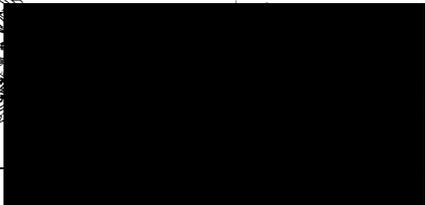




U.S. Department of Justice
Immigration and Naturalization Service

B2



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



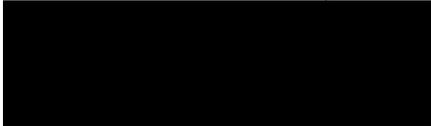
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invasion of personal privacy

File: EAC 00 113 50338 Office: Vermont Service Center Date: JAN 09 2002

IN RE: Petitioner: [Redacted]
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:



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

The petitioner is a university. It seeks to classify the beneficiary 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 athletics. The director determined the petitioner had not established that the beneficiary has earned 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 the beneficiary has sustained national or international acclaim at the very top level.

The petitioner seeks to employ the beneficiary 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). 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, the petitioner 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.

J.T. Weiss, head wrestling coach at the petitioning university, states that the beneficiary "has been known as an honor coach of Lithuania in the international category" and that the beneficiary's students have competed in five world championships. Mr. Weiss asserts that the beneficiary's "sportsmen always take first places on home, international and world tournaments." Mr. Weiss states that the beneficiary held the title "Honor Sportsman of the USSR," but the record contains no first-hand documentation of this title, nor any evidence of its significance. An occupational title or qualification is not a prize or award.

The record contains a number of certificates, showing that the beneficiary has taken first, second, or third place in a number of national and international wrestling competitions. The beneficiary's "International Competitor's Licence" lists only one competition, the 1995 Freestyle World Championships.

A certificate presented to the beneficiary at the 1995 Freestyle World Championships indicates that the beneficiary "has earned recognition and appreciation." Other evidence indicates that the beneficiary placed 28th in this competition, and therefore the certificate appears to represent an acknowledgement of the beneficiary's participation rather than a prize or award.

The above evidence pertains to the beneficiary's own career as a competitive wrestler, rather than his work as a coach. We acknowledge that there are not many significant coaching awards, but we will consider evidence of the success of the beneficiary's students as comparable evidence under 8 C.F.R. 204.5(h)(4). S. Kasimov, president of the Laisvunas Wrestling Club in Lithuania, identifies three of the beneficiary's students as "winners of the 1999 World Championship," and three others as "winners of international championships in Russia, Poland, Germany, Latvia, Belarus." The beneficiary's students are identified as "cadets," wrestlers ten and eleven years of age.

Witness letters and newspaper articles discuss the success of the beneficiary's students, although we note the absence of first-hand documentation of the many championships that those students are said to have won.

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 beneficiary is a member of the Federation of Associated Wrestling Styles ("FILA").¹ There is nothing in the record to show that FILA is an association that requires outstanding achievements as a condition of membership. If FILA is simply a governing body that supervises competitions, it would appear that every competitor in a FILA competition could be a member.

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.

The August 12, 1995 issue of Wrestling Week '95 includes a list of competitors for an upcoming competition (which the excerpt submitted does not identify). The petitioner has not established the significance of Wrestling Week '95, which according to a printed legend was "published daily by USA Wrestling from August 6-14, 1995."

The Waycross Journal-Herald covered a local exhibition match between the Olympic wrestling teams from Canada and Lithuania, in preparation for the then-upcoming 1996 Olympic Games in nearby Atlanta. There is no evidence that the Journal-Herald is a national publication that circulates significantly beyond the Waycross area.

The petitioner submits several articles printed in foreign languages. The record does not contain translations of the articles; rather, the petitioner has provided brief summaries of the articles. The petitioner has not shown that any of these publications are national or international.

The petitioner has not shown that the beneficiary has attracted more attention either in the trade press or in the popular media than most other wrestling coaches.

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

Mr. Weiss states that the beneficiary has "participated in the XXVI Olympic Games as the representative of [the] Lithuanian national team" and "won a series of very prestigious tournaments," and that the beneficiary's "students have also a record of outstanding achievements winning national and international tournaments."

¹The acronym derives from the association's French name, *Fédération Internationale des Lutttes Associées*.

Winning a competition (or coaching a winner) can qualify as a prize or award, but it does not follow that every such victory is an original contribution of major significance. The petitioner has not shown that the beneficiary has influenced the field of wrestling to a greater extent than other successful wrestlers.

With regard to the assertion that the beneficiary has "participated in the XXVI Olympic Games," the beneficiary's "International Competitor's Licence" has a section with the heading "Olympic Games." This section is blank. While the beneficiary has an identification card from the Lithuanian National Olympic Committee, there is no concrete evidence that the beneficiary actually competed in the Olympics. Documentation regarding the beneficiary's activity with the Olympic team is dated 1995, a year before the XXVI Olympic Games took place.

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

The petitioner submits documentation that the beneficiary has served as a freestyle wrestling coach of the Lithuanian Olympic Team. Coaching an Olympic team certainly represents a critical role at a national level, and would appear to satisfy this regulatory criterion, although we note that it is not clear whether the beneficiary was a head coach or a subordinate coach with lesser duties.²

Mr. Weiss asserts that the beneficiary has also played a leading or critical role for FILA, but the record does not show this to be the case. Simply acting as one of many coaches at a FILA event is not a leading or critical role, and the petitioner has not shown that the beneficiary has assumed any duties under FILA that do not fall within the normal, standard duties expected of any FILA coach.

Mr. Weiss notes that the petitioning university is, itself, an establishment with a distinguished reputation, as one of the nation's most respected universities. The reputation of the petitioning university is beyond serious dispute, and its wrestling team has won a number of championships, but there is no record that the university had already employed the beneficiary as a coach. The petitioner's intention of employing the beneficiary in the future does not meet the regulatory language, which requires that the beneficiary "has performed," rather than will perform, in a leading or critical role for a distinguished establishment.

The director noted "[t]he beneficiary appears to have had a successful wrestling career" but determined that the evidence submitted with the initial petition does not establish sustained national or international acclaim as a coach. The director

²We note that the petitioner employs four wrestling coaches.

instructed the petitioner to submit further evidence to enable a comparison between the beneficiary and "wrestling coaches who are at the top of their field."

In response, counsel states "the beneficiary is still young, and it is his intention to eventually receive U.S. citizenship and represent the U.S. in the next Olympics. Aside from his coaching duties, he continues to train, and may eventually bring benefit to the U.S. as an athlete."

The initial filing represented the beneficiary not as a wrestler, but as a coach with a prior history as a wrestler. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to Service requirements. See Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations, July 13, 1998). The beneficiary cannot meet some criteria as a wrestler and some as a coach, if his accomplishments in either field standing alone would not suffice to establish eligibility.

Furthermore, counsel's assertions regarding the beneficiary's future wrestling career are tentative and highly speculative. The contention that the beneficiary "may" continue to compete as a wrestler does not overcome the petitioner's failure to make any reference to such plans in the initial filing.

The petitioner submits letters from several wrestling coaches, which counsel deems to be the best way to gauge the beneficiary's reputation in the field.

Granit Taropin, an assistant wrestling coach at the petitioning university, discusses some of the beneficiary's achievements as a wrestler but says nothing about the beneficiary's work as a coach. Mr. Taropin makes several ambiguous assertions about the beneficiary's involvement with the 1996 Olympic Games but never says outright that the beneficiary actually competed, nor does Mr. Taropin otherwise clarify the nature of the beneficiary's activities at those games. Mr. Taropin states that the beneficiary competed in the 2000 Olympic Games and was "successful," but the record contains no first-hand documentation to establish the extent of the beneficiary's participation. Also, the 2000 Olympics took place after the petition's March 1, 2000 filing date.

Olympic gold medalist Kendall Cross states that the beneficiary's "achievements and experiences as an Olympic athlete will enable him to contribute to the well being of others seeking his advice and guidance as a mentor and friend." Like Mr. Taropin, Mr. Cross does not discuss the beneficiary's coaching work at all, let alone establish that the beneficiary is nationally or internationally acclaimed as a coach.

In a joint letter, several wrestling coaches attest to the beneficiary's volunteer work with aspiring wrestlers from

disadvantaged backgrounds. While such volunteer work is commendable, there is no evidence that it has contributed to the beneficiary's widespread acclaim.

One witness does discuss the beneficiary's coaching work. Eduard Kravchenko, coach of the Ukraine Olympic Team, states that the beneficiary "has a record of world championship achievements. . . . His coaching career is also outstanding. His juniors have recently won [the] International championship in Germany, where they competed with more than 300 sportsmen."

A partial translation of a newspaper article states that "all five of [the beneficiary's] students won the championship" in Germany in 2000. This article concerns events that took place after the petition's filing date. In any event, the petitioner has already established that the beneficiary has successfully coached young champion wrestlers.

To establish that demand exists for the beneficiary's services as a coach, the petitioner submits a letter showing that Campbell University seeks "to discuss the possibility" of employing the beneficiary, owing to the beneficiary's "extraordinary skill as both an Olympic athlete and a coach of exceptional caliber." This letter, from October 2000, is also dated after the filing date. The letter suggests that Campbell University's interest in the beneficiary stems at least in part from his work as an Olympic athlete, apparently a reference to the 2000 Olympic Games which took place after the filing date.

The director denied the petition, stating that the beneficiary "has had considerable success in his field, especially as an athlete," and that the beneficiary has coached successful athletes, but nevertheless the record does not establish sustained national or international acclaim as a top wrestling coach. The director also noted that his champion students have been in junior classes, and "it is not clear if his coaching accomplishments in the junior international championships places him among [the top] coaches."

On appeal, counsel argues that the beneficiary's "coaching accomplishments in the junior international championships place him among those coaches who are at the top of their field." Counsel notes that the petitioner has submitted letters of support from "coaches of international category who have world recognition." Counsel observes that a number of these coaches are Olympic gold medalists, and counsel argues "[t]hese individuals currently are the top wrestling coaches in the world and they consider the beneficiary an equal level wrestling coach. They state that his ability as a wrestling coach is extraordinary and rises to . . . the very top of the field."

Review of the letters in question simply does not support counsel's reading of the evidence. As noted above, only one of the witnesses discusses the beneficiary's work as a coach at all, the others

focusing on his career as a wrestler or his volunteer work as a "mentor." Their general assertions to the effect that the beneficiary has much to contribute do not amount to declarations that he is as accomplished as a coach as they themselves are.

All of the evidence submitted on appeal consists of copies of documents submitted in response to the director's earlier request for further evidence. We have already addressed this evidence above.

Many of the petitioner's claims are poorly or incompletely documented, and many of counsel's assertions regarding the existing evidence are unsupported or unwarranted by examination of that evidence. Certainly the beneficiary is an accomplished wrestler in his own right, and he appears to have had considerable success in coaching "cadets" and "junior" wrestlers, but the record offers little information about the beneficiary's track record (if any) as a coach of collegiate wrestlers. The record likewise fails to show that competitions among very young wrestlers attract the same attention as collegiate or Olympic-level wrestling. Even if we make allowances in the usual evidentiary standards, the petitioner has met at most two of the ten regulatory criteria.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the beneficiary has distinguished himself as a wrestling coach 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 beneficiary is a successful wrestler and coach, but is not persuasive that the beneficiary's achievements consistently set him significantly above almost all others in his field at a national or international level. 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.