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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: WAC 01 027 52022 Office: California Service Center

Date: AUG 11 2002

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

IN BEHALF OF PETITIONER: Self-represented

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

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

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. – An alien is described in this subparagraph if –

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term “extraordinary ability” means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has achieved sustained national or international acclaim are set forth in Service regulations at 8 C.F.R. 204.5(h)(3):

Initial evidence: A petition for an alien of extraordinary ability must be accompanied by evidence that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise. Such evidence shall include evidence of a one-time achievement (that is, a major, international recognized award), or at least three of the following:

- (i) Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
- (ii) Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of

their members, as judged by recognized national or international experts in their disciplines or fields;

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

(iv) Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought;

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field;

(vi) Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media;

(vii) Evidence of the display of the alien's work in the field at artistic exhibitions or showcases;

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation;

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field;
or

(x) Evidence of commercial successes in the performing arts, as shown by box office receipts or record, cassette, compact disk, or video sales.

The petitioner is a competitive chess player and a chess coach. The director, in denying the petition, acknowledged that the petitioner satisfied criteria (i) and (iii) above. The record supports this conclusion, as it contains evidence that indicates that the prime minister of Armenia presented the petitioner with a gold medal for his work as coach of Armenia's women's chess team in 1999. Among the many newspaper articles describing tournaments in which the petitioner placed first or at least very highly, are articles specifically about the petitioner, such as a full-page interview.

On appeal, the petitioner repeats his prior contention that he has satisfied other criteria as well. Not all of these claims are persuasive. For instance, the petitioner observes that some of his chess games have been recorded and distributed on CD-ROMs, and that some of his moves are original in that they have no precedent in earlier recorded games. Originality is not inherently a sign of major significance. Also, while 100 of the petitioner's games appear on one CD-ROM, that CD-ROM contains a total of one million recorded games. The petitioner's involvement in one ten-thousandth of the total number of games, is not *prima facie* evidence of the petitioner's disproportionate influence over the game of chess.

The petitioner's strongest claim regarding a third criterion pertains to 8 C.F.R. 204.5(h)(3)(viii), playing a leading or critical role for a distinguished organization or establishment. The director stated that the petitioner had submitted no evidence pertaining to this criterion, but the record shows that the petitioner was the coach of Armenia's national women's chess team in 1999 (for which the petitioner received the aforementioned national award). The petitioner has thus met the requisite three criteria out of the ten set forth at 8 C.F.R. 204.5(h)(3).

The director stated that the petitioner's status with the World Chess Federation is inactive. On appeal, the petitioner persuasively demonstrates that the director has misread the documentation submitted by the petitioner. World Chess Federation materials clearly identify inactive players, and the designation does not appear beside the petitioner's name. Thus, the director's decision contains a demonstrable error of fact which apparently had some bearing on the outcome of the decision.

The director also noted that, according to "the international ratings at the World Chess Federation website," the petitioner is not ranked among the world's top 100 chess players. The petitioner acknowledges this, but it remains that national acclaim is sufficient to establish eligibility. The petitioner had been in his native Armenia until a few months before he filed his petition, and almost all of the evidence of record pertains to his reputation in Armenia. The web site for the World Chess Federation (www.fide.com) indicates that, while the petitioner's international ranking is not particularly high (985), among Armenian players he ranks much higher, at number 18. The director's observation that "[c]hess is an international sport" does not nullify the "national acclaim" clause. There is nothing in the statute or regulations to indicate that national acclaim is insufficient to establish eligibility in certain areas of endeavor.

While the above demonstrates the petitioner's national acclaim, there remains the separate statutory requirement at section 203(b)(1)(A)(ii) that "the alien seeks to enter the United States to continue work in the area of extraordinary ability." The petitioner's intention to continue playing chess is not in dispute; the record shows that the petitioner has participated in tournaments in California. More relevant is the issue of whether chess will be the petitioner's primary occupation and source of income. Because the petitioner seeks an employment-based immigrant classification based on his chess-playing and coaching skills, it is reasonable to require evidence that the petitioner has been and will continue to support himself principally as a coach and/or through tournament prize money (rather than coaching or playing in his spare time while supporting himself through unrelated employment). The evidence now in the record is insufficient to show that the petitioner has been and will continue to support himself primarily through his skills as a chess player and coach, and the director should afford him the opportunity to submit further evidence in this regard.

Therefore, this matter will be remanded. The director may request any additional evidence deemed warranted and should allow the petitioner to submit additional evidence in support of its position within a reasonable period of time. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision which, if adverse to the petitioner, is to be certified to the Associate Commissioner for Examinations for review.