



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

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

In Re: 7533673

Date: FEB. 24, 2020

Appeal of Nebraska Service Center Decision

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

The Petitioner, a ballet dancer and master teacher, seeks classification 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 the Petitioner established that he satisfied only one of the ten initial evidentiary criteria for this classification, of which he must meet at least three.

On appeal, the Petitioner contends that he submitted sufficient evidence to establish that he meets five additional criteria and is qualified for the benefit sought.

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 his or her 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 he or she must provide sufficient qualifying documentation that 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 petitioner 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).

II. ANALYSIS

The Petitioner is a ballet dancer and master ballet teacher who trained at the Institute of State Ballet of [redacted]. His biography indicates that he has performed in European theaters with Italian ballet companies, as well as in Italian films and television shows. In addition to his work as a performer, he founded a youth dance competition, an agency for performing artists, a musical theater company, and a performing arts training center in his native Italy, and has worked as a master teacher with several ballet schools in the United States.

A. Evidentiary Criteria

Because the Petitioner has not indicated or established that he 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 Director found that the Petitioner met one of the evidentiary criteria, relating to judging the work of others in his field. The Petitioner provided evidence that he has served on a judging panel for the [redacted] youth dance competition and therefore we agree with the Director that this criterion was met.

On appeal, the Petitioner asserts that he meets five additional evidentiary criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x), discussed below.¹ After reviewing all of the evidence in the record, we find that the Petitioner has not established that he meets at least three of the ten initial evidentiary criteria.

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)

¹ Previously, the Petitioner also claimed to meet the criterion relating to commercial success in the performing arts at 8 C.F.R. § 204.5(h)(x). The Director found that he not submit sufficient evidence to establish that he met this criterion, and the Petitioner does not contest this issue on appeal. Therefore, we deem the issue to be waived. *See, e.g., Matter of M-A-S-*, 24 I&N Dec. 762, 767 n.2 (BIA 2009).

In order to fulfill this criterion, the Petitioner must demonstrate that his prizes or awards are nationally or internationally recognized for excellence in the field of endeavor.² 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.³

The Petitioner claims that he has received two qualifying awards, including a 1991 [redacted] Award.” The Petitioner submitted a photograph which, according to the index accompanying the initial evidence, depicts him receiving the award statue from presenter [redacted]. He also submitted what appears to be a poster or flier advertising the [redacted]’91 Sport Spettacolo” award ceremony, but this evidence was not accompanied by an 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.* While the poster includes the Petitioner’s name among a list of individuals, all of whom appear to be identified as performing artists, it is not clear whether those listed were award winners, the scheduled performers at the award ceremony, or both. The Petitioner asserts that it is a “public announcement regarding the awarding of the prizes issued by the [redacted] organization,” but without an English translation, we cannot determine whether the evidence supports this claim.

In response to a request for evidence, the Petitioner provided a biography for [redacted] which indicates that he is an Italian television personality. The Petitioner also provided a letter from [redacted] [redacted] president of [redacted]. [redacted] states that the [redacted] club organized the “International Award [redacted] from 1984 to 1992, and states that “[i]n those years the [redacted] AWARD was in Italy, the most important event, which rewarded the most important personalities in the world of art, culture, entertainment, politics and society.” He further states that the winners were national and international celebrities and provides the names of athletes, performing artists, journalists, scientists and others who had won the award. Finally, [redacted] states that at the time he received the award, the Petitioner had just participated in the Italian television program [redacted] and that “it was a great opportunity for us to recognize this [redacted] AWARD to the young and talented dancer.”

While the untranslated poster or flier for the award event appears to identify [redacted] [redacted] as one of three organizers of the [redacted] award, [redacted]’s letter alone does not provide sufficient evidence regarding the background of the award or the awarding entities to establish that it is a nationally or internationally recognized prize for excellence in the Petitioner’s field. If the award is or was in fact considered one of the most important awards that can be earned by artists and entertainers in Italy as stated by [redacted], it is reasonable to expect independent evidence regarding the award and the national recognition associated with it. Although the Petitioner indicated that the referenced poster or flier served as a “public announcement” of the award winners, it appears to

² 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>.

³ *Id.*

advertise the award ceremony; it does not establish that the award was nationally publicized or recognized.

The Petitioner also provided evidence that he received a [redacted] Award in 2007, which translates to [redacted] Award.” The Petitioner submitted a photograph of him receiving the award, copies of posters or fliers for the awards ceremonies held in the years 2007 through 2012, as well as a letter from [redacted] who indicates that he co-founded the [redacted] award in 2007 “to enhance and reward important personalities of our Italian and international society recognizing their commitment and talent in their work.” [redacted] confirms the Petitioner’s receipt of the award and states he was recognized “for his incredible career, which had seen him star in theater, cinema and television.”

The Petitioner also provided two published articles that provide additional background regarding the award. The first a [redacted] 2012 article from an unidentified source is titled [redacted] Award’ to [redacted]” According to the article, the [redacted] award is “aimed at assigning recognition to personalities” in politics, film, music, science, literature and the arts, “in partnership with Region, Province, and Community of [redacted] that have been the subject of great attention by the press and public agencies.” The Petitioner also submitted an article titled [redacted] from the website *Brindisi Sera* (www.brindisisera.it) which announced the winners of the 2009 [redacted] award. Based on the information in the article, the prize is awarded to recipients born in the southern Italian city of [redacted] or greater [redacted] region, who have achieved success in the arts, business, athletics and other fields.

The submitted evidence reflects that the [redacted] award is intended to recognize natives of [redacted] or the [redacted] region who have gone on to achieve prominence in their respective fields. However, the Petitioner has not provided sufficient evidence to establish that the [redacted] is a nationally or internationally-recognized prize or award for excellence. While the Petitioner claims on appeal that the Petitioner provided “undisputed evidence of media coverage” of his receipt of both awards, as noted above, the record does not contain such evidence. The media coverage related to the [redacted] award is not from 2007, the year in which he was a recipient.

For the foregoing reasons, the Petitioner has not established that he 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)

The Director determined that the Petitioner did not meet this criterion, noting that, while he provided many articles about projects and productions with which he was associated, the articles were not about him and only briefly mentioned his involvement. Further, the Director acknowledged that the Petitioner submitted three articles that were about him and his work in the field, as required by the language of this criterion, but determined that he did not provide evidence that the articles appeared in professional or major trade publications or other major media.

On appeal, the Petitioner maintains that he submitted two articles from *La Gazzetta del Mezzogiorno* and an article from *Danza Si* that satisfy all requirements of this criterion. The first of the two articles from *La Gazzetta del Mezzogiorno* was published in [REDACTED] 2009 and includes an interview with the Petitioner about the musical [REDACTED] performed by [REDACTED]

[REDACTED] The second article from this newspaper is about the Beneficiary's receipt of an unidentified award and briefly discusses the highlights of his career; however, the Petitioner provided a partially illegible photocopy of the original article which does not identify the date of publication or the author of the article.⁴

Since *La Gazzetta del Mezzogiorno* is a daily newspaper and not a professional or trade publication, the Petitioner must submit evidence to demonstrate that it qualifies as "major media" in Italy. Evidence of published material in a major media publication should establish that the circulation is high compared to other circulation statistics.⁵ The Petitioner has relied in part on a translated *Wikipedia* page for *La Gazzetta del Mezzogiorno* in support of its claim that this newspaper qualifies as a major medium, consistent with the regulation at 8 C.F.R. § 204.5(h)(3)(iii). We note that *Wikipedia* is an online, open source, collaborative encyclopedia that explicitly states it cannot guarantee the validity of its content. See *General Disclaimer, Wikipedia* (last visited Jan. 10, 2020), https://en.wikipedia.org/wiki/Wikipedia:General_disclaimer; *Badasa v. Mukasey*, 540 F.3d 909 (8th Cir. 2008). The Petitioner also provided what appears to be a page from the newspaper's press kit which provides an "average annual circulation" figure for 2017 and states that it is "one of the oldest Italian newspapers." However the Petitioner does not include comparative data reflecting how the circulation of *La Gazzetta del Mezzogiorno* compares to that of other daily newspapers in Italy. Without this context, we cannot determine that this newspaper is recognized as a major medium.

As noted, the Petitioner indicates that his 1991 interview with the monthly dance newspaper *Danza Si* also satisfies the published materials criterion. The interview is about the Petitioner and his work in the field, but we agree with the Director that the Petitioner did not establish that *Danza Si* is a professional or major trade publication or other major medium. A screenshot of the publication's website indicates that the DanzaSi Cultural Association was established in 1990 and published its first "monthly magazine" in March 1990 as "the only one in the Italian publishing scene dealing with dance but from the point of view of the operators." The record does not contain additional information regarding the circulation of the publication or its intended audience in support of the Petitioner's claim that it a professional or major trade publication or major media.

Finally, the Director determined that an article published in *Il Corsivo: Luci Della Ribalta* is about the Petitioner and his work in the field. We agree, but, as noted by the Director, the Petitioner did not submit evidence to establish that this publication is a professional or major trade publication or other major media, and the Petitioner has not referenced this article or publication on appeal.

Therefore, for the reasons discussed above, the Petitioner did not submit evidence that satisfies this criterion.

⁴ The Petitioner's response to the RFE included a third article titled [REDACTED] which is about him and his career as a dancer. The Petitioner states that the article appeared in *La Gazzetta del Mezzogiorno*, but the article does not identify the name of the publication, the date, or the author of the material. The Petitioner does not reference this article on appeal.

⁵ See USCIS Policy Memorandum PM 602-0005.1, *supra* at 7.

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 that not only has he made original contributions but that they have been of major significance in the field. For example, a petitioner may show that the contributions have been widely implemented throughout the field, have significantly impacted or influenced the field, or have otherwise risen to a level of major significance in the field.

Initially, the Petitioner claimed to meet this criterion based on the following: (1) he founded the first musical performing arts training center in [redacted] Italy, a musical performing arts company that performed original works, a youth dance competition, and a performing arts agency to represent elite European dancers; and (2) he directed, produced, and choreographed original work for live performance and television. While the Petitioner submitted evidence regarding his involvement in the referenced projects, the evidence did not address how any of these activities were both original and significantly influential in the field of dance.

The Petitioner also submitted 12 testimonial letters praising his abilities as a dancer, teacher, and choreographer, but few of these even mentioned the original contributions referenced above.⁶ The Petitioner submitted a letter from [redacted] director of [redacted] a Canadian dance company. [redacted] states that the Petitioner was “the first to organize a dance competition called [redacted] and the winners received the opportunity to study dance in America.” Another letter, from [redacted] of [redacted] indicates that his New York-based dance program partnered with the [redacted] competition and notes the Petitioner also directs the “[redacted].” However, neither [redacted] nor [redacted] comment on how either of these endeavors (a dance competition and a musical theatre group) represent an original contribution of major significance in dance. While both endeavors offered artistic development and performance opportunities to dancers in [redacted] Italy, the record does not reflect how the Petitioner’s work was original or how it significantly or widely impacted his field.

In response to the RFE, the Petitioner has emphasized that he is well known for teaching the [redacted] ballet technique in its purest form, noting that his teaching “has helped [redacted] reach thousands and thousands of students and dancers worldwide.” Further, the Petitioner stated that “[s]ince it is the purest form of the art itself, this contribution of the field encourages traditional forms of dance to reemerge.” Some of the submitted letters mention the Petitioner’s expertise in the [redacted] technique, but they do not demonstrate how his technique is original or how he has used it to make a contribution of major significance to the field. For example, [redacted] Director of the [redacted] states that her dance school uses methods based on the [redacted] technique and notes that it is difficult to find a [redacted]-trained instructor who has the Petitioner’s extensive experience in both teaching and performing. Similarly, [redacted] founder of the [redacted] Academy, states that the Russian [redacted] method used at her school is “known to be the most powerful and effective technique in ballet training.” She notes that the method is mainly used in ballet schools in the former Soviet Union, noting that few U.S. schools use the method “due to lack of teachers and knowledge.” She praises the Petitioner’s teaching and choreography, and mentions that he has been teaching the highest level of

⁶ Although we highlight only select letters in this discussion, we have reviewed and considered each one.

classes at her school. Most of the other letters mention the [redacted] technique only in passing or not at all, although they generally praise the Petitioner's technique, teaching, and artistic abilities.

The Director determined that while the evidence demonstrated that the Petitioner had impacted the dance students he taught, he had not demonstrated widespread implementation of his techniques or an original contribution of major significance in the field. Rather, the Director found that he had "refined and built on existing traditions."

On appeal, the Petitioner asserts that he meets this criterion as a dancer and master instructor of the [redacted] technique he learned at a prestigious dance school in [redacted]. Although he did not create the teaching method, he states that he "does teach the purest form of it and accordingly, has contributed artistically and athletically in this field of dancing." In addition, the Petitioner maintains that his "teaching of the purest form of [redacted] has revolutionized dance," and continued the legacy of the method, "a feat *no other* dance instructor can claim."

The Petitioner emphasizes that the submitted letters from dance instructors "attest to his highest instructor and his abilities in teaching and dancing [redacted]." As noted, only two of the submitted letters discuss the [redacted] teaching tradition, and both are from instructors who used the method in their schools prior to hiring the Petitioner. While the submitted letters highly praise the Petitioner's abilities as a dancer and instructor, they do not contain specific, detailed information explaining the significant influence his ballet and teaching career have had on the overall field, and they do not support the Petitioner's own claims that he "revolutionized dance" or that there is "no other dance instructor" capable of teaching the [redacted] method to the next generation of ballet dancers. Letters that specifically articulate how a petitioner's contributions are of major significance to the field and its impact on subsequent work add value.⁷ On the other hand, letters that lack specifics and use hyperbolic language do not add value, and are not considered to be probative evidence that may form the basis for meeting this criterion.⁸ Moreover, USCIS need not accept primarily conclusory statements. *1756, Inc. v. The U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Here, the evidence establishes that the Petitioner has been a successful professional dancer and instructor whose traditional teaching method is valued and sought after by ballet schools. However, for the reasons discussed above, considered both individually and collectively, the Petitioner has not shown that he has made original contributions of major significance in the field.

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)

The Director found that the Petitioner did not meet this criterion, emphasizing that it is "limited to the visual arts" and that the Petitioner "has not created tangible pieces of art that were on display at artistic exhibitions and showcases." We disagree with the Director's determination that the plain language of the regulation renders this criterion applicable only to visual artists. The regulation requires only that the work displayed be a given petitioner's own work product and that the venues at which the

⁷ See USCIS Policy Memorandum PM 602-0005.1, *supra*, at 8-9.

⁸ *Id.* at 9.

individual's work was displayed by artistic exhibitions or showcases.⁹ As certain exhibitions or showcases featuring performing artists meet the plain language of this regulation, the Director should have considered the submitted evidence. Upon review, the Petitioner has provided evidence of his stage performances as a principal ballet dancer in productions at various European venues. We find the evidence sufficient to satisfy this criterion.

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)

As it relates to a leading role, the evidence must establish that a petitioner is or was a leader. A title, with appropriate matching duties, can help to establish if a role is or was, in fact, leading. Regarding a critical role, the evidence must demonstrate that a petitioner has contributed in a way that is of significant importance to the outcome of the organizations or establishment's activities. It is not the title of a petitioner's role, but rather the performance in the role that determines whether the role is or was critical.¹⁰ Finally, the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires the organizations or establishments to have a distinguished reputation, which is marked by eminence, distinction, or excellence.¹¹

The Director found that the Petitioner did not meet this criterion because, although he played a role as the founder or co-founder of various groups such as the [redacted] and the [redacted] he did not provide evidence to demonstrate the distinguished reputation of these organizations. The Director also acknowledged the Petitioner's involvement with the [redacted] [redacted] but found that he did not provide detailed and probative information that specifically addressed how his role was leading or critical for this organization. Finally, the Director found that although the record demonstrated the Petitioner's roles in various dance productions, he did not demonstrate how shows and productions qualify as "organizations and establishments."

On appeal, counsel asserts that organizations founded or co-founded by the Petitioner, including [redacted], the [redacted], and the youth dance competition [redacted] "have garnered widespread fame by producing and discovering many talented dance students that have gone on to do great things." He points to the previously submitted testimonial letters and published media in support of this claim. The Petitioner provided several newspaper articles that covered upcoming local performances of [redacted] and one article that mentions the second edition of the [redacted] competition as a "regional competition" open to ballet schools in [redacted] and "one of the most stimulating opportunities for young local talents." This evidence is insufficient to establish that these organizations enjoy a distinguished reputation, and we note that the submitted media coverage does not reference [redacted] [redacted] at all.

⁹ See also USCIS Policy Memorandum PM 602-0005.1, *supra* at 9-10 (stating that officers should use the common dictionary definitions of "exhibition" and "showcase" in evaluating this criterion, and indicating that a "showcase" is "a setting, occasion, or medium for exhibiting something or someone, especially in an attractive or favorable aspect" (emphasis added)).

¹⁰ See USCIS Policy Memorandum PM-602-0005.1, *supra*, at 10.

¹¹ *Id.* at 10-11.

Further, even if we determined that these organizations have a distinguished reputation, the Petitioner has not submitted letters from representatives of these entities discussing his leading or critical role, nor has he submitted organizational charts or other evidence that would independently confirm his position and placement in the organizations' hierarchies. The Petitioner submits secondary evidence that mentions his leadership role with these groups, but this evidence cannot substitute for letters from his employers or colleagues describing his role within these organizations. *See* 8 C.F.R. § 204.5(g)(1) (stating that evidence of experience 'shall' consist of letters from employers).

The Petitioner also emphasizes his role as a "Coordinator" with the Italian performing arts association [redacted]. The Petitioner submitted: (1) a [redacted] 2013 blog article indicating that [redacted] took over as coordinator of the dance division of [redacted] of [redacted] and [redacted] following the Petitioner's resignation; and (2) a letter from [redacted] President [redacted] who indicated that the Petitioner "has been a member of our Union, in the region of [redacted] and [redacted] from 2010 to 2013," and "was chosen as the [redacted] in [redacted] 2012 and held the job until the end of [redacted] 2013 when he resigned." [redacted] states that "thanks to his constant effort and his initiative the number of members in the department of dance grew and reached many objectives in that sector." [redacted]'s letter is vague and it does not mention the Petitioner's role as "coordinator." Further, he does not describe the specific duties and functions the Petitioner performed for [redacted] and does not explain with specificity how the Petitioner performed either a leading role or a critical role that was of significant importance to [redacted]' outcome or activities.

The Petitioner also maintains that he "submitted over ten supporting letters from various dance teachers, companies, and officials that all attest to [his] critical role in either their dance school or a reputable local dance school that he has taught at." The referenced letters do not establish how the Petitioner's role has been critical to the dance schools. [redacted] mentions that the Petitioner "is a definite asset" to her school and mentions the success of a particular student he taught, but she does not explain in what specific role he has performed or how he has contributed in a significant way to her school. [redacted] of [redacted] Dance Center indicates that the Petitioner taught two summer intensive programs at her studio, and states that he "has made such a huge impact on his students." [redacted] art director for [redacted] School for the Performing Arts indicates that the Petitioner has been invited to teach master classes, workshops and summer intensive classes, and states that "our ballet students are thriving under his tutelage." While these and other letters mention that the Petitioner's instruction has improved the performance of individual students, they do not support the Petitioner's claim that he has performed in a leading or critical role for dance schools in the United States. Further, the Petitioner did not submit evidence to establish the distinguished reputation of the American schools where he has provided his services as an instructor.

In addition, the Petitioner maintains that he "has submitted a number of documents that pertain to his critical role in many productions, fashion shows, and musical productions," but he specifically references only a 2014 [redacted] fashion show, indicating that he served as choreographer for the event. However, we agree with the Director's determination that serving a lead or critical role in a discrete event or production does not establish that one has held a lead or critical role for an "organization or establishment." The Petitioner submitted an article that appeared on the website of the [redacted] in [redacted] Italy, announcing the [redacted] fashion show held at the hotel in [redacted] 2014. The article indicates that the [redacted] corps de ballet would perform at the event, "choreographed by [redacted], and supervised by [the Petitioner]." While the Petitioner might have held an

important role in supervising the ballet performance held at this particular [] event, the record does not establish that this fashion show was an “organization or establishment,” nor does it contain, for example, a letter from [] attesting to the critical role the Petitioner performs for that organization.

Finally, we acknowledge that with respect to this and other criteria, the Petitioner refers to several non-precedent decisions concerning other petitioners who have appealed the denial of their extraordinary ability petitions. The referenced decisions were not published as a precedent and therefore does not bind USCIS officers in future adjudications. *See* 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy.

Accordingly, the Petitioner has not demonstrated that he fulfills this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner received 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 Petitioner, 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 I-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), *affd*, 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

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a finding that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. 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. Comm’r 1994). Here, the Petitioner has not shown that the significance of his work is indicative of the required sustained national or international acclaim or that it is 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. Moreover, the record does not otherwise demonstrate that the Petitioner has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

For the reasons discussed above, the Petitioner has not demonstrated his 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.