



BA

U.S. Department of Justice

Immigration and Naturalization Service

Deleting data deleted to prevent clearly unwarranted invasion of personal privacy

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

[Redacted]

File: [Redacted] LIN-01-234-52010)

Office: Nebraska Service Center

Date: AUG 11 2006

IN RE: Petitioner:
Beneficiary:

[Redacted]

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:

[Redacted]

Public Copy

INSTRUCTIONS:

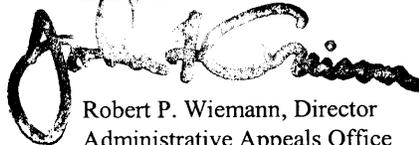
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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 in the athletics. 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 sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a wrestling coach. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). While counsel asserts without explanation that the record contains evidence of a one-time achievement, no such evidence is in the record. Barring the alien's receipt of such an award, the regulation outlines ten criteria, at least three of which must be satisfied for an

alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.

The petitioner's page on the FILA website reflects the following rankings:

1990 European Championship, ranked 5th;
1993 European Championship, ranked 5th;
1994 European Championship, ranked 8th,
1994 World Championship, ranked 8th,
1995 European Championship, ranked 11th,
1995 World Championship, ranked 11th,
1996 European Championship, ranked 4th, and
1997 European Championship, ranked 12th.

While these rankings reflect international competition, they do not reflect international awards or prizes. The highest ranking the petitioner received was fourth in 1996, which is not an award level.

The petitioner also won a regional match and the National Championship of the National Junior College Athletic Association in the United States. While the director accepted this award as a lesser nationally recognized award, we do not concur. Competing in the National Junior College Athletic Association does not involve competition against the best national wrestlers. It is not a nationally recognized award.

Counsel asserts that the petitioner won the Romanian National Title "continually, every year, from 1980 until 1997." The petitioner failed to submit any evidence of this title.

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.

The FILA website information reveals that the petitioner was a member of the Romanian Olympic team at the XXVI Olympic Games where he was ranked 19th. As such, the petitioner appears to meet this criterion.

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.

As evidence to meet this criterion, the petitioner submitted several articles published in an unknown newspaper reporting on the results of the Kansas Neosho County Community College (NCCC) Wrestling Team. While the director concluded that the petitioner meets this criterion, none of these

articles are primarily about the petitioner and the petitioner has not established that the publications constitute major media. The petitioner also submitted an article entitled “Kansas Team has World Class, Romanian Wrestlers in Waiting,” published in the *Post-Bulletin*. While this article focuses on the petitioner and his brother, the *Post-Bulletin* appears to be a local Rochester, Minnesota paper, the site of the NJCAA championships. As such, the petitioner has not established that the story was published in major media or represents the petitioner’s national acclaim.

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

Initially, counsel asserted without explanation that the petitioner meets this criterion. The record contains five letters of support, four of which are from coaches and wrestlers at NCCC. The letters from NCCC coaches discuss the petitioner’s volunteer coaching and competition with the team and assert that his efforts resulted in the team winning the NJCCA national championship in its second year of existence. The remaining letter is from Mitchell C. Hull, National Teams Director for USA Wrestling. Mr. Hull asserts that USA Wrestling is offering the petitioner the opportunity to train and compete at the Olympic Training Center in Colorado Springs, that the petitioner could benefit from such training, and that others training with him would also benefit.

Counsel no longer pursues this criterion on appeal and the record does not support the initial claim to meet it. While the petitioner may have provided useful coaching assistance to a specific community college team, such assistance is not a contribution of major significance to the field of wrestling. Mr. Hull’s opinion that the petitioner himself might benefit from future training and benefit his fellow trainees is not evidence of a past contribution of major significance. The record contains no evidence that the petitioner has set a world record or other standard to which other wrestlers nationally or internationally aspire. The record contains no evidence that his style or technique has been influential in the field at a national or international level.

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

Counsel initially asserted that the petitioner meets this criterion and on appeal argues that the basis for this claim is the petitioner’s participation in “the World Games, European Championships and the Olympic Games.” Counsel continues, “teams that participate in such events have distinguished reputations.”

Membership in a distinguished team is not evidence of a leading or critical role above and beyond the other athletes and coaches on the team. We cannot conclude that the petitioner’s membership on an Olympic team can serve to meet both the membership and leading role criteria.

Finally, while the director concluded that the petitioner had not met three of the above criteria as an athlete, he also concluded that the petitioner intended to enter the United States to coach, not compete. The director stated that the petitioner would thus need to establish extraordinary ability as a coach. On appeal, counsel cites a non-precedent case issued by the Administrative Appeals

Office (AAO) which did not contest that coaching was within that individual athlete's area of expertise.

A non-precedent case is not binding. One of the petitioner's own references, [REDACTED], Head Coach for NCCC, concedes, "many can wrestle, but teaching it takes special people." This statement confirms our position that an alien who seeks to enter the United States as a coach under the extraordinary ability classification cannot rely solely on acclaim as an athlete. That said, given the nexus between competing and coaching, in a case where an alien has clearly recently sustained national or international acclaim as an athlete and has sustained that acclaim in the field of coaching at a national level, we can consider the totality of the evidence as establishing an overall pattern of sustained acclaim and extraordinary ability. Nevertheless, the letter from Mr. Hull indicates that the petitioner has the opportunity to train and compete in the United States. As such, the issue of whether the petitioner needs to demonstrate extraordinary ability as a coach is moot.

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

Review of the record, however, does not establish that the petitioner has distinguished himself as a wrestler to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of his field. The evidence indicates that the petitioner shows talent as a wrestler, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.