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U.S. Department of Justice

Immigration and Naturalization Service

identifying 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: EAC 00 218 52201 Office: Vermont Service Center Date: JUN 13 2002

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, Vermont Service Center. Subsequently, the director reopened the petition on the petitioner's motion, and again denied the petition. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

We note that the Form I-140 petition lists two petitioners: the alien beneficiary himself, and Radu Physical Culture, a gymnasium in New York City. There is no provision for multiple petitioners. The alien beneficiary filed the appeal, apparently without the involvement of Radu Physical Culture. In this decision, the term "the petitioner" shall refer only to the alien beneficiary.

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 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).

This petition seeks to classify the petitioner as an alien with extraordinary ability as a personal trainer in boxing and martial arts at [redacted] The petitioner asserts that he "has received sustained national and/or international acclaim and recognition for achievements in sports training" because several of his trainees have won major competitions.

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 initial submission consists almost entirely of letters and affidavits describing the petitioner's activities, rather than first-hand documentation or other evidence of those activities. [redacted] states that these were the same documents used to secure an O-1 nonimmigrant visa for the petitioner, but the only documentation pertaining to an O-1 visa petition is a copy of a notice indicating that the petition had been denied.

[redacted] states that the petitioner "[t]rained in a combined team of Republic with the following boxers: World Champio[redacted]989y), winners of sports meeting of the USSR peoples [redacted] and others."[1] [redacted] states that the petitioner "is held in respect among the athletes and trainers of Republic for his modesty and responsibility for entrusted job."

The petitioner has submitted two affidavits, both attributed [redacted] These documents are very similar in format to introductory letters signed by the petitioner and by [redacted] owner of [redacted] For example, they feature entire paragraphs and even pages entirely in capital letters. The statements are typed or computer-printed, and feature considerable detail about the signer's relationship to the petitioner, but the signer's name is handwritten into a blank space at the beginning of the document, as if the person preparing the affidavit (presumably [redacted] did not know the signer's name. A passage from one affidavit reads "[the petitioner] has shown his special new boxing techniques to [redacted] who is a world-class athlete. . . ." First-person pronouns appear elsewhere in the same affidavit; the third-person reference to [redacted] is another indication that the affidavits were prepared before the identity of the person who would sign them was known.

The ten regulatory criteria set forth at 8 C.F.R. 204.5(h)(3) call for a broad variety of documentary evidence, in keeping with the statutory requirement (cited above) for "extensive documentation" to support claims of sustained national or international acclaim. Personal assertions by the petitioner and a handful of witnesses do not amount to "substantial documentation," nor can they meet the regulatory criteria. The only substantive documentation in the initial record, apart from letters and affidavits prepared in conjunction with the aforementioned O-1 visa petition, consists of magazine articles abo[redacted] and its namesake and proprietor. Because [redacted] not the beneficiary of this petition, the relevance of this material is far from clear.

The petitioner has observed that, because of political instability [redacted] documentation is often difficult to obtain. Nevertheless, the statute and regulations place a high evidentiary burden on the petitioner. The petitioner cannot relieve himself of this burden simply by stating that the documentation is unobtainable; the documentary requirements are not discretionary.

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[1] The grammar of this quotation is as it appears in the uncertified translation of Mr. Tshvirashvili's letter.

The director denied the petition on February 16, 2001, stating that the initial filing contained little direct evidence to support the claims made on the petitioner's behalf. On July 23, 2001, the petitioner filed a motion to reopen, asserting that he "was a sparring mate and trainer of [redacted] and [redacted] both of whom won medals at the 2000 Olympic Games in Sydney, Australia. The petitioner submits copies of previously submitted letters, and news articles about the medal-winning boxers, but none of this evidence linked the boxers to the petitioner. We note that the Olympic Games in question took place in late September 2000, several months after the petition's July 5, 2000 filing date.

On August 21, 2001, the director again denied the petition. Apart from the lack of documentation linking the champion boxers with the petitioner, the director observed that the sparring partner of an Olympic medallist cannot be said to enjoy the same top level of acclaim as the actual medallist himself. On appeal, the petitioner submits a letter from [redacted] to establish that the petitioner was indeed his sparring partner. The letter was prepared in the form of an affidavit but the notarial attestation has been left blank. As with the original letters and affidavits, this document is entirely computer printed except for a blank space in which the name [redacted] has been handwritten. Again, as with the original letters and affidavits, the letter contains first-person pronouns but refers to Mr. Ibraimov in the third person. A passage from the letter reads:

> TWO OLYMPIC MEDALISTS, AS SHOWN BY THE ENCLOSED PRESS RELEASES, WERE HIS SPARRING MATES AND TRAINEES. (YERMAKHAN IBRAIMOV, OLYMPIC GOLD MEDALIST IN THE MIDDLEWEIGHT EVENT IN THE 2000 OLYMPICS IN SYDNEY

After the word [redacted] one and a half lines of text have been obscured with correction fluid. The deleted portion reads "AND JUMADILOV BULAT, SILVER MEDALIST IN THE 2000 OLYMPICS IN SYDNEY, IN THE FLYWEIGHT EVENT.)" The petitioner does not explain the reason for the deletion. After the printed text of the letter follows a handwritten portion by [redacted] grammar as in the original): "In November 1992, [the petitioner] coached me for International Boxing Championship [redacted] I took a third place. That was a beginning of my successful boxing career. Also he was my sparring partner. He is one of the best athlete and coach in the world." Only in the handwritten addendum does [redacted] refer to himself in the first person, which further suggests that this letter, like its predecessors, was written by an unidentified third party and only later ascribed to the individual who signed it. We note that the letter is dated March 2, 2001, and it is clear from the text that the letter was written in support of the petitioner's O-1 nonimmigrant visa petition. The record also contains what appears to be a Russian translation of [redacted] letter, this one bearing a notary's attestation. The Russian version does not contain the reference [redacted] The Russian version appears to have been prepared subsequent to the English version; the handwritten annotation on the English version has been printed in the Russian version.

The only other material submitted on appeal consists of three color photographs of [redacted] Ibraimov, two of which are captioned "Champion, Asian Game in Korea."

The petitioner asserts that "when a trainer trains someone who eventually wins an Olympic gold medal, the trainer is extraordinary because not everyone trains trainees up to [the] Olympic level." While the success of an athlete can reflect very favorably on the skills of a coach, there is no evidence that the petitioner was [redacted] oach "up to [the] Olympic level." [redacted] himself states only that the petitioner was his sparring partner in 1992, eight years before the 2000 Olympics in Sydney. We cannot infer that an Olympic athlete's success demonstrates the extraordinary ability of every coach or sparring partner with whom that athlete has worked in his entire career.

The petitioner's other claims on appeal are unsubstantiated by any reliable documentary evidence. For instance, the petitioner asserts that he has earned "a significantly higher remuneration relative to others in the field," but his only support for this is [redacted] letter, indicating "I believe that his $60 per hour offer will be a significantly high remuneration for services in relation to others in the field." There is no documentary support for the assertion that most boxing trainers earn less than $60 per hour, and the original source of the letter is (as explained above) highly dubious.

Throughout this proceeding, the petitioner has submitted very little actual documentation to meet the statutory requirement of "substantial documentation," and much of what has been submitted is either irrelevant or of questionable provenance. We cannot conclude from the evidence submitted that the petitioner has earned sustained acclaim as one of the very top figures in his field.

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 boxing trainer, instructor, or sparring partner 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 is not persuasive that the petitioner's achievements 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.