photo series appearing on Mr. comments on the originality of the petitioner's work stating that he "devised new techniques to capture perfect moments in demanding situations where there is poor lighting and constant movement. . . . Starting at least with his acclaimed photo series, " In addition, Mr. mentions that the petitioner "has innovated a way to translate the look and technique of black and white photography shot in 35mm film into the digital format, which increases the artistic quality of the images." Mr. further states that the petitioner's "artistic contributions to his field are original because he has transformed the role of photographer from merely a passive observer into a more active participant." The preceding statements from Mr. are sufficient only to demonstrate the originality the petitioner's work.

With regard to the major significance of the petitioner's work, Mr. states:

> [The petitioner] has greatly influenced the field of photography and has created a new model for how photographers can reach a larger audience and increase their own exposure.
>
> [The petitioner's] original contributions are of major significance because his technical innovations have had a global impact on the field of fashion and event photography. Simply put, his techniques have changed the way fashion and event photographers shoot. Now, photographers around the world attempt to use or replicate the groundbreaking look that [the petitioner] has created and which he has made his signature style. His contributions are also of major significance because his work has transformed the entire look and image of not only top fashion magazines, but of fashion and event photography across the entire industry.

Mr. asserts that the petitioner "has greatly influenced the field of photography" and "has created a new model for how photographers can reach a larger audience and increase their own exposure," but does not provide specific examples of photographers who have relied on the petitioner's particular model to achieve success in the industry. In addition, Mr. states that the petitioner's "technical innovations have had a global impact on the field of fashion and event photography"; that "his techniques have changed the way fashion and event photographers shoot"; and that "photographers around the world attempt to use or replicate the groundbreaking look that [the petitioner] has created." Again, Mr. does not identify any photographers who have attempted to use or replicate the petitioner's techniques. Moreover, Mr. does not provide specific examples of how the petitioner's original innovations and techniques have influenced the field of fashion or event photography, have affected the way photographers shoot their subjects, have been replicated by others working in the fashion industry, or have otherwise been indicative of artistic contributions of major significance in the field. As previously mentioned, USCIS need not rely on unsubstantiated assertions. *See 1756, Inc.*, 745 F. Supp. at 15; s*ee also Visinscaia*, 4 F.Supp.3d at 134-35 (upholding USCIS' decision to give limited weight to uncorroborated assertions from practitioners in the field). Furthermore, repeating the language of the regulations does not satisfy the petitioner's burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, No. 95 CIV. 10729, 1997 WL 188942, *1, *5 (S.D.N.Y. Apr. 18, 1997).

a curator for the and a teacher at the in New York, a photography school where the petitioner studied, states:

> [The petitioner] has made original contributions to his field through bringing intricate new techniques from the realm of fine art and documentary to fashion and event photography. In other words, [the petitioner's] original contribution to the field is that he has injected high art into fashion and event photography. [The petitioner's] contribution to his field is major because he has changed the way that event and fashion photographers shoot. The influence of [the petitioner's] contributions to the field has had a demonstrable, global impact on the field because his innovations are being imitated by many other photographers working today.

Mr. asserts that the petitioner has brought "intricate new techniques from the realm of fine art and documentary to fashion and event photography"; "has injected high art into fashion and event photography"; "has changed the way that event and fashion photographers shoot"; and "has had a demonstrable, global impact on the field because his innovations are being imitated by many other photographers working today." Mr. does not specify the number of photographers who have successfully utilized the petitioner's new techniques and innovations, or identify any photographers by name. Again, USCIS need not rely on unsubstantiated assertions. *See 1756, Inc.*, 745 F. Supp. at 15; s*ee also Visinscaia*, 4 F.Supp.3d at 134-35. There is no documentary evidence showing that the petitioner's original techniques and innovations have affected education programs at various photography schools, have influenced the work of other photographers in the industry, or otherwise constitute original contributions of major significance in the field.

Managing Editor, states that the petitioner has worked as a freelance photographer for the website. Regarding the originality of the beneficiary's work, Ms. states:

> [The petitioner] has developed techniques to shoot in low-light situations and still capture compelling, one-of-a-kind images. He gives a black-and-white film feel to the world of digital photography, translating the look and technique of black and white photography shot in 35 mm to digital format – a style that he has made his signature. Additionally, he brings studio-level production to event photography by using a custom portable studio at events. Before [the petitioner], photographers struggled to create high quality event photography due to poor light and constant movement.
>
> Furthermore, [the petitioner's] artistic contributions to his field are original because he has transformed the role of photographer from passive observer to active participant with his dynamic and upbeat personality.

Ms. asserts that "[b]efore [the petitioner], photographers struggled to create high quality event photography due to poor light and constant movement," but there is no documentary evidence showing that earlier photographers were unable to produce "high quality event photography" under the conditions indicated. In addition, there is no evidence showing that a substantial number of photographers are now utilizing the petitioner's specific techniques to overcome problems associated with poor lighting and constant motion. While Ms. remaining comments demonstrate the originality of the beneficiary's work, the submitted evidence does not show that the petitioner's work rises to the level of artistic contributions of major significance in the field. With regard to the major significance of the petitioner's work, Ms. states: "Because [the petitioner's] work has raised the bar for what event photography can look like, he has added to tremendously to the caliber of the content on " The plain language of this regulatory criterion requires, however, that the beneficiary's contributions be "of major significance in the field" rather than limited to the websites for which he has provided freelance photography services. *See Visinscaia*, 4 F. Supp. 3d at 134-35 (upholding a finding that a ballroom dancer had not met this criterion because she did not demonstrate her impact in the field as a whole). There is no documentary evidence showing that the petitioner's original photographic techniques have affected the industry at a level indicative of artistic contributions of major significance in the field.

Deputy Photo Director, states that the petitioner photographed musician for a magazine feature about the singer. Ms. comments on the originality of the petitioner's work stating:

> [The petitioner] has made original artistic contributions to his field of photography because he has innovated new ways to bring high art level photography into fashion and event photography. Before [the petitioner's] technique of capturing compelling, artistic photographs, event photography was often content with snapshots of celebrities. [The petitioner's] original contribution to the field was to raise the standard of event photography. Now, leading Photo Directors at top publications such as myself, seek to publish photos that have the level of artistic quality that [the petitioner] presents.

Ms. asserts that the petitioner "has innovated new ways to bring high art level photography into fashion and event photography"; has raised "the standard of event photography"; and that "Photo Directors at top publications . . . seek to publish photos that have the level of artistic quality that [the petitioner] presents." Ms. however, does not identify specific examples of how the

petitioner's photographic innovations have influenced the field or raised standards in the industry beyond his immediate clients, or have otherwise risen to the level of original contributions of major significance in the field. In addition, while Ms. asserts that "[b]efore [the petitioner's] technique of capturing compelling, artistic photographs, event photography was often content with snapshots of celebrities," there is no documentary evidence showing that earlier event photographers were unable to capture "compelling, artistic photographs" or that their work was limited to only "snapshots of celebrities." Regarding the major significance of the petitioner's work, Ms. asserts that his "contributions to the field of photography are of major significance because they have had a demonstrable impact on the field by transforming the look of the world's top publications and by setting a new standard for style that other photographers worldwide now try to match." Ms. however, does not identify "the world's top publications" whose look the petitioner's original photographic innovations have transformed, or point to specific publications or editions where the new standard for style that he originated emerged. Again, USCIS need not rely on unsubstantiated assertions. *See 1756, Inc.*, 745 F. Supp. at 15; s*ee also Visinscaia*, 4 F.Supp.3d at 134-35. Furthermore, there is no documentary evidence showing the extent of the petitioner's influence on other photographers in the field, or demonstrating that standards for style have specifically changed as a result of his original work so as to demonstrate the major significance of his contributions.

, Partner and Project Manager, , a marketing and advertising agency, states that he selected a collection of the beneficiary's photographs to be displayed at "," a pop music event held at that showcases "Swedish artistic talent living in " Mr. further states:

> [The petitioner] has made original artistic contributions to his field because he developed techniques that have revolutionized the way photographers work. He has created new ways to shoot captivating images in dim, low-light situations with constant movement. Before [the petitioner] developed his unique style, photographers shooting in such difficult circumstances had to either opt for digital cameras and flash, or for overly posed and artificial shots. [The petitioner] showed how photographers can capture unique, beautiful shots in a demanding environment. These contributions are of major significance because [the petitioner] has opened up a new field for artistic event photography. His contributions have had a demonstrable impact across the globe and has transformed the way that other photographers shoot event photography. His contributions are also of major significance because his work has been imitated by others and his influence can be seen in major publications through the world.

Mr. mentions that the petitioner "developed techniques that have revolutionized the way photographers work"; "created new ways to shoot captivating images in dim, low-light situations with constant movement"; and "transformed the way that other photographers shoot event photography," but does not provide specific examples of photographers who are utilizing the petitioner's original techniques at a level commensurate with artistic contributions of major significance in the field. In addition, although Mr. asserts that the petitioner has "opened up a new field for artistic event photography," there is no supporting documentary evidence showing that a new branch of study or sphere of influence has arisen from the petitioner's work, or that his work otherwise equates to a contribution of major significance in the field. Mr. further

states that the petitioner's "work has been imitated by others," but does not identify any photographers who have imitated the petitioner's work. Furthermore, there is no documentary evidence to support Mr. assertion that the petitioner's "influence can be seen in major publications through the world." While the petitioner has provided freelance photography services to various magazines and fashion websites, the submitted evidence does not establish that the petitioner's work has affected the fashion community or field of event photography at a level indicative of original artistic contributions of major significance in the field.

The petitioner submitted letters of varying probative value. We have addressed the specific assertions above. Generalized conclusory assertions that do not identify specific contributions or their impact in the field have little probative value. *See 1756, Inc.*, 745 F. Supp. at 17. In addition, uncorroborated assertions are insufficient. *See Visinscaia*, 4 F.Supp.3d at 134-35; *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988) (holding that an agency "may, in its discretion, use as advisory opinions statements . . . submitted in evidence as expert testimony," but is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought and "is not required to accept or may give less weight" to evidence that is "in any way questionable"). The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the petitioner's eligibility. *Id. See also Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). Without additional, specific evidence showing that the petitioner's work has been unusually influential, substantially impacted the field, or has otherwise risen to the level of original contributions of major significance, the petitioner has not established that he meets this regulatory criterion.

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

The evidence supports the director's finding that the petitioner meets this regulatory criterion. For example, the petitioner submitted documentary evidence showing that he exhibited his photography at the and the . Accordingly, the petitioner has established that he meets this regulatory criterion.

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

The director determined that the petitioner had not established eligibility for this criterion. The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires "[e]vidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation." A review of the record of proceeding, however, reflects that the petitioner submitted sufficient documentary evidence establishing that he meets the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii). For example, the petitioner submitted documentary evidence showing that he performed in a critical role as a photographer for In addition, the petitioner submitted evidence demonstrating that the websites have a distinguished reputation. Accordingly, the petitioner has established that he meets this regulatory criterion.

B. Summary

For the reasons discussed above, we agree with the director that the petitioner has not submitted the requisite initial evidence, in this case, evidence that satisfies three of the ten regulatory criteria.

C. Prior O-1 Nonimmigrant Visa Status

The record reflects that the petitioner is the beneficiary of two approved O-1 nonimmigrant visa petitions for an alien of extraordinary ability in the arts. 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(o)(3)(ii). "Distinction" is a different 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(o)(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, approval of a nonimmigrant visa does not mandate the approval of a similar immigrant visa. Each petition must be decided on a case-by-case basis upon review of the evidence of record.

Many 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.*, 724 F. Supp. at 1103. *See also Texas A&M Univ. v. Upchurch*, 99 Fed. Appx. 556 (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).

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

Furthermore, our 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 petitioner, we would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, *1, *3 (E.D. La. Mar. 2000), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the individual has achieved sustained national or international acclaim and is one of the small percentage who has risen to the very top of his or her field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a "level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor," and (2) "that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise." 8 C.F.R. § 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. As the petitioner has not done so, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of presenting evidence that satisfied the initial evidence requirements set forth at 8 C.F.R § 204.5(h)(3) and (4). *Kazarian*, 596 F.3d at 1122. Nevertheless, although we need not provide the type of final merits determination referenced in *Kazarian*, a review of the evidence in the aggregate supports a finding that the petitioner has not demonstrated the level of expertise required for the classification sought.[3]

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

[3] We maintain *de novo* review of all questions of fact and law. *See Soltane v. United States Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, we maintain the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii); *see also* INA §§ 103(a)(1), 204(b); DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).