



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

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

In Re: 12797029

Date: JAN. 29, 2021

Appeal of Nebraska Service Center Decision

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

The Petitioner, a chief executive officer (CEO), 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 although the record established that the Petitioner satisfied the initial evidentiary requirements for this classification, it did not demonstrate, as required, that the Petitioner has sustained national or international acclaim and is an individual in that small percentage at the very top of the field. The matter is now before us on appeal.<sup>1</sup>

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 conclude that the Petitioner has not met this burden. Accordingly, 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

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<sup>1</sup> The Petitioner provided a short statement identifying the basis for his appeal on the Form I-290B, Notice of Appeal or Motion, and indicated that a brief would be submitted to the AAO within 30 days of the appeal's filing date (June 11, 2020). As of the date of this decision, the record reflects that we have not received the Petitioner's brief and the record will be considered complete.

- (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 international 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 criteria 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) (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).

## II. ANALYSIS

The Petitioner is the CEO and founder of [REDACTED], a training center and business education provider that organizes business and self-improvement training events. The Petitioner indicates that [REDACTED] has three offices in Russia and an office in the [REDACTED], where it intends to market its [REDACTED]

### 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 Petitioner claimed to meet seven of these ten criteria, summarized below:

- (i) Receipt of lesser nationally or internationally recognized prizes or awards;
- (ii) Membership in associations which require outstanding achievements of their members;
- (iii), Published material in professional publications or major media;
- (iv), Participation as a judge of the work of others in the field;
- (v), Contributions of major significance in the field;
- (vi), Authorship of scholarly articles; and
- (viii), Leading or critical role for an organization with a distinguished reputation.

The Director concluded that the Petitioner met three of the claimed evidentiary criteria, relating to published material, judging and performing in a leading or critical role for an organization that has a

distinguished reputation, but determined that he had not met the remaining four claimed criteria. Because the Petitioner satisfied the initial evidence requirements, the Director proceeded to a final merits determination. The record supports the Director's determination that the Petitioner satisfied the three referenced criteria. Specifically, Petitioner established that he and his work were the subject of an article published by *Kommersant*, that he judged several competitions in the field of business, and that he is the leader of a company with a distinguished reputation.

On appeal, the Petitioner asserts that the Director "applied the wrong examination criteria to several of the qualifying criterion [*sic*] in dismissing several of the claims," but does not specify which of the criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) he is contesting. As the Petitioner has demonstrated that he satisfies three criteria, we will evaluate the evidence submitted in support of the remaining criteria in the context of the final merits determination further below.

## B. Final Merits Determination

As the Petitioner has submitted the requisite initial evidence, we will evaluate whether he has demonstrated, by a preponderance of the evidence, his sustained national or international acclaim and 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. In a final merits determination, we analyze a petitioner'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.<sup>2</sup> For the reasons discussed below, we conclude that the Petitioner has not demonstrated his eligibility.

The record reflects that the Petitioner established [redacted] in [redacted] Russia in 2010 and has served as its CEO since that time, currently based at its [redacted] office. The record does not include the Petitioner's curriculum vitae or otherwise provide details regarding his earlier career but rather reflects that most of his documented achievements in business have resulted from his work over the last decade, particularly in the last several years.

As mentioned above, the Petitioner has been featured in a major media publication, judged others within his field, and performed in a leading role. We have also considered evidence related to his claimed award and membership, his published work, and his business-related contributions. The record, however, does not demonstrate that his achievements reflect a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990).

As it relates to published materials in major media, the record reflects that *Kommersant*, a daily newspaper with national circulation in Russia, published an interview with the Petitioner about his work with [redacted] in its online edition in [redacted] 2018. Overall, however, the evidence reflects that most media coverage of the Petitioner and his work to date has been in publications that are local

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<sup>2</sup> See also 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 10* (Dec. 22, 2010), <https://www.uscis.gov/policymanual/HTML/PolicyManual.html> (stating that USCIS officers should then evaluate the evidence together when considering the petition in its entirety to determine if the petitioner has established by a preponderance of the evidence the required high level of expertise of the immigrant classification).

or regional in nature. For example, the Petitioner submitted a 2016 interview with him published by the website *Uniform Republican Business Portal* (www.erbp.ru), which is described as “a multifunctional Internet resource, designed to become an information and communication platform for business representatives of the Republic of [redacted].”

The record also reflects that the Petitioner was selected by the [redacted] edition of the magazine *Sobaka* ([redacted]) as one of the “Top 30 Most Famous People [redacted] in 2016. Specifically, the evidence shows that he was one of 30 individuals from [redacted] nominated for prizes in seven categories that included business, as well as sports, arts-related and lifestyle categories. While the record does not demonstrate that he won the prize in the business category, it does show that his photo and a brief profile appeared in the online magazine as a result of his nomination. However, the Petitioner does not establish that this recognition, while notable, evidences his receipt of a nationally recognized award as claimed, or that he garnered national acclaim and recognition based on his nomination and appearance in a magazine with a regional focus.

In addition to these three publications, the Petitioner provided evidence that several classes and events in which he participated as a presenter or lecturer were announced online in the events section of [redacted] *Today* ([http://\[redacted\]today/events](http://[redacted]today/events)) in 2016. Finally, he provided screenshots indicating that the website *The [redacted] Room* included him on its list of the top [redacted] Instagram profiles from natives of the city. The Petitioner appears [redacted] on the list with over 18,000 subscribers. The article identifies him as the head of [redacted] and as an entrepreneur and coach, and provides a quote from him about the types of photographs he prefers to post on Instagram. The record does not establish that local event announcements or his inclusion on the list of Instagram users compiled by *The [redacted] Room* reflected or contributed to his national or international recognition in his field.

In sum, the record does not establish that a single published article in a major medium is consistent with the sustained national or international acclaim necessary for this highly restrictive classification. *See* section 203(b)(1)(A) of the Act. Even considering the totality of the other published materials, the Petitioner has not shown that his press coverage is indicative of a level of success consistent with being among “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2).

Relating to the Petitioner's service as a judge of the work of others, an evaluation of the significance of his experience is appropriate to determine if such evidence indicates the required extraordinary ability for this classification. *See Kazarian*, 596 F. 3d at 1121-22.<sup>3</sup> The record reflects that the Petitioner has provided his services as (1) a panel judge for the information technology competition held within the [redacted] Contest” at [redacted] University in 2018; and (2) as an expert council member at a preliminary regional stage [redacted] for the [redacted] Entrepreneurship Prize competition in 2017. The Petitioner also provided evidence that he initiated and served as chairman of the jury for a “competition to identify the best organization among small businesses” which was held by the [redacted] Regional Branch of “Opora Russia” in 2018. Finally, the record demonstrates that the Petitioner was a co-organizer (along

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<sup>3</sup> *See also* USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (stating that an individual's participation should be evaluated to determine whether it was indicative of being one of that small percentage who have risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

with the [redacted] of a “Power of Team” competition held in the [redacted] in 2018. The information provided regarding the “Power of Team” competition indicates that its jury would include “5 reputable expert persons – representatives of business, government, sports.” The evidence does not indicate whether the Petitioner participated as a judge for this competition or that his role as co-organizer involved judging the work of others in his field.

While the evidence confirms the Petitioner’s service as a judge in three of these four business-related competitions, it does not sufficiently support his claim that he has often been invited to judge the work of others as a result of his national or international reputation in the field. Two of the competitions in which he was involved are new regional competitions in which he is identified as the contests’ initiator or co-organizer; he was not invited to participate as a judge in these competitions based on his national acclaim. The willingness of regional entities to co-sponsor or co-organize these competitions with him is acknowledged and may be indicative of his reputation as a business expert in [redacted] but does not support a finding that he enjoys national acclaim in his field. In addition, although the record indicates that the [redacted] Entrepreneurship Prize draws from a national pool of competitors, the Petitioner was invited to judge a preliminary stage of the competition at the regional level.

The Petitioner provided a letter from [redacted] CEO of [redacted] which held the Open Innovations start-up contest in 2018. He explains that the [redacted] Forum and Technology Show is an annual forum which provides “a platform for discussion, interaction and exchange amongst experts in leading edge technologies, scientists, top managers from Russian and foreign corporations, startups and state authorities.” [redacted] states that he personally selected the Petitioner as a panel member for the forum’s 2018 start-up competition because he “needed an experienced and respected businessman to judge the contest.” He also indicates that [redacted] “chose only the people who have truly proven themselves to have extraordinary ability . . . to help us select the winning teams to join our acceleration program as judges of the startup competition.” [redacted]’s letter supports a conclusion that the [redacted] competition was likely the most prominent competition in which the Petitioner served as a judge. However, his statement is not sufficiently detailed to establish that invitations to serve on its judging panels were limited to those nationally or internationally acclaimed business professionals in the small percentage at the very top of the field. The record does not contain, for example, profiles of others who served with the Petitioner on the judging panel for the start-up competition.

Finally, the evidence does not establish that the Petitioner garnered sustained national or international recognition or acclaim as a result of his participation as a judge in these competitions, all of which occurred within the two years preceding the filing of the petition. The Petitioner has not shown, for example, how his judging experience compares to others in his field or otherwise sets him apart from them. Without this evidence, he has not demonstrated that his service as a judge indicates that he is among “that small percentage who [has] risen to the very top of the field of endeavor.” See 8 C.F.R. § 204.5(h)(2).

For similar reasons, the Petitioner has not demonstrated that his invitation to join the “speaker series” of the School of Business [redacted] reflects that he enjoys sustained national or international acclaim. [redacted] rector of [redacted] explains that the Petitioner’s company,

[redacted] “has been a trusted partner” to the school, which has, in turn “extended an invitation to [the Petitioner] to join our speaker series, an honor extended to the very few business and education professionals worldwide.” [redacted] notes that the organizing committee for the series has “very stringent criteria for selecting its featured speakers” and requires those selected to have “extraordinary abilities and achievements in their respective fields.” He names several other individuals as members of the speaker series, noting that they are “highly regarded” and “legends” in their fields, but the record does not contain information about them. Further, although [redacted] states that the Petitioner accepted [redacted]’s invitation to join its speaker series, the record does not identify or include evidence of any [redacted] events in which the Petitioner participated as a speaker or the nature and scope of his involvement. Nor does the record contain additional background regarding [redacted] or its speaker series in general, such that we could evaluate the level of national or international recognition that may be associated with participation in the series. The Petitioner’s and [redacted]’s association with [redacted] and its speaker series supports a determination that he is recognized within some segments of the Russian business community, but there is insufficient evidence to establish how his participation in the series places him among that small percentage at the very top of his field.

We have also considered evidence related to the Petitioner’s publications, which include a book<sup>4</sup> titled [redacted] and four articles in the Russian online edition of *Forbes* magazine published between [redacted] 2018 and [redacted] 2019. The record reflects that the Petitioner has also authored articles published on the Russian websites *Vc.ru*, *RusBase* ([www.rb.ru](http://www.rb.ru)), *Invest-Foresight* ([www.if24.ru](http://www.if24.ru)) and *Standards and Quality* ([www.ria-stk.ru](http://www.ria-stk.ru)). The Director determined that the articles authored by the Petitioner did not qualify as scholarly articles under the regulation at 8 C.F.R. § 204.5(h)(3)(vi) and did not address this evidence in his final merits determination.

As it relates to the Petitioner’s authorship of articles, we emphasize that publication of one’s written work does not automatically place an individual at the top of the field.<sup>5</sup> We acknowledge that *Forbes* is a major medium, but the record does not establish to what extent the Petitioner’s four recent articles garnered him sustained national or international acclaim or that the publication of his work in *Forbes* reflects such acclaim. The Petitioner is credited in the articles’ bylines as a “*Forbes* contributor,” but the record does not contain any information or documentation about the magazine’s standards, policies or procedures for accepting articles from contributors. We cannot determine, for example, that *Forbes* or the other referenced publications only accept articles from contributors who are nationally recognized figures in a given field. The record also lacks evidence that the Petitioner’s articles have been cited or discussed by others in the field, or that they have generated a level of interest in the Petitioner and his work commensurate with sustained national or international acclaim.

The Petitioner also states that he became a “best-selling author” based on his publication of the book [redacted]. In support of this claim, he provides evidence that the book is available for purchase on the websites of three Russian booksellers. Some of the recommendation letters and expert opinion letters, including a letter from [redacted] of [redacted] also refer to the “enormous success” of the Petitioner’s book. However, the record does not contain any independent evidence, such as information about the number of books published or sold, evidence of the book’s

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<sup>4</sup> Other evidence in the record refers to the English translation of the book’s title as [redacted] and [redacted]

<sup>5</sup> See also USCIS Policy Memorandum PM 602-0005.1, *supra*, at 13 (providing that publications should be evaluated to determine whether they were indicative of being one of that small percentage who has risen to the very top of the field of endeavor and enjoying sustained national or international acclaim).

critical success, or other information to establish that the Petitioner's work as an author has received acclaim at the national or international level. Some of the submitted recommendation letters refer to the Petitioner's written work as "informative" and emphasize that it is significant that his views on technology, management and start-up enterprises are deemed "worthy of dissemination" in business-related publications, but this does not equate to a finding that his publications have earned him a place among the small percentage of individuals at the very top of his field.

Overall, the Petitioner did not establish that his publication of a book and magazine articles in the few years preceding the filing of the petition sets him apart through a "career of acclaimed work." The statute requires the Petitioner to submit "extensive documentation" of his sustained national or international acclaim. *See* section 203(b)(1)(A) of the Act. Further, as noted, the Petitioner did not establish that the articles or his book have been cited or generated widespread discussion in the field, nor did it otherwise demonstrate a level of interest in his work commensurate with sustained national or international acclaim at the top of his field. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3).

Lastly, as it relates to the Petitioner's service in a leading role with [redacted] and the business contributions he has made as the company's leader, the record contains numerous letters of recommendation and expert opinion letters.<sup>6</sup> On appeal, the Petitioner maintains that the Director's decision "ignored the overwhelming body of expert opinion evidence" previously submitted.

With respect to the Petitioner's business-related contributions, the Director's decision reflects that he considered the submitted letters of recommendation. He specifically referenced letters from [redacted] and [redacted] which discuss a horizontal management structure that the Petitioner developed or adapted, as well as [redacted] a customer relationship management system designed for businesses that employ a horizontal management structure.

With respect to the horizontal management structure, some of the submitted letters identify the Petitioner as the originator of this business model, while others state that he adapted this structure after studying successful American companies (such as Google, Facebook and Netflix) that were built on horizontal management. For example, the letter from [redacted] states that the Petitioner is "a pioneer of an innovative business management – he designed and formulated a turn-key horizontal business management structure based on the model he successfully developed at [redacted]" In contrast, [redacted] refers to the Petitioner as a "student and early adaptor of horizontal business management structure" but not as the creator or developer of this business model.

Similarly, [redacted] a business coach who has partnered with [redacted] explains that the Petitioner studied other successful organizations that use a horizontal management structure, based his company on this model and became "its most outspoken advocate and promoter in Russia." [redacted] states that the Petitioner's promotion of this type of non-traditional structure has "resonated throughout the Russian Federation," and notes that the Petitioner has taught seminars and led training sessions "to promote this revolutionary model" in over 40 cities. Collectively, the letters suggest that the Petitioner was among the first to promote a horizontal management structure as an alternative to the vertical, top-down management structure that is prevalent in Russia, but not that he is credited as

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<sup>6</sup> Although we discuss only a sampling of this correspondence, we have reviewed all of the letters in the record.

the originator of this structure. Further, the fact that he promotes this management structure through his company and speaking engagements does not establish that his efforts have already significantly impacted the field to the extent that he has achieved national or international acclaim as a result of his business-related contributions. The supporting evidence does not corroborate, for example, how the Petitioner's business model has "resonated throughout the Russian Federation."

With respect to [redacted]'s [redacted] product, [redacted] credits the Petitioner with formulating designing it and delivering it to market, and notes that the product "has been very well received and adopted by some of the most innovative company's [sic] in our country." [redacted] notes the "incredible success" of the product, and several of the other recommendation letters repeat similar language about the success of the product and its adoption by Russian companies. The record does not include independent evidence of the product's performance, its implementation by prominent companies, its recognition in the field, or the individual recognition that the Petitioner has received as a result of the product's success in Russia or elsewhere.

Finally, we have considered an expert opinion letter from [redacted], a professor at [redacted] University, who states that he has reviewed the evidence submitted in support of this petition, including letters from six professional peers,<sup>7</sup> press related to the Petitioner and his business ventures, articles that he has authored, his judging activities, his leadership role with [redacted] and his business-related contributions, and his recognition as "one of the 30 most famous citizens [redacted]." Without referencing the statutory or regulatory requirements applicable to this classification, he concludes that the Petitioner "has achieved a national and international reputation for outstanding achievements in business." This conclusion appears to be based on the Petitioner's submission of evidence that satisfies at least three of the initial evidentiary criteria, but does not included an analysis of how that evidence, when considered individually and collectively, supports a conclusion that the Petitioner is among that small percentage at the very top of his field.

USCIS may, in its discretion, use as advisory opinions statements from universities, professional organizations, or other sources submitted in evidence as expert testimony. *Matter of Caron Int'l*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding a foreign national's eligibility. The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. *Id.* Furthermore, merely repeating the language of the statute or regulations does not satisfy a 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).

As acknowledged by the Director, the record supports a determination that the Petitioner and [redacted] have garnered some recognition in the field over the last several years, as evidenced by the media coverage discussed above, his invitations to serve as a judge in business competitions and to participate in speaking engagements, and the publication of his book and business articles. However, the record does not support his claims that his work has made an impact in the overall field of business in Russia, or that he has achieved sustained national or international acclaim based on his achievements. While the evidence, all of which dates from the last few years, shows that the Petitioner is increasingly being recognized for his work in the Russian business community, particularly in the

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<sup>7</sup> These include the letters of [redacted], [redacted], [redacted], and three other letters which we have considered but did not specifically discuss above.



[redacted] the totality of the evidence does not establish that he is already among that small percentage at the top of his field.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields. 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 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.

### C. O-1 Nonimmigrant Status

We note that the record reflects that the Petitioner has 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 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 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).

Further, it must be emphasized that each petition filing is a separate proceeding with a separate record. In making a determination of statutory eligibility, USCIS is limited to the information contained in that individual record of proceedings. 8 C.F.R. § 103.2(b)(16)(ii). 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 Matter of Church Scientology Int’l*, 19 I&N Dec. 593, 597 (Comm’r 1988); *see also Sussex Eng’g, Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987).

Finally, 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 petition. *See La. 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 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.