



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 7302905

Date: APR. 23, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Extraordinary Ability)

The Petitioner, a metalworking and design firm, seeks classification of the Beneficiary, an “artist blacksmith,” as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those 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 of the Nebraska Service Center denied the petition, concluding that although the Petitioner demonstrated that the Beneficiary satisfied three of the ten initial evidentiary criteria, as required, it did not establish that he has sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

On appeal, the Petitioner asserts that the Director misinterpreted or disregarded persuasive evidence that is sufficient to establish the Beneficiary’s eligibility.

In these proceedings, it is the Petitioner’s burden to establish eligibility for the requested benefit. *See* Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

Section 203(b)(1) of the Act makes visas available to immigrants with extraordinary ability 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.

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." 8 C.F.R. § 204.5(h)(2). The implementing 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 a beneficiary's achievements in the field through a one-time achievement (that is, a major, internationally recognized award). If that petitioner does not submit this evidence, then it must provide sufficient qualifying documentation demonstrating that the beneficiary meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a beneficiary meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the "truth is to be determined not by the quantity of evidence alone but by its quality," as well as the principle that we examine "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." *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Petitioner, a firm that drafts, fabricates, renders and installs ornamental metalwork for residential and commercial architectural projects, currently employs the Beneficiary as an "artist blacksmith." The Beneficiary completed his blacksmith qualification at a Hungarian vocational school in 1994 and received a certificate in "Blacksmith Advanced Studies" from [redacted] University of Applied Sciences – Institute of Design and Fine Arts in [redacted] in 2001.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that the Beneficiary has received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x).

The Petitioner submitted evidence relating to seven of the ten criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Director concluded that the Petitioner established that the Beneficiary met three of the criteria, relating to published material in major trade publications or other major media, display of his work at artistic exhibitions or showcases, and performing in a leading or critical role for organizations that have a distinguished reputation. *See* 8 C.F.R. § 204.5(h)(3)(iii), (vii) and (viii). However, the Director concluded that the Petitioner had not shown that the Beneficiary met the criteria for lesser nationally or internationally recognized awards, memberships in associations in his field, original contributions

of major significance, and high salary or other significantly high remuneration at 8 C.F.R. § 204.5(h)(3)(i), (ii), (v) and (ix). Ultimately, the Director concluded that the Petitioner had not established the Beneficiary's eligibility in the final merits analysis.

On appeal, the Petitioner asserts that the Director "inappropriately discounted individuals in the field who are aware of the facts and reputation of the beneficiary." The Petitioner emphasizes that USCIS has already found that the Beneficiary has satisfied three of the ten criteria and asserts that the totality of the record supports a conclusion that he has risen to the top of his field.

After reviewing all of the evidence in the record, we disagree with the Director's determination that the evidence submitted establishes that the Beneficiary meets at least three of the initial evidentiary criteria. We agree with the Director's conclusion that the Petitioner did not establish that the Beneficiary has sustained national or international acclaim and demonstrate that he is among the small percentage at the very top of the field of endeavor.

Documentation of the individual's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor. 8 C.F.R. § 204.5(h)(3)(i)

The Petitioner submitted the following evidence relating to this criterion:

- 2017 [redacted] Award for Craftmanship and Artisanhip, awarded to the Petitioner for [redacted]
- 1st Place certificate for participation in the exhibition of works at the 2nd [redacted] [redacted] (2001)
- 3rd Place Diploma in the [redacted] at the 4th National [redacted] (Hungary, 2005)

With respect to the [redacted] Award awarded to the petitioning company, we note that according to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), the evidence must establish that the individual beneficiary is the actual recipient of the prizes or the awards.¹ While the Petitioner submitted letters explaining that the Beneficiary played a key role in the award-winning project, it remains that he is not the recipient of the award. An October 2018 letter from the [redacted] [redacted] states that "[the Petitioner's] work and [the Beneficiary] as a team member was recognized with the [redacted] Award." However, the Petitioner did not provide evidence that the Beneficiary received any formal individual recognition from the [redacted] contemporaneous with the granting of his employer's award.

With respect to the two remaining awards, the Petitioner did not provide any information or evidence regarding these awards beyond the award certificates themselves. While the certificates name the Beneficiary as the recipient, the record does not establish the national or international significance of

¹ See USCIS Policy Memorandum PM 602-0005.1, Evaluation of Evidence Submitted with Certain Form I-140 Petitions; Revisions to the Adjudicator's Field Manual (AFM) Chapter 22.2, AFM Update AD11-14 6 (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that for this criterion, the focus should be on an individual's receipt of the awards or prizes, as opposed to his or her employer's receipt of the awards or prizes).

the awards. Relevant considerations regarding whether the basis for granting the prizes or awards was excellence in the field include, but are not limited to, the criteria used to grant the prizes or awards, the national or international significance of the prizes or awards in the field, and the number of awardees or prize recipients as well as any limitations on competitors.² The fact that the events were designated as “national” or “international” is not sufficient to establish that the awards the Beneficiary received are nationally or internationally recognized awards for excellence in his field.

For these reasons, we agree with the Director’s determination that the Beneficiary does not meet this criterion.

Documentation of the individual’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.
8 C.F.R. § 204.5(h)(3)(ii)

The Petitioner claimed that the Beneficiary meets this criterion based on his membership in the Hungarian Blacksmith Guild. The Petitioner submitted a June 2015 letter from [redacted] Guild Master, who states that the guild only admits new members “who know blacksmith craft in an excellent manner and create pieces of work of high artistic standard.” Regarding the Beneficiary’s membership, [redacted] states: “In 1996, he applied for membership before the committee by presenting pieces of work that prove his perfect possession of professional knowledge and his artistic talent and he got admitted based on the unanimous decision of the guild assembly.”

Based on this limited information regarding the membership selection criteria and process, the Petitioner did not meet its burden to establish that the Beneficiary, who was 19 or 20 years old at the time of admission to the Hungarian Blacksmith Guild, was required to demonstrate “outstanding achievements” in his field, as judged by recognized national or international experts, as a condition for membership.

We note that [redacted] also states that the Beneficiary “fulfilled the function of the notary” between 2012 and 2014, and the Petitioner stated in its own letter that he “was appointed distinguished member” of the Hungarian Blacksmith Guild during that same time period. However, the record does not contain any further information regarding the requirements for appointment as a notary or as a “distinguished member.” Other than the referenced letter from [redacted] the Petitioner has not provided any other primary documentation from the guild, such as its by-laws or similar evidence, that addresses its membership requirements or criteria. For these reasons, we agree with the Director’s determination that the Petitioner did not establish that the Beneficiary meets this criterion.

Published material about the individual in professional or major trade publications or other major media, relating to the individual’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. 8 C.F.R. § 204.5(h)(3)(iii)

² See USCIS Policy Memorandum PM 602-0005.1, *supra* at 6.

The Director determined that the Petitioner submitted sufficient evidence to meet this criterion, and specifically referenced an article that appeared in *Daily News Hungary*. As explained below, upon *de novo* review, we conclude the Petitioner has not established that the referenced article or other submitted published material meet all requirements set forth in the regulation at 8 C.F.R. § 204.5(h)(3)(iii). Therefore, we will withdraw the Director's determination that this criterion was met.

With respect to the article from *Daily News Hungary*, we note that the Petitioner did not offer supporting evidence establishing that this publication, which does not appear to be a professional or major trade publication, qualifies as major media in Hungary.³ The Petitioner did not provide, for example, circulation statistics showing how its circulation compares to that of other daily newspapers in Hungary. The article, entitled "[redacted]" is primarily about the Petitioner's president, [redacted] who was interviewed by the publication for the article, and the Petitioner's [redacted] Award-winning project. The article explains that [redacted] selected the Beneficiary and another Hungarian blacksmith for the project and mentions that they both worked with him in the past, but the article is not about the Beneficiary.

Another article, entitled "[redacted]" was published online by *Kozterkep*. While the article is about the Beneficiary's work on a war memorial built in the Hungarian town of [redacted] the article does not identify the author of the material and is not accompanied by a certified English translation. Any document in a foreign language must be accompanied by a full English language translation. 8 C.F.R. § 103.2(b)(3). The translator must certify that the English language translation is complete and accurate, and that the translator is competent to translate from the foreign language into English. *Id.* Because the Petitioner did not submit a properly certified English language translation of the document, we cannot meaningfully determine whether the translated material is accurate and thus supports the Petitioner's claims. In any event, the Petitioner did not submit any additional information regarding *Kozterkep*, such as its circulation statistics and intended audience, to establish that it is considered a major trade publication, professional publication or other major media.

In addition, the Petitioner submitted an article entitled "[redacted]" While this article is accompanied by a translator's certificate of accuracy, the translator identified the source of the article solely as "Website Article 2015." The record does not include the original article in the Hungarian language, or the title, author, and date of the material.

None of the other published materials submitted by the Petitioner mention the Beneficiary's name and therefore are not about him and his work in the field.⁴ Accordingly, the Petitioner did not establish that the Beneficiary meets this criterion.

³ See USCIS Policy Memorandum PM 602-0005.1, *supra* at 7 (instructing that evidence of published material in professional or major trade publication or in other major media publications should establish that the circulation (on-line or in print) is high compared to other circulation statistics and show the intended audience of the publication).

⁴ This evidence includes: another article from an unidentified Hungarian newspaper for which the author, title and date of publication were not provided; an excerpt of a book chapter that discusses the Petitioner's [redacted] Award-winning project; an *Architectural Digest* article which briefly mentions the Petitioner's receipt of a [redacted] Award; and an article from the professional publication *The Anvil's Ring* which is about the Hungarian Blacksmith Guild and includes an interview with one of its members.

Evidence of the individual's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field. 8 C.F.R. § 204.5(h)(3)(v)

In order to satisfy the regulation at 8 C.F.R. § 204.5(h)(3)(v), a petitioner must establish not only that the beneficiary has made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the beneficiary's contributions have been widely implemented throughout the field, have remarkably impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

With respect to this criterion, the Petitioner indicated that it was submitting testimonial letters "attesting to the fact that [the Beneficiary's] work has made a significant contribution to the world of blacksmiths." The Petitioner also mentioned that it was providing letters discussing the Beneficiary's work on the above-referenced war memorial in the town of [redacted] Hungary, a letter from the Artist-[redacted], and an advisory opinion from the President of the [redacted]

The testimonial evidence in the record indicates that the Beneficiary's technical and artistic skills as a blacksmith are highly regarded by his peers and experts in the field.⁵ However, the letters do not identify with specificity an original contribution he has made or explained how he has remarkably impacted or influenced the field. For example, the "peer consultation and recommendation" letter from [redacted] president of the [redacted] addresses the Beneficiary's use of "old techniques" on the Petitioner's award-winning project which involved the fabrication of [redacted] University's new campus gates. She notes that the methods used on the original gates, which had been fabricated more than a century ago, were widely used in Eastern Europe but are not common in the United States. She did not explain, however, how the techniques the Beneficiary learned in Hungary represent an "original contribution," or address their impact on the field. While the project received an award and some attention in the architectural field, neither [redacted]'s letter nor the evidence as a whole indicate that the Beneficiary himself has been recognized for making an original contribution of major significance based on his work.

The letter from [redacted] president of the [redacted] also notes the Beneficiary's "knowledge and experience of traditional methods," mentions his work on the [redacted] University project, and states that "the level of skills demanded for such work is superior to that of a normally proficient artisan." [redacted] of [redacted] Studios states that the Beneficiary's "masterful handling of hand forged iron on the gates at the Residential College at [redacted] are [a] true testament to the dedication of his love for fine metalwork," and indicates that "the finished project is a monument for future blacksmiths to study and admire for true craftsmanship." The Petitioner also provided a letter from [redacted] Mayor of [redacted] who notes that the Beneficiary's design for the town's World War II memorial was chosen "from a large pool of applicants," and praises him as "an accomplished artist of great distinction in the metal craft."

The letters considered above primarily contain attestations of the Beneficiary's mastery of skills and Old World techniques and traditions in his craft without providing specific examples of how he has made *original* contributions to the field, or contributions that rise to a level consistent with major

⁵ While we address only a sampling of letters here, we have reviewed and considered each one.

significance in the field. Letters from experts may add value if they specifically articulate how a petitioner's original contributions are of major significance and what impact they had on subsequent work, while letters that lack specifics do not add value and are not considered to be probative evidence that may form the basis for meeting this criterion.⁶ For these reasons, we agree with the Director's determination that the Petitioner did not establish that the Beneficiary satisfies this criterion.

Evidence of the display of the individual's work in the field at artistic exhibitions or showcases. 8 C.F.R. § 204.5(h)(3)(vii)

We agree with the Director's determination that the Petitioner established that the Beneficiary meets this criterion. The record demonstrates that the Beneficiary has displayed his work at national blacksmith exhibitions and other events that qualify as artistic exhibitions or showcases.

Evidence that the individual has performed in a leading or critical role for organizations or establishments that have a distinguished reputation. 8 C.F.R. § 204.5(h)(3)(viii)

The Director determined that the Beneficiary met this criterion based on evidence that he performs a critical role for the petitioning company as a master artist - blacksmith. The record adequately supports the Director's determination and contains sufficient evidence to demonstrate that the Petitioner enjoys a distinguished reputation in its niche industry of architectural metalworking. Accordingly, we agree that this criterion has been met.

Evidence that the individual has commanded a high salary or other significantly high remuneration for services, in relation to others in the field. 8 C.F.R. § 204.5(h)(3)(ix)

To establish eligibility under this criterion, the Petitioner must present evidence showing that the Beneficiary has earned a high salary or significantly high remuneration in comparison with those performing similar services in the field. *See Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (considering a professional golfer's earnings versus other PGA Tour golfers); *see also Skokos v. U.S. Dept. of Homeland Sec.*, 420 F. App'x 712, 713-14 (9th Cir. 2011) (finding salary information for those performing lesser duties is not a comparison to others in the field).

The Petitioner indicates that the Beneficiary earns \$32.00 per hour (\$66,500 annually) and provided copies of his IRS Form W-2 for 2017 and recent pay statements issued to him in 2018.

The Petitioner also submitted screenshots from the Department of Labor's Bureau of Labor Statistics (www.bls.gov/OES) indicating that the annual mean wage for the occupational category of "Craft Artists" (which includes blacksmiths) in the [redacted] metropolitan area is \$59,550. The Petitioner also provided a screenshot from Salary Expert and emphasized that it demonstrates that the average base salary for a blacksmith in the Beneficiary's geographic location is \$51,550, thus indicating that the Beneficiary's salary is comparatively high. However, the information provided from Salary Expert indicates that the average salary for a "senior level blacksmith" with at least eight years of experience is \$62,722. The Beneficiary has significantly more than eight years of experience,

⁶ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 8-9.

and the evidence does not reflect that his earnings are “significantly high” in comparison to average wages earned by senior level blacksmiths.

Overall, the information provided reflects that the Beneficiary’s past earnings have been, at most, slightly above average for a blacksmith in his area and with his level of experience. The Petitioner has not established that he has commanded a high salary or other significantly high remuneration in relation to others in the field. Accordingly, we agree with the Director that the Petitioner did not demonstrate that the Beneficiary meets this criterion.

B. Final Merits Determination

Although we disagree with the Director’s determination that the Petitioner submitted evidence to meet three criteria, we will briefly consider the final merits determination already conducted by the Director, and the Petitioner’s response on appeal. In a final merits determination, we analyze a beneficiary’s accomplishments and weigh the totality of the evidence to determine if his successes are sufficient to demonstrate that he has extraordinary ability in the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20. The Petitioner must establish by a preponderance of the evidence, the Beneficiary’s sustained national or international acclaim, that he is one of the small percentage at the very top of the field of endeavor, and that his achievements have been recognized in the field through extensive documentation.

The record reflects that the Beneficiary was admitted to the Hungarian Blacksmith Guild at a young age in 1996, was well-trained in traditional Eastern European artistic metalworking techniques, and has displayed his work at artistic displays and exhibitions in Hungary between the years of 2000 and 2005, where he was twice recognized for his work with first and third place awards at blacksmith meetings and gatherings. [redacted] also states that the Petitioner participated in other “professional events” of the Hungarian Blacksmith Guild including a 2002 [redacted], a “Style Practices” master course in 2006, and a 2007 exhibition in the [redacted] but these activities are not otherwise documented in the record and their significance has not been explained.

While this evidence indicates that the Petitioner was an active member of the guild and a regular participant in displays and exhibitions of his craft, the record does not support a finding that these early-career activities and achievements required, reflected, or resulted in national or international acclaim or are indicative of the Beneficiary being in the small percentage at the very top of the field. As noted, the Petitioner did not provide evidence that membership in the Hungarian Blacksmith Guild was based on the Beneficiary’s prior outstanding achievements or provide evidence of the significance of the Beneficiary’s individual awards. Nor did it demonstrate that the displays or exhibitions of his work, or the awards he received at those exhibitions, elicited attention from the media, or even from the field outside of those participating at the blacksmith meetings.

Apart from the above-referenced evidence related to the Beneficiary’s early career, the record contains sparse information regarding his career and achievements between the mid-2000s and 2015, when he joined the petitioning company. The Petitioner submitted a letter of reference from [redacted] Corporation confirming that it employed the Beneficiary in the United States from June 2005 until December 2006 and applied his ironworking skills to a historical restoration project and on two commercial fabrication projects. Other evidence in the record clarifies that the Beneficiary served in an 18-month

apprenticeship with [redacted] where he underwent practical training with the Petitioner's president, [redacted] [redacted] who was then a vice president with [redacted]. While the Petitioner demonstrated that this company has a distinguished reputation, the Petitioner did not provide evidence that the Beneficiary or his work with [redacted] as an apprentice garnered attention at a level consistent with national or international acclaim. This practical training experience was likely valuable to the Beneficiary in his artistic and professional development, but the evidence of his activities in the field should be consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act.

The record reflects that the Beneficiary has since operated his own blacksmith shop in Hungary with his brothers, but as noted, the Petitioner does not document or mention his continuing activities or achievements in the field prior to his return to the United States in 2015, and has therefore has not supported a finding that he has the level of sustained national or international acclaim required. For example, [redacted] states that the Beneficiary "worked with several prestigious metalworking studios and design firms in Hungary and internationally" but there is a significant gap in the record with respect to explaining or documenting the Petitioner's activities in the field for a lengthy period prior to 2015. The evidence does reflect that the Beneficiary received some media attention as a result of his work on the town of [redacted]'s war memorial project in 2015 or 2016. However, as discussed, the media coverage is not sufficiently documented and appears to be local or regional in nature. The evidence does not establish that he was selected for the project based on his career of achievements or acclaim in the field, or that his completion of the project garnered him national or international acclaim.

Regarding his work with the Petitioner, the record documents the Beneficiary's critical role as one of its master blacksmiths. The Petitioner has also substantiated his essential role in executing the Petitioner's [redacted] Award-winning project, which has contributed to the company's distinguished reputation in the architectural metalworking field. The record reflects, however, that the acclaim for that work and any recognition the work has received as a significant architectural contribution resides predominantly with the Petitioner and its president, rather than specifically with the Beneficiary. For example, only the Petitioner and [redacted] are mentioned in the book [redacted] [redacted]. Further, the one submitted media article that discusses the [redacted] University project in detail (from *Daily News Hungary*) primarily focuses on [redacted] [redacted] president of the [redacted], recognizes the Beneficiary "as a team member" who contributed to the award-winning project, and the record demonstrates that the Petitioner accompanied [redacted] to the [redacted] Award ceremony. However, the Petitioner has not established that the Beneficiary's individual work on the [redacted] University project is recognized by the overall field as having been majorly significant consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act.

The record also contains recommendation letters that praise the Beneficiary's skills and make general assertions repeating the statute and regulations. For instance, [redacted] of the [redacted] states that the Beneficiary "is a master craftsman of extraordinary skill who has risen to the top of his selected *métier*," and that the [redacted] "do[es] not object his classification as an extraordinary artist." [redacted] [redacted] of the [redacted] states that the Beneficiary "clearly established himself as a successful and highly skilled artistic blacksmith" and expresses her opinion that he is "a master craftsman of rare and extraordinary ability who has risen to the very top of his field." Although the letters recount the

Beneficiary's skills in traditional techniques and his notable work with the Petitioner, they do not explain or justify their assertions. Repeating the language of the statute or 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); *Ayvr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Here, the letters do not provide sufficient information and explanation, nor does the record include sufficient corroborating evidence, to show that the Beneficiary is viewed by the overall field as being among that small percentage at the very top of the field of endeavor. *See* 8 C.F.R. § 204.5(h)(2).

The record, including the evidence discussed above, does not establish the Beneficiary's eligibility for the benefit sought. The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. USCIS has long held that even athletes performing at the major league level do not automatically meet the statutory standards for classification as an individual of "extraordinary ability." *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). While the Petitioner need not establish that there is no one more accomplished to qualify for the classification sought, we find the record insufficient to demonstrate that the Beneficiary has sustained national or international acclaim and is among the small percentage at the top of his field. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2).

C. O-1 Nonimmigrant Status

We note that the record indicates that the Beneficiary has previously been granted O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved at least one O-1 nonimmigrant visa petition filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard - statute, regulations, and case law. Many Form 1-140 immigrant petitions are correctly 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 Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, 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 an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *Louisiana Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).

III. CONCLUSION

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.